

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 12/10/2015

DATED: 19/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.20580 of 2011 &
M.P.Nos.2 and 3 of 2011

A.Rethinam ... Petitioner

Vs.

- 1.The Land Commissioner
(Under the Land Reforms Act)
Ezhilagam,
Chepauk,
Chennai 600 005.
- 2.The Joint Land Commissioner
(Under the Land Reforms Act)
Mayiladuthurai,
Nagapattinam District 609 001.
- 3.The Revenue Divisional Officer,
Thiruvarur,
Thiruvarur District.
- 4.The Tahsildar,
Valangaiman,
Thiruvarur District.
- 5.K.Singaravelu Udaiyar

6.K.Kalyanasundara Udaiyar ... Respondents
(Dismissed vide Court order dated
12.06.2012 by this Court)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus calling for the records from the second respondent relating to his order bearing No.M.R.1/15-K/37/72/Valangai/A2, dated 10.08.2011 and quash the same and consequently direct the Respondents 1 to 4 to execute the Sale Deed to the Petitioner for the land of 30 cents in S.No.101/5 in Narthangudi Village, Valangaiman Taluk, Thiruvarur District assigned under A.O.No.4330 dated 14.10.1991 and award costs.

For Petitioner : Mr.S.Ayyathurai
For Respondents : Mr.M.S.Ramesh (for R1 to R4)
Additional Government Pleader

Mr.J.Nandagopal (for R5)

O R D E R

The short facts of the case are as follows:-

The petitioner has submitted that he is an agricultural labourer and he does not own any agricultural land other than the land assigned to him by the second respondent and the house site in which he has put up a small thatched house. He submitted that the second respondent acquired the agricultural land of 24.40 acres from the respondents 4 and 5 under the Tamil Nadu Land Reforms Act, (Fixation of ceiling on land) 1961. He has further submitted that the second respondent announced that the land taken over from the respondents 5 and 6 would be distributed among the agricultural labourers and called for applications. He also applied for land. It is stated that about 76 persons applied for land and that the second respondent after conducting an enquiry assigned land to about 61 persons including him. He got about 30 cents of land for a consideration of Rs.594/- to be paid in installments by an order dated 14.10.1991. He paid a sum of Rs.43/- towards initial payment. Like him about 61 agricultural labourers who were also assigned lands and Patta was also issued to him and others. However, Sale Deeds were not executed in their favour.

2. He has further submitted that when they went to the office of the third respondent to pay further installments, they were told that the respondents 5 and 6 had filed a writ petition in this Court against the order of the second respondent assigning the excess land of 24.40 acres, taken over from the respondents 5 and 6 and assigned to them and they could pay the remaining installments after the case was over. He and other assignees had been growing Kattuvela (velikathan trees) trees for fire wood and for sale as firewood. He has further submitted that as usual this year also in the month of June they went to the fourth respondent to find out whether they could pay the balance and get the sale deed. To their shock and surprise they were told that the first respondent by the impugned order dated 27.02.1999 set aside the order of the second respondent dated 28.09.1997 and directed the second respondent to conduct fresh enquiry in accordance with relevant provisions of the Land Reforms Act and that he had sought for instruction from the second respondent as to receiving the payment from them. When they told him that they had no notice from the first respondent and that they were not heard by the first respondent and before passing the order dated 27.02.1999, they were told that he did

not know anything about all those things and that fresh enquiry had been directed to be held by the second respondent and that fresh enquiry would be held at any time and that going by the order of the first respondent the lands might be returned to the respondents 4 and 5.

