

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P. VELMURUGAN

W.A.No.1717 of 2017

1. Ananda Jothi
2. R. Parthasarathy
3. Shanmugam
4. Selvi

.... Appellants

-vs-

- 1.R. Manivannan
- 2.Tmt.Rajammani
- 3.R. Uma
- 4.R. Sadhana
- 5.The Tahsildar,
Coimbatore North
Coimbatore
6. The Assistant Commissioner (Land Reforms)
Erode, Periyar District
- 7.The Land Commissioner,
Chepauk, Chennai - 5
8. Baba Chandrasekar

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.23508 of 2007 dated 25.09.2015.

WP.NO.23508/2007:

WP is filed Under Article 226 of the Constitution of India issue a Writ of Certiorari to call for the records of the 7th respondent and quash the order passed in D1/R.P.7/2006/L.Ref dated 12.7.2006

For Appellants : Mr.C. Deivasigamani

For R.1 to R.4 : Mr.P.K. Rajagopal

For R.5 to R.7 : Ms.Ramya Revathi
Govt Advocate

JUDGMENT

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

The challenge in this appeal is to the order dated 25.09.2015 in Writ Petition W.P No.23508 of 2007, dismissing the writ petition filed by the appellants, challenging the order dated 12.07.2006 on the file of the Land Commissioner, Chepauk, Chennai-5.

2. The competent authority, under the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act 1970 (Tamil Nadu Act No.17/70) initiated statutory proceedings against the predecessor in interest of the respondents 1 to 4. The Draft Statement under Section 10(1) was prepared and published in the Tamil Nadu Gazette on 23.05.1979. It was followed by the final statement under Sec.12 of the Act, which was published on 19.3.1980. The competent authority declared 21.92 ordinary acres, equivalent to 6.278 standard acres, to be acquired as surplus from the holdings of the land owners. The Order declaring surplus land, was challenged by the land owners by way of a revision petition before the Land Commissioner under Sec.82 of the Act. The revision petition was dismissed. Thereafter, a Writ Petition was filed before this Court in W.P No.8039 of 1982 and after constitution of the Tamil Nadu Land Reforms Special Appellate Tribunal, the same was transferred to the Tribunal. The Tamil Nadu Land Reforms Special Appellate Tribunal dismissed the appeal. The competent authority, thereafter, issued a Notification under Section 18(1) of the Act declaring the surplus land and the same was gazetted on 05.11.1995.

3. The predecessor in interest of the respondents 1 to 4 filed objection petition before the Assistant Commissioner on 23.01.1996 stating that their land was also included in the holdings of the adjacent landholders. In the meantime, the surplus land was assigned to four persons by proceedings dated 17.02.1996. The actual possession was also handed over to the assignees. The remaining land was assigned by proceedings dated 23.07.2002.

4. The respondents 1 to 4 filed a revision petition before the Land Commissioner, challenging the assignment proceedings dated 23.07.2002. The revision petition was allowed by the Land Commissioner by order dated 12.07.2006. Since the appellants failed to appear before the Land Commissioner, an ex-parte order was passed directing to identify the correct portion of the land owned by the land owners' and declare the surplus thereafter.

5. Since the land was in the possession of the appellants and an adverse order was passed against them, a writ petition W.P No.23508 of 2007 was filed before this Court.

6. Before the Writ Court, the appellants contended that they are in possession of the lands, pursuant to the order of assignment dated 17.2.1996. It was also contended that patta has already been transferred in their names and as such, the Land Commissioner was not correct in setting aside the final order passed under the special statute. The learned Single Judge dismissed the writ petition without addressing the crucial issue. Feeling aggrieved, the appellants have filed the present intracourt appeal.

7. We have heard the learned counsel for the appellants. We have also heard the learned counsel for the respondents 1 to 4.

