

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 30/10/2015

DATED: 06/11/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.14931 of 2007

and

M.P.No.2 of 2007

M.R.Palanisamy

... Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by its Secretary,
Department of Revenue,
Fort St. George,
Chennai - 9.

2.The Commissioner (Land Reforms),
Ezhilagam,
Chepauk,
Chennai 5.

3.The Assistant Commissioner (Land Reforms),
Jawans Bhavan,
Near Pattakarar Buildings,
Gandhiji Road,
Erode.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records relating to G.O.Ms.No.2 Revenue [L.R.1(2)] dated 03.01.2007 as published in Tamil Nadu Government Gazette, Part-II, Section-1 dated 14.02.2007 issued by the first respondent and to quash the same.

For Petitioner : Mr.R.Muthukumaraswamy, Senior Counsel
for Mr.S.Saravanan

For Respondents: Mr.P.Karthikeyan
Government Advocate

- -

O R D E R

The short facts of the case are as follows:-

The petitioner has submitted that he is the owner of the land comprised in Survey No.215/2, 218, 219, 220, 221/2, 222/1 and 222/2 of Uthiyoor Village, Kangayam Taluk, Erode District measuring an extent of 31 acres which is equivalent to about 8 standard acres. He has further submitted that originally he owned lands in Survey Nos.210/1, 211/1, 214/1, 215/1, 215/2, 218, 219, 220, 221/2, 222/1 and 222/2 of Uthiyoor Village in all measuring an extent of 67.24 acres. The Government initiated the proceedings under Tamil Nadu Land Reforms (Fixation of ceiling on land) Act 1961 in the year 1976 wherein the lands comprised in Survey No.210/1, 211/1, 214 and 215/1 in all measuring an extent of 30.57 acres were declared as excess by No.15 P/MRI/17/70A dated 24.06.1976. The lands which were declared as excess were assigned to various beneficiaries belonging to Harijan families and pattas have been granted to them. By virtue of the aforesaid proceedings, he is no more in possession of the aforesaid properties, which were declared as excess. Thereafter, he has sold an extent of 5 acres in Survey No.215/2 and 218, in the year 2006. By virtue of the aforesaid proceedings under land reforms act and the aforesaid sale he is entitled to and in possession of only about 31 acres which is below the ceiling limit of 60 acres.

2.The petitioner has further submitted that he has dug two wells and two bore-wells in his lands by investing huge money. A family temple is also located in his lands. Tiled farm house with electricity supply connection has also been constructed in his lands. He is running a poultry farm in the aforesaid land. There are coconut plantations and palmyra trees in his land. He has further submitted that while this being the position, he was shocked to receive the Government Gazette dated 14.02.2007, wherein it has been stated that he is the owner of 67.24 acres which is equivalent to 16.810 acres. The respondents have computed his holdings at 67.24 acres by including the lands that were declared as a excess and which have been allotted to the beneficiaries and the land that has been already sold by him which is contrary to law. Though the power has been vested with the commissioner for review, no notice was issued to him, thereby violating the principles of natural justice. He reliably understand that the Government, finding that there is no sufficient land to distribute to the poor person under the scheme announced by the Government, has pressurized the subordinate officers to find out some lands and to make them available to implement the Government policy by any means. Aggrieved by the action of the respondents in declaring his property to be excess when no such property is in excess.

Hence, this writ petition is filed.

3.The respondents have filed counter statement which are as follows:-

The third respondent has stated that the office of the third respondent has been disbanded and the post of Assistant Commissioner (Land Reforms), Erode has been disbanded as per G.O.Ms.No.34, Revenue dated 14.01.2015. The powers of the Authorized Officer and Assigning Authority under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 have been conferred to the Sub-Collector / Revenue Divisional Officers in the State as per the notification published on 04.03.2015 and 05.03.2015. As the lands involved in this case falls under the Revenue Division of Dharapuram, the Revenue Divisional Officer, Dharapuram is the Authorized Officer concerned for this case.

4.(i)It is submitted that the writ petitioner challenged the declaration of surplus notified in the modification to notification under Section 18-C of the Act published in the Tamil Nadu Government Gazette dated 14.02.2007.