3. However, they started cultivation. After they started cultivation the respondents 5 and 6 tried to prevent them. Therefore, the Revenue Divisional Officer (the third respondent herein) convened a peace meeting on 28.07.2011, in the said meeting the second respondent took part and stated that consequent on the order of the first respondent dated 27.02.1999 the assignment orders became infructuous and it was informed to their counsel Mr. Raphael Raj, Kumbakonam on 09.08.2007. When they disputed his statement, the Revenue Divisional Officer (the third respondent) asked for proof from the second respondent and the second respondent after verifying the file said that there was no proof of sending the communication to the Advocate Mr. Raphael Raj. Then the Revenue Divisional Officer said that in the absence of proof of any communication to the assignees to the effect that the assignment had become infructuous, he could not prevent them from cultivating the lands.

4. Thereafter, he filed a writ petition No.19066 of 2011 challenging the order of the first respondent dated 27.02.1999 and for direction to the respondents to execute the sale deed for him. He was told that when the said writ petition came up for admission on 17.08.2011 the learned Government Advocate raised an objection that the writ petition was not maintainable as there was delay in filing the writ petition and that it was given to the petitioner to file a writ petition seeking any relief other than the relief of granting the order of the first respondent as it was only a direction to the second respondent to conduct a fresh enquiry. This Court was pleased to adjourn the hearing of the said writ petition for admission so as to enable to consider filing of another writ petition. While so, he received the impugned order dated 10.08.2011 of the second respondent through the Village menial on 24.08.2011, which states that consequent on the order of the first respondent dated 27.02.1999 the assignment proceedings have become ineffective and cancelled. Hence, the petitioner has filed the present writ petition.

5. The third respondent has filed a counter statement on behalf of herself and the other respondents 1, 2 and 4 and submitted that the office of the second respondent has been disbanded and the post of the Joint Commissioner, Mayiladuthurai has also 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 Districts as per the notification published on 04.03.2015 and 05.03.2015. As the lands involved in this case lie in the jurisdiction of Revenue Division, Thiruvarur, the Revenue Divisional Officer, Thiruvarur is to deal with the present case.

6. The points which are vital to the case are furnished below:-

(i) The petitioner being the assignee of surplus lands has no locus standi to question the impugned order when the declaration of surplus itself was set aside by the appropriate statutory forums.

(ii) The surplus land declared had been questioned by the landowner, Trust and the order of declaration was set aside by the Tamil Nadu Land Reforms Special Appellate Tribunal in TRP.584/91 dated 05.03.1993 and the Land Commissioner in RP.78/97 dated 27.02.1999.

(iii) When the original declaration of surplus was set aside by the Tamil Nadu Land Reforms Special Appellate Tribunal and by the Land Commissioner, the assignment made subsequent to that declaration becomes infructuous and deemed to have been automatically set aside.

(iv) The land will vest with the assignee, only if the land value has been paid in full or after the conditional period of 20 years is over whichever is later as per Rule 9(1)(iii)(a) of the Rules, 1965. The vesting of lands with the petitioner - assignee has not taken place.

(v) Once the declaration has been set aside, no claim shall be enforceable in respect of such land against the Government or any person deriving rights from them;

(vi) In the revised proceedings, the order of Authorised Officer is at a preliminary stage of 9(2)(b) dated 28.07.2011 and surplus declaration has not reached finality;

(vii) Only on notifying the lands in the notification under Section 18(1), the declaration will become final.

(viii) Notices are being issued to interested parties only if they are purchasers / family members, where applicable, in the proceedings of declaration of surplus. The assignees are not entitled for any notice in the declaration proceedings.

(ix) The selection of surplus land to be declared has not yet been completed.

(x) Replies were sent to the petitioners, assignees about the orders of Land Commissioner and Tamil Nadu Land Reforms Special Appellate Tribunal and the cancellation of assignment and they have been duly acknowledged by them. But contrary to the truth, the petitioners are making wild allegations, incorrect statements and misleading the Court by stating that no proof of communication was received by them.

(xi) The assignees were also informed by the second respondent that the case of the assignees will be considered, while initiating re- assignment proceedings.

