

IN THE HIGH COURT OF JUDICATURE AT MADRAS

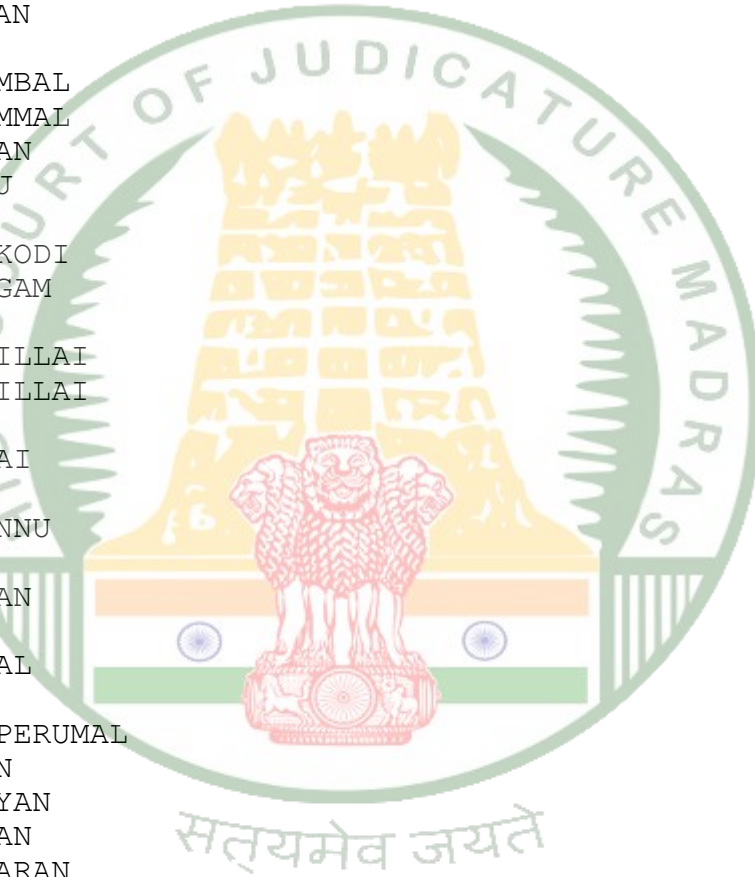
Dated: 11.10.2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.721 of 2017

1 P.VEERAIYAN
2 ABURVAM
3 K.JEGATHAMBAL
4 R.KARUTHAMMAL
5 K.NATARAJAN
6 A.DURAIRAJ
7 P.KALIAN
8 M.DHANUSHKODI
9 S.MAHALINGAM
10 T.SAROJA
11 V.CHINNAPILLAI
12 P.CHINNAPILLAI
13 P.ANJAN
14 C.ANNADURAI
15 M.THAYYAN
16 K.MUTHUKANNU
17 S.RAMU
18 M.RAJENDRAN
19 S.GANDHI
20 V.VENUGOPAL
21 V.RAMU
22 V.A.KALIAPERUMAL
23 S.ANANDHAN
24 N.MURUGAIYAN
25 S.NAGARAJAN
26 H.GUNASEKARAN
27 J.PAKKIRISAMY
28 A.KASINATHAN
29 T.UTHIRAPATHI
30 A.RETHINAM
31 A.KALIAPERUMAL
32 K.KATHAIYAN



WEB COPY

... Appellants

Vs

1 STATE OF TAMILNADU,
REP. BY SECRETARY TO GOVT. REVENUE ,
DEPARTMENT (LAND REFORMS) FORT ST. GEORGE
CHENNAI-9.

- 2 THE JOINT LAND COMMISSIONER,
(UNDER THE LAND REFORMS ACT), MAYILADUTHURAI,
NAGAPATTINAM DIST. - 609 001.
- 3 THE REVENUE DIVISIONAL OFFICER,
THIRUVARUR THIRUVARUR DIST.
- 4 THE TAHSILDAR,
VALANGAIAMAN, THIRUVARUR DIST.
- 5 K.SINGARAVELU UDAIYAR
- 6 K.SIVAKUMAR . . . Respondents

WRIT PETITION NO.29954/2011 PRAYER: Writ petition filed under Article 226 of the constitution of india for a writ of certiorarified mandamus calling for the records from the 2nd Respondent relating to the order bearing No. M.R.I./15-K/37/72/PPN/A2, dated 28.7.2011 and quash the same and consequently direct the 2nd Respondent to execute the Sale Deed in favour of the Petitioners for the land assigned to them under the order bearing No. M.R.4.57/37/72/ Valangai/AA4, dated 30.4.1990 and award costs

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 19.01.2016 made in W.P.No.29954 of 2011, on the file of this Court.