(ii)It is submitted that Land Ceiling proceedings were initiated against the holdings of the landowner, the writ petitioner under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) as amended by Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Tamil Nadu Act 17/70) and after following due process of law, surplus was declared and assigned to eligible persons under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. While determining the surplus, the extent settled in favour of sister of Writ Petitioner, the land owner through Doct.No.1312/70 and 1313/70, which were registered between the date of commencement of the Act, i.e. 15.02.1970 and the notified date i.e. 02.10.1970, i.e. on 10.04.1970 were deducted.

(iii)It is submitted that the case on hand was reopened under the Amended Act 11/96 that came to be passed following the Supreme Court rulings as reported in 1980 I MLJ 34 (SC) in the case of Authorised Officer v. S.Naganatha Ayyar. Hence revised surplus was arrived as per the notification now under challenge in this writ petition.

(iv)It is submitted that Section 22 of the Act reads as follows:

"Where, on or after the date of the commencement of this Act, but before the notified date, any person has transferred any land held by him by sale, gift (other than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by bequest or has effected a partition of his holding or part thereof, the authorized officer within whose jurisdiction such land, holding or the major part thereof is situated may, after notice to such person and other

persons affected by such transfer or partition and after such enquiry as he thinks fit to make, declare the transfer or partition to be void if he finds that the transfer or the partition, as the case may be, defeats the provisions of the Act".

(v) It is submitted that the case of the writ petitioner was lawfully reopened on 31.12.1999 under the Amended Act 11/96 well before the expiry of period of five years from the date of publication of Amended Act 11/96. After giving 16 notices to both the transferor and transferees and after giving sufficient opportunities and recording their depositions, surplus was arrived and against the declaration of surplus the writ petition has been filed by the petitioner.

5.A brief history of the case is as follows:

(i) The petitioner Thiru.M.R.Palanisamy Gounder of Mudalipalayam village, Kangeyam Taluk in Erode District held lands to an extent of 158.29 ordinary acres equivalent to 39.573 Standard Acres as on 15.02.1970. As the land owner held lands in excess of the ceiling area as on 15.02.1970, actions was initiated against the holdings of the land owner as per the provisions of the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act 1970 (Tamil Nadu Act 17/70) hereinafter referred to as "the Act."

(ii) The draft statement under Section 10(1) of the Act was published in the Tamil Nadu Government Gazette dated 05.02.1975 and copy of it was sent to the land owner on 17.02.1975 by R.P.A.D. After receiving a copy of notification under Section 10(1) of the Act, the land owner filed objections before the Assistant Commissioner. In his objection petition, the land owner had claimed to exclude an extent of 20.67 acres in Uthiyoor Village and 16.00 acres in Mudalipalayam Village, as he settled lands in favour of his sister Kamalam Poongothai which were executed on 07.02.1970 and 21.01.1970 respectively. The land owner has also requested to exclude some lands under Section 3(22) of the Act which were unfit for cultivation. The land owner has also requested to rectify the land placed in Draft Statement in respect of S.No.735.

(iii) After considering the objections, the then Assistant Commissioner passed order under Section 10(5) of the Act declaring an extent of 57.13 ordinary acres equivalent to 14.282 standard acres as surplus on 24.06.1976. Based on the above order, the Final Statement under Section 12 of the Act and notification under Section 18(1) of the Act was published in the Tamil Nadu Government Gazette dated 02.11.1977 and 27.12.1978 respectively.

(iv) Following the declaration of surplus, assignment proceeding under Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 were initiated and the surplus extent was assigned to 14 eligible persons vide proceedings of the then Assistant Commissioner in MRIV/240/17-70 dated 31.07.1979.

(v) Then, consequent on the introduction of Tamil Nadu Land Reforms Amendment Act 11/96, action was initiated on 31.12.1999 and the settlement deeds registered in between the date of commencement of the Act and notified date, i.e. 15.02.1970 and 02.10.1970 were treated as void, as the transactions covered by the two deeds were found to be defeating the provisions of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 and whereby surplus extent, became reduced. As per the provisions contained under Section 6 of the Amended Act 11/96, notices were issued by the Assistant Commissioner (Land Reforms), Erode in Roc.7157/99 (A1) dated 31.12.1999, 12.03.2000, 07.06.2000, 11.04.2001, 16.06.2001, 11.07.2001, 19.09.2001, 20.11.2001, 20.12.2001, 01.02.2002, 28.02.2002, 29.04.2002, 03.05.2002, 02.09.2002, 03.02.2003 to the transferor and the transferees.