7. A brief history of the case is as follows:-

(i) Thiru.N.S.Kuppusamy Udayar of Narthangudi Village, Valangaiman Taluk had created the following trusts after 01.03.1972 through document Nos.320, 321, 322 registered at the Sub-Registrar's Office, Needamangalam on 05.04.1973 appointing himself and his two sons namely 1.Thiru.K.Singaravelu Udayar and 2.Thiru.K.Kalyana Sundara Udayar as trustees. The said documents were executed on 15.12.1972 and registered on 05.04.1973 (i.e.) after the date of commencement of the Tamil Nadu Land Reforms [Fixation of Ceiling on Land] Act 1961 [Tamil Nadu Act 58/61] as amended by Act 37/72 in which, acquisition of lands on and after 01.03.1972, the date of commencement of the amendment Act 37/72 by the Public Trust is prohibited. The said Trust acquired lands to an extent of 24.40 ordinary acres equivalent to 19.966 standard acres of lands.

Sl. No.	Name of the Trust	Name of the Trustee	Document No. in which the Trust was created
1.	Arunnachalathudayar Annachatram (Sri Abatesahayeswara Swami Thirukarthigai Mandagapadi Dharmam)	N.S.Kuppusamy Udayar	320 dated 05.04.1973
2.	Arunnachalathudayar Annachatram (Chidambaram Sri Natarajan Archanai Kattalai Dharmam)	N.S.Kuppusamy Udayar	320 dated 05.04.1973

Sl. No.	Name of the Trust	Name of the Trustee	Document No. in which the Trust was created
3.	Arunnachalathudayar Annachatram (Sri Siddhi Vinayagar Koil Nithiyapadi Poojai, Neivethya Dharmam)	K.Singaravelu Udayar	321 dated 05.04.1973
4.	Arunnachalathudayar Annachatram (Brindavana Dwadesi Kattalai Dharmam)	K.Singaravelu Udayar	321 dated 05.04.1973
5.	Arunnachalathudayar Annachatram (Thanner Pandal Dharmam)	K.Singaravelu Udayar	321 dated 05.04.1973
6.	Arunnachalathudayar Annachatram (Thanner Pandal Dharmam)	K.Singaravelu Udayar	321 dated 05.04.1973
7.	Arunnachalathudayar Annachatram (Dharmam Building Maintenance and Brahamana Kudumbasam Bakshnai Dharmam)	K.Kalyana Sundara Udayar	322 dated 05.04.1973

(ii) As these trusts were created after 01.03.1972 and acquired lands in contravention of the provisions contained in Section 2(2) and 5(3-C) of the Act, after putting the parties on notice, orders were passed by the Assistant Commissioner (Land Reforms) Mayiladuthurai in his MRI/15K/37-72/NNL/ dated 23.02.1990 transferring an extent of 24.40 ordinary acres equivalent to 19.966 standard acres of lands to the Government under Section 20-A of the Act, as a penalty for contravention of the provisions contained in Section 2(2) and 5(3-C) of the Act.

(iii) Against the above order, Thiru.N.Kuppusamy Udayar filed a revision petition before the Land Commissioner, Chennai. The Revision Petition was dismissed by the Land Commissioner, Chennai in F1/R.P.69/90 (Land Reforms), dated 07.09.1990, as devoid of merits.

(iv) Then, Thiru.N.S.Kuppusamy Udayar, filed writ petition in W.P.No.17341/1990 against the orders of Assistant Commissioner (Land Reforms), Mayiladuthurai in MRI/15K/37-72/NNL dated 23.02.1990 and the orders of Land Commissioner,

Chennai in F1/R.P.69/90 (Land Reforms), dated 07.09.1990. On the constitution of Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai, the above said writ petition was transferred and numbered as TRP No.584/1991.

