

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.429 & 430 of 2006
and
W.M.P.Nos. 472 to 474, 2912 & 2913 of 2006
and
W.M.P.Nos.283 & 284 of 2009

S.Manikandan ...Petitioner in W.P.No.429 of 2006
S.Madhanraj ...Petitioner in W.P.No.430 of 2006

Vs.

1. State of Tamil Nadu
Rep. by Secretary to Government,
Revenue Department,
Fort. St. George,
Chennai 600 009.
2. P.K.Sgenbagavalli Ammal
3. S.Mohanavalli ...Respondents in both the W.Ps.

Prayer in Writ Petition No.429 of 2006 : Writ petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari to call for the proceedings of the first respondent made in G.O.Ms.No.215, Revenue {LR-1(2)} dated 19.04.2005 as published in the Tamil Nadu Govt. Gezette part II - Section 1 dated 18.05.2005 and quash the said notification in so far as it relates to the lands belonging to the petitioner comprised in Survey No.53/3A, 14/1C, 3B, 53/2, 15/13, 53/1, 56/1A of Mangalagudi Village, Madurai North Taluk, Madurai District measuring 5 acres 91 cents.

Prayer in Writ Petition No.430 of 2006 : Writ petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari to call for the proceedings of the first respondent made in G.O.Ms.No.215, Revenue {LR-1(2)} dated 19.04.2005 as published in the Tamil Nadu Govt. Gezette part II - Section 1 dated 18.05.2005 and quash the said notification in so far as it relates to the lands belonging to the petitioner comprised in Survey No.56/2B, of Mangalagudi Village, Madurai North Taluk, Madurai District measuring 2 acres 53 cents.

For Petitioners : Mr.A.Jenasenan

For Respondents : Mr.K.Ravikumar
AGP for R1

C O M M O N O R D E R

The petitioners have filed these writ petitions challenging the order passed by the first respondent in G.O.Ms.No.215, Revenue (LR-1(2)) dated 19.04.2005 as published in the Tamil Nadu Government Gazette part-II Section 1 dated 18.05.2005 and quash the said notification in so far as it relates to the lands belonging to the petitioner comprised in Survey Nos.53/3A, 14/1C, 3B, 53/2, 15/13, 56/1A of Mangalagudi Village, Madurai North Taluk, Madurai District measuring 5 acres 91 cents and in Survey No.56/2B of Mangalagudi Village, Madurai North Taluk, Madurai District measuring 2 acres 53 cents respectively.

2.Since the issues involved in both the writ petitions are similar in nature, they are disposed of by way of a common order.

3.The case of the petitioners is that Thiru P.K.Subramanian, owned agricultural lands in Madurai besides properties in Kerala. The said P.K.Subramanian died leaving behind the second respondent, who is his mother and the third respondent, who is his wife and minor children.

4.In the year 1991, the respondents 2 & 3 had offered to sell part of their holdings situated in Mangalagudi Village, Madurai District, certain properties situated in Kerala to the petitioner's family. They executed a sale deed dated 14.09.1994 conveying lands measuring 6 acres and 50 cents in Survey Nos.53/3A, 14/1C, 3B, 53/2, 15/13, 53/1, 56/1A, 57/2, 57/3 in favour of the petitioner in writ petition No.429 of 2006 and conveying lands measuring 3 acres and 80 cents in Survey No.56/2 of Mangalagudi Village, along with another property situated in Kerala in favour of the petitioner in writ petition No.430 of 2006 for a sum of Rs.1,00,300/- and the same was registered in the Office of the Sub-Registrar, Parasala. Subsequently, the petitioners also paid the deficit stamp duty in the office of the Sub-Registrar, Thamaraipatti at Chitampatti, Madurai district. Since then, the petitioners were in possession and enjoyment of the said properties and also paying the taxes for the above said lands.

5.The petitioners came to know that proceedings had been initiated under the Tamil Nadu Land Reforms Act (hereinafter referred to as 'Act'). Initially notice under Section 9(2)(b)

was issued to the petitioners vendors on 28.02.1992. Though the petitioners vendors received the notice under Section 9(2)(b), they did not file any objection before the Authority. The draft statement was issued on 20.04.1994 under Section 10(1) of the Act published in Tamil Nadu Government Gazette.

6.The Assistant Commissioner (Land Reforms), Madurai, published notification under Section 10(5) of the Act on 13.01.1998, wherein the sale deed was executed on 14.09.1994. Thereafter the impugned notification was published in the Government Gazette.

