

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:12.09.2014

DATED:25.09.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.23508 of 2007

and

M.P.No.1 of 2007

1.Anandha Jothi
2.R.Parthasarathy
3.Shanmugam
4.Selvi

... Petitioners

Vs.

1.R.Manivannan
2.Rajamani
3.Uma
4.R.Sadhana

5.The Tahsildar-Coimbatore North,
Coimbatore - 641 045.

6.The Assistant Commissioner (Lands Reforms)
Erode, Periyar District.

7.The Land Commissioner,
Chepauk, Chennai - 5.

8.Baba Chandra Sekar

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, to call for the records of the 7th respondent and quash the order passed in D1/R.P.7/2006/L/Ref, dated 12.07.2006.

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For Petitioner : Mr.C.Deivasigamani

For Respondents : Mr.G.Krishnakumar for R1 to R4
Mr.M.S.Ramesh
(Additional Government Pleader
for R5 to R7

No Appearance for R8

O R D E R

The petitioner submits that one Mr.Balachandrasekar, S/o.P.R.Ramakrishnan, attracted by Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (Tamil Nadu Act No.58/61) and as amended by Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act 1970 (Tamil Nadu Act No.17/70) as he held an extent of 55.66 ordinary acres equivalent to 21.281 standard acres as on 15.02.1970 in Coimbatore and Chengalpattu Districts. Draft statement under section 10(1) was prepared and published in the Tamil Nadu Government Gazette dated 23.05.1979 and the final statement under section 12 of the Act was published in the Tamil Nadu Government Gazette dated 19.03.1980 declaring an extent of 21.92 ordinary acres equivalent to 6.278 standard acres to be acquired as surplus from the holdings of the land owner. Among the above surplus extent the following lands in Edikarai Village of Coimbatore District were also noted as surplus.

Edikarai Village:

S.F.No	Extent declared as surplus A.C
518	0.57
515	1.74
516	1.05

2. Aggrieved by the above final statement, the Revision petition filed before the Land Commissioner under Section 82 of the Act was dismissed on merits. Thereafter, the appeal made in W.M.P.No.12025/82 in W.P.No.8039/82 before this Court transferred to Tamil Nadu Land Reforms Special Appellate Tribunal was also dismissed on merits. The notification under section 18(1) of the Act was published in the Tamil Nadu Government Gazette dated 05.11.1995, declaring the following surplus lands among other surplus lands.

Sl. No	S.F.No	Wet or Dry	Extent A.C	Assessment	Assessment rate per acre
1	518/1B2	Dry	0.37	0.96	1.66
2	515/2B	Dry	1.74	2.95	1.69
3	516/2B	Dry	1.05	1.78	1.69

After publication of Notification under section 18(1) of the Act, Thiru.N.Rangasamy, the father of the respondents 1 to 4 herein had filed an objection petition before the Assistant Commissioner on 23.01.1996, stating that his land was included in the holdings of the adjacent land holder and request to Chandra Sekar further action in the cases of lands belonging to him. He had also filed a copy of family agreement along with his petition. As the family agreement was not a registered one and an enquiry notice was sent to Rangasamy, the father of the respondents 1 to 4 herein to appear before the Assistant Commissioner (L.Ref.) Coimbatore on 07.03.2006 calling for registered documents and this notice was dispatched on 26.02.1996. On receipt of the notice, Thiru.Rangasamy, the father of the respondents 1 to 4 herein again sent a petition on 07.03.1996 stating that demarcation of surplus lands were wrong; he had also stated that he is enclosing land revenue receipts and village accounts in support of his contention. The Assistant Commissioner in his letter dated 04.04.1996 informed him that the ownership of the surplus lands was not proved with reference to material evidence and as the assignment process were also completed in MRIV/663/C4 the claim of the ownership by the petitioner cannot be complied with. Assignment of surplus lands to four persons was completed on 17.02.1996 and possession was also handedover to the assignees.

