

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2017

Pronounced on : 12.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A.Nos.501 and 502 of 2016

and W.A.Nos.1363 and 1404 of 2017

and CMP.Nos.6831 to 6834 of 2017

R.Murali Krishnan Appellant/Petitioner
in W.A.No.501 of 2016)

R.Gopi Krishnan Appellant/Petitioner
in W.A.No.502 of 2016)

P.C.P.Radhakrishnan Appellant/Petitioner in
W.A.Nos.1363 & 1404 of 2017)

Vs

1.Union of India,
Union Territory of Puducherry,
Rep.by its Secretary to Government,
Revenue Department, Govt. of Puducherry,
Puducherry - 605 002.

2.The Sub-Collector (Revenue) North-cum-
Authorised Officer (Land Reforms)
Saram, Puducherry - 605 008.

3.P.C.P.Radhakrishnan Respondents/Respondents
(in W.A.Nos.501 & 502 of 2016)
and Appellant/Petitioner in WA.1363/17

1.R.Gopi Krishnan

2.Union of India,
Union Territory of Puducherry,
Rep.by its Secretary to Government,
Revenue Department, Govt. of Puducherry,
Puducherry - 605 002.

2.The Sub-Collector (Revenue) North-cum-
Authorised Officer (Land Reforms)
Saram, Puducherry - 605 008.Respondents/Respondents
(in W.A.No.1363 of 2017)

1.R.Murali Krishnan

2.Union of India,
Union Territory of Puducherry,
Rep.by its Secretary to Government,
Revenue Department, Govt. of Puducherry,
Puducherry - 605 002.

2.The Sub-Collector (Revenue) North-cum-
Authorised Officer (Land Reforms)
Saram, Puducherry - 605 008.Respondents/Respondents
(in W.A.No.1404 of 2017)

Common Prayer: Writ appeals have been filed under clause 15 of Letters Patent against the order of this Court dated 16.11.2015 made in W.P.Nos.19128 & 19129 of 2009.

WP.19128/2009:- Filed Under Article 226 of the constitution of India, for a writ of certiorarified mandamus to to call for the entire records in connection with the Final Statement made under Section 11 of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 published in the Gazette of Pondicherry dated 29.12.2000 and the consequential proclamation made by the 2nd respondent in No.5398/SC(R)N/LR/08 dated 3.11.2008 and quash the entire proceedings and consequently direct the respondents 1 and 2 to exclude the petitioner lands or in the alternative to treat these lands within the retained portions of the lands of the erstwhile land holdings of P.C.Purusothama Reddiar.

WP.19129/2009:-Filed Under Article 226 of the constitution of India, for a writ of certiorarified mandamus to call for the entire records in connection with the Final Statement made under Section 11 of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 published in the Gazette of Pondicherry dated 29.12.2000 and the consequential proclamation made by the 2nd respondent in No.5398/SC(R) N/LR/08 dated 3.11.2008 and quash

the entire proceedings and consequently direct the respondents 1 and 2 to exclude the petitioner lands or in the alternative to treat these lands within the retained portions of the lands of the erstwhile land holdings of P.C.Purusothama Reddiar.

For Petitioner : Mr.Venkatachalapathy,

Senior Counsel for
Mr.M.Sriram
(in W.A.Nos.501 & 502 of 2016)

Mr.T.P.Manoharan, Senior Counsel for
Mr.T.M.Naveen
(in W.A.Nos.1363 & 1404 of 2017)

For Respondents : Mrs.V.Usha
Additional Government Pleader (Pondy)
(for R1 and R2 in W.A.Nos.501 & 502
of 2016 and for R2 and R3 in
W.A.Nos.1363 & 1404 of 2017)

Mr.T.P.Manoharan, Senior Counsel for
Mr.T.M.Naveen, for R3
(in W.A.Nos.501 & 502 of 2016)

Mr.Venkatachalapathy,
Senior Counsel for
Mr.M.Sriram, for R1
(in W.A.Nos.1363 & 1404 of 2017)

COMMON JUDGMENT

P.VELMURUGAN, J.

The competent authority under the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 after following the provisions of the Act and Rules made thereunder notified the surplus land held by Thiru.P.C.Purushothama Reddiar, predecessor in interest of the appellant in W.A.No.1363 of 2017 and 1404 of 2017 on 7 August 2008. Subsequently, notice was issued to identify the land held by them and to hand over such land in lieu of the notified lands, taking into account the transfer of land to the predecessor in interest of the appellants in W.A.No.501 of 2016 and 502 of 2016, which is void under Section 22(2) of the Act. When further action was taken to take possession, writ petitions were filed by the appellants in W.A.No.501 and 502 of 2016 challenging the statutory proceeding, and to exclude the land purchased by them. Since the assignment through an unregistered document was in violation of Section 22 of the Act, the writ petitions were dismissed. The appellants

are therefore before this Court by filing the intra court appeals.

