

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.10279 of 2001

1.S.Palanisamy
2.S.Subramani ...Petitioners

Vs

1.The Land Commissioner
Office of the Land Reforms
Chepauk, Chennai-5.
2.The Assistant Commissioner
Land Reforms, Erode. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to proceedings in D2/RP.No.27/2000/L.Ref dated 11.05.2001 on the file of the 1st respondent and quash the same.

For petitioners : Mr.C.Prakasam
For Respondents : Mr.S.Pattabiraman
Government Advocate (Writ)

O R D E R

The writ petition has been filed to call for the entire records relating to proceedings in D2/RP.No.27/2000/L.Ref dated 11.05.2001 on the file of the 1st respondent and quash the same.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Writ) appearing for the respondents.

3. Each of the petitioners was assigned 3 acres of land under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules 1965 by the Assistant Commissioner, Land Reforms, Erode, by his proceedings dated 31.03.1995. One Kandasamy sent a complaint to the authorities stating that the petitioners are not landless labourers and that they have an extent of 16.40 acres of landed properties and that further, they had suppressed this fact and had obtained assignment. Based on the said complaint, enquiry was conducted by the Assistant Commissioner of Land Reforms, Sivanmalai and during the enquiry, it came to light that the petitioners' father P.Swamiappa Gounder and his brothers viz., Senmalai Gounder and Chinnasamy Gounder were

together having ancestral properties to an extent of 16.40 acres. It also came to light that P.Swamiappa Gounder, the father of the petitioners died in the year 1996 and the share devolved on his widow and others.

4. In the light of the above findings, the Assistant Commissioner, Land Reforms issued a notice dated 15.12.2000 to the petitioners calling upon them to show cause as to why the assignment granted in their favour should not be cancelled. The petitioners were directed to appear before the Land Commissioner either in person or through their agent, or through pleader and file their objections, if any. Before the Land Commissioner, after several adjournments, the counsel for the petitioners submitted their objections dated 07.05.2001. The Land Commissioner heard the arguments of the counsel for the petitioners and after perusing the records, passed the impugned order on 11.05.2001 cancelling the assignment, challenging which, the petitioners are before this Court.

5. The learned counsel appearing for the petitioners submitted that the impugned order was passed in the year 2001, which is six years later and as such, the same is barred by limitation. He also submitted that as on the date, when the lands were assigned to the petitioners, they did not have any land, which was not taken into account by the Land Commissioner at the time of passing of the impugned order.

6. Per contra, the Assistant Commissioner of Land Records has filed a counter wherein, in paragraphs 11 & 12, it is stated as follows:

"With regard to the averments made in ground (g), it is submitted that in respect of complaint made against the other two individuals, the Assistant Commissioner has enquired the Village Administrative Officer, Sivanmalai regarding the properties owned by them and their family members. The enquiry conducted by the Assistant Commissioner (L.Ref.), Erode revealed that (Late) Samiyappa Gounder, father of Thiru.Palanisamy and Thiru.Subramani and Senmalai Gounder and Chinnasamy gounder, brothers of Samiappa were holding an extent of 6.64.0 hectares i.e., 16.40 acres of lands jointly as detailed below:-

Name of the Village : Sivanmalai Village

SI.No.	S.F.No.	Extent (hec.)
1.	473/3	1.28.0

SI.No.	S.F.No.	Extent (hec.)
2	502/4	0.80.0
3	505/1	2.82.0
4	506/2	1.74.0
	Total	6.64.0 or 16.40 acres

Out of the above properties, 1/3rd of the properties was said to be in the enjoyment of Samiyappa Gounder and after his death in May in 1996, it was under the enjoyment of his wife. Although the lands are said to be under the enjoyment of their mother, since the properties are ancestral properties, they are legally entitled to 1/3 share in the above extent. However, while applying for assignment in Form 'C' and at the time of enquiry under rule 8(3) of the rules, they have suppressed the above facts, given false information that they are not holding any landed property in their name. In addition to that, Thiru.Palanisamy owns house at Kangeyam and an Ambassador Car. Without disclosing the above facts, both of them have violated the condition No.1 of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. If the extent assigned to them are included with their own properties, then it will exceed the ceiling area of 3.00 acres of dry land prescribed in rule 5(2) of the Disposal of Surplus Land Rules, 1965 and they are ineligible to get assignment of the entire extent applied for by them. Therefore, the contention of the petitioners are devoid of merit and deserves no consideration.

With regard to the averments made in Ground (h), it is submitted that as regards the question of jurisdiction Rule 12 of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, was already amended and the Land Commissioner was empowered to take suo motu revision in such cases under rule 11(3) (b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 as modified in G.O.Ms.No.391, Revenue, dated 14.03.1985 at any time without limitation aspects. "

7. As regards the first contention that the impugned order has been passed after six years, it is seen that the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 was

amended in G.O.Ms.391, Revenue, dated 14.03.1985, under which, there is no limitation for the Land Commissioner to exercise suo motu revisionary powers for cancellation of the assignment which has been obtained by suppression of fact.