3. At this juncture, R.Manivannan, S/o.Rangasamy and three others filed Revision Petition (herein the respondents 1 to 4) under Rule 11(3) (b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land (Rules, 1965 against the proceedings of the Assistant Commissioner (L.Reforms) Erode. MR.IV/2813, dated 23.07.2002, assigning the surplus lands. Aggrieved by the above final statement, a Revision petition has been filed under section 82 of the Act and was dismissed on merits. Thereafter, the appeal made in W.M.P.No.12025/82 in W.P.No.8039/82 before this Court and this Court has transferred the case to Tamil Nadu Law Reforms Special Appellate Tribunal and the appeal was dismissed by the Special Appellate Tribunal. The notification under section 18(1) of the Act was published in the Tamil Nadu Government Gazette dated 05.11.1995 declaring the following surplus lands among other surplus lands. She further states the 7th Respondent has allowed the Revision Petition filed by the respondents 1 to 4 herein in his proceedings D1/R.P.7/2006/D.Ref, dated 12.07.1996. She states that an order

passed by the 7th respondent is erroneous.

4. The respondent further submits that in the case one Thiru.Babachandrasekar, S/o.P.R.Ramakrishnan, was a person attracted under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by Act, 17/70 hereinafter called as the 'Act'. He held an extent of 55.66 ordinary acres equivalent to 21.281 standard acres as on 15.02.1970 both in Coimbatore and Chengalpattu District. Draft statement under section 10(1) of the Act was published in Tamil Nadu Government Gazette dated 23.05.1979. Final statement under section 12 of the Act was published in Tamil Nadu Government Gazette dated 19.03.1980 declaring an extent of 21.92 ordinary acres equivalent to 6.278 standard acres as surplus as detailed below:

IDIKARI VILLAGE (Coimbatore Taluk)

S.F.518/1	0.57
S.F.515	1.74
S.F.516	1.05
Total	3.36

PACHAPALAYAM VILLAGE (PALLADAM TALUK)

S.F.5/2	5.66
S.F.6/2	1.60
S.F.195	9.23
Total	16.49

VARADHARAJAPURAM VILLAGE (SRIPERUMPUDUR TALUK)

S.F.537/1	0.54
S.F.537/2	0.60
S.F.518/2	0.45 ½
S.F.523/1	0.47 1/2
Total	2.07

Grand Total (3.36+16.49+2.07=21.92)

Against the publication of final statement under section 12 of the Act, the land Owner Babachandrasekar has filed a Revision Petition before the Land Commissioner. After enquiry, the Tribunal dismissed the Special Revision Petition in its order in TRP 635/91 (W.P.8039/82) dated 02.07.1992. Later on, sub divisions were made and notification under section 18(1) of the Act was published in Tamil Nadu Gazette dated 15.11.1995.

IDIKARI VILLAGE

S.F.518/1	0.57
S.F.515	1.74
S.F.516	1.05
Total	3.36

PACHAPALAYAM VILLAGE

S.F.5/2	5.66
S.F.6/2	1.60
S.F.195	9.23
Total	16.49

VARADHARAJAPURAM VILLAGE

S.F.537/1	0.54
S.F.537/2	0.60
S.F.518/2	0.45 ½
S.F.523/1	0.47 1/2
Total	2.07

After the publication of 18(1) notification in Tamil Nadu Government Gazette dated 15.11.1995, assignment proceedings were taken and surplus lands viz., 3.36 in Idikarai Village was assigned to the following four persons in Ref.No.MR.IV.663/C4, dated 17.02.1996.

Sl. No	Name of the Assignee	S.F.No	Extent
1.	R.Shanmugam S/o.Rangasamy	518/1B2 515/2B (Part)	0.57 0.27 0.84
2.	Anandhajothe W/o.Rangasamy	515/2B(P) 516/2B(P)	0.63 0.21 0.84 -----
3.	Selvi W/o/Krishnan	516/2B(P)	0.84
4.	S.Parthasarathi	515/2B(P)	0.84
		Total	3.36

Thereafter, an extent of 16.49 acres was assigned to 18 persons in Pachapalayam Village vide the Assistant Commissioner (Land Reforms), Erode, proceedings Ref.No.670/MR IV/17.70/dated 24.02.1996

as detailed below:

