

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 20.07.2018

Pronounced On: 27.07.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No. 2485 of 2009
and M.P.Nos. 1 and 2 of 2009

Arumani Estates; a Trust,
Represented by the Trustee,
Mr.A.S.Mani,
33, Annammal Koil Street,
Udayampalayam,
Coimbatore. Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by Secretary to Government,
Revenue Department,
Fort St. George, Chennai-9.

2.The Assistant Commissioner,
Land Revenue,
Coimbatore. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Ceriorarified Mandamus, calling for the records of the first respondent herein, pertaining to G.O.Ms.No.242, (Revenue), dated 27.02.1997, and quash the same and consequently forbear the Respondents herein, from interfering with the petitioner's peaceful possession of the property comprised in Survey Nos.1/3 and 2, Nandipuram, Patticombai Division, Kothagiri Taluk, The Nilgiris District.

For Petitioner : Mr.R.Ramesh

For Respondents: Mr.Sricharan Rangarajan
Additional Government Pleader

O R D E R

This writ petition has been filed for issuance of a writ of certiorarified mandamus, calling for the records in G.O.Ms.No.242, (Revenue) dated 27.02.1997, passed by the Government of Tamil Nadu and quash the same and Consequentially the restraining the State Government from interfering with the

peaceful possession of the property measuring 56.70 acres in Survey No.1/3 and 161.18 acres in Survey No.2 in Nandhipuram, Patticombai Division, Kothagiri Taluk, Nilgiris District.

2.The averments mentioned in writ petition are as under:-

"a. The petitioner, a Trust, was duly constituted on 30.09.1981 for the purpose of carrying out various activities as mentioned in the Trust deed.

b. The Trust purchased 56.70 acres in Survey No.1/3 and 161.18 acres in Survey No.2 in Nandhipuram, Patticombai Division, Kothagiri Taluk, Nilgiris District from one client M/s. Glenburn Estate under a registered sale deed.

c. the petitioner applied for patta mutation and the same was permitted by Tahsildar, Kothagiri and patta No.4 and 6 have been issued to the petitioner on 06.06.2008.

d.The petitioner had been in correspondence of the Coffee Board under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and the Government Authorities recognized right of the petitioner.

e. When the District Forest Officer attempted to interfere with the petitioners right to cut wood in the areas purchased by it. The Trust filed a writ petition in W.P.No.3809 of 1993 before this Court which was contested by the Government.

f.The Assistant Commissioner, Land Reforms, Coimbatore started interfering with the possession of the petitioner in October 2008 on the ground that the State was acquiring the same. It is contended that when the petitioner objected, they were informed that the vendor of the petitioner M/s. Glenburn Estate which was owner of the property was holding Lands in excess on permitting ceiling in Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and the excess land held by M/s. Glenburn Estate was being acquired. A copy of G.O.Ms.No.242, (Revenue) dated 27.02.1997 was also given whereby the Government had passed an order to acquire which were held in excess to, M/s. Glenburn Estate and which included land which had been sold to the petitioner under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961."

3.It is the submission of the petitioner that the G.O was not communicated to the petitioner and this order cannot affect the petitioner's rights as the petitioner purchased the property more than 25 years before the G.O was issued. This Court issued notice and granted Interim Protection to the petitioner by order dated 10.02.2009.

4.Heard, Mr.R.Ramesh, learned counsel for the petitioner and Mr.Sricharan Rangarajan, learned Additional Government Pleader for the respondents.

5. On facts, as stated it is in the writ petition, the sale in favour of the petitioner is void under Section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 Section 18, 20 and 23 which are relevant to the writ petition reads as under:-

Section 18: Acquittioin of surplus land:-

(1) After the publication of the final statement under Section 12 or 14, the Government shall, subject to the provisions of Sections 16 and 17, publish a notification to the effect that the surplus land is required for a public purpose.

(2) As soon as may be after the publication of a notification under sub -Section(1), the Authorized Officer shall:-

(a) cause to be published in every village or town in which any part of the land specified in such notification is situated a proclamation containing the terms of the notifications;

(b) cause a copy of the notification to be served on the persons concerned, the creditors, persons whose names appear in the final statement published under Section 12 or 14 and such other persons as may be specified in the Rules made by the Government.