(v) The Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai, after observing that the Authorized Officer has not stated the facts of the case vis-à-vis the provisions of law to be applied for reaching a conclusion that Section 20-A of the Act has to be applied and also that the order of the Land Commissioner is founded on a new allegation not brought out in the show cause notice issued to the petitioner, has set aside the orders of the Authorized Officer and Assistant Commissioner (Land Reforms), Mayiladuthurai and the Land Commissioner, Chennai and directed to initiate denovo proceedings in accordance with law in its order in TRP No.584/91 (W.P.No.17341/1990) dated 05.03.1973.

(vi) Thereafter, an order was passed by the Assistant Commissioner (Land Reforms), Mayiladuthurai in MRI/15K/37-72/PPN/A2 dated 28.09.1997 and again it was ordered to transfer an extent of 24.40 ordinary acres equivalent to 19.966 standard acres of land to Government with effect from the date of registration of document under Section 20-A of the Act.

(vii) Against this order, Thiru.K.Singaravelu Udayar and Thiru.K.Kalyana Sundara Udayar have filed the revision petition in D1/R.P.78/97 (Land Reforms) under Section 82 of the Act before the Land Commissioner, Chennai.

(viii) The Land Commissioner, Chennai-5 in the order in R.P.78/97 dated 27.02.1999 allowed the revision petition and set aside the order of the Assistant Commissioner (Land Reforms), Mayiladuthurai dated 28.09.1997 and remitted the matter to the Assistant Commissioner (Land Reforms), Mayiladuthurai for denovo proceedings taking into account of the provisions contained under Section 5(ii)(d)(i) of the Act and as per other relevant provisions of the Land Ceiling Law, after observing that the existence of the trust even prior to the date of commencement of the Act 37/72 i.e. 01.03.1972 is held proved beyond reasonable doubt and that as regards the nature of the trust, the trust is a private family trust which existed prior to the date of commencement of the Amended Act 37/72 i.e. 01.03.1972 and therefore do not attract the provisions of Section 20-A read with Section 2(2) and 5(3-C) of the Act.

(ix) Thereafter, the Joint Commissioner, Land Reforms, Mayiladuthurai, after issue of notices and conduct of enquiry has passed orders under Section 9(2)(b) of the Act, declaring an extent of 4.996 standard acres as excess in MRI/15K/37.72/PPN/A2, dated 28.07.2011 after allowing an extent of 15,000 standard acres towards ceiling area.

(x) After issue of orders under Section 9(2)(b) of the Act dated 28.07.2011, the second respondent sent an intimation to the assignees on 10.08.2011 stating that the order of assignment in MRIV/57/37/72/Valangaiman dated 30.04.1990 has become infructuous and cancelled.

(xi) Against the above notice dated 10.08.2011, the petitioner filed the present writ petition.

8. The third respondent has further submitted that when a request was made by one Thiru.M.S.Raphael Raj, Advocate for the petitioner on 27.07.2007, an intimation was given to him by the second respondent on 09.08.2007 stating that following the orders of the Land Commissioner in RP.78/97 dated 27.02.1999, the orders passed on assignment would become infructuous and that at the time of initiating re-assignment proceedings, their request will be considered. The said M.S.Raphael Raj in his representation dated 25.07.2008 has clearly mentioned and confirmed receipt of the above communication dated 09.08.2007. When it is so, the contention of the petitioner that no communication was sent is baseless. It has also further submitted that the petitioner is making false affidavit by stating that the Revenue Divisional Officer ordered that in the absence of proof of any communication to the assignees to that effect that the assignment has become infructuous, he could not prevent them from cultivating the lands. The fact is that the Sub-Divisional Magistrate and Revenue Divisional Officer, Thiruvavur in his proc. M.C.59/97-A2 (Section 145 Cr.P.C.) dated 28.07.1998 after conducting an enquiry under Section 145 Cr.P.C. has issued orders that till the finalization of proceedings under Land Reforms, the trustees and assignees should not enter in the disputed lands with an observation that the lands are surplus lands and though patta issued, possession of lands was not handed to the assignees.