Sl. No	Name of the Assignee	S.F.No	Extent Assigned
1.	Devarajan S/o.Vellingiri	6/2	0.80
2.	Damodharan S/o.Palanisamy	6/2	0.80
3.	Devadoss S/o.Muthusamy	195/1	0.95
4.	Jayabalan S/o.Narayanasamy	195/1	0.95
5.	Balasubramanian S/o.Govindasamy	5/2A	0.95
6.	Indirani W/o.Arumugam	5/2A	0.95
7.	Rathinamal W/o.Karuppusamy	5/2A	0.95
8.	Sivakumar S/o.Velusamy	5/2A	0.95
9.	Gandhimani W/o.Ramasamy	5/2A	0.95
10.	Maniyathal W/o.Nachimuthu	195/1	0.95
11.	M.V.Ramakrishnan	5/2A	0.91
12.	Chinnasamy S/o.Sengoda Gomalu	195/1	0.95
13.	Ramasamy S/o.Sengodan	195/1	0.85
14.	Thangavelu S/o.Thirumalaisamy	195/1	0.83
15.	Palaniyammal W/o.Ganesan	195/1	0.95
16.	Saraswathi W/o.Selvaraju	195/1	0.90
17.	Maniyarasi D/o.Govindan	195/1	0.95
18.	Pannari D/o.Ramasamy	195/1	0.95
		Total	16.49

Meanwhile, against the publication of notification under section 18(1) of the Act, one Thiru.N.Rangasamy, filed an objection petition before the Assistant Commissioner (L.Ref) Coimbatore on 23.01.1996 stating that the following lands in Idikarai Village had been included in the holdings of the land owner Babachandrasekarar and that therefore action may be dropped in respect of his lands.

S.F.518/1	1.02 $\frac{1}{2}$
S.F.516	1.40 $\frac{3}{4}$
S.F.515	2.32 $\frac{3}{4}$
Total	4.76

Along with his petition he sent a copy of Family Agreement Deed. As the family agreement deed sent by him was only a copy of a notice was sent to him in this office Ref.M.R.I/28B/17.70, dated 17.02.1996 to produce the original document and registered Family Agreement for perusal on 07.03.1996. Responding to this notice, N.Rangasamy, sent a petition on 07.03.1996 stating that the demarcation of surplus lands were wrong. It was therefore, intimated to N.Rangasamy by the Assistant Commissioner (Land Reforms) Coimbatore, in Ref.M.R.I/28B/17.70-A7, dated 04.04.1996 that the ownership of the surplus lands was not proved with reference to material evidence, that the process of assignment was also completed and that no action could be taken. Then Deeds of Assignment in 'Form F' was issued and possession was also given to the assignees on 06.08.1996. Afterwards, R.Manivannan, S/o.Rangasamy and three other (Legal heirs of the erstwhile landowner) filed a Revision Petition under Rule 11 (3) (b) of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, before the Land Commissioner on 01.02.2005 against the proceedings of the Assistant Commissioner (Land Reforms), Erode, in MR-IV/28B/17.70, dated 23.07.02. In the Revision Petition Thiru.Manivannan claimed that the following lands in Idikarai Village are ancestral Properties, but these lands have been included in the holdings of one Thiru.Babachandrasekar and that therefore the entire proceedings may be quashed.

S.F.No	Extent
515/2	0.93.5
516/2	0.61.5
518/1B	0.42.5
Total	1.97.5 Hec. (or) 4.88 acres

After enquiry, the Land Commissioner in Proceedings Ref.D1/R.P.7/2006, dated 12.07.2006, set aside the final statement under section 12 of the Act as well as the 18(1) notification published under the Act and the consequential assignment proceedings in so far as the following lands declared as surplus:

S.F.No	Extent
518/2B2	0.57
515/2B	0.74
516/2B	1.05
Total	2.36

The Land Commissioner has also issued directions to identify the correct portions of the land owners lands and declare the surplus

lands suitably and that necessary amendment to final statement and 18 (1) notification would be issued accordingly. Against the order passed by the Land Commissioner in proceedings in D1/R.P.7/2006, dated 12.07.2006, the present writ petition No.23508/2007 has been filed by Tmt.Anandha Jothi and three others who are all assignees.