8. There is no dispute that the proceedings initiated by the competent authority under the Tamil Nadu Act No.17/70 has become final. The competent authority, after declaring the excess lands, initiated proceedings for assignment. The appellants are the beneficiaries as per the orders of assignment dated 17.02.1996 and 23.07.2002.

9. The possession of the land has already been transferred to the appellants and patta was also transferred. In short, the appellants were put in possession of the lands assigned to them.

10. While so, the respondents 1 to 4 initiated proceedings before the Land Commissioner, Chennai, challenging the order of assignment dated 23.07.2002 on the file of Assistant Commissioner (Land Reforms), Erode. The Land Commissioner appears to have issued notice to the appellants. Since there was no representation on behalf of the appellants, an ex-parte order was passed on 12.07.2006 remanding the matter to the Assistant Commissioner for consideration of the lands owned by the revision petitioners and to declare the surplus lands.

11. The Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 contains string of provisions relating to appeals and revision. Rule 11 deals with the power of the Land Commissioner to entertain a revision. There is a statutory period prescribed for entertaining a revision by the Land Commissioner. Sub Rule 3(a) of Rule 11 indicates that in case the order is against the decision rendered by the District Revenue Officer under Rule 10, the revision petition should be filed within a period of 60 days.

12. The Land Commissioner is given discretion to entertain the appeal in case it is delayed by 30 days. Similarly, under

sub section 3(b) the Land Commissioner is given revisional power suo-motu within five years from the date of order of assignment or the date of the order passed by the appellate authority.

13. The respondents 1 to 4 initiated the revisional proceedings in the year 2006. In the order passed by the Land Commissioner, there is an indication that the assignment of the lands to four persons was complete on 17.02.1996 and possession was also handed over to the assignees. The order passed by the Land Commissioner does not contain any indication that the respondents 1 to 4 filed an application for condoning the delay in filing the revision. The Land Commissioner appears to have taken up the revision without considering the period of limitation prescribed under the Rules.

14. Similarly, there was no indication in the order passed by the Land Commissioner that the subsequent events relating to transfer of patta and improvements of the lands were also taken on record.

15. In a matter of this nature, the Land Commissioner should consider the entire back ground facts before taking a decision to set aside the order of assignment. Even if the assignee is not before the Commissioner, a duty is cast upon the statutory authority to look into the subsequent events. No such effort was taken by the Land Commissioner while setting aside the order dated 12.07.2006. This material aspect was not taken note of by the learned Single Judge. We are, therefore of the view that the order passed by the learned Single Judge is liable to be set aside.

16. We set aside the order dated 12.7.2006 on the file of Land Commissioner, Chepauk. We also set aside the order dated 25.09.2015 in W.P.No.23508 of 2007.

17. We direct the Land Commissioner, Chepauk, Chennai to restore the revisional proceedings initiated by the respondents 1 to 4. The respondents 1 to 4 are given liberty to file an application for condonation of delay. It is open to the Land Commissioner to consider the application, filed for condoning the delay, on merits, taking into account the reasons given by the respondents 1 to 4.

18. The appellants are also given an opportunity to oppose the application for condoning the delay and submit their case on merits.

19. Since the matter is of the year 2006, we direct the Land Commissioner to dispose of the statutory proceedings as expeditiously as possible and in any case, within six months

from the date of receipt of a copy of this judgment.

20. The appellants shall co-operate with the statutory authorities for an early disposal. In case, the parties make any attempt to delay the matter, it is open to the Land Commissioner to decide the matter on merits.

21. The intracourt appeal is allowed as indicated above. No costs.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

sr

To

1.The Tahsildar,
Coimbatore North
Coimbatore

2. The Assistant Commissioner (Land Reforms)
Erode, Periyar District

3.The Land Commissioner,
Chepauk, Chennai - 5

+ 1 cc to Mr.C. Deivasigamani Advocate,SR.7399

+ 1 cc to Mr.P.K. Rajagopal Advocate,SR.7359

W.A No.1717 of 2017

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