

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 14.02.2018	Date of Pronouncing Judgment 28.06.2018
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CORAM:

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

W.A. No.1418 of 2012

- 1.A.Sowmya Narayanan
Rep.by Power Agent,
No.1203, Mind Block,
H.M.World City J.P.Nagar,
9th Phase Raghavan Palaya,
Bangalore 560062
2. S.Ramakrishnan
3. S.Venkatachalam
4. Muthulakshmi
5. V.Sankari
-Appellants
- Vs.
1. The Assistant Commissioner,
(Land Reforms) Tirunelveli
2. The Land Commissioner,
Chepauk, Chennai 600 005
3. Kailasa Iyer
4. Peishkar of Thiruvaduthurai Adheenam,
Thiruvaduthurai Adheenam,
Tirunelveli
5. The District Collector,
Thoothukudi DT at Thoothukudi
6. Additional Personal Assistant(Land),
to the Collector, Thoothukudi
7. The Revenue Divisional Officer,
Thoothukudi
(R5 to R7 impleaded vide Court order dated
09.02.2018 made in C.M.P.No.17922/2016
in W.A.No.1418/2012
- ...Respondents

PRAYER:

Writ Appeal is filed under Clause 15 of the Letters Patent against the Order dated 07.06.2011 passed in W.P.No.8795 of 2004.

Writ Petition Under Article 226 of Constitution of India for the issuance of writ of certiorari to set aside the order of the Second respondent in R.P.No.128 of 1998, dated 26.04.1999.

For Appellants : Mr.A.Sivaji

For Respondents : Mr.A.Srijayanthi,
Special Government Pleader
for RR1, 2 & 5 to 7
Mr.J.Antony Jesus for R3,

: No Appearance for RR4

J U D G M E N T

P.VELMURUGAN, J.

The appellants 1 to 3 are the sons and the appellants 4 and 5 are the daughters of late Smt.N.S.Kamalam, wife of Subramania Ganabadigal. As per the geneology, the land owner's family consists of 8 members including herself, her husband, four sons and two daughters, totally 8 members. Among the four sons, the first son / the first appellant became major on 4.12.1963. The second son by name Seeravarnan died on 7.7.1969. The other sons / appellants 2 and 3 were minors as on the relevant date. The fourth appellant got married on 02.06.1974 and the fifth appellant got married on 22.06.1981. The first respondent is the original Authority. Against his orders passed under Sections 12 and 18 revision is provided to the second respondent under Section 83 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. The third and fourth respondents are the joint owners of the land at Vadavallanadu, which is the subject matter of the Writ Appeal. Pending the Writ Appeal, respondents 5 to 7 were added as respondents due to the abolition of the Office of the first respondent and divesting the work to the respondents 5 to 7.

2. The land in question situate in the aforesaid Vadavallanadu and Vallanadu kaspas, villages of Tirunelveli District, were given by the landowner's mother namely Tmt.Muthammal, to the land owner through the registered Will dated 17.10.1954. She is a life estate holder in respect of land in schedules 2 and 4. The Will was executed by the mother of the land owner. It consists of five schedules. Mainly life estate was given to the land owner, without power of alienation and after her life time it should go to her male issues born at that time and to be born thereafter. The first respondent initiated action against the said land owner under Tamil Nadu Land Reforms

(Fixation of Ceiling on Land) Act 58 of 1961 as amended by the Tamil Nadu Act No.17 of 1970. The Act 17 of 1970 came into force on 15.02.1970, the notified date being 2.10.1970. As per the amended Act, the total allowed extent is 15 standard acres for a family as defined under Section 3 (14), consisting of 5 members and the landowners are entitled to hold 20 standard acres.