(vi) The transferee in Document No.1313/70 dated 10.04.1970, Tmt.Poongothai, who is the sister of the land owner M.R.Palanisamy Gounder appeared for enquiry on 22.10.2001 and deposed that her brother M.R.Palanisamy settled an extent of 20.67 acres in Uthiyoor Village in her favour through document No.1313/70 dated 10.04.1970 that after she attained majority, she got possession of the lands from her guardian mother Tmt.Rukmani Ammal and that she was not given any land by her mother.

(vii) In respect of another transfer in Document No.1312/70 dated 10.04.1970, Tmt.Kamalam, who is another sister of the land owner M.R.Palanisamy Gounder also appeared for enquiry on 26.03.2002 and deposed that she got married in the year 1967, that during marriage she was not given "Sridhanam" that therefore it was agreed before "Panchayatdars" in the year 1968 to settle the properties to her, that later on, that "Settlement Deed" was executed on 07.02.1970 and registered on 10.04.1970 and that she has been in possession of the properties.

(viii) The transferor in document No.1313/70 dated 10.04.1970 and Document No.1312/70 dated 10.04.1970 viz., M.R.Palanisamy Gounder, the Writ Petitioner was also given notices but he sought for adjournment again and again, without appearing for the enquiry. Hence a final notice was issued to him in Roc.MRI/15P/17-70 dated 14.05.2003 fixing the final hearing on 02.06.2003 and it was specifically stated in the final notice that if he fails to appear on 02.06.2003 and produce records and makes his representations about the two settlement deeds, it will be construed that he has no representation to offer and that orders would be passed on the basis of available records and to this final notice also, he sought for adjournment without making any representation.

(ix) Therefore, further action was continued and the above said extent of 36.67 acres of land settled to the sister of Writ Petitioner was included in the holdings of the land owner and the holdings of the land owner was re-determined again surplus was determined and an order was passed in MRI/7137/99 (A2) dated 06.09.2004 re-determining the holdings of the land owner as on 15.02.1970, as detailed below:-

	Ordinary Acres	Standard Acres
i) Total holdings of the land owner as per final statement under section 12 of the Act published in the Tamil Nadu Government Gazette dated 2.11.77	117.13	29.282
ii) Ceiling area allowed	60.00	15.000
iii) Surplus already notified	57.13	14.282
iv) Additional surplus now declared	36.67	9.168

(x) Following the order passed in ref.MRI/7137/99 (A2) dated 06.09.2004, Amendment to Final Statement under section 12 of the Act was published in the Tamil Nadu Government Gazette dated 29.09.2004. As there were certain mistakes in the Amendment already published an order under section 15 of the Act was passed in proceedings Roc.MRI/15/17-70 dated 07.07.2005 to rectify the 'mistakes'.

(xi) An 'Errata' was therefore published in the Tamil Nadu Government Gazette dated 10.08.2005. Later, the Government in their G.O.(Ms)No.2 Revenue (LR I-2) Department dated 03.01.2007 approved the modification to notification under section 18-C of the Tamil Nadu Land Reforms Act and it was published in Tamil Nadu Government Gazette dated 14.02.2007 giving modification to the notification already published on 27.12.1978 in respect of lands held in Uthiyoor Village, as the lands declared as surplus additionally were lying in the Uthiyoor Village, Dharapuram Taluk.

(xii) After publication of modification to notification under section 18-C of the Act, the process of Assignment to landless poor persons has been started and notice in Form 'B' inviting applications for assignment was issued on 16.02.2007. 41 applications have been received. Enquiry under rule 8(3) of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules 1965 was conducted on 20.03.2007. On the date of enquiry only 14 persons attended enquiry. 27 persons did not appear for enquiry. Hence in order to give wide publicity, Revised 'B' notice inviting applications for assignment was again issued on

30.03.2007.

(xiii)At this juncture, the land owner writ petitioner has filed this writ petition to quash the Government Order G.O.Ms.No.2 Revenue (L.R I(2) dated 03.01.2007 and the notification published in the Tamil Nadu Government Gazette dated 14.02.2007 before this Court and got an interim stay on 24.04.2007 in CMP.No.2/2007.