5. The respondent further submits that it is admitted that the possession was handed over to the assignees on 06.08.1996. Thereafter, the Land Commissioner in her order dated 12.07.2006 has set aside the final statement under section 12 of the Act and notification under section 18(1) of the Act published in the Tamil Nadu Government Gazette and also the consequential assignment proceedings. Therefore, the possession of land by the assignees is not lawful and the assignment shall be deemed to have been cancelled by virtue of Section 18-D(2) of the Act. Hence, the claim of the petitioners has no force. It is submitted that the identification of the portion of land of the land owner Babachandrasekar as per the directions of Land Commissioner is under process. Hence, the Writ Petition is a premature one. It is submitted that no orders has been passed by the Office of the Assistant Commissioner (Land Reforms) Erode, in proceedings MRIV/28B/17-70, dated 23.07.2002. But only copy of 18(1) notification was issued by the Assistant Commissioner (Land Reforms), Erode to one Thiru.N.Rangasamy, F/o.Thiru.Manivannan, on 23.07.2002. Therefore, the contention of the petitioner is liable to be rejected. It is submitted that the enquiry notice alleged to have been issued Ref.No.D1/16211/2005 relates to the Correspondence in the office of the Land Commissioner in connection with D1/R.P.7/06 (L.Ref) filed by the legal heirs of Thiru.Rangasamy, erstwhile land owner. Therefore, the contention of the petitioners deserves no merit. The Land Commissioner had enquired into the matter and passed orders on 12.07.2006 that the lands in question (i.e.) S.No.515/2B, 516/2B and 518/1B2 belong to Rangasamy and they do not belong to Babachandrasekar. It is submitted that the lands assigned to the writ petitioners are from the portion belonging to Rangasamy. However, the identification of lands belonging to Babachandrasekar is under process.

6. The respondent further submits that soon after the publication of notification under section 18(1) of the Act in Tamil Nadu Government Gazette dated 15.11.1995, N.Rangasamy (father of R.Manivannan) was brought to notice of the Assistant Commissioner (Land Reforms) Coimbatore on 23.01.1996. Hence, it is not correct to say that the fact was brought to notice only now. Further, the Assistant Commissioner has no jurisdiction to entertain any kind of representation after the publication of 18(1) notification. Hence, the contention of the petitioner is liable for rejections.

7. The learned counsel Mr.C.Deivasigamani appearing for the petitioner submits that the respondents had acquired surplus lands

from one Balachandrasekar under the Tamil Nadu Land Reforms (Fixation of Ceiling) Land Act. After acquiring the said lands, the lands were assigned to four persons and possession was handed over. Further, the land owner had filed an appeal against the declaration and the same was dismissed. Under the circumstances, the respondents 1 to 4 had filed revision before the 5th respondent herein. The same was allowed. Actually, the petitioners are in possession and enjoyment of the property from the date of handing over the possession i.e., 17.02.1996. The petitioners have not been impleaded as necessary parties before the Assistant Commissioner, Land Reforms, Erode. The father of the respondents 1 to 4 was working as a Tahsildar and he encroached the lands adjacent to his lands by misusing his official power. Therefore, a land survey is required to determine and identify the surplus lands and possession. The learned counsel requests this Court to set aside the 7th respondents order.

8. The learned counsel Mr.G.Krishnakumar, appearing for the respondents 1 to 4 submits that the subject land has been assigned to the petitioner's under the Tamil Nadu Land Reforms, Rules 1965. The same was challenged by the respondents 1 to 4 before the 7th respondent. The subject lands are ancestral properties of the respondents 1 to 4. The father of the respondents 1 to 4 had not proved with reference to the material evidence and assignment and also whether possession was given to the petitioner. The 7th respondent had issued notice to the petitioners, but they did not appear. Thereafter, the impugned order has been passed wherein the 18 (1) notification under the Act was set aside and further directed the Assistant Commissioner, Land Reforms, Erode to identity the correct portions of the land owner's lands as well as declare the surplus lands suitably and also necessary amendments to the final statements and issue notification Section 18(1). As per the impugned order, the possession of the land by the petitioner is not lawful and assignment shall be deemed to have been cancelled by virtue of section 18D(2) of the Act. Further, as per the counter statement filed by the respondents 5 to 7, the property belongs to father of the respondents 1 to 4. सत्यमेव जयते

9. The learned counsel further submits that the respondent has passed the impugned order within the stipulated period. Unless, the identification of the correct portion of the land owners are made, then only the revenue authorities can declare the surplus lands suitably. In view of the fact that the subject lands belonging to the 8th respondent. The contention was also accepted by the petitioners in their grounds raised in the above writ petition.

10. The learned counsel, Mr.M.S.Ramesh appearing for the respondents 5 to 7 submits that the respondents 1 to 4 had filed revision before the 7th respondent herein and challenged the assignment proceedings of the 6th respondent, wherein the land owner i.e., 8th respondent also participated. The 7th respondent had conducted a comprehensive enquiry and passed the orders on merits, after considering the report of the Special Revenue Inspector and Special Deputy Tahsildar, Land Reforms, Coimbatore. The operative portion of the impugned order states that the 7th respondent directed the 6th respondent namely Assistant Commissioner to identify the correct portion of the land owner's lands and declare the surplus lands suitably.