2. it is the case of the writ petitioners that their father viz., T.Ramakrishnan had purchased agricultural lands from the father of the 3rd respondent/appellant in W.A.Nos.1363 and 1404 of 2017 as per Sale Agreement dated 19.03.1965. (For convenience, the parties are referred to as per their rank in the writ petitions.) As per the sale agreement, the father of the petitioners had paid the entire sale consideration. The possession of the lands were also taken over by the father of the petitioners. 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 document is not mandatory. Subsequently, the sale agreement has been registered as sale deeds dated 05.08.1975 and 07.08.1975. In the meanwhile, the Pondicherry Land Reforms (Fixation of Ceiling on Surplus Land) Act 1973 (hereinafter referred to as the Act) came into force on 14.10.1974. The appointed date under Section 2(4) of the Act is 24.01.1971. Due to the said Act, the 2nd respondent issued a proclamation dated 03.11.2008, including the land owned by the petitioners for public purpose. The petitioners came to know about the same only on 25.09.2008, when a notice under Section 68 of the Land Reforms Act was issued by the 2nd respondent for demarcation of land for public purpose. Immediately, the petitioners sent their representation explaining the fact that their father entered into a sale agreement and subsequently the possession was taken and as per the French Civil Code, the title and possession remains with them from the date of agreement dated 19.03.1965. However, the same was not considered by the 2nd respondent. After the enquiry, it was found that the land of the petitioners were still considered as the land of the third respondent and it was notified as surplus land. The 3rd respondent had also challenged the same by way of two petitions and the same are pending. Notices were not served on the petitioners, except the notice under Section 68 of the Act. Without considering the contention of the petitioners, the learned Single Judge dismissed the writ petitions. Aggrieved against the order passed by the learned Single Judge, the writ petitioners have filed the present writ appeals in W.A.Nos.501 & 502 of 2016. The 3rd respondent has filed W.A.Nos.1363 and 1404 of 2017.

3. Heard the learned Senior Counsel appearing for the petitioners, learned Senior Counsel appearing for the respondents and the learned Additional Government Pleader (Puducherry) appearing on behalf of the Union Territory of Puducherry.

4. The learned Additional Government Pleader has produced the files. We have gone through the records in its entirety.

5. The case of the appellant in W.A.Nos.1363 and 1404 of 2017, relates to the land purchased by the father. The short facts leading to the writ appeals are as follows:

The subject land originally belonged to the father of the 3rd respondent. During his life time, agreement was entered into with the father of the writ petitioners by Sale Agreement dated 19.03.1965. As per the sale agreement, the father of the writ petitioners paid the entire sale consideration to the 3rd respondent's father. The Possession was also taken on the very same date. It was contended that from the date of sale agreement, the father of the petitioners was in possession of the said lands and he died on 22.09.1977. After the death of their father, they are in actual/physical possession of the land. As per the French Civil Code, once a sale agreement is executed and the possession has been handed over, the sale is completed and the registration of the same is not mandatory. In this case, subsequently, the sale agreement was registered as sale deed on 06.08.1975 and 07.08.1975. In the meanwhile, the Pondicherry Land Reforms (Fixation of Ceiling on Surplus Land) Act, 1973 came into force on 14.10.1974. The appointed date was 24.01.1971. Based on the said Act, the 2nd respondent issued a proclamation dated 03.11.2008 including the lands covered under the agreement for acquiring it for public purpose. The petitioners came to know only after the notice was issued under Section 68 of the said Act. After the receipt of the said notice, the petitioners sent a representation explaining the details and the same was not considered by the competent authority. The 3rd respondent (original owner) died on 22.09.1977. Thereafter, the petitioners came to know about the said fact that the lands covered under the agreement were treated as the land of the 3rd respondent. As per the French Civil Code, once a sale agreement is entered into and possession is handed over, the title passes to the purchaser of the land. According to them, the learned single judge dismissed the writ petitions without considering the legal position prevailing in the Union Territory of Puducherry.