6.The third defendant has further submitted that as per the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) as amended by Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Tamil Nadu Act 17/70), the date of commencement of the Act i.e. 15.02.1970 is the criteria to determine the holdings of the landowner and accordingly surplus was arrived in the year 1978. Subsequently, after the enactment of Amended Act 11/96 the extent settled to his sister to an extent of 36.67 acres was declared as void and the holdings of the landowner was re-determined and surplus was arrived and notified in the notification dated 14.02.2007. Therefore the contention of the petitioner that the petitioner is owning only 31 acres equivalent to 8.000 standard acres deserved no consideration.

7.(i)It is submitted that the landowner, the writ petitioner held lands to an extent of 158.29 ordinary acres equivalent to 39.573 standard acres as on 15.02.1970, the date of the commencement of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as amended. After considering the objections filed by the landowner, the writ petitioner, the surplus was originally determined as detailed below:

Details	Ordinary Acres	Standard Acres
Total holdings of the landowner as on 15.02.1970	158.29	39.573
Less(i) Extent settled in favour of 36.67 landowner's sister in Doct. No.1312/70 and 1313/70		9.168
(ii)Extent executed u/s 3(22) of the Act	0.60	0.150
iii)Extent wrongly included	3.89	0.973
iv)Total extent to be deducted	41.16	10.291
Net holdings	117.13	29.282
Ceiling allowable to the landowner	60.00	15.000
Surplus determined	57.13	14.282

(ii) The above extent of lands was notified as surplus as per the notification under section 18(1) of the Act published in the Tamil Nadu Government Gazette dated 27.12.1978. The above surplus lands were covered in two Villages, Mudalipalayam Village - 26.56 acres and Uthiyoor Village - 30.57 acres. The above surplus extent was assigned to 14 eligible persons as per the orders of the Assistant Commissioner (Land Reforms), Erode in MRIV/240/17-70 dated 31.07.1979.

(iii) It is submitted that the writ petitioner, contrary to the above facts, is misleading this Court by stating that he owned only 67.24 acres and after declaration of surplus to an extent of 30.57 acres and assigned to beneficiaries belonging to Harijan families and after sale of lands to an extent of 5 acres in the year 2006, he is in possession of only 31 acres which is below the ceiling limit of 60 acres. The writ petitioner has completely omitted to disclose the fact of holding the lands to an extent of 60 acres which were allowed towards ceiling area as prescribed under section 5(1)(a) of the Act.

(iv) It is further submitted that after declaring the extent settled to the sister of writ petitioner to an extent of 36.67 acres as void, the extent was included in the holdings of the landowner and surplus was re-determined as per the notification dated 14.02.2007. Therefore, the proceedings initiated under the Amended Act 11/96 and the surplus declared as per the notification dated 14.02.2007 is as per law and legally valid and sustainable.

8. It is submitted that the writ petitioner has not divulged the number of survey fields in which there are two 'Dug-wells' and two 'Bore-wells', and 'Family Temple' and 'Tiled Farm' house and 'poultry farm'. However, it is submitted that the additional lands declared as surplus under the Tamil Nadu Land Reforms Amendment Act 1/96 were inspected by the Special Deputy Tahsildar (Land Reforms) of this office on 09.10.2003 and 10.10.2003 and it was found that they are suitable for assignment.

9(i) It is submitted that as stated in paragraph-3, the case of the writ petitioner was reopened under the Amended Act 11/96 and the settlement made to the sister of the writ petitioner to an extent of 36.67 acres was declared as void and surplus was re-determined after including the above said extent and notified in the notification dated 14.02.2007.