7.The learned counsel appearing for the petitioners would submit that though the petitioners vendors received the notice under Section 9(2)(b), however the vendors did not filed their written objection before the Authority, the Authority proceeded by collecting their information through the magazines. However, the mandatory notice under Section 10 (5) has to be issued in favour of the interested persons. The provision clearly states that the persons interested are entitled to receive notice prior to the publication. Thereafter, the respondents has right to proceed further for acquisition of the land under the Land Reforms Act.

8.Per Contra, the learned Additional Government Pleader in his counter stated that the lands under dispute in these writ petitions are vested with the Government and are free from all encumbrances on the date of publication of notification under Section 18(1) of the Act dated 18.05.2005. The second and third respondents are not entitled to sell the disputed property in favour of the petitioners and the said alienation is void under Section 23(1)(a) of the Act.

9.The learned counsel for the respondents further contended that notice was issued under Section 9(2)(b) to the petitioners vendors namely the second and the third respondents. Thereafter, the draft statement under Section 10(1) of the Act was published on 20.04.1994 proposing to declare the subject lands as surplus. The draft statement was served on the 3rd respondent and also published in all places as contemplated under Rule 12(2) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962 (hereinafter referred to as the 'Rules'). The second and third respondents after the publication of draft statement sold the lands to the petitioners on 22.09.1994 knowing fully well that the said lands are covered in the Land reform proceedings.

10.The notice under Section 10(1) was served on the second respondent. The second respondent even while filing her objections against the publication of draft statement before the Authorised Officer or while filing appeal before the Land

Tribunal had not agitated the inclusion of sold lands to the petitioner in the surplus portion. The draft statement under Section 10(1) and final statement under Section 12 of the Act were published in the Village and in all places as contemplated under the said Rules for information of general public.

11.Hence, the contention of the petitioners that they were not aware of the acquisition proceedings cannot be said to be true, when wide publication of proposed declaration of lands purchased by him was made in the village and other places.

12.Thiru P.K.Subramanian, the son of Late P.Kadirvel Pillai of Madurai town was the person attracted by the provisions of the Act as amended by Act 17 of 1970, hereinafter referred to as 'the Amendment Act'. The holdings in the name of the landowner was determined as 23.16 ordinary acres equivalent to 16.264 standard acres as on 15.02.1970.

13.The father of the landowner (Late) P.Kadirvel Pillai was in possession of lands to an extent of 19.68 ½ ordinary acres equivalent to 14.253 standard acres as on 15.02.1970. His father during his life time had created an unregistered Will on 21.01.1972 in which he has allotted the entire properties to his two wives. The landowner P.K.Subramanian was the only son of P.Kadirvel Pillai. After his demise on 08.10.1972, his only son, the landowner Thiru P.K.Subramanian and his two mothers inherited the properties. Accordingly, the landowner inherited an extent of 13.12 ordinary acres equivalent to 9.502 standard acres, out of the total extent of 19.68 ½ ordinary acres equivalent to 14.253 standard acres held by his father.

14.The father of the landowner Late P.Kadirvel Pillai created two trusts and set apart landed properties. These two trusts are private in nature. After granting exemption and exclusion to an extent of 3.10 ordinary acres equivalent to 1.509 standard acres, the net holdings was determined as 43.27 ordinary acres equivalent to 30.127 standard acres and after allowing an extent of 15.000 standard acres towards ceiling area, the surplus land was determined as 15.127 standard acres.

15.Accordingly, an order under Section 9(2)(b) of the Act was passed on 28.02.1992, proposing to declare the above extent 15.127 standard acres as surplus. A draft statement under Section 10(1) of the Act was published in the Tamil Nadu Government Gazette, dated 20.04.1994. As the landowner died on 15.09.1984, a copy of the draft statement along with Form 7, calling for objections, if any, to the draft statement was sent to Tmt.S.Mohanavalli, wife of the landowner by Registered Post with acknowledgement due on 08.06.1994. The draft statement was also sent for publication to the Tahsildar, Madurai North, Madurai South, Panchayat Union Commissioner, Madurai and

Panchayat President, Mangalakudi, Angadimangalam and Chettikulam on 22.06.1994 and the same was published in the respective places and to that effect they furnished the certificate of publication on 04.07.1994 and 05.07.1994. Tmt.Mohanavalli, wife of the landowner in her letter dated 20.07.1994 sought for 15 days to file her objections.

16.After considering the objections, the Assistant Commissioner (Land Reforms), Madurai passed an order on 13.01.1998, over ruling all the objections raised by the wife of the land owner after observing that the position as on 15.02.1970 is the criteria for determination of holdings and there is no legal provision to allow the heirs of the landowner to share the property and that in respect of lands in Madakulam village, they have not produced any proof that the lands were not agricultural lands as on 15.02.1970 and that in regard to grant of exemption for the lands set apart for two trusts.