3. As per the order of the first respondent, the net holding of the land owner was 132.83 ordinary acres equivalent to 41.39 standard acres as on 15.02.1970. An extent of 4.54 ordinary acres was ordered to be excluded under Section 3 (22) of the Act on the ground that the same were used for non agricultural purposes. After excluding this extent, the first respondent determined the total holding as 128.29 ordinary acres equivalent to 40.25 standard acres. Consequently after fixing the members of the landowner's family as 6, the authority allowed 20 standard acres as retainable holding and declared 20.25 standard acre as surplus. Followed by this, a draft statement under Section 10 (1) of the Act was published on 23.06.1976 in the Tamil Nadu Government Gazette. On 02.11.1977, final statement under Section 12 of the Act was issued. These two proceedings were in consonance with the order passed under Section 9(2)(b) of the Act. The allowed ceiling area for the land owner's family was 47.30 ordinary acres equivalent to 20 standard acres. By fixing the members of the land owner's family as six, 80.99 ordinary acres equivalent to 20.25 stands acres were shown as surplus. This allowed ceiling limit is in accordance with Section 5 (1) (b) read with Section 10 (2) (a). The members of the Family who were alive as on the notified dated i.e. 02.10.1970 is to be taken into account while calculating the ceiling for the first time. For the second or for the subsequent time, while calculating the ceiling, the first respondent shall take into account, only those members of the family who are alive on the date of preparation of the draft statement under Section 10 (1).

4. In this case, the draft statement was published on 23.06.1976. The family of the land owner consist of six members including herself. The first respondent passed an order on 20.01.1981 after long lapse of nearly six years. The first respondent has no power to review his earlier orders dated 27.04.1975, 23.06.1976 and 02.11.1977. Rule (11) (h) provide for reviewing his order only on the ground of patent error. After review, the allowed ceiling limit was fixed at 15 standard acres and the members of the land owner's family got reduced from 6 to 5. Consequently, the surplus extent was declared as 25.250 standard acres. This revised order was made under Section 10 (5) of the said Act. Consequently, the final statement under Section 12 and the notification under Section 18 dated

20.01.1981, 22.10.1977 and 25.02.1998 respectively were issued. All are illegal and contrary to Section 5 (2) (a) of the Act. The final statement was issued on 27.04.1975. As could be seen from the genealogy, the members of the land owner's family was six and not five as unilaterally held by the first respondent.

5. The above facts will establish that the first respondent proceeded further against the dead person, in spite of knowledge not only about the death of the land owner but also receiving the information of the death and the details of the legal heirs of the land owner and proceeded further by declaring the surplus land and fixing compensation and then assigned the lands to third parties. The declaration of surplus showing the deceased landowner without notice to the legal representatives of the deceased landowner is bad in law. Sections 9, 10, 12, 18 and 50 contemplates notice to the landowner, interested persons and all concerned persons. In this case, the impugned proceedings were issued against a dead person showing as landowner. Rules 8 (c) and (d) of the Rules framed under the Act provides for service of notice. The mandatory procedure was violated by continuing further with the proceedings, even after the death of the landowner and without issuing notice to the legal representatives of the landowner. Against various statutory orders passed under Sections 9, 10 (5) and 50 of the Act statutory appeals are provided under Section 78 and a further revision to the High Court under Section 83 of the Act. Against the orders of the first respondent passed under Sections 12, 18 etc. revision to the second respondent under Section 82 of the Act was provided. As such, the appellants herein filed a statutory revision before the second respondent in R.P.No.128 of 1998 challenging the proceedings under Sections 12 and 18 dated 22.10.1997 and 26.02.1998 respectively. This revision came to be dismissed by the order of the second respondent dated 26.04.1999. This is the subject matter of revision in S.R.P.No.28 of 2000 filed before the Tamil Nadu Land Reforms Special Appellate Tribunal (since abolished). The first respondent filed counter and additional counter. The revision was transferred and numbered as W.P.No.8795 of 2004. After notice and hearing, the writ petition was dismissed on 07.06.2011. Based on the records, obtained under the RTI Act, the writ appellant filed C.M.P.No.17404 of 2016 and raised the additional grounds.

6. After hearing the case, the learned Single Judge dismissed the writ petition and confirmed the order of the second respondent. Hence, the appellants are before this Court by way of this Writ Appeal.

7. Heard the rival submissions made by the learned counsel on either side and perused the material records.

8. A perusal of the records would clearly show that the land in question originally belonged to one Tmt.Muthammal, who executed a registered Will dated 17.10.1954 in favour of one Smt.N.S.Kamalam.

9. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 was amended by Act 17 of 1970, which came into force on 15.02.1970 and the same was notified on 02.10.1970. As per the amended Act, the authorised Officer, the first respondent initiated action against the landowner. As on the relevant date, there were 8 members as per the genealogy filed by the landowner. But as per Section 3 (14) of the Act, "family" in relation to a person, means the person, the wife or husband, as the case may be, as such person and his or her -

- (i) minor sons and unmarried daughters, and
- (ii) minor grand sons and unmarried grand-daughters in the male line, whose father and mother are dead.

9. As per the above provision, in the present case, one son has already attained majority on the relevant date and one son died prior to the relevant date. Therefore, two sons and two daughters, being unmarried, plus the land owner, there were only 5 members.

10. As per the definition of 'Family' under Section 3 (14), wife or the husband both simultaneously cannot be treated as a member of the family. Hence, the Authority concerned has taken 5 as members in the landowner's family at the relevant point of time. Therefore, the contention of the appellants that at the relevant point of time, there were six members and not five members is not acceptable and the same is rejected. As per Section 3 (14) of the Act, as on the relevant date, the family of the land owner constituted only five members. Therefore, they are entitled to only 15 standard acres.

11. The contention raised by the appellants is that, the land owner has got only life interest through her life. Before the Act, they have entered into a partition and also gave up the life interest. Therefore, as per the partition deed, there is no surplus land. The land is within the ceiling limit. The land owner filed an appeal before the Land Tribunal, Tirunelveli against the order passed under Section 10 (5) of the Act dated 20.01.1981 and the same was dismissed in LTCMA.7 of 1981 dated 23.12.1982. The land owner filed a Civil Revision Petition before this Court against the order of the Land Tribunal and

this Court by order dated 14.09.1988 dismissed the Civil Revision Petition. So, based on the orders under Section 10 (5) of the Act, dated 20.01.1981, the necessary final statement under Section 12 of the Act was published in the Tamil Nadu Government Gazette dated 22.10.1997. Notification under Section 18 (1) of the Act was also published in the Tamil Nadu Government Gazette dated 25.2.1998. Against the publication of the Final Statement under Section 12 and the Notification under Section 18 (1) of the Act published in the Tamil Nadu Government Gazette dated 22.10.1997 and 25.2.1998 respectively. The legal heirs of the land owner Smt.N.S.Kamalam filed the revision petition before the Land Commissioner stating that the land owner died on 29.03.1992 and also as per the partition they are all entitled for share in the lands. Subsequently, the revision was transferred to this Court. Once this Court in Civil Revision Petition decided the nullity of the unregistered partition, the appellants cannot re-agitate the same point already answered by this Court in the writ petition. Therefore, the contention raised by the appellants that there is no surplus land as per the partition deed by which they are entitled for share and so there is no surplus land, is not acceptable. The main contention of the appellant is that the landowner died on 29.3.1992 even before the notification. Therefore, as per the notification dated 25.02.1998, before finalising the final statement, they have to sub-divide the surplus land and give a notice under Rule 14 of the Tamil Nadu Land Reforms (FCL) Rule to the co-sharers. The appellants are the legal representatives. However, they were not given opportunity. There was no notice served before subdividing the land and other legal formalities. Therefore, in the absence of any service of notice to the legal representatives, order passed by the second respondent is not in accordance with law. Yet another contention is that sub division work should have been completed before proposing Final Statement and the correct particulars of lands and measurements.

12. The first respondent passed the order on 20.01.1981 itself and the landowner herself filed a revision before the Tribunal, which was dismissed. She preferred a Civil Revision Petition before this Court, which was also dismissed. Therefore, insofar as the decision regarding the members constituting the family of the landowner, and the entitlement of standard acres have attained finality even during the life time of the landowner. The rest of the proceedings are only legal formalities. Of course, Rule 14 contemplates that notice has to be given to the legal representatives of the landowner. The order dated 20.01.1981 clearly states that after excluding the major son, there are only 5 members in the family as on 15.02.1970. Hence, she is entitled to hold only 15 standard acres. The remaining extent as detailed below will be declared as surplus as follows.