(ii) While initiating to proceedings under Amended Act 11/96, notices were issued to both the transferor and transferees on 31.12.1999, 12.03.2000, 07.06.2000, 11.04.2001, 16.06.2001, 11.07.2001, 19.09.2001, 20.11.2001, 20.12.2001, 01.02.2002, 28.02.2002, 29.04.2002, 03.05.2002, 02.09.2002, 03.02.2003 and notices were also issued to the writ petitioner and is sought for adjournment to the every notice issued and therefore a final

notice was issued to him in MR I/15P/17-70 dated 14.05.2003 fixing the date of enquiry on 02.06.2003 and in the final notice it was specifically stated that if the writ petitioner fails to appear on 02.06.2003 and produce records and make his representation on the settlement of lands to his sister it will be construed that he has no representation to offer and that orders would be passed on the basis of available records and to this final notice also, he sought for adjournment and not made any representation. Therefore as sufficient opportunities were extended to the writ petitioner and as the writ petitioner failed to availed the opportunities provided to him, the orders were passed. The petitioner has completely hid the fact of issue of notice to this Court only to get benefit out of it. Therefore the contention that no notice was issued to him and violation of Principles of natural justice is devoid of merit and deserves no consideration.

10.The learned senior counsel Mr.R.Muthukumaraswamy, appearing for the petitioner submits that the subject land, which is equivalent to 8 standard acres; originally the petitioner owned the lands at Uthiyoor Village to an extent of 67.24 acres. The Government had initiated proceedings under the Tamil Nadu Land Reforms Act and declared an extent of 30.57 acres as excess by their proceedings dated 24.06.1976. The surplus lands were assigned to various beneficiaries belonging to Adi-dravida people. Subsequently, patta have been issued to them. Subsequently, the petitioner sold an extent of 5 acres, comprised in Survey No.215/2 and 218. The said alienation had been taken in the year 2006. As such, now, the petitioner is possessing only about 31 acres, which is below the ceiling limit.

11.The very competent senior counsel further submits that in the said lands, two bore-wells and two wells were dug. A family temple is also located. Besides, Tiled farm house with electricity service connection has been put up. Further, the petitioner is running a poultry farm in the above said land. The petitioner has raised coconut trees and Palmyra trees over the lands. Under the circumstances, the petitioner has received a Government Gazette dated 14.02.2007, wherein it has been stated that he is the owner of 67.24 acres. As such, the notification published in the Government Gazette is improper since the petitioner had sold 5 acres in the year 2006. Besides, the respondents have taken 30.57 acres as surplus lands and the same was distributed to the Adi-dravida people.

12.The learned counsel has cited a judgment reported in 1995 AIR 73, 1994 SCC (6) 591 (Thakur Kishan Singh vs Arvind Kumar) held as follows:

"The findings recorded by the High Court and the trial court have been assailed by Shri Sen, the learned Senior Counsel appearing for the appellant, and it is

claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-ininterest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See Ram Saran Lall v. Mst Domini Kuerl and Nanda Ballabh Gururani v. Smt Maqbool Begum².) Since, admittedly, the lease deed was executed on 5-12-1949, the plaintiff after registration of it on 3-4-1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. And the courts below did not commit any error in negating the claim of appellant."

13.The learned Government Advocate Mr.P.Karthikeyan, appearing for the respondents submits that the respondents had issued publication on 14.02.2007 and declared that surplus lands have been acquired under the Tamil Nadu Land Reforms Act. The surplus lands have been acquired after following due process of law. At the time of determining the surplus lands, the extent was settled in favour of sister of petitioner by a two registered documents. The said lands have been deducted before acquiring surplus lands.

14.The highly competent counsel further submits that as per Section 22 of the Act, where on or after the date of the commencement of this Act, but before the notified date, any person has transferred any land held by him by sale, gift, exchange, surrender, settlement or in any other manner whatsoever, except by bequest or has effected a partition of his holding or part thereof, the authorised officer, within whose jurisdiction, such land, holding on the major part thereof is situated, may after notice to such persons and other persons effected by such a transfer or partition and after such enquiry as he thinks fit to make, declare the transfer or partition to be void, if he finds that the transfer or the partition, as the case may be defeat the provision of the Act. The learned counsel further submits that the writ petitioner was lawfully reopened on 31.12.1999 under the amended Act 11/96, well before the expiry of period of 5 years from the date of publication of the amended Act. After giving 16 notices to both the transferrer and transferees and after giving sufficient opportunities and recording their depositions, surplus was

arrived and against the declaration of surplus, the writ petition has been filed.