9. The third respondent has further submitted that the petitioner has filed W.P.No.19066 of 2011 challenging the order of the Land Commissioner, Chennai-5 in D1/R.P.78/97 dated 27.02.1999 and praying for a direction to the respondents to execute the sale deed to the petitioner for the land of 30 cents in S.F.No.101/5. This writ petition, in view of the orders under Section 9(2)(b) regarding extent of surplus land for declaration as 4.996 standard acres, passed by the second respondent on 28.07.2011 pursuant to the orders of Land Commissioner dated 27.02.1999, was closed by this Court on 18.11.2011 with liberty to the petitioner to challenge the order under Section 9(2)(b) dated 28.07.2011 before the appropriate forum. Thereafter, the assignees including the writ petitioner filed writ petition in WP.No.29954/2011 and the case is pending disposal before this Court. Following the above order dated 28.07.2011, an intimation was sent to the assignees including the petitioner on 10.08.2011 informing them that the assignment order has

become infructuous and are cancelled. Against the above communication dated 10.08.2011, the petitioner filed the present writ petition. Hence, it was prayed to dismiss the writ petition.

10. The learned counsel Mr.S.Ayyadurai, appearing for the petitioner submits that the petitioner is a poor agricultural labourer and involved in agricultural operations. He does not own any cultivable lands. The second respondent had acquired agricultural lands under the Tamilnadu Land Reforms Act, to an extent of 24.40 acres from the respondents 5 and 6, who are the land owners. After acquiring the said lands, the second respondent called for application to distribute the said lands among the poor agricultural labourers. Accordingly, the petitioner has been allotted land to an extent of 30 cents for which the petitioner paid initial payment as advance land consideration. Subsequently, patta has been issued in his name. The petitioner went to the third respondent's office to pay further installments towards land cost and he was informed that the land owners had initiated writ petition before this Court and challenged the acquisition proceedings of the second respondent.

11. The highly competent counsel further submits that under the circumstances, the first respondent set aside the impugned order of the second respondent and directed the second respondent to conduct fresh enquiry on the same issue under the same act. The petitioner does not know about the fresh enquiry proceedings. However, the petitioner and other beneficiaries started cultivation, as per earlier assignment order. Under the circumstances, the second respondent had issued impugned order dated 10.08.2011, which reveals that the assignment proceedings have become ineffective and cancelled. Further, the surplus lands have been assigned to beneficiaries in the year 1990 and after the period of 9 years, the cancellation proceedings had been issued in an arbitrary manner, since the case was proved that the fifth and sixth respondents were possessing surplus lands at the time of acquisition proceedings.

12. The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents 1 to 4 submits that the impugned order declaring that the fifth and sixth respondents are possessing surplus lands was set aside by the appellate authority i.e. Tamilnadu Land Reforms Special Appellate Tribunal. As such, the declaration has become infructuous. Therefore, the assignee / petitioner has no locus standi to claim rights over the said land. Further, the assignee had not remitted entire land cost. Further, the second respondent's order has not reached finality and therefore the same cannot be executed in favour of the petitioner. The petitioner, without knowing the entire acquisition proceedings and proceeding of appellate authority, has filed the above writ petition with unclear statements.

Actually, the father of the fifth and sixth respondents had registered private trust on the file of Sub-Registrar's office, Needamangalam, on 05.04.1973. He has appointed his sons, i.e. fifth and sixth respondents as trustees. Therefore, the property belongs to the private trust and this fact had not been disclosed to the second respondent at the time of enquiry./ After knowing the factual position, the second respondent's impugned order was cancelled, on merits, which is sustainable under law since the trust was existing even before acquiring the said land. Hence, the very competent counsel entreats the Court to dismiss the above writ petition.