(3) On the publication of the notification under sub-section -(1), the land specified in the notification together with the trees, standing on such land and buildings, [machinery, plant apparatus, wells filter points or power lines] constructed, erected or fixed on such land and used for agricultural purposes shall, subject to the provisions of this Act, be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from [the date of such publication] and all rights, title and interest of all persons in such land with effect from the said date, be deemed to have been extinguished: सतयमेव जयते

Provided that where there is any crop standing on such land on [the date of such publication] the Authorized Officer may, subject to such conditions as may be prescribed, permit the harvest of such crop by the person who had raised such crop.

[***]

(4) Subject to the Rules made under sub-section (5), the Authorised Officer may, at any time after the publication of the notification under sub-section(1), take possession of any land specified in the said notification.

(5) The Government may make Rules:-

(a) Specifying the classes of tenants, who may be

allowed to continue in possession of the land.

(b) permitting any co-operative society registered or deemed to have been registered under the Tamil Nadu Co-operative Societies Act, 1932 (Act 6 of 1932) or under the Travancore-Cochin Tamil Nadu Co-operative Societies Act, 1951 (Travancore-Cochin Act 10 of 1952) or any land mortgage bank to which the Tamil Nadu Co-operative Land Mortgage Banks Act, 1934 (Act 10 of 1934) applies or any agricultural company to continue in possession of the land notwithstanding anything contained in Sections 5 and 7, even after the publication of the notification under sub-section (1). Such Rules may also provide for the conditions subject to which the persons referred to in clauses (a) and (b) may continue in possession of the land."

Section 20.

Penalty for future acquisition in contravention of Section 7:-

(1) If, as a result of any transfer of land either by sale, gift (other than gift made in contemplation of death), exchange, surrender, agreement, settlement or otherwise effected on or after the notified date, the extent of land held by the transferee exceeds the ceiling area, then the right title or interest accrued in his favour by virtue of such transfer in the land in excess of the ceiling area shall, as a penalty for contravention of the provisions of Section 7, be deemed to have been transferred to the Government with effect from the date of such transfer, on a declaration made by the Authorized Officer within whose jurisdiction such excess land or the major part thereof is situated. The Authorized Officer shall record in writing the reasons for such declaration:

Provided that:-

(a) no such declaration shall be made unless the transferror 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 payment of the consideration for, and to discharge other liabilities under, such transaction and the transferror shall have no claim for such consideration against the Government, otherwise than in respect of such land.

(c) No suit or other proceeding by the transferee shall lie in any Court for the refund of the consideration for any such transaction;

Explanation:- For the purpose of this sub-

section, "transfer" does not include inheritance, bequest, lease, or possessory mortgage.

(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 off.

Section 23:- Transfers or sub-divisions made or effected before the publication of notification under sub-section (1) of Section 18:- (1) Subject to the provision of Section 20, for the purpose of fixing, for the first time after the date of the commencement of this Act, the ceiling area of any person holding land on the date of the commencement of this Act in excess of 30 standard acres:-

(a) any transfer, whether by sale (including sale in execution of a decree or order of a civil Court or of an award or order of any other lawful authority) or by gift (other than gift made in contemplation of death), exchange, surrender, settlement or otherwise; or

(b) any sub-division (including sub-division by a decree or order of a civil court or any other lawful authority) whether by partition or otherwise; effected on or after the notified date and before the publication of a notification under sub-section (1) of section 18 shall be, and shall be deemed always to have been, void and accordingly the authorized officer shall calculate the ceiling area of such person as if no such transfer or sub-division had taken place.

Explanation:- This sub-section shall, on and from the 15th day of February 1970, have effect as if for the figures and words "30 standard acres", the figures and words "15 standard acres" had been substituted;

(2) It shall be the duty of the authorized officer to include the land so transferred or sub-divided, within the ceiling area of the transferor or the person who held the land immediately before such sub-division, as the case may be, as if no such transfer or sub-division had taken place.