For Appellants : Mr.S.Ayyathurai

For Respondents : Mr.V.Anandhamoorthy
Additional Government Pleader
for R1 to R4

Mr.J.Nandhagopal for R5 & R6

J U D G M E N T

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated 19.01.2016 made in W.P.No.29954 of 2011, on the file of this Court.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioner aggrieved by the order passed by the second respondent relating to his order bearing No.M.R.1/15-K/37/72/PPN/A2, dated 28.07.2011 and quash the same and consequently direct the second Respondent to execute the Sale

Deed in favour of the Petitioners for the land assigned to them under the order bearing No.M.R.4.57/37/72/Valangai/AA4, dated 30.04.1990 and award costs.

3. Facts culled out in brief for the disposal of the writ appeal are as follows:-

3.1 It is the case of the petitioners that they are agricultural labourers and they do not own any agricultural land other than the land assigned to them by the second respondent in April 1990 and the house site in which they have put up houses. It is further submitted that the second respondent acquired the agricultural land of 24.40 acres from the respondents 5 and 6 under the Tamil Nadu Land Reforms Act, (fixation of ceiling on land) 1961. 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 and the petitioners have applied for the same. It is submitted that though 76 persons applied for land, the second respondent after conducting an enquiry assigned land to about 61 persons including the petitioners. The petitioners got allotted different sizes of land for consideration of various amounts to be paid in installments by an order dated 14.10.1991 and the petitioners paid money towards initial payment and possession was handed over and Pattas were also issued to them, however, Sale Deeds were not executed in their favour. Thereafter, when the petitioners went to the office of the third respondent to pay further installments, they were told that the fourth respondent and the father of the sixth respondent (since deceased) had filed a Writ Petition before this Court against the order of the second respondent assigning the excess land of 24.40 acres, taken over from them and assigned to the respondents and they could pay the remaining installments after the case was over.

3.2 Thereafter, the Land Commissioner 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. However, the petitioners started cultivation as they had not been issued any order of cancellation of assignment. 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 Land Commissioner 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 the petitioners 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.

3.3 Thereafter, one of the petitioners filed a writ petition No.19066 of 2011 challenging the order of the Land Commissioner dated 27.02.1999 and for direction to the respondents to execute the sale deed for him. 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 petitioners to file a writ petition seeking any relief other than the relief of granting the order of the Land Commissioner 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 the petitioners therein consider for filing of another writ petition. While so, the petitioners received the order dated 10.08.2011 from the second respondent through the Village menial on 24.08.2011, which stated that consequent on the order of the Land Commissioner dated 27.02.1999 the assignment proceedings have become ineffective and cancelled. Challenging the said proceedings, one of the petitioners filed a Writ Petition No.20580 of 2011. This Court was pleased to admit the writ petition and order status quo. The petitioners would further submit that even before passing the impugned order, the petitioners cultivated the land and raised paddy crops and the petitioners had harvested about 10 bags of paddy (40 kgs. bag) and sold it to the Tamil Nadu Civil Supply Corporation under the direct procurement scheme. Thereafter, the first respondent orally directed the Civil Supply Authority not to disburse the amount and passed an order directing the Tahsildar not to permit the petitioners and others to harvest the remaining paddy crops on the ground that he had passed an order dated 05.08.2011 prohibiting the petitioners, the respondents and 4 others from entering the land. The petitioners therefore filed a Miscellaneous Petition (M.P.No.3/2011) in W.P.No.20580 of 2011 praying for an order of interim injunction restraining the respondents from interfering with the petitioners from harvesting the paddy crop raised in the land assigned to them, pending disposal of the writ petition and this Court by an order dated 09.11.2011 directed the

