

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Tirty first day of January

One thousand nine hundred and seventy nine

PRESENT:

The Honourable Mr. Justice Mohan Writ petition No. 3332/76

V. K. P. Sethupathy

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Petitioner

-Vs-

1. The Land Commissioner, Board of Revenue, Chepauk, Madras-5.
2. The Authorised Office (L. Ref.), Dindigul, Madurai District.
3. Sri Machi Ramabadra Naidu
4. Rajkumar Minor represented by his father and Natural guardian Machi Ramabadra Naidu.

Respondents

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a Writ of Certiorari calling for the records of the Land Commissioner in his proceedings R.P. 110/76 (L. Ref.) dt. 23/6/1976 confirming the proceedings of the Authorised Officer, Dindigul in G.O. Ms. No. 4187 Revenue dated 10/9/1973 in respect of petitioner's Tope lands about an extent of 2.77 acres in R.S. No. 134/1 and 16 cents in R.S. No. 136/2 in Pudukottai in village Periakulam taluk Madurai District and quash the same.

ORDER: This petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court dated 20/8/76 and made herein, and the counter and affidavits filed herein and the records relating to the order in R.P. No. 110/76 (L. Ref.) dated 23/6/1976 on the file of 1st respondent and comprised in the return of respondent 1 and 2 of the Writ made by the High Court, and upon hearing the arguments of Mr. S. Govindasamy, Advocate for the petitioner, and of Mr. V. Ramajagadeesan for Government Pleader for the respondents 1 and 2 and the respondents

3 and 4 not appearing in person or by Advocate the Court made the following order:-

The third respondent held lands more than the ceiling limit as on 6/4/1960. Therefore, the second respondent (The Authorised Officer, Land Reforms, Dindigul) initiated proceedings under the Tamil Nadu Land Reforms (FCL) Act 58 of 1961 (herein after called the Act).

The third respondent filed the return of his holdings on 1/4/1963 stating that the family consisted of 5 members on 2/10/1962 namely, himself his wife, two minor sons and unmarried daughter. The family was eligible to hold 30 standard acres. On verification and enquiry it was found that the family held an extent of 314.31 $\frac{1}{2}$ ordinary acres equivalent to 132.813 standard acres on 6/4/1960. After granting exemption for an extent of 121.93 ordinary acres, equivalent to 40.647 standard acres under Section 73 and 74 of the Act and allowing 45.06 ordinary acres equivalent to 30 standard acres there was a surplus of 147.32 $\frac{1}{2}$ ordinary acres equivalent to 62.166 standard acres. A draft statement was published under Section 10 on 1/9/1965. The same was served on 23/9/1965 by the third respondent. He filed his objection on 20/5/1965 and 13/11/1965 requesting exemption in respect of certain lands on the ground that they were tope. In spite of repeated opportunities being afforded to him he did not appear in the enquiry. Therefore, the objection was rejected. The Third respondent again repeated his request before the second respondent on 6/9/1972 and after considering the merits of the case and inspection, an exemption to the extent of 3.54 acres, equivalent to 1.184 standard acres was granted. The petitioner came to purchase the property on 9/7/1971, thereafter final statement under Section 12 of the Act was published on 16/5/1972 proposing to declare an extent of 139.74 $\frac{1}{2}$ ordinary acres, equivalent to 58.724 standard acres, as surplus. Since there were revisional proceedings in this court, they could not be included in the final statement, However, the final statement came to be published on 30/5/1973. On 18th July 1973, the notification under Section 18 was made which was duly served on the petitioner on 26/3/1976. The revision petition was dismissed by the first respondent by his order dt. 2/1/75.

The appeals before the Land Tribunal which has been preferred by the Landowner were dismissed on 18/3/1975 for default. In the meantime, the petitioner and some others filed revision petition before the Land Commissioner, Board of Revenue,. That came to be dealt with as R.P. 110/1976. The Principle contention urged there was that the lands purchased by the petitioner were topes in character and therefore it should be exempted from the Ceiling Act. The revision was dismissed on 23/6/1976 on the ground that the claim for exemption was not put forth by the third respondent and such claims cannot be considered in the proceedings for revision of the notification under Section 18(1) which only declared that the lands already determined as surplus as required for public purpose and that determination of the holdings of surplus is not under examination in the proceedings under Section 18. It is to quash this order dated 23/6/1976 the present writ petition has been preferred.

Mr. S Govindaswamy urges two grounds for my consideration. One is that in view of Section 19 read with rule 25(2) in as much as the sale has been registered. the petitioner will be entitled to notice of the proceedings under Section 12 and 18 and therefore the proceedings without notice must be held to be invalid. Secondly in so far as the revisional authority has held that the benefit under Section 23(2) of the Act can be availed of, there should have been a specific direction in this regard in the remanded enquiry. The learned Government Pleader states that it is undoubtedly a case in which the original land lord was given notice and at no point of time he claimed any right of exemption on the ground of the lands being tope. The petitioner being a subsequent cannot claim such a right.

As far as the request under Section 23(2) is concerned, that is a matter which could be decided by Authority to which the matter has been remitted.

I have no doubt in my mind that the partitioner is not a person who is entitled to notice as of right. What section 19 says is this:-

19 Declaration to be made before the registering authority in certain cases:-

1. On and after the notified date, no document relating to any transfer of land either by sale, gift exchange lease, possessory mortgage, surrender, agreement, settlement or otherwise shall be registered unless a declaration in writing is made in duplicate in such form as may be prescribed and filed by the transferee before the registering authority under the Indian Registration Act 1908, (Central Act XVI, of 1908), as to the total extent held by him.

2. The registering authority referred to in sub-section (1) shall forward within such time and in such manner as may be prescribed, one copy of the declaration referred to in sub-section (1) to the Authorised Officer, within whose Jurisdiction the land which is the subject matter of the transfer or the major part thereof is situated.

3. On receipt of the copy of the declaration under Sub-Section (2), the authorised officer may obtain such information as may be necessary and take such action as he deems fit in accordance with the provisions of this Act, and in accordance with such rules as may be made in this behalf". At this stage, rule 25(2) can also be noted:-

"25(2) One copy of the declaration referred to sub-rule (1) shall be forwarded to the authorised officer concerned by the registering authority. Copies of the declaration filed during a fortnight shall be forwarded by the registering authority within a week after the expiry of the fortnight by registered post, with an invoice in duplicate showing the number of declaration sent and the registration number of the documents to which the declarations relate. The authorised officer, shall on receipt of the declarations return the duplicate copy of the invoice duly acknowledged".

By a reading of the above provisions, I am unable to hold how the petitioner who had come to purchase the property after section 10 notification which admittedly was served on the landlord can claim the benefit of this Act and say that he is entitled to notice. He is not a person interested on the date of section 10 notification. Nor again did he send intimation to the authority in which event at least something could be said in favour of the petitioner. Therefore, the first argument fails.

No doubt the first respondent in his order of remit has stated that the petitioner is entitled to the benefit of section 23(2). That could be gone into specifically by the authority to whom the matter stands remitted. For all these reasons the writ petition fails and is hereby dismissed.

There will be no order as to costs.

Sd/- K. P. MADHAVAN
Assistant Registrar (P).