17.Thereafter, as against the order under Section 10(5) of the Act, the third respondent filed appeal before the Court of the Appellate Authority and District Revenue Officer (Land Tribunal), Chennai and the Land Tribunal in its judgment in LTCMA No.9/98 dated 28.07.1998 set aside the order of the Assistant Commissioner (Land Reforms), Madurai dated 13.07.1998 and remanded back to him for making fresh enquiry and disposal.

18.Aggrieved by the said judgment, the Assistant Commissioner (Land Reforms), Madurai filed Special Revision before the Appellate Tribunal, Chennai and the Tamil Nadu Land Reforms Special Appellate Tribunal, in its judgment in SRP 39/99, dated 18.09.2000 allowed the revision petition and set aside the judgment dated 28.07.1990 by holding that all the questions and the contentions raised by the land owner or his legal representatives are left open to be decided afresh by the authorized officer of Land Reforms at Madurai uninfluenced by the remarks and statements made by the Land Tribunal.

19.Thereafter, the Assistant Commissioner (Land Reforms), Madurai issued notice on 31.10.2000 to the Legal Representatives to come forward with their objections afresh. It was construed that she had no fresh objections except the objections already raised at the time of enquiry under the section 10(5) of the Act and therefore, the order of the Assistant Commissioner (Land Reforms), Madurai dated 13.01.1998 is non-est in law and subsequent notification is also not sustainable.

20.Though, petitioners purchased their properties in the year 1994, no notice was issued to the petitioners before the publication of the notification and the draft notification was issued under Section 10(1) of the Act. Thereafter, before

preparing the final statement under Section 12 of the Act and without following the due process of law, the notification was published in the Government Gazette, declaring that the petitioners land is a surplus land.

21.The respondent had filed a detailed counter stating that draft notification was issued under Section 10(1) of the Act. Thereafter, they prepared a final statement under Section 12 of the Act and after following usual formalities, the notification was published in the Government Gazette, declaring that the petitioner's land is surplus on 23.06.2004, declaring an extent of 20.73 ordinary acres equivalent to 15.127 standard acres as surplus.

22.Even as per counter statement, the final statement under Section 12 was served only on Mohanavalli on 01.09.2004 and the same was published in the Mangalakudi Village on 04.09.2004. Thereafter, notification under Section 18(1) of the Act was published in the Tamil Nadu Government Gazette on 18.05.2005 declaring the same extent that was published in the final statement on 23.06.2004.

23.Admittedly, Mohanavalli was not the only legal representative of P.K.Subramanian. There are also other legal representatives and interested persons available. The 1st respondent has filed a typed set containing the petitioners sale deed and there is no explanation as to how the 1st respondent came to know about the sale executed by the 2nd & 3rd respondents in favour of the petitioners.

24.If it is so, the purchaser / petitioners is also coming under the category of interested person and accordingly he is entitled to receive notice under Section 10(1) and subsequent provisions and the same is the clear violation of the principal of natural justice. The respondents have served notice only to Mohanavalli and they did not serve notice to other legal representatives including the petitioners and other interested persons.

25.Even as per Section 10(1) of the Act for preparing publication of draft statement as regards lands in excess in ceiling area, the authorities are duty bound to collect the particulars of the encumbrance if any, over the land and thereafter to proceed as per Section 10(5) of the Act, the draft statement shall be published and copy thereof shall be served on the persons concerned, the tenants, creditors and all other persons who in the opinion or the Authorised Officer are interested in the land to which such draft statement relates, is a Mandatory procedure.

26.In the present case, the procedure contemplated under Section 10(5) of the Act was not followed. The respondents did not effect notice to other legal representatives, including the petitioner.

27.In view of the above, this Court is inclined to interfere with the order of the respondents, declaring the land as surplus land under Section 10(5) of the Act. Accordingly, notification under Section 10(5) of the Act of the Assistant Commissioner (Land Reforms), Madurai on 13.01.1998 and subsequent final statement under Section 12 of the Act dated 23.06.2004 and further notification under Section 18(1) of the Act published in the Tamil Nadu Government Gazette on 18.05.2005 is hereby set aside and the matter is remitted back to the Authorities at the stage as draft notification under Section 10(1) of the Act for fresh adjudication.

28.The Authority is hereby directed to proceed the matter from the draft notification under Section 10(1) of the Act and pass appropriate orders in accordance with law. The writ petitions are allowed in the above terms. Consequently, the connected miscellaneous petitions are also closed. No costs.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To.

The Secretary to Government,
Revenue Department,
Fort. St. George,
Chennai 600 009.

+2 CCS to Mr.A.Jenasenan, Advocate sr 38481.
+1 CC to Govt. Pleader sr 38287.

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SP(16/07/2018)