

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 49079 of 2006
and
M.P. 1 of 2006

A.S.Paramesh

... Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Commissioner
of Land Reforms,
Fort St. George,
Chennai-600 009.

2. The Appellate Authority &
District Revenue Officer,
(Land Tribunal),
Chepauk,
Chennai-600 005.

3. The Assistant Commissioner,
(Land Reforms),
Erode.

.... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in L.T.C.M.A.No.13 of 2004 and quash the same and direct the respondents to forthwith drop all proceedings initiated under the Act in respect of an extent of 7.97 acres in Survey Nos.118, 128, 129, 293 and 296 of Avalpoondurai Village, Erode Taluk.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhuaman
Associates.

For Respondents : Mr.J.Ramesh,
Addl. Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order of the 2nd respondent in L.T.C.M.A.No.13 of 2004 and quash the same and direct the respondents to forthwith drop all proceedings initiated under the Act in respect of an extent of 7.97 acres in Survey Nos.118, 128, 129, 293 and 296 of Avalpoondurai Village, Erode Taluk.

2. The case of the petitioner is that the petitioner's paternal grandfather C.Dakshinamurthy owned lands in Kurugapalayam, Modakurichi and Avalpoondurai Village of Erode Taluk. The Authorised Officer, Land Reforms issued a draft notification dated 27.04.1973, in and by which he had prepared a draft statement regarding the lands held in excess by the petitioner's paternal grandfather. The said draft notification shows that he was holding an extent of 14.42, 5/24 ordinary acres equivalent to 5.623 standard acres as surplus. The notification further called upon the petitioner's grandfather to submit his objection to the draft statement within a period of 30 days from the date service of notice. Thereafter, a draft notification was also published in the Tamil Nadu Government Gazette on 16.05.1973. One of the objections made by the petitioner's grandfather was that the lands in Survey Nos. 118, 128, 129, 260, 295 & 296 of Avalpoondurai village were subject matter of the suit filed in O.S.No.174 of 1965 on the file of Subordinate Judge's Court at Erode. After the enquiry, the Authorised Officer had passed an order dated 07.03.1975 under Section 10(5) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, (hereinafter called as 'Act'), wherein he has declared that an extent of 4.37 ordinary acres equivalent to 2.909 standard acres as surplus. In that order, the Authorised Officer while dealing with the above objection has stated that as per the provisions of Section 13(1) of the Act, the lands, which are the subject matter of the litigation would be excluded and after the disposal of the suit, further decision will be taken.

3. Thereafter, as against the declaration of surplus lands, which was the subject matter of this Writ Petition, the petitioner's grandfather filed an appeal in C.M.A.No.96 of 1975 before the Land Tribunal and the learned Land Tribunal by its order dated 24.04.1976 has remanded the matter back to the authorities for fresh disposal. Thereafter, a fresh enquiry was conducted and revised the earlier order dated 07.02.1977 and proceeded to declare an extent of 5.06 ordinary acres equivalent to 2.552 standard acres as surplus. Subsequently, the final statement under Section 12 of the Act was issued on 24.01.1979 in the Gazette showing that an extent of 5.33 ordinary acres

equivalent to 2.653 standard acres in Modakurichi village as excess holding. Following the above statement, the notification under Section 18(1) of the Act was published to that effect that the lands shown as surplus lands in Modakurichi Village, was required for a public purpose. In the meanwhile, the disputed land in Avalpoondurai village measuring an extent of 7.97 ordinary acres was bequeathed to the petitioner by his paternal grandmother by a Will dated 16.07.1989 and on the demise of grandmother, the petitioner has become the absolute owner of the said lands.

4. While being so, to the shock and surprise, the petitioner has received a notice addressed to the petitioner's father informing that the proposal had been taken by the 3rd respondent to declare an extent of 7.97 acres in Avalpoondurai Village as surplus lands and calling upon the petitioner to attend the enquiry on 03.11.2003. However, the petitioner could not attend the enquiry on that day, the 3rd respondent has again adjourned the enquiry on 08.12.2003. Since the property, which was the subject matter of the notice had been bequeathed to the petitioner, he has sent a letter to the 3rd respondent dated 08.12.2003 requesting to furnish the copies of the earlier proceedings. However, the 3rd respondent has refused to furnish the copies stating that the copies had already been served on the right person at the appropriate time, who are family members of Thiru A.S.Paramesh. Without furnishing the copies to the petitioner, the 3rd respondent has proceeded to pass an order dated 01.11.2004 purportedly being the revised order under Sec.10(5), which shows the landowner as the petitioner's deceased grandfather inspite of the fact that the 3rd respondent was already put on notice that the lands had been bequeathed to the petitioner. The 3rd respondent had passed the order on the ground that the landowner Thiru A.S.Dhakshinamurthy was in possession and enjoyment of the land and his grandson Thiru A.S.Paramesh is holding the land. Further, the land ceiling authorities have never been impleaded in the civil case and there is no orders by any Court restraining the land ceiling authorities from proceedings with the land by including the same in the holdings of the landowner and the view of the landowner as well as the land ceiling authorities with regard to the title for the extent of 7.97 acres is one and the same.

