

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.12.2017

Pronounced on : 13.02.2018

CORAM :

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

W.A.Nos.875, 876, 877 & 878 of 2012 and
M.P.Nos.1, 1 and 1 of 2012 and 2, 2, & 2 of 2012

G.Gopalsamy ... Appellant in W.A.Nos.875 & 876 of 2012
V.Veerapandian ... Appellant in W.A.Nos.877 & 878 of 2012

Vs.

1. The Government of Pondicherry
Rep. by the Sub-Collector (Revenue)
North cum Authorized Officer (Land Reforms)
The Pondicherry Land Reforms Act,
Pondicherry.
2. The Tahsildar,
Department of Revenue & Disaster Management,
Revenue Department, Saram, Pondicherry.
3. The Settlement Officer,
Settlement Office,
Saram, Pondicherry.
4. The Village Administrative Officer,
Abhishegapakkam Revenue Village,
Department of Revenue & Disaster Management,
Revenue Department, Saram, Pondicherry.
5. Director of Survey & Land Reforms,
Saram, Pondicherry. .. Respondents 1 to 5
in all W.As
6. Mr.Raghavan @
R.K.Selvaraj (deceased) .. 6th Respondent in
WA.No.875 of 2012
6. Mr.Raghavan @
R.K.Selvaraj (deceased) .. 6th Respondent in
WA.No.877 of 2012

7. S.Murugavel
8. Krishnakumari
9. Aishwarya Lakshmi
10. Jeyendiren

... Respondents 7 to 10 in
WA.No.877 of 2012

(RR7 to 10 in W.A.No.877 of 2012 were brought on record as LR's of the deceased 6th respondent vide order dated 20.11.2017 in W.A.Nos.875 to 878 of 2012 and C.M.P.Nos.18534 to 18536 of 2017)

Prayer in all the writ appeals: Writ Appeals are filed under Clause 15 of the Letters Patent, against the common order of this Court dated 31.01.2012 made in W.P.Nos.21309, 16655, 21308 and 16629 of 2011, respectively.

Prayer in W.P.No.21309 of 2011:-

Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the First Respondent to proceed against the retained lands of Sixth Respondent as contemplated under Section 22(2) of the Pondicherry Land Reforms (Fixation of Ceiling on land) Act 1973 (herein after referred to as the PLR Act) and declare the lands R.S.No.6/1 in Cadastre No.85 86 part & 88 measuring 37 Ares and 47 Cantiares in Abhishegapakkam Puducherry as free from the acquisition under the PLR Act 1973

Prayer in W.P.No.16655 OF 2011:-

Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus calling for the records of the 1st respondent culminating in the impugned GO M.S. No. 108 dt 2.12.2008 (5398/SC(R)N/LR/08) dt 13.11.08 quash the same in so far as it pertains to Serial Nos. 76 to 82 of the schedule therein and direct the respondents to issue patta in the name of the petitioner in respect of the lands (1) RS. No.6/1 in cadastre No. 85 86 part 88 measuring 37 Ares 47 Cadastre in Abhishegapakkam Puducherry

Prayer in W.P.No.21308 of 2011:-

Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the First Respondent to proceed against the retained lands of Sixth Respondent as contemplated under Section 22(2) of the Pondicherry Land Reforms (Fixation of Ceiling on land) Act 1973 (herein after referred to as the PLR Act) and declare the lands R.S.No.5/1 in Cadastre No.14 part measuring 58 Ares 88 Cantiares (2) R.S.No.6/1 in Cadastre No.85 86 part and 88 measuring 59 Ares 95 Cantiares and (3) R.S.No.6/3 in Cadastre No.87 measuring 4 Ares 48 Cantiares in Abhishegapakkam Puducherry now owned by the Petitioner as free from the acquisition under PLR, Act 1973

Prayer in W.P.No.16629 OF 2011:-

Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus calling for the records of the 1st respondent culminating in the impugned GO M.S. No. 108 dt 2.12.2008 quash the same in so far as it pertains to Serial Nos. 76 77 78 79 and 80 of the schedule therein and direct the respondents to issue patta in the name of the petitioner in respect of the lands (1) RS. No.5/1 in cadastre No. 13 and 14 part measuring 1 Hectare 3 Ares (2) RS.No.6/1 in cadastre No. 85, 86 part and 88 measuring 97 Ares and (3) R.S. No.6/3 in cadastre No.87 measuring 4 ares 50 cantiares in Abhishagapakam Puducherry.

For appellants : Mr.C.A.Diwakar in all the writ appeals

For Respondents: Ms.V.Usha, AGP, (Pondy) for RR1 to R5
in all the writ appeals

COMMON JUDGMENT

P.VELMURUGAN, J.

The appellants after purchasing the land declared as surplus by the Competent Authority under the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973, approached the writ court with a contention that they were not aware of the declaration that it was a surplus land. The writ court negatived the claim, resulting in filing the intra court appeals by the purchasers of the notified land duly vested in the Government.