13. The highly competent counsel Mr.J.Nandagopal, appearing for the fifth respondent submits that the fifth and sixth respondents proved their case that the property belongs to the family trust and the same has been proved before the appellate authority. The assignment order had been issued to the petitioner and other beneficiaries as per the second respondent's order dated 30.04.1990, but the family trust has been registered in the year 1972 itself. Before the relevant period, the family trust was in existence and therefore the impugned order had been issued and the assignment order was cancelled in a proper manner. On the basis of impugned order, the petitioner's right will not be affected. Besides, the earlier assignment order had not been completed / executed.

14. On considering the facts and circumstances of the case and arguments advanced by the very competent counsels on all sides and on perusing the typed set of papers, this Court is of the view that the second respondent had assigned surplus lands to the petitioner and others in his proceedings dated 30.04.1990. The same was challenged before the appellate authority, wherein the factual position of the case that the family trust had been registered on 01.03.1972 and the same has been in existence and functioning, was proved. Therefore, the property belongs to the private family trust. Hence, the appellate authority had set aside the second respondent's order and the same has been communicated to the petitioner. As such, the impugned order is an appropriate one and can be operated upon further. Therefore, the above writ petition does not generate sufficient force to allow it.

15. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Land Commissioner
(Under the Land Reforms Act)
Ezhilagam,
Chepauk,
Chennai 600 005.

2.The Joint Land Commissioner
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Mayiladuthurai,
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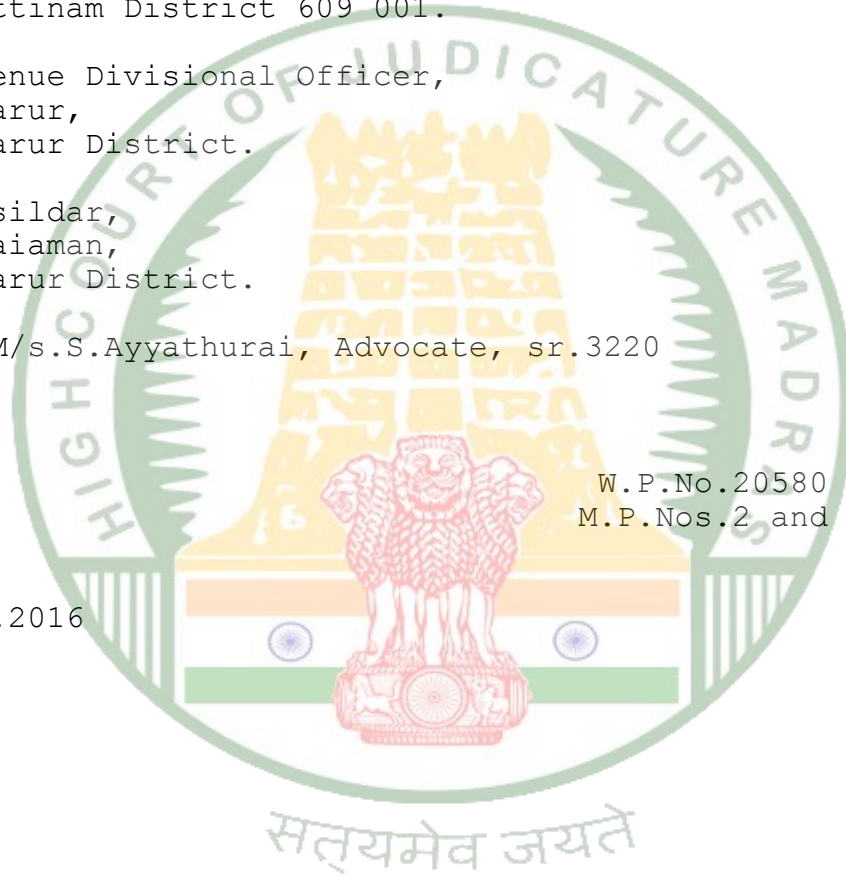
3.The Revenue Divisional Officer,
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Thiruvarur District.

4.The Tahsildar,
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Thiruvarur District.

+1 CC to M/s.S.Ayyathurai, Advocate, sr.3220

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