8. It is trite that fraud and suppression vitiate legal proceedings and a plea of limitation cannot be raised as a defence of fraudulent action. Hence, the first contention of the learned counsel appearing for the petitioners that the impugned order is barred by limitation is rejected.

9. As regards the second contention, even in the objections dated 07.05.2001 filed by the petitioners, they have not denied the fact of their father having 16.40 acres, but, their defence was that their father had alienated the properties and that they had not got any share in the properties. Having pleaded thus, the petitioners had not produced any material before the Land Commissioner that their father had alienated the properties. It is the burden of the petitioners to prove the fact which is to their exclusive knowledge. At the risk of repetition, they did not dispute the findings of the Assistant Commissioner, Land Reforms that the family was holding 16.40 acres of ancestral land. They only took a plea that their father had alienated the property and that they did not get any share in the property. As stated above, the petitioners did not produce any material in support of this contention. The fact remains that as on the date of assignment in 1995, the petitioners' family had ancestral property to an extent of 16.40 acres. The petitioners ought to have mentioned this fact at the time of seeking assignment. They projected themselves as landless labourers and got the assignment. The expression "landless labourer" is defined as :

"(d) "landless agricultural labourer" means a landless person, whose principal means of livelihood is the income he gets as wages for his manual labour on agricultural land".

in Rule 2(d) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, the expression "landless persons" means the persons who should have no interest whether proprietary or otherwise in land.

10. Admittedly, the family of the petitioners was holding ancestral properties measuring 16.40 acres. It is not the case of the petitioners that 16.40 acres or the part thereof, was self acquired property of their father. Even after giving discount to Senmalai Gounder and Chinnasamy Gounder, Swamiappa Gounder would get 1/3rd share of 16.40 ares in which the petitioners will be legally having a share. Therefore the petitioners cannot be categorized as "landless persons". In such view of the matter, this Court does not find any infirmity

in the order passed by the Land Commissioner.

In the result, this Writ Petition is dismissed as being devoid of merits. No costs.

s/d-
Assistant Registrar(CS-III)

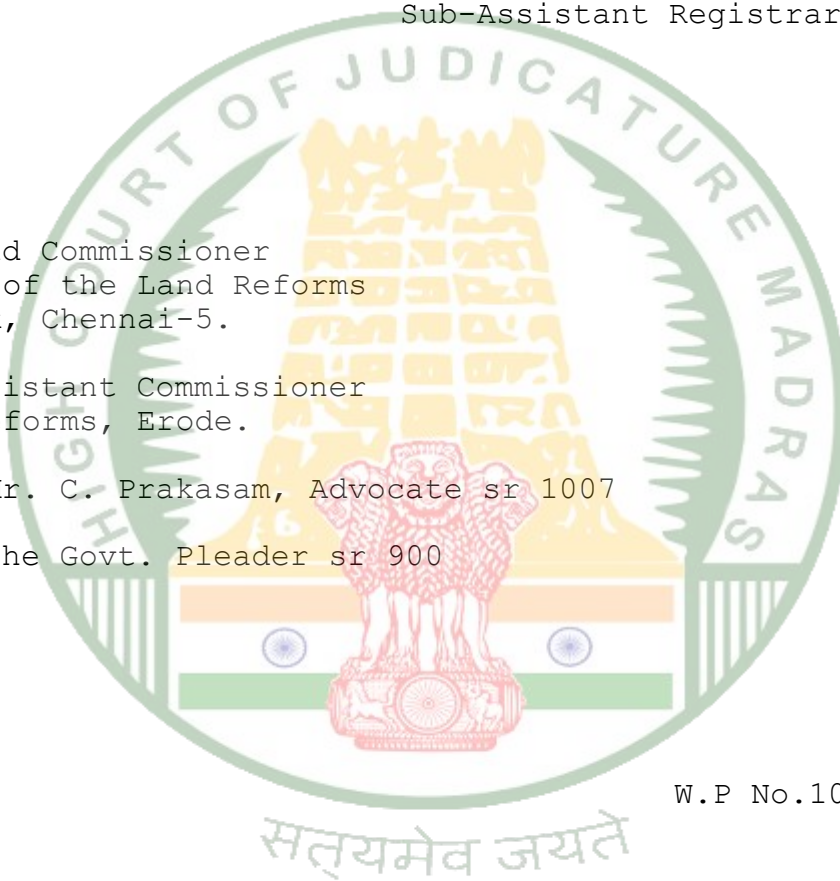
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Sub-Assistant Registrar

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To

1. The Land Commissioner
Office of the Land Reforms
Chepauk, Chennai-5.
 2. The Assistant Commissioner
Land Reforms, Erode.
- +1 CC to Mr. C. Prakasam, Advocate sr 1007
+1 CC to The Govt. Pleader sr 900



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