	O.A.	S.A.
1. Total holdings as per draft statement	28.29	40.250
2. Extent to be exclude of exempted	--	--
3. Ceiling area allowed	--	15.000
4. Surplus lands	--	25.250

13. Further, paragraph four of the order clearly states that on inspection of the surplus lands declared in the draft statement regarding the suitability, it is noticed that certain lands are less than one acre and sub division will cause minute fragments and not suitable for easy and convenient enjoyment by the assignees. Further an extent of five standard acres has to be declared as surplus in addition to the surplus declared in the draft statement. The land holder has not offered any alternate surplus lands during enquiry. Hence, required surplus lands will be selected suo moto.

14. In view of the above discussion, there is no reason to interfere with the findings regarding the 5 members constituting the family as on 15.02.1970, entitling to hold 15 standard acres. Therefore, remaining lands were declared as surplus land. However, after passing the order and even before the notification and publication, the landowner died on 29.03.1992. In the sub division and other proceedings following the order, the legal representatives / appellants have not been informed to appear or no notice was served. Therefore for the limited purpose, this Court remands the matter to the second respondent.

15. The second respondent is directed to give opportunity of hearing to the appellants and pass a fresh order on merits and as per law.

16. With the above observation, the Writ Appeal is disposed of. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VII)

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Sub Assistant Registrar

lok/tar

To

1. The Assistant Commissioner,
(Land Reforms) Tirunelveli

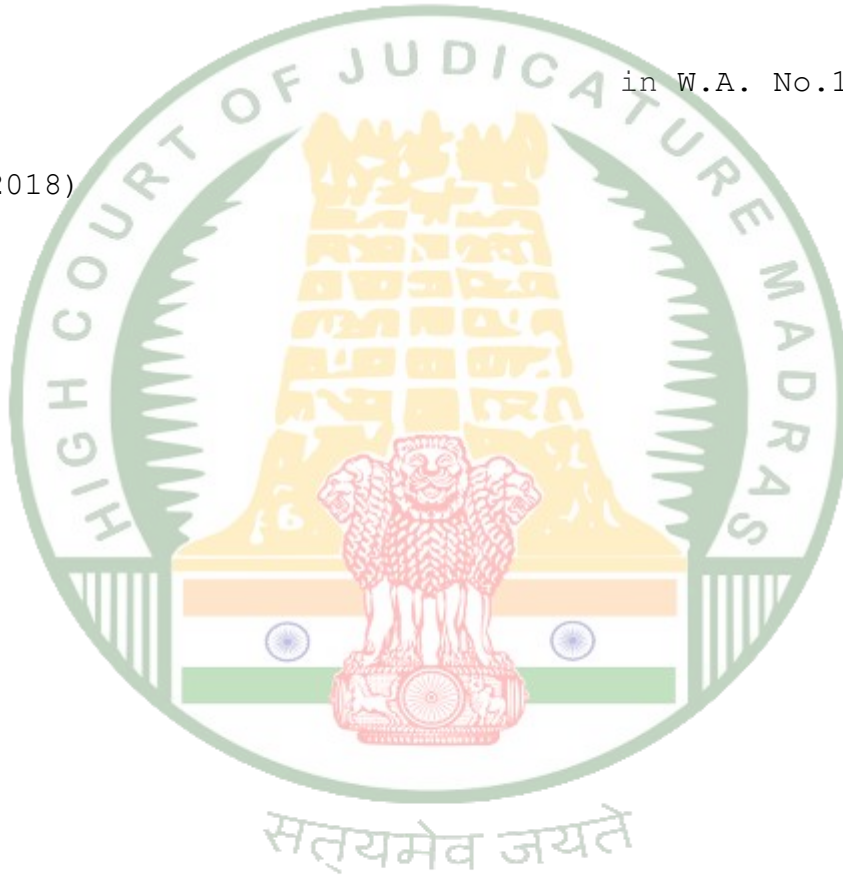
2. The Land Commissioner,
Chepauk, Chennai 600 005

3. The District Collector,
Thoothukudi DT at Thoothukudi
4. Additional Personal Assistant (Land),
to the Collector, Thoothukudi
5. The Revenue Divisional Officer,
Thoothukudi

+1cc to Mr.J.ANTONY JESUS, Advocate, S.R.No.42425

Judgment
in W.A. No.1418 of 2012

RV(CO)
TR(16/07/2018)



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