

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Twenty fourth day of November,
One thousand nine hundred and seventy eight.

Present: The Honourable Mr. Justice SATHIADEV.

Writ Petition Nos. 5036/73 and 460/74.

V.R. Ramaraj

.. Petitioner in W.P.No.5036/73

V.P. Paramasivam

.. Petitioner in W.P.No.460/74

Vs.

1. The Board of Revenue
represented by Land Commissioner
(Land Reforms), Madras-5.

2. Kasia Pillai, Ex-Serviceman,
No.101320, Madras Fire Service,
Bodinaickanur, Ethamapalayam
Taluk, Madurai District.

Respondents in both the
petitions.

Petitions under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the respective affidavits filed therewith, the High Court will be pleased to issue writs of certiorari calling for the records of the first respondent in his R.P.No.C3/3/72 (Land Reforms) dated 19th June 1973 and quashing the same.

ORDER: These Writ Petitions coming on for hearing on Wednesday the 8th day of November 1978 and on Thursday the 9th day of November 1978, upon perusing the petitions and the respective affidavits filed in support thereof, the order of the High Court, dated 9th October 1973 and 8th March 1974 and made in Writ Petitions Nos.5036 of 76 and 460/74 respectively and the Counter affidavit filed in W.P.No.5036/78 and the records relating to the order in R.P.No.C3/3/72 dated 19th June 1973 on the file of the 1st respondent in both the petitions comprised in the return of the 1st respondent in both the petitions to the writ made by the High Court, and upon hearing the arguments of Mr. R. Sukantharaj, Advocate for the petitioner in both the petitions and of Mr. C. Chinnsamy for the Government Pleader on behalf of the first respondent and the 2nd respondent in both the petitions not appearing either in person or by Advocate and having stood over for consideration till this day, the Court made the following order:-

In both these petitions, counsel for the petitioners had raised similar points and therefore they are dealt with together.

The point involved arises under Tamil Nadu Land Reforms (Disposal of Surplus lands) Rules 1965 herein after called rules and the contentions is that the impugned orders should not have been made at the instance of a party who had no locus standi to prefer a petition before the Collector, he having not made an application for assignment within a time fixed for receipt of applications, and therefore he is not an aggrieved party and he cannot maintain a petition before the first respondent.

For the purpose of appreciating the points involved, the facts in W.P.No.5036 of 1973 may be briefly considered. The surplus lands were taken possession of on 11th August 1970. Authorised Officer, Madurai called for applications and the last date for receipt of applications was fixed at 15th August 1970. 8 persons applied including the petitioners. Notice in Form 'D' was issued inviting objections on 25th August 1970, but none received. Therefore the lands were assigned to 8 persons by order dated 9th November 1970. It is at this stage, the second respondent filed a petition before the District Revenue Officer also alleging irregularities in the assignment of lands in favour of the applicants, but this application was rejected by the District Revenue Officer by order dated 21st December 1971 on the ground that he was not an applicant and therefore it is not maintainable. Being aggrieved with the said order, the second respondent filed a revision petition to the first respondent under rule 11(3) of the Rules and the first respondent by order dated 19th June 1973 set aside the order and directed fresh notices to be issued. Being aggrieved with this order, these writ petitions have been filed.

The main contention taken by the counsel for the petitioners is that the second respondent herein was not an applicant for the assignment of lands within the time prescribed, and therefore he cannot either file an appeal or a revision under the said rules. It is not in dispute that the second respondent was an applicant, and it is not even his case that he has made an application within time. He filed his petition on 20th October 1971, nearly one year after the order of the Authorised Officer, dated 19th November 1970 alleging irregularities in the assignment of the lands. No doubt the District Revenue Officer rejected it. But when the matter came up before the first respondent, it was noticed that the lands have been assigned to persons, who do not

come within the category of rules 5(1) (6) of the rules, because they cannot be 'landless persons'. The particulars of lands held by them and made known later, had disclosed they own extensive lands not only in the hill areas in Tamil Nadu but also in Kerala.

The contentions of the petitioners are that there had been a partition in their family and that they are not in possession of the lands which are mentioned in the counter affidavit. But they have not shown that there had been any partition in the family except to say that they have been enjoying the lands separately pursuant to an oral partition, which is supported by reports of the Revenue Officials. In any event, their main contention is that the Land Commissioner cannot take these aspects into account, because the revision petition filed before him is not maintainable under the said rules.