2. The brief facts of the appellants' case in the writ petitions are as follows :-

(a) The land in question originally belonged to the sixth respondent, namely, Raghavan @ R.K.Selvaraj, (who is no more). The appellants purchased the land in question from the 6th respondent. They applied for patta and the application for mutation of revenue records is pending with the concerned officials. In the meantime, the appellants have cultivated the land, which is originally an agricultural land.

(b) In the year 2011, the appellants were informed that the Department had not considered their request, as the land purchased by them is one among the surplus land in the hands of the original owner, which has been notified vide G.O.No.108 dated 02.12.2008 under Section 17(1) of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (herein after

referred to as "the Pondicherry Land Reforms Act").

(c) The appellants could not get any information regarding the notifications. They came to know about the notification under Section 17 (1) of the Pondicherry Land Reforms Act, only through RTI Act. The appellants secured a copy of the Government order. Thereafter, the appellants filed writ petitions to quash the impugned notification in G.O.No.108 dated 02.12.2008, Notification No.5398/SC(R)N/LR/08 dated 13.11.2008, and to direct the official respondents therein to issue patta in their names, on the ground that they are bona fide purchasers, without any notice of proceedings relating to surplus lands in the hands of the sixth respondent.

3. The learned Single Judge, after considering the rival submissions and the documents available on record, dismissed the writ petitions by a common order dated 31.01.2012 in W.P.Nos.21309, 16655, 21308 and 16629 of 2011, holding that the issue was squarely covered by the decision of this Court in W.P.No.26790 and 26791 of 2009 in the case S.Bhuvaeswaran and another Vs. Union of India and two others, dated 09.11.2011.

4. Aggrieved by the order dated 31.01.2012 in W.P.Nos.21309, 16655, 21308 and 16629 of 2011, passed by the learned Single Judge, the appellants have preferred the present writ appeals.

5. The learned counsel for the appellants would submit that the learned Single Judge had dismissed the writ petitions by following the earlier decision of this Court in W.P.Nos.26790 and 26791 of 2009 (S.Bhuvaneswaran and another vs. Union of India and two others), dated 09.11.2011. According to the learned counsel, the issue decided therein has arisen out of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (herein after referred to as "the Act"), whereas, these writ petitions are under the provisions of the Pondicherry Land Reforms Act, which are entirely different. The Pondicherry Land Reforms Act does not totally bar a transaction in respect of surplus land. The decision relied on by the learned Single Judge is not applicable to the present case and hence the order of the learned Single Judge is liable to be set aside.

6. The learned counsel for the appellants would further submit that the larger extent of land originally belonged to the sixth respondent. The appellants purchased the land for themselves within the ceiling of his vendor. Even assuming that this land is surplus, enquiry has to be conducted as contemplated under the Pondicherry Land Reforms Act. Further, the appellants have purchased the land with bona fide intention, and without knowing the acquisition proceedings. Therefore, the impugned notification dated 13.11.2008 is not valid and prays

for allowing the appeal.

7. The learned Additional Government Pleader for Puducherry appearing for the respondents 1 to 5 would submit that knowing fully well the appellants have purchased the land, after declaring the land as surplus by G.O.Ms.108, dated 02.12.2008. Since the sale of surplus land is prohibited, the appellants have no title to the land in question. It was further contended that the appellants have not stated in the affidavit as to when they have purchased the property from the original owner. They have simply stated that they purchased the land from the original owner, but however they have not disclosed any particulars regarding the date and the document number. As per the Pondicherry Land Reforms Act, after the Act came into effect, the surplus land shall not be transferred by way of sale, gift or otherwise. According to the learned Government Pleader, the original land owner/6th respondent himself sent a letter dated 16.04.2008 to the first respondent stating that he voluntarily surrender the lands in question being the surplus lands, to the Government. Therefore, the appellants herein have no locus standi to challenge the G.O.Ms.No.108, dated 02.12.2008. The appeals filed by the appellants have no merits and prays for dismissal of the appeals.

8. The learned Single Judge dismissed the writ petitions filed by the appellants, on the ground that the issue has already been decided by this court by referring to an earlier order of this Court in W.P.Nos.26790 and 26791 of 2009 (S.Bhuvaneswaran and another vs. Union of India and two others), dated 09.11.2011. The said decision relates to Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, whereas, the present writ petitions are in respect of the Pondicherry Land Reforms Act. The object of both the Acts are one and the same. The primary object of both the Acts are to find out the land in excess and to declare it as surplus lands.

9. On a perusal of the letter dated 16.04.2008, submitted by the landowner/6th respondent, namely, R.K.Selvaraj, to the first respondent, it is found that he has voluntarily surrendered the surplus land to the Government which includes the land purchased by the appellants. Moreover, the appellants themselves admitted that the patta was not transferred in their names and applications for mutation of revenue records are still pending. The appellants have not shown any records in support of their contention that they are in possession of the subject land.

10. If at all the appellants had purchased any property from the original owner, they have to work out their remedy with their vendor and not from the respondents by filing writ petitions. The appellants had filed the writ petitions after the

lapse of three years from the date of publishing the notification in G.O.Ms.No.108 dated 02.12.2008. The reason stated by the appellants that they could not get the copy of the Government Order for filing the writ petitions earlier is not acceptable. Once the Government Order is published in the Gazette, the same is made available as a public document. Therefore, it is open to the appellants to say that they were not provided with a copy of the Government Order. Since the land owner himself surrendered the surplus land belonged to him including the subject land, even if appellants are having any grievance, their remedy is only to proceed against their vendor.

