IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.10.2017

DELIVERED ON: 25.10.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.2617 of 2006
& M.P.No.2736 of 2006

G.V.Memorial Trust,
rep. by its Authorised Signatory,
N.Manoharan,
338, Avinashi Road,
Peelamedu, Coimbatore-641 004. .. Petitioner

Vs.

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

2.The Special Commissioner & Commissioner
of Land Reforms,
Chepauk,
Chennai-600 005.

3.The Authorised Officer &
Assistant Commissioner,
Land Reforms, Madurai. ...Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of certiorari to call for the records of the respondents especially the order of the third respondent dated 27.06.2002 vide ROC No.1848 of 98-A1, as confirmed by the order of the second respondent dated 25.04.2005 vide Ref.D1 18370 of 2004 (Land Reforms) in respect of lands in several Survey Nos. of Gullapuram Village, Theni District measuring 31.76 acres and quash the same.

For Petitioner .. Mr.V.Ramesh

For Respondents.. Mr.S.V.Duraisolaimalai,
Addl. Govt. Pleader

ORDER

Writ petition has been filed by the petitioner/Trust seeking the following relief:

> '' To issue a writ of certiorari to call for the records of the respondents especially the order of the third respondent dated 27.06.2002 vide ROC No.1848 of 98-A1, as confirmed by the order of the second respondent dated 25.04.2005 vide Ref.D1 18370 of 2004 (Land Reforms) in respect of lands in several Survey Nos. of Gullapuram Village, Theni District measuring 31.76 acres and quash the same''.

2.The case of the petitioner is as follows:

The petitioner is a Public Charitable Trust formed in the year 1994 with the object of providing education for the people hailing from rural and underdeveloped areas. The petitioner trust is already running a school in the name and style of ''Srivalli Varadaraj Matriculation School'' at Periakulam, Theni. In order to fulfil the objects of the trust and extend their educational activities for providing educational needs to the underprivileged and the rural people like establishing educational institutions, hospitals and other public utility centres, the petitioner trust has proposed to purchase some lands for fulfilment of the objects of the trust.

3.For the above said purpose, the petitioner Trust had purchased 49.7 acres of land through various sale deeds and according to the petitioner trust, those lands were not cultivable lands and were barren lands. The lands were purchased under several Survey Numbers in Gullapuram Village, Melmangalam and Kovilpatti Village.

4.The petitioner trust on having purchased the lands measuring about 49.7 acres submitted an application originally on 01.11.1995 to the Government under Section 37(B) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act , seeking permission to hold and acquire lands to educational and hospital purposes and necessary form seeking such permission had also been enclosed along with the application.

5. Later on, the petitioner trust found that some of the lands purchased by them in Gullapuram Village were not found fit for the fulfilment of the objects of the trust for more than one reason. One of the reasons was that the lands were not contiguous and therefore did not serve any useful purpose for utilising the same for the trust's educational and hospital needs.

6. Since, according to the petitioner, the lands in Gullapuram Village were not the agricultural lands and incapable

of being cultivated under any circumstances, the petitioner trust decided to sell the lands and make use of the proceeds of the sale of lands for purchase of other lands to an extent of 17.94 acres in the same village, adjacent to the lands in Melmangalam and Kovilpatti Villages. Accordingly, about 17.94 acres under several Survey Nos of Gullapuram Village was purchased and the total lands thus purchased by the petitioner trust was 37.28 acres. In the changed circumstances, the petitioner trust had submitted another application on 04.01.1999 under Section 37(B) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961(herein after referred to as '' the Act'') seeking permission for acquiring the lands measuring about 37.28 acres.

7. According to the petitioner trust that the lands originally purchased in Gullapuram Village were un-cultivable barren lands and incapable of being used for agricultural purposes. Therefore, their original application which was made on 01.11.1995, seeking exemption, was on a mistaken belief on the part of the petitioner trust that such exemption was required. However the fact of the matter was selling of the subject lands by them did not attract any provisions of the Act, since the lands sold were cultivable and fell outside the scope of definition of lands as defined under the Land Reforms Act.

8.According to the petitioner trust the lands which were sold by them did not come within the definition of lands as defined under Section 3 (22) of the Act. The said position has been explained to the Government by the petitioner trust by a letter dated 31.03.2001.