The impugned order refer to Rules 11(3) of the said rules, and proceeds to state that this is a revision petition filed by the petitioner under Rule 11(3) against the orders of the District Revenue Officer dated 21st December 1971. Relying on this reference made by the Land Commissioner/first respondent counsel for the petitioners contends that he has no jurisdiction to receive the petition and therefore the order passed by him is not valid in the eye of law. The counsel for the respondent No.1 would contend that when Rules 11(3) of the rules is invoked by the first respondent whether at the instance of a party or on his own, it is suomotu power conferred on him under the rules, and therefore the only relevant fact or to be taken into account is to be found out whether the first respondent is invested with such a power or not, and it is not necessary to go into the question as to whether it can be invoked by a person like the second respondent who had not made an application within this time. In essence, his contention is that whenever power is exercised under rule 11(3) of the Rules, it is suomotu power which he can exercise. Whether he has come across the proceedings administratively or anybody else bringing to his notice about the concerned matter. Rule 11 as originally stood enabled the Land Commissioner to call for and examine the records of the District Revenue Officer to satisfy himself as to the regularity of such proceedings or correctness, legality of propriety of any decision or orders passed thereon in any case, if it appears to him that it would either be modified, annulled, reversed or remitted for consideration. Therefore, the power of revision contemplated under Rule 11, as it originally stood, is a suomotu power which he can exercise either by himself calling for the

records or of his being made known of what has transpired in the offices of the respective District Revenue Officers. By G.O.Ms. No.1870/Rev. dated 8th September 1969, Rule 11 had been substituted and sub rule 3 enables him, at any time within 5 years of the date of the order of assignment, if he is satisfied that the order was grossly wrong or there has been a material irregularity in the procedure or it was based under a mistake of fact owing to fraud or misrepresentation or that the extent assigned together with the other lands if any held by the assignee will be in excess of 5 standard acres. It is seen that this sub-rule 3 had been substituted by an amendment in G.O.601/Rev. dated 11th February 1974. The present order having been passed on 19th June 1973 the amendment dated 11th February 1974 will not be applicable to these cases. Hence Rule 11(3) of the Rules enables the Land Commissioner to set aside an order of assignment on the ground stated therein. It does not state that it can be exercised only at the instance of an order of aggrieved party. Rather it confers on him a soumotu power, which can be exercised within 5 years of the date of the assignment and that is the only then limitation on the powers to be exercised by him under Rule 11(3). It does not depend on any aggrieved person preferring a revised petition for the powers to be exercised by him. In these cases, no doubt the second respondent had brought to the notice of the first respondent of the material irregularities and also about the misrepresentation about the lands held by the assignees, and when such materials come to the knowledge of the first respondent, he calls for the records and passes an order under Rule 11(3). The impugned order had been passed after calling for the records of the District Revenue Officer. Whenever an authority is conferred with a soumotu power, it is not necessary to find out whether he had come across the matter of his own or through his subordinate officials or by any petitions from a member of the public. The only restraint against passing an order of his own is that he is to comply with the requirements of sub-rule 6, which states that no order shall be passed without giving an opportunity to see assignees are being heard. In these cases such an opportunity had been extended to the petitioners and it is only thereafter the first respondent had come to the conclusion that they have not furnished the particulars of the lands owned by them, when they made 'C' form applications and that this will tantamount to suppression of facts relating to the possession of other lands. If this is not an irregularity,

which an authority exercising suo-motu powers can make out, it is not made out before me as to what else such an authority can do, when he becomes aware of such irregularities. The counter-affidavit itself discloses the fact that the family of the petitioners owns extensive lands not only in this state but also in adjoining Kerala State. These facts have come to the knowledge of the first respondent by calling for the records of the subordinate officers and this power is conferred on him under rule 11(3) and this is what he has precisely done. No doubt he had initiated action on a petition filed by the second respondent. But as already stated what is necessary to be made out, is to find out whether such revising authority is conferred with a suo motu power or not and it is immaterial whether the person who makes the petition is an aggrieved party or not.

The next contention is that when Rule 11(3) had been mentioned in the order it would mean that the second respondent had been enable to invoke the said rule, which is not applicable to this case. It has been held by this Court and the Supreme Court that the mere fact that a wrong rule or a section is mentioned in an order, it would not invalidate the order, and what is necessary to trace the real source of power, and if it to be made out and if it can be applicable to the orders in question, then the order will be a valid one. In this case, as already stated, the first respondent has exercised his powers under Rule 11(3) though, as such, the second respondent cannot maintain a petition under Rule 11(3).

Even in the grounds taken in the petition, in ground 'D', it is stated the first respondent has erred in passing a suo motu order and without applying his mind in a quasi judicial capacity. Hence, when these petitioners had understood that the impugned order was one passed by the first respondent in exercise of his suo-motu powers, I fail to see as to how the petitioners can still challenge the impugned orders. Hence, these writ petitions are dismissed with costs, Counsel fee Rs.100 one set.

Memorandum of costs in writ petition No.5036 of 1973.

First respondent's costs

Stamp for vakalathanama

Advocate's fee (as fixed by Court)	Rs.100.00
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Translation and printing or typing charges	Nil
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To be paid by the petitioner to the first respondent (Rupees one hundred only)	Rs.100.00
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Memorandum of costs in Writ Petition No.460/74.

First Respondent's costs:

Stamp for Vakalathanama	..	0.00
Advocate's fee	..	0.00
Translation & Printing or typing charges..		<u>Nil</u>

To be paid by the petitioner to the Respondent	<u>Nil</u>
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(Rupees Nil).

And counsel fee one set given in W.P.5036/73.

Sd/- K. P. MADHAVAN

Assistant Registrar (P).

/True copy/