6. Admittedly, the petitioner is purchaser of the land conveyed in G.O.Ms.No.242, (Revenue) dated 27.02.1997. Section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 mandates any sale of land by a person only who is holding land in excess of the ceiling area after the notified date that is 02.10.1970 and before the notification under Section 18(1) of the Act is void. The sale in favour of the petitioner is hit by Section 23 of the Tamil Nadu Land

Reforms (Fixation of Ceiling on Land) Act, 1961.

7.The State of Tamil Nadu has filed a counter stating as under:-

“(iv) The Tamil Nadu Land Board granted permission to M/s. Glenburn Estate Limited for development of plantation under Section 31 of the Act for an extent of 124.744 acres.

(v) Since the landowner company failed to develop the area as plantation, show cause notices were issued to the landowner-company by the Tamil Nadu Land Board. When taking action to revoke the permission already granted to the landowner-company, the petitioner had also made a request to permit them to develop the area within 5 years. While Land Board revoked the permission granted in its proceedings in B.P.No.11/76 dated 29.05.1976, through an order in R.C.64/LB/80 dated 23.07.1985 as the landowner company violated the conditions by not developing the area as plantation, it also rejects the request of the petitioner for grant of extension of time since it was not a party before the Land Board in its original proceedings and therefore it has no locus standi.

(vi) Following the order of the Land Board, an order under Section 10(5) was passed on 28.02.1986 declaring an extent on 124.74 acres as surplus.

(vii) The order of the Land Board, dated 23.07.1985 and the order of the Authorized Officer (Land Reforms), Coimbatore in 5C/Mr1/E, dated 28.02.1986 under Section 10(5) was challenged by the petitioner and the landowner company. The Tamil Nadu Land Reforms Special Appellate Tribunal in its order in TRP 260/91 (W.P.No.5947 of 1986) dated 20.10.1992 held to effect that:-

(a) The landowner company failed and neglected to develop the said extent as a plantation and thereby violated the conditions and therefore, the Land Board had passed orders on 23.07.1985 withdrawing the permission granted with the result the said extent of 124.74 acres ceased to have the benefit of the order under section 31 of the Act.

(b) The order of the Land Board in withdrawing the permission granted under Section 31 of the Act by its order dated 23.07.1985 does not suffer from any infirmity and the logical conclusion would be to declare the surplus in the holdings of landowner company.

(c) The notified date is 02.10.1970. The publication of notification under section 18(1) of the Act is yet to be made. It is after the notified date,

the sale by the second petitioner (M/s.Glenburn Estates Limited) in favour of the first petitioner (petitioner herein) had taken place i.e. on 03.05.1982. Transfer of such a nature which comes under Section 23 is declared as void under that section. Therefore, the first petitioner (petitioner herein) derives no conceivable right under the sale deed made in his favour on 03.05.1982 as far as the Land Reforms is concerned.

(d) The petitioner not being a party to the proceedings has no locus standi to question the validity of the order made under Section 10(5) of the Act. The sale in favour of the petitioner, dated 03.05.1982 has no legal effect so far as Land Ceiling Act is concerned and therefore the petitioner cannot claim himself to be an aggrieved person of the proceedings taken against the M/s.Glenburn Estates Limited.

(viii) The order of the Tamil Nadu Land Reforms Special Appellate Tribunal, dated 20.10.1992 in TRP 260/91 (W.P.No.5947 of 1986) has not been challenged by the petitioner and therefore it becomes final and conclusive."

8.A reading of the counter suggest that the petitioner M/s. Glenburn Estate challenge the proceedings initiated by the Government under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 before the Tamil Nadu Land Reform Special Appellate Tribunal which has rejected the claims on 20.10.1992.

9.In any event, on the reading of the Section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and the facts admitted, it is clear that the sale deed dated 03.05.1982 is void and hence the writ petition as framed is not maintainable. The writ petition is dismissed. No orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsp

To

1.The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai-9.

2.The Assistant Commissioner,
Land Revenue,
Coimbatore.

+1cc to Mr.SRINATHSRIDEVAN, Advocate, S.R.No. 50742

W.P.No. 2485 of 2009
and
M.P.Nos. 1 and 2 of 2009

TR(03/08/2018)



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