5. As against the order, the petitioner has filed a revision petition before the 2nd respondent in L.T.C.M.A. No.13 of 2004 and the 2nd respondent by its order dated 30.10.2006 has dismissed the petitioner's appeal. Challenging the same, the present Writ Petition has been filed by the petitioner.

6. Mr.S.Mukunth, learned counsel appearing for the petitioner would submit that the disputed land in Survey

Nos.118, 128, 129, 293 and 296 of Avalpoondurai Village, an extent of 7.97 ordinary acres was initially excluded on the ground that there was a civil litigation pending in between family members before the competent civil court. Thereafter, without furnishing any copies to the petitioner, the 3rd respondent has issued a notice under Sec.10(5) of the Act, which is contrary to the provision of Section 14 of the Act. The learned counsel would further submit that without publishing draft statement required under Sec.10(1) of the Act, calling upon the petitioner to attend the enquiry is unsustainable one and without complying Section 10(1) of the Act, publishing the statement under Section 10(5) of the Act is bad in law and before publishing statement under Section 10 (5) of the Act, no opportunity was given to the petitioner and in an hurried manner, the authorities have passed the impugned order, which is unsustainable one. Hence, he prayed to allow the Writ Petition.

7. Mr.J.Ramesh, learned Addl. Government Pleader appearing for the State would submit that initially, the disputed property was excluded for issuance of statement under Section 10(5) of the Act as well as the issuance of notification under Section 18 (1) of the Act on the ground that a civil suit is pending between the parties. After disposal of the suit, with regard to the disputed property, which was excluded under Section 13(1) of the Act, the land in respect of which any question of title is pending before a competent court, after disposal, if the landowner possess the title, the authority has to amend the final statement published under Section 12 of the Act by giving proper notice. In the present case, the notice was given to the petitioner, however, the petitioner did not file any statement and did not dispute the title, which was vested to his grandfather. Further, in the present case, the property, which was excluded in the earlier occasion only on the ground of pending civil suit. Immediately after the completion of the civil court proceedings, the authority has power to include the land by publishing final statement under Section 12 of the Act. Thereafter, notification under Section 18 (1) of the Act has to be issued. In the present case, the petitioner has challenged the draft statement, which was prepared under Section 10(5) of the Act. Hence, the Writ Petition is not maintainable against the draft statement issued under Section 10(5) of the Act. Further, after the notified date, any alienation, sale or gift is void. Accordingly, he prayed for dismissal of the Writ Petition.

8. On perusal of entire records, it is seen that the dispute involved in the present case, whether the authority has power to proceed with the subject matter of the disputed property in the Writ Petition, which was excluded at the time of preparation of

final statement. Admittedly, the authority has excluded the disputed property in Survey Nos.118, 128, 129, 293, 295 and 296 on the ground that there was a civil dispute pending between the parties. After disposal of the civil dispute, the authority has power to include the property by issuing proper notice. As soon as the final disposal of the proceedings in the Suit relating to the possession of title under Section 13(1) of the Act, the authority has power to amend the final statement published under Section 14 of the Act or where no such final statement was prepared, the final statement under Section 12 of the Act has to be issued. For better appreciation, Section 13 and 14 of the Act is extracted hereunder :-

"13. Exclusion of certain land from calculation of ceiling area.--

(1) Notwithstanding anything contained in Section 11 and 12, the Authorised Officer shall, in calculation the extent of land held by any person exclude :-

(i) the land in respect of which any question of title is pending before a competent Court, or the [Land tribunal] or other authority;

14. Amendment of final statement in certain cases.--

(1) As soon as may be after the final disposal of the proceeding or suit relating to the question of title of any land exclude under clause (i) or sub-section (1) of Section 13, the Authorised Officer shall ----

(i) amend the final statement published under Section 12, or

(ii) where there is no such final statement prepare a final statement, if necessary, under Section 12, in accordance with the decision of the Court or the [Land Tribunal] or other authority as the case may be."

9. On perusal of the above provisions, in the earlier occasion, the subject land was excluded by invoking Section 13 (1) of the Act on the ground that the civil dispute in respect of the land was pending. Immediately after the disposal of the civil suit, as per Section 14 of the Act, the authority has power to prepare the final statement under Section 12 of the Act. In the present case, after disposal of the civil suit, the authorised officer has prepared a draft statement under Section 10(5) of the Act, for which he has issued a notice to the petitioner, but, he has not submitted any objection. Thereafter, the authority has prepared a draft statement, which was challenged before the revisional as well as appellate authority. Further, the petitioner has challenged the draft statement in

this Writ Petition, which was prepared under Section 10 (5) of the Act, which is unsustainable one. Hence, the filing of appeal as well as the Writ Petition is premature one. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner of Land Reforms,
State of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Appellate Authority &
District Revenue Officer,
(Land Tribunal),
Chepauk,
Chennai-600 005.
3. The Assistant Commissioner,
(Land Reforms),
Erode.

+1cc to Mr.M/s.Sarvabhuanan Associates, Advocate SR.No.70494

+1cc to Government Pleader SR.No.70836

W.P. 49079 of 2006
and
M.P. 1 of 2006

RSV(CO)
GMY(10/09/2019)

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