

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 7301 of 2010

and

M.P. 2 of 2010

Pitchayammal,
rep. by her son and
Power Agent Mr.Sivaraman
North Street, Thotacheri,
Sekarai Post, Needamangalam Taluk,
Thiruvarur District.

... Petitioner

Vs

1.State of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Thiruvarur District,
Thiruvarur.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the publication of gazette No.31, dated 06.08.2008 by the 1st respondent herein pertaining to Survey No.214, situated at Athakkudi, Therku Sethi, Needamangalam Taluk, Thiruvarur District and quash the same.

For Petitioner : Mr.G.Karthikeyan

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

O R D E R

The petitioner has filed this Writ Petition challenging the impugned publication of gazette No.31, dated 06.08.2008, by the 1st respondent herein pertaining to Survey No.214, situated at Athakkudi, Therku Sethi, Needamangalam Taluk, Thiruvarur District and quash the same.

2. The case of the petitioner is that he has purchased the property in Survey No.214, situated at Athakkudi, Therku Sethi, Needamangalam Taluk, Thiruvarur District to an extent of 2.28 2/3 acres of land vide registered Sale deed in Document No.419/1998, dated 23.06.1998 for a valid consideration. After the purchase, the petitioner came to know that the 1st respondent has notified his lands in the Government Gazette No.31, dated 06.08.2008, requiring the surplus lands for a public purpose under Section 18 (1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (hereinafter called as 'Reforms Act'). As per the gazette, the lands in Survey Nos.213/4, 214, 217-9B3 and 217-9D2, which are in possession and enjoyment of the petitioner and the said lands were owned by the legal heirs of one Kamaludeen viz., 1. Jubaida Beevi, 2. Jaberullah, 3. Hajamytheen and 4. Mumtaj Begum. As against the gazette notification, the present Writ Petition has been filed.

3. Mr.G.Karthikeyan, learned counsel appearing for the petitioner would submit