11. Per contra, the learned counsel, Mr.Deivasigamani submits that the revenue authority had issued patta in the name of 1st petitioner after verifying the entire records and physical possession. Therefore, the petitioners are in physical possession from 17.02.1996. Under the circumstances, the impugned order is not suitable for execution.

12. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on all sides, this Court is of the view that the 7th respondent had perused the reports submitted by the Special Revenue Inspector and Special Deputy Tahsildar, Land Reforms and then had passed the impugned order and directed the Assistant Commissioner, the 6th respondent herein to identify the correct portion of the land owner's lands and declare the surplus lands suitably. The petitioners also have raised grounds stating that "unless land survey is conducted, based on the documents of Balachandrasekar, S/o.Ramakrishnan and Rangasamy, the surplus lands cannot be identified and the petitioner's possession cannot be disturbed". As such the impugned order of the 7th respondent will not be prejudicial to either parties.

Hence, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(cs-II)

//True copy//

Sub Assistant Registrar

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To

1.The Tahsildar-Coimbatore North,
Coimbatore - 641 045.

2.The Assistant Commissioner (Lands Reforms)
Erode, Periyar District.

3.The Land Commissioner,
Chepauk, Chennai - 5.

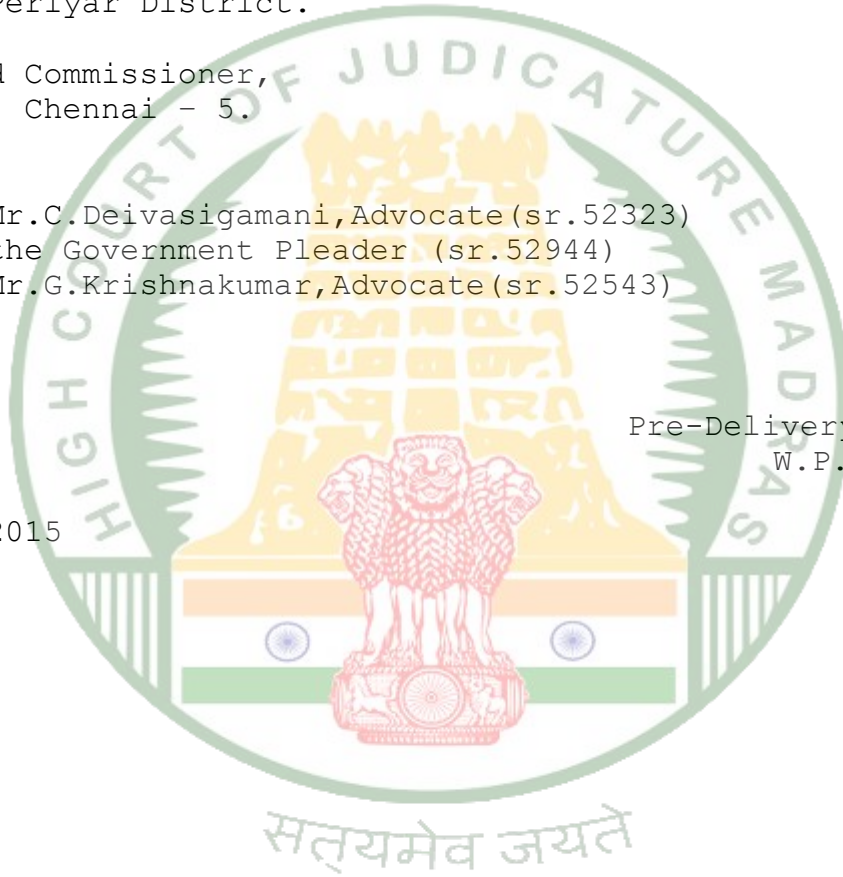
+1 cc to Mr.C.Deivasigamani, Advocate (sr.52323)

+1 cc to the Government Pleader (sr.52944)

+1 cc to Mr.G.Krishnakumar, Advocate (sr.52543)

GP (co)
cp 06/10/2015

Pre-Delivery Order made in
W.P.No.23508 of 2007



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