

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1419 of 2012
and
C.M.P.No.6559 of 2019

1. G.Balasubramanian,
2. Tmt.Suseela

...Appellants

Vs

1. The Assistant Commissioner
(Land Reforms), Erode,
2. The Land Commissioner, Chempauk,
Chennai - 600 005.
3. The District Collector
Tirupur District at Tirupur.
4. The Additional Personal Assistant (Land)
Tirupur.
5. The Revenue Divisional Officer,
Udumalpet.
(R3 to 5 impleaded vide Court order dated 09.02.2018
made in CMP.No.17923/2016 in WA.1419/2012.)

...Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act,
to set aside the order dated 07.06.2011 passed in W.P.No.8799
of 2004.

W.P.No.8799 of 2004:

Petition has been filed under Article 226 of the
constitution of India praying to issue a Writ of certiorari to
set aside the order of the record Respondent in D1/RF.No. 11/2000
(L. Ref) dated 22.12.2000.

For Appellant	: Mr.A.Sivaji
For Respondents	: Mr.S.R.Rajgopal, Additional Advocate General assisted by Ms.A.Srijayanthi, Special Government Pleader

JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN, J.)

This intra court appeal is directed against the order dated 07 June 2011 in W.P.No.8799 of 2004, dismissing the Writ Petition filed by the appellants challenging the order passed by the second respondent dated 22 December 2000.

2. The appellants are husband and wife. The first appellant was the owner of the lands having more than the ceiling area as on 15.12.1970, the date of commencement of the Tamil Nadu Land Reforms (FCL) Act, 1961 (T.N.Act No.58 of 1961), as amended by the TNLR (RCL) Act 1970 (TN Act No.17 of 1970). The family of the land owner held an extent of 252.31 ordinary acres equivalent to 64.835 standard acres of lands in Section- I and 67.43 ordinary acres equivalent to 22.470 standard acres in Section VI. Since the land owner had not filed returns in Form No.2 as required under Section 8 of the Act, the first respondent filed a draft statement under Section 10 (1) of the Act and the same was published in the Government Gazette on 16 April 1980 and a copy of the same was also served on the first appellant on 24.07.1980. After receiving the objections on 21 August 1980, an enquiry was conducted under Section 10(5) of the Act and an order was passed on 02.06.1982 declaring that the family of the land owner held an extent of 26.009 standard Acres of land as surplus in Section 1 and 12.476 standard Acres of land in Section VI. The said order was served on the land owner on 26.04.1983. Feeling aggrieved, the land owner preferred an appeal before the Land Tribunal, Madurai in LTCMA.No. 110 of 1983. After hearing both sides, the Land Tribunal by order dated 31.05.1985 partially allowed the appeal in so far as it relates to the decree for partition passed in O.S.No.418 of * 1966 dated 20.07.1967 and remanded the case for fresh disposal according to the provisions of the Act. Feeling aggrieved by the order of Tribunal, the land owner filed C.M.P.No.10623 of 1986 in C.R.P.No.2097 of 1986 before this Court. This Court initially granted interim stay on 04.12.1986. In view of the formation of the Tamil Nadu Land Reforms Special Appellate Tribunal, the matter was transferred and it was renumbered as TRP.No.309/1991. After hearing the TRP, the Tribunal partly allowed the revision on 16.12.1992 and remanded the case to the first respondent to reconsider the issue afresh, after giving opportunity to the landowners. The authorised officer after conducting the enquiry passed an order on 28.01.1994. Against the said order, the appellant had preferred an application before the State Appellate Tribunal which was subsequently converted as SRP.No.61 of 1994. After getting the report of the authorised officer, the SRP was dismissed on 06.03.1995 with a direction to delete an extent of 22.15 acres which was owned by the second petitioner prior to 15.02.1970. As per the directions of the Tribunal, the

authorised officer by order dated 26.09.1996 declared that an extent of 1.133 standard acres in Section I and 5.093 standard Acres in Section VI property as surplus. Subsequently, it was found that there was a clerical error while converting to ordinary acres into standard acres. The said correction was made on 25.01.2000. Against the order dated 26.09.1996 and 25.01.2000, the appellants once again filed a revision petition and the same was dismissed by the second respondent by order dated 22.12.2000. Feeling aggrieved the appellants have preferred the Writ Petition in W.P.No.8799 of 2004. The learned single Judge, after hearing the arguments of both sides dismissed the Writ Petition. Feeling aggrieved, the appellants have filed the Writ Appeal before this Court.

3. Heard both sides. Perused the materials available on record.

4. The learned counsel for the appellant would contend that the respondents and the learned Single Judge have not considered the preliminary decree passed in O.S.No.418 of 1966 on the file of Sub Court, * **Coimbatore dated 20.07.1967** following the final decree on 18.08.1970, while fixing the ceiling limits of the family. Further, he would contend that respondents do not have any power to invoke Section 15 of the Tamil Nadu Land Reforms (FCL) Act, 1961 (T.N.Act No.58 of 1961), as amended by the Tamil Nadu Act 17 of 1970 to correct and rectify any clerical or arithmetical error in the final statement. The appellants were not given any notice prior to that. This fact was also not considered by the learned Single Judge.

5. The learned Additional Advocate General submitted that the correction of error would be beneficial to the appellants. Further, he fairly conceded that before passing the correction order, no notice was given to the appellants.

6. It is not in dispute that no notice was served on the appellants, before passing the correction order. In view of the same, we set aside the order passed by the learned Single Judge dated 07.06.2011 and remit the matter back to the competent authority to consider the matter afresh. It is also open to the parties to approach the concerned competent authorities to redress their grievance. The parties are at liberty to raise all of their contentions before the appropriate tribunal/authority.

7. In the result, the intra court appeal is allowed. The matter is remitted to the competent authority under the Act. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CCC)
14.06.2018

*** Substituted as per order
of this court dated 24.07.2019
in CMP.No.6559 of 2019 in
WA.NO.1419 of 2012**

**Sd/-
Assistant Registrar (CCC)
dated 02.08.2019**

True Copy

Sub-Assistant Registrar

arr/tar

To

1. The Assistant Commissioner
(Land Reforms), Erode,
2. The Land Commissioner, Chepauk,
Chennai - 600 005.
3. The District Collector
Tirupur District at Tirupur.
4. The Additional Personal Assistant (Land)
Tirupur.
5. The Revenue Divisional Officer,
Udumalpet.

**To be Substituted
as per order copy
already despatched
on 27.06.2018**

+1 CC to Mr.A.Sivaji, Advocate sr 21333.
+1 CC to Govt.Pleader sr 21870.

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W.A.No.1419 of 2012

SP(19/06/2018)
CS/07/08/2019