Tahsildar to harvest the paddy and keep the paddy in his custody. The petitioners would further submit that on 09.11.2011 when M.P.No.3 of 2011 in W.P.No.20580 of 2011 was heard by this Court, the learned counsel for the respondents 5 and 6 therein produced typed set of papers containing order of the second respondent dated 28.07.2011 under which the second respondent arrived at the area of surplus land as 4.99 standard acres. Challenging the order of the land Commissioner dated 27.02.1999, the Writ Petition in W.P.No.19066 of 2011 has been filed and when the matter came up for hearing on 18.11.2011, the learned counsel for the third respondent produced a copy of the order of the second respondent dated 28.11.2010 under which the first respondent has declared an extent of 4.996 standard acres as surplus it is contrary to the extent of acreage of surplus land found by his predecessor against the respondents 3 and 4. Based on the second respondent's order produced dated 28.07.2011, this Court closed the said writ petition with liberty to the writ petitioners to challenge the said order of the second respondent dated 28.07.2011. Hence, the petitioners have filed the writ petition.

4. After considering the materials placed before the Writ Court, the learned Single Judge dismissed the Writ Petition.

5. Aggrieved against the order of the learned Single Judge, the appellants / petitioners have filed the present Writ Appeal.

6. The learned counsel for the appellants would submit that the learned Single Judge has failed to consider that the impugned order is arbitrary, unreasonable and unfair for it was not made after a fair and proper enquiry by the second respondent by giving them an opportunity of being heard and therefore, it is violative of Article 14 of the Constitution of India. The learned counsel would further submit that the learned Single Judge has merely reproduced the averments made in the counter affidavit of the third respondent and dismissed the Writ Petition without discussing the rival contentions of the parties, particularly the contention raised by the appellants in grounds raised against the impugned order in the Writ Petition. He would further submit that though in para 17 of the order passed by the learned Single Judge has stated with reference to submissions made by the learned counsel for the writ petitioners, but, actually the learned Single Judge never heard the arguments of the learned counsel for the writ petitioners, it suffers from non-application of mind and non-consideration of relevant facts and issues raised in the Writ Petition.

7. Heard Mr.S.Ayyathurai, learned counsel appearing for the appellants; Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.J.Nandhagopal, learned counsel appearing for the respondents 5 and 6.

8. The main contention of the learned counsel for the appellants is that the learned Single Judge, did not hear the counsel for the writ petitioners and without hearing the counsel for the writ petitioners, has referred in para 17 of the judgment as if counsel for the appellants was heard and he made his submissions and dismissed the Writ Petition without discussing the rival contentions of the parties, particularly the contention raised by the appellants in grounds raised against the impugned order in the Writ Petition. At this juncture, it is relevant to quote the last paragraph of the order passed by the learned Single Judge:-

" 20. 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 petitioners 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 petitioners. 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.

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

From the above, it is very crystal clear that the order passed by the learned Single Judge in Paragraph Nos.1 to 19 reveal the contentions in the affidavit, counter affidavit and the arguments of the learned counsel for the appellants and respondents. The learned Single Judge has not assigned any valid ground or reason for dismissing the writ petition. Viewing from

any angle, we are of the considered opinion, that the order passed by the learned Single Judge is not on merits and the same is liable to be set aside.

9. In the result, the Writ Appeal is allowed, by setting aside the order of the learned Single Judge passed in W.P.No.29954 of 2011, dated 19.01.2016 and the Writ Petition is remitted back for deciding the issue afresh in accordance with law. There is no order as to costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The SECRETARY TO GOVT. REVENUE DEPARTMENT
(LAND REFORMS) FORT ST. GEORGE
GOVERNMENT OF TAMILNADU,
CHENNAI-9.
- 2 THE JOINT LAND COMMISSIONER,
(UNDER THE LAND REFORMS ACT), MAYILADUTHURAI,
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- 3 THE REVENUE DIVISIONAL OFFICER,
THIRUVARUR THIRUVARUR DIST.
- 4 THE TAHSILDAR,
VALANGAIAMAN, THIRUVARUR DIST.

+1cc to Mr.S.AYYATHURAI, Advocate, S.R.No. 72798

W.A.No.721 of 2017

MN(CO)
TR(21/11/2017)