9.While matter stood thus, the first respondent issued G.O.Rt.No.540, Revenue (L.R.3(1)) Department dated 04.12.2001, granting exemption to the petitioner trust under Section 37(B) for 37.28 acres and directed the third respondent herein to initiate action under Section 20 (A) of the Act in respect of 31.76 acres of land which were sold to the third parties by the petitioner trust between 1995-1999 i.e., from the date of the first application made on 01.11.1995 and the revised application made on 04.01.1999. On this, the petitioner trust sent a reply on 25.03.2002 stating that the direction as contained in G.O..Rt.No.540, Revenue (L.R.3(1)) Department dated 04.12.2001, for taking action under the provisions of the Act will not arise in their case since the lands which were sold by the trust were neither cultivable nor the agricultural lands. Therefore, the sale of the lands would not attract the provisions of the Act, particularly, Section 20 (A) of the Act. In the said circumstances, the petitioner trust filed a review application to the Government on 27.05.2002, seeking review of its order dated 04.12.2001 regarding action proposed in respect of 31 acres and 76 cents which were sold to the third parties by the petitioner trust. After filing of the review application before the Government, simultaneously, a writ petition was filed in WP. No.25020 of 2002 by the petitioner trust seeking for a direction restraining the respondents from proceeding under Section 20 (A) of the Act, pursuant to G.O.Rt.No.540, Revenue (L.R.3(1)) Department dated 04.12.2001. The writ petition came to be disposed of, directing the first respondent to decide the review application in accordance with law.

10.In the meanwhile, the third respondent, in pursuance of the aforesaid G.O.Rt.No.540, Revenue (L.R.3(1)) Department dated 04.12.2001, passed an order under Section 20 (A) of the Act vide proceedings dated 27.06.2002, declaring the sale effected by the petitioner trust in favour of the third parties as null and void and declared that the lands be transferred to the Government. Assailing the said order passed by the third respondent, who is the authorised officer, under the provisions of the Act, the petitioner trust preferred an appeal on 13.09.2002, before the second respondent. The second respondent by order dated 25.04.2005, rejected the appeal confirming the order passed by the third respondent. According to the petitioner trust, the second respondent rejected the appeal, solely on the ground that the review application preferred by the petitioner trust before the Government was rejected vide proceedings dated 02.01.2004. On this, the petitioner trust averred in the affidavit that the rejection of review petition dated 02.01.2004 was not communicated to them at all and they had come to know about the same only when their appeal dated 13.09.2002 was rejected by the second respondent vide his proceedings dated 25.04.2005. Being aggrieved by the orders passed by the second respondent dated 27.06.2002 and 25.04.2005, the petitioner trust is before this Court challenging the same.

11. Upon notice, Mr.S.V.Duraisolaimalai, the learned Additional Government Pleader takes notice on behalf of the respondents and filed a detailed counter affidavit. The learned Additional Government Pleader would submit that the lands in question can be irrigated with the well water although the lands were classified as dry lands. Therefore, he would submit that the claim of the petitioner trust that the lands were barren was contrary to the fact. In the said circumstances, the land in question, would come within the definition of the ''land'' as defined under Section 3 Sub Clause 22 of the Act. He therefore, submitted that the lands were sold without obtaining permission from the authority and therefore, the third and the second respondents have rightly passed orders by invoking Section 20(A) of the Act. Such order is valid in all respects and does not call for interference from this Court.

12. Mr.V.Ramesh, learned counsel for the petitioner would strenuously contend that the orders passed by both the third and

second respondents, which are impugned in the writ petition, cannot be countenanced both in law or on facts for the simple reason that there had been no independent application of mind on the part of both the authorities concerned in terms of relevant provisions of the Act. According to the learned counsel, the third and second respondents were merely guided by the direction issued by the Government under G.O.Rt.No.540, Revenue (L.R.3(1)) Department dated 04.12.2001 by abdicating their statutory responsibility to independently deal with the application submitted by the petitioner trust under Section 37 (B) of the Act.

13. The leaned counsel for the petitioner with equal tenacity would contend that the lands in question which eventually attracted Section 20 (A) of the Act were not cultivable and cannot be used for any agricultural purposes since they were mere barren lands, incapable of being put to cultivation and hence these lands did not come within mischief of Section 3 Sub Cluase 22 of the Act, which defines the word ''land'' as under:

> (22) ''land'' means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes of purposes subservient thereto and includes forest land, pasture land, plantation and tope, but does not include house-site or land used exclusively for non-agricultural purposes.