15.The learned counsel further submits that the petitioner held lands to an extent of 39.573 standard acres as on 15.02.1970. The action was initiated against the holdings of the land owner as per the provisions of the Tamil Nadu Land Reforms Act. The draft statement was published in the Government Gazette dated 05.02.1975. The same was communicated to the petitioner. After receipt of the draft statement, the petitioner filed objection petition and had claimed to exclude an extent of 20.67 acres in Uthiyoor Village and 16 acres in Muthal Palayam Village as the settled lands in favour of his sister, which were executed on 07.02.1970 and 21.01.1970 respectively. After considering the objection submitted by the petitioner, the then Assistant Commissioner declared that 14.282 standard acres are surplus. Subsequently, final statement was published. The surplus lands was assigned to 14 eligible persons by proceedings dated 31.07.1979. Hence, the learned counsel entreats the Court to dismiss the above writ petition.

16.On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, this Court is of the view that the petitioner has submitted objection before the then Assistant Commissioner, Land Reforms, who considered the said objection and passed final order and declared that an extent of 14.282 standard acres as surplus. The same was published in the Government Gazette dated 27.12.1978. The said publication was effected. Thereafter, the surplus lands was assigned to 14 eligible persons, as per the proceedings dated 31.07.1979. Now, the subject land are vested with the beneficiaries. Considering this aspect, the above writ petition does not generate sufficient force to allow it. Hence, it is dismissed.

17.In the result, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

To

1. The Secretary
The Government of Tamil Nadu,
Department of Revenue,
Fort St. George,
Chennai - 9.

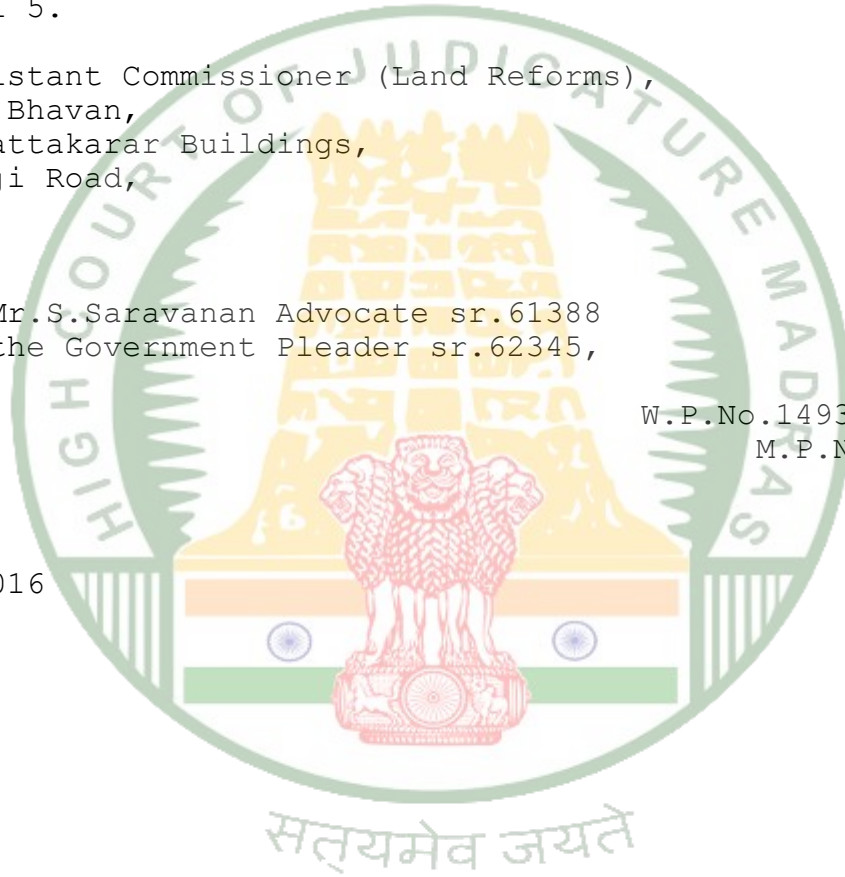
2.The Commissioner (Land Reforms),
Ezhilagam,
Chepauk,
Chennai 5.

3.The Assistant Commissioner (Land Reforms),
Jawans Bhavan,
Near Pattakarar Buildings,
Gandhiji Road,
Erode.

+1 cc to Mr.S.Saravanan Advocate sr.61388
+1 cc to the Government Pleader sr.62345,

W.P.No.14931 of 2007 &
M.P.No.2 of 2007

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