11. The learned counsel for the appellants made an attempt to convince us that the appellants entered into an agreement with the erstwhile land owner/6th respondent and later on purchased the said property. According to the appellants, as per the French civil code, the agreement itself can be treated as transfer of the land. Further as per the French civil code, once the sale agreement is executed and the possession has been handed over, the sale is said to be completed and the registration of the same is not mandatory. After the Pondicherry Land Reforms Act came into force, the land owner himself sent a letter on 16.04.2008 surrendering the surplus land in his possession to the Government. Therefore, the contention of the learned counsel for the appellants is not legally sustainable. The appellants failed to establish that the land in question is not covered by the Land Ceiling Act.

12. It is pertinent to refer Section 22 of the Pondicherry Act which is extracted hereunder.

"22(1) Except where a person is permitted in writing, by the authorized officer, a person, holding land in excess of the ceiling area applicable to him under Section 4, shall not, after the commencement of this Act, transfer by sale, gift or otherwise or make any partition of land held by him or any part thereof until the excess land, which is to be acquired by the Government under Section 17, has been determined and taken possession of by or on behalf of the Government.

(2) (a) if any person makes any transfer, whether by sale, gift or otherwise, of any land in contravention of the provisions of sub-section 9(1) the government may, in the first instance, take possession of land, equal in area to the land which is to be acquired by Government, from out of the land held by such person, and where such recovery from the person is not possible from the transferee.

(3) Any person who transfers any land in contravention of the provisions of sub-section (1) shall be punishable with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months or with both".

13. The Pondicherry Land Reforms Act clearly provides that after the commencement of the Act and before determining the land as surplus and taking possession of the said land by or on behalf of the Government, no conveyance or transfer shall be effected. The sale in favour of the appellants is hit by section 22(1) of the Pondicherry Land Reforms Act.

14. In view of the above discussion, we are of the considered view that the appellants have no justifiable claim. The learned Single Judge was correct in dismissing the Writ Petitions.

15. In the result, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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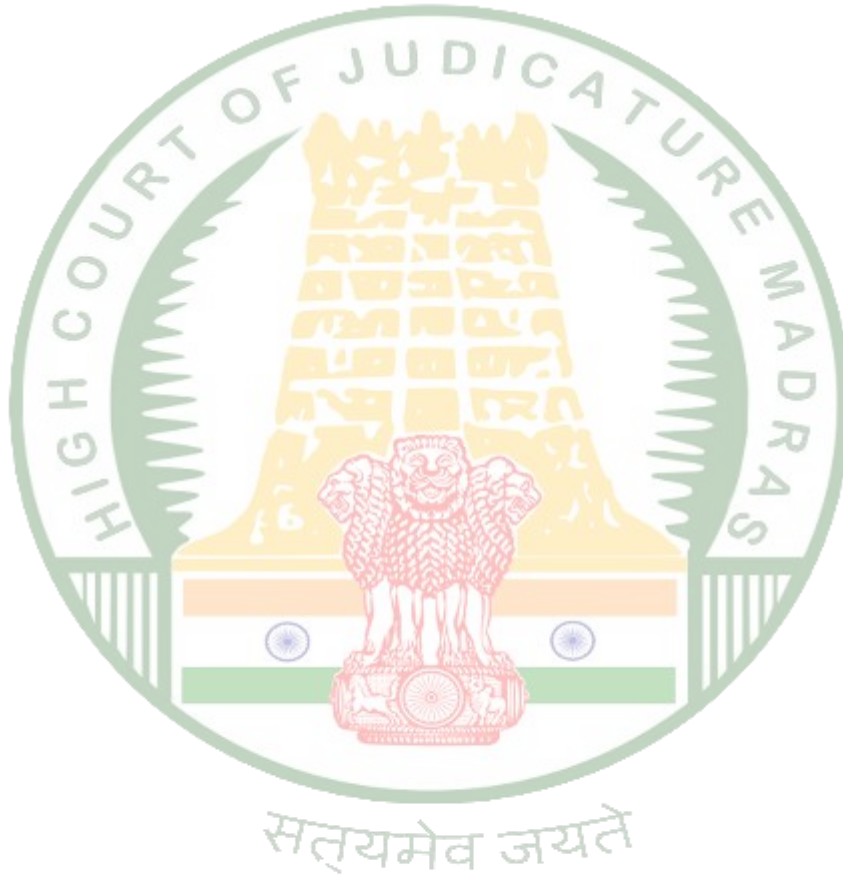
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5. The Director of Survey & Land Reforms,
Saram, Pondicherry.

+4ccs to Mr.C.A.Diwakar, Advocate, S.R.No.10904 to 10907
+1cc to the Government Pleader, S.R.No.11104

W.A.Nos.875, 876, 877 & 878 of 2012

ssd(co)
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