6. The case of the 3rd respondent is that, he is the legal heir of the erstwhile owner of the land. He was having land ad-measuring 5.58.45 Ordinary HAC and 4.50.82 Standard HAC . In view of Sec.4(1) of Pondicherry Land Reforms Act, the family consisting of P.C.Purushothama Reddiar and his wife-Thilakavathi were entitled to hold 6 Standard HAC. However, they were in possession only 5.58.45 Ordinary HACs equal to 4.50.82 Standard HAC. i.e. less than the ceiling area of 6 Standard HAC. Therefore, in view of Sec.7(1) of the Act, P.C.Purusothama Reddiar and his wife-Thilakavathy need not file a Return before

the Authorised officer (Land Reforms) and they had also not done so. Further, the Authorised Officer (Land Reforms) cannot initiate any Proceedings under the Act 1974 against them for fixation of the ceiling area relating to the Agricultural Lands held by them. In the year 1975, due to mistake, in addition to the agricultural land actually owned and possessed by the 3rd respondent's father P.C.Purushothama Reddiar and mother-Thilakavathy as on the appointed day i.e.24.01.1971, 5.58.45 Ordinary HAC.=4.50.82 Standard HACs., the then Authorized Officer (Land Reforms) has also incorrectly taken (i)the Agricultural Lands owned and possessed by various third parties and also entered their names in the Revenue Records, measuring 3.28.03 Ordinary Hac.+2.28.31 Standard HAC (i.e. not owned and also not entered in the names of P.C.Purusothama Reddiar and/or Thilakavathy in the Revenue Records) and (ii) also the Agricultural Lands sold by his father P.C.Purusothama Reddiar prior to the appointed day, measuring in total 6.2515 Ordinary HAC=4.94.86 Standard HAC to T.Ramakrishnan viz., the father of the petitioners and also handed over possession of the same to him i.e. in total 9.30.68 Ordinary HAC.=7.01.88 Standard HAC also as the Agricultural Lands owned and held by them. Based on such mistake, he had incorrectly arrived at the holdings of P.C.Purusothama Reddiar and Thilakavathy on the appointed day as 14.84.03 Ordinary HACs.=11.50.93 Standard HACs and initiated proceedings under the Act against P.C.Purusothama Reddiar for fixation of ceiling area of the agricultural land held by him on the appointed day.

7. The records produced before us would show that the subject land originally belonged to Thiru. P.C.Purushothama Reddiar, who is none other than the father of the 3rd respondent. The Pondicherry Land Reforms (Fixation of Ceiling on Surplus Land) Act, 1973 came into force on 14.10.1974 and the appointed date is 24.01.1971. As on that date, the land belonged to the erstwhile owner P.C.Purushothama Reddiar. The holder of the land has not filed any returns in accordance with the Act. According to the 3rd respondent and the writ petitioners, since they have entered into an agreement much earlier to the Act coming into force, the land would be within the ceiling limit. In other words, the Act will not attract the Lands covered under the agreement. Hence, he has not filed the returns. Admittedly, the land belonged to the father of the 3rd respondent viz., P.C.Purushothama Reddiar. During his life time, the Act came into force (he having died on 22.09.1977). He never filed the returns since 1973. It was later found that the lands of the petitioners were still considered as lands of the Thiru.P.C.Purushothama Reddiar. Since, P.C.Purushothama Reddiar died on 22.09.1977, notice was issued to his legal heir, viz., the third respondent. However, the respondents 1 & 2 have stated that Section 68 notice was served on the writ petitioners

also. Since they have admitted that the sale agreement dated 19.03.1965 is an unregistered agreement and they registered the sale deeds based on the agreement only on 06.08.1975 and 07.08.1975, it is clear that the sale deeds were registered only after the Act came into force on 14.10.1974. If the sale agreement is genuine and had made before the Act coming into force and extension of the Registration Act in Pondicherry, the agreement need not be registered. But mutation would have been effected. Whereas, nowhere is stated that they entered into an agreement mutually on 19.03.1965, much earlier to the land ceiling Act coming into force. Taking advantage of the French Civil Code, they registered the sale deeds on 06.08.1975 and 07.08.1975 stating that they had already entered into an agreement in 1965. Therefore, the genuineness and existence of the agreement has got to be established by the writ petitioners and the 3rd respondent. Unless, they establish that agreement was executed in the year 1965 itself and the possession was also taken immediately when the French Civil Code was applicable to the Union Territory of Puducherry, before the extension of law Act and also the Registration Act, they cannot succeed in the matter. It is a matter of record and evidence. On the date of the Act came into force, as per the revenue records, the subject lands stood in the name of the erstwhile owner P.C.Purushothama Reddiar.

8. Since the revenue records show that the lands stood in the name of P.C.Purushothama Reddiar as on the cut-off date, and he was in possession, as per law, he is the owner of the land.