The learned counsel would further contend that the statutory duties cast upon the third respondent is to follow the procedure contemplated under Section 20 (A) of the Act and the authority is to be convinced and satisfied about the nature of the lands before recording his declaration. Section 20 (A) is extracted below:

> ''20-A. Penalty for future acquisition in contravention of certain provision;- (1) Any acquisition of any land madein contravention of the provisions of sub-section (2) of section 2, of sub-clause (ii) of clause © of sub-section (1), sub-clause (ii) of clause (d) of sub-section (1), clause (b) of sub-section (3-B), and of sub-section (3-C) of section 5, shall be null and viod and any land which is so acquired shall, as a penalty for such contravention, be deemed to have been transferred to the Government with effect from the date of such acquisition on a declaration made by the authorised officer within whose jurisdiction such land or the major part thereof is situated. The authorised officer shall record in writing the reasons for such declaration:
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> Provided that :-
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> (a)no such declaration shall be made unless the transferor and the transferee have been given a

reasonable opportunity of being heard and of adducing evidence, if any,

(b) the transferee shall be liable for the payment of the consideration for, and to discharge other liabilities under such transaction and the transferor shall have no claim for such consideration against the Government, otherwise than in respect of such land,

(c) no suit or other proceedings by the transferee shall lie in any Court for the refund of the consideration for any such transaction.

(2) The Government may make rules providing for the manner in which, any right, title or interest transferred to the Government under sub-section (1) shall be disposed of.

14. The learned counsel for the petitioner would submit that no procedure was followed as contemplated above and there was no finding of fact whether the lands in question were agricultural lands or it is merely barren lands as claimed by the petitioner trust. He would draw the attention of this Court to the order passed by the third respondent / authorised officer dated 27.06.2002.

15. The learned counsel for the petitioner would rely on the decision reported in 99 Law Weekly page 832 (Savitriammal Vs. The Commissioner, Land Revenue, Land Reforms Board of Revenue, Madras.5) by the learned Single Judge of this Court, wherein, it has been held in paragraph No.2 as under:

> 2. Mr. A.V. Dhanakoti, learned counsel for the petitioner, would submit that if evidence is required on the questions posed by the first respondent with regard to the deed of Trust, the first respondent ought to have remitted the matter back to the second respondent for reconsideration as contemplated under S. 82 of the Act, directing the second respondent to permit the petitioner to place the requisite evidence on the questions. This plea of the learned counsel for the petitioner on facts, requires countenance. If in fact, the deed of Trust covers the land in question and has been acted upon, and would fall within the exempted category, the petitioner may plead and succeed for exemption under S. 2 of the Act. S. 82 of the Act is generously couched, and enables the revisional authority to make an order of remittal in appropriate cases. The Act circumscribes the right to bold property and before the provisions of such a statute are enforced, any benefit thereunder, such as an exemption, which is a silver lining in an otherwise dark portals of the statute, must be

given, if in fact, the party is entitled to it inlaw and on facts. The omission to put forth a plea for exemption at the earliest stage need not be rigorously put against the party, to deprive him the exemption, which he may be lawfully entitled to. In my view, the first respondent has taken too technical view, which has resulted in prejudice to the petitioner, and the first respondent has not adverted to the amplitude of his revisional powers, and he unjustly failed to exercise the power vested in him in law. It will be just and proper and it will meet the ends of justice that the second respondent considers the matter afresh permitting the petitioner to place the requisite evidence on the relevant aspects relating to the deed of Trust and then render a decision one way or other. Accordingly, this writ petition is allowed and the order of the first respondent is quashed and the matter will stand remitted to the file of the Second respondent for him to consider the same afresh is the light of the observations and directions made above. It is needless to state that the petitioner will be alert enough to participate in the enquiry, which the second respondent may initiate is this behalf after due notice to the petitioner and place all the requisite evidence to substantiate her claim for exemption. I make no order as to costs."

According to the learned counsel for the petitioner this Court has held that the Act is generously couched and no rigorous view to be taken against the party concerned.