9. It is useful to refer Section 22 of the Pondicherry Land Reforms (Fixation of Ceiling on land) Act 1973.

"22.(1) Except where a person is permitted, in writing, by the authorised 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 any 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 (1), the Government may, in the first instance, take possession of land, equal in area to the land which is to be acquired by the Government from out of the land held by such person, and where such recovery from the person is not possible, from the

transferee.

(b) Where there are more transferees than one, the deficiency of the surplus area shall be made up from each of the transferees in proportion to the land transferred to them.

(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."

10. The registered sale deeds are dated 06.08.1975 and 07.08.1975. The sale of land was subsequent to the Act. As per Section 3(14), that Sale of land subsequent to coming into force of the Act though pursuant to an agreement for sale entered into prior to the Act, should be ignored. The vendor continues to hold the land as defined in Section 3(14). Hence, the land sold also should be included in the holding of the vendor for the purpose of the Act.

11. According to the writ petitioners and the 3rd respondent, they entered into a sale agreement in the year 1965 itself and the possession was also handed over. There is absolutely no material except an unregistered agreement to show that the land was transferred to the writ petitioners prior to the commencement of the Act and possession was also delivered to them. Unregistered document can be created at any point of time. Even, if any agreement was entered into prior to the Act, such agreement cannot be taken into consideration as the lands remain in the name of the vendor.

12. The competent authority followed the provisions of the Act strictly and declared the excess land. This Court is concerned only with the judicial making process. The appellants have not pointed out any irregularity or illegality in the procedure adopted in the matter. We therefore do not find any reason to entertain the appeals.

13. Accordingly, the writ appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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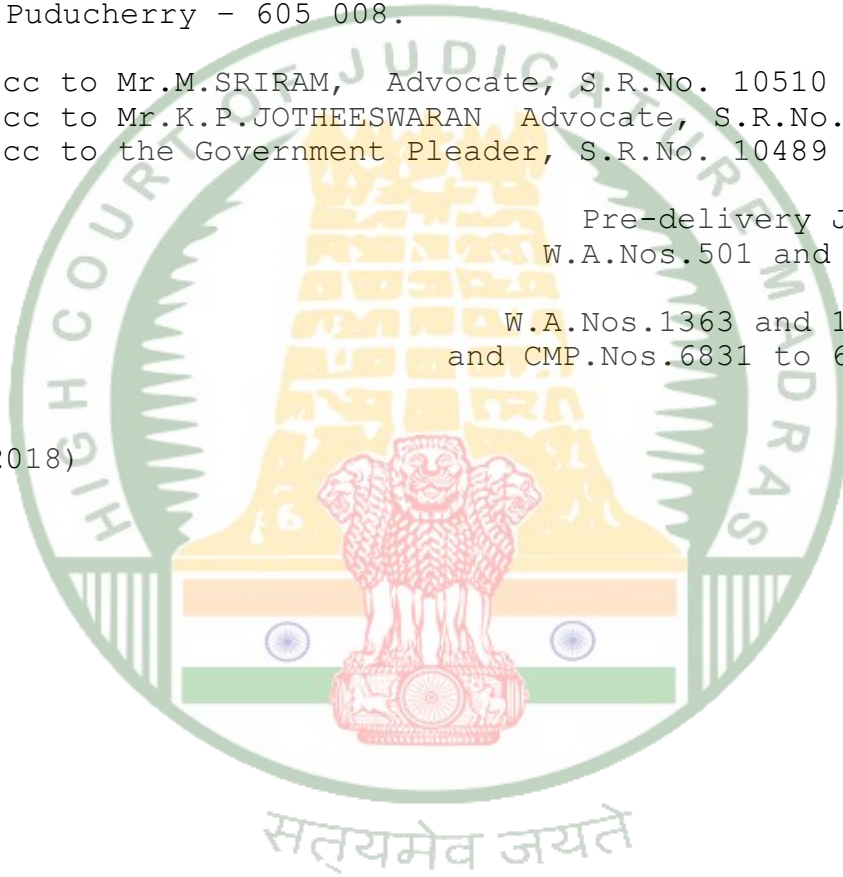
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2.The Sub-Collector (Revenue) North-cum-
Authorised Officer (Land Reforms)
Saram, Puducherry - 605 008.

+2cc to Mr.M.SRIRAM, Advocate, S.R.No. 10510
+1cc to Mr.K.P.JOTHEESWARAN Advocate, S.R.No. 10891
+1cc to the Government Pleader, S.R.No. 10489

Pre-delivery Judgment in
W.A.Nos.501 and 502 of 2016
and
W.A.Nos.1363 and 1404 of 2017
and CMP.Nos.6831 to 6834 of 2017

LRS (CO)
TR(01/03/2018)



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