16. From the contents of the order dated 27.06.2002, it could be seen there was no finding rendered by the authority concerned as to the nature of the lands and the claim of the petitioner trust as to the barren and uncultivable nature of lands had not been addressed at all. The order in its entirety is bereft of legal reasons and disclosed complete non application of mind. Such non speaking order, cannot result in nagation of valuable right of the petitioner trust holding the property and sell the same for their own betterment. This submission on behalf of the leaned counsel for the petitioner, would carry conviction with this Court since the third respondent, who is vested with the statutory powers of giving declaration has abdicated his responsibility and passed the order contrary to the very scheme of Section 20 (A) of the Act. Further, this Court's attention was also drawn to the order passed by the appellate authority namely, the second respondent herein dated 25.04.2005, there again, the appellate authority, did not choose to address the claim of the petitioner trust as

to the nature of the lands originally held by the petitioner trust, which was subsequently sold to the third parties. As rightly contended by the learned counsel for the petitioner the appellate authority was merely guided by the Government's order dated 04.12.2001 and mechanically confirmed the order passed by the third respondent dated 27.06.2002, which declared the sale transactions by the trust to the third parties to the extent of 31.76 acres as null and void. This Court is unable to appreciate the manner in which the powers vested in the authority has been so casually exercised without proper application of mind in terms of the scheme of the Act. Both the orders passed by the third respondent and second respondent dated 27.06.2002 & 25.04.2005 have to go lock stock and barrel as the same did not fulfil the parameters as laid down by the scheme of the Act, particularly, in terms of Section 20 (A) of the Act. Although, the petitioner trust had claimed in more than one of the communications addressed to the authorities concerned that the lands which were originally purchased by them in Gullakulam Village were uncultivable, barren lands, incapable of use for any agricultural purposes, the said factual issue has not been addressed at all by the third and second respondents, since the right of the petitioner to sell the properties can be determined one way or the other only on the basis of the claim put forth on behalf of the petitioner. In the absence of any contra findings by the authorities concerned as to the claim of the petitioner trust, the impugned orders passed by the third and second respondents cannot stand the test of judicial scrutiny and the same are therefore liable to be interfered with.

17.Having concluded so, this Court cannot go to the factum whether the lands which are originally purchased by the petitioner and which were subsequently sold to the third parties measuring about 31.76 acres were un-cultivable lands or not by exercising its jurisdiction of judicial review under Article 226 of the Constitution of India. It is for the authorities to examine the claim of the petitioner trust with reference to the materials to be produced and placed on record by the petitioner trust and with reference to revenue records in respect of the subject lands. The authorities need to examine the issue after adopting the procedure laid down particularly, under Section 20 (A) of the Act before making any declaration determining the right of the petitioner trust to own, acquire and sell the lands in question.

18. In the said circumstances, this Court is of the view that the matter has to be remanded back to the third respondent to examine the issue afresh with regard to the claim of the petitioner trust and give a clear finding whether the lands which were sold to the third parties measuring about 31.76 acres would come within the definition of Section 3 (22) of the Act

and whether the petitioner trust had violated any mandatory provisions of the Act before effecting sale to the third parties and also whether Section 20 (A) of the Act is attracted in their case. Such finding has to be rendered by the third respondent in clear terms after adverting to all the relevant materials and evidence to be placed before the authorities concerned. The third respondent is therefore directed to revisit the order on the basis of the above direction and pass a well considered order within a period of six months from the date of receipt of a copy of this order. Thereupon, if the petitioner trust is aggrieved by any finding, it shall be open to the petitioner trust to exhaust a statutory appeal available to them under the Act and any such appeal is filed, the appellate authority shall consider the same by exercising his power independently, under the Act and shall pass orders there on in terms of the Act.

19.The writ petition is disposed of, on the above terms. No costs. Consequently connected miscellaneous petition is closed.

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sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1.The Secretary to Govt,
Government of Tamilnadu,
Revenue Department,
Fort St. George, Chennai-9

2.The Special Commissioner & Commissioner
of Land Reforms,
Chepauk,
Chennai-600 005.

3.The Authorised Officer &
Assistant Commissioner,
Land Reforms, Madurai.

+1CC to Mr.V.RAMESH Advocate SR.NO.75854

W.P.No.2617 of 2006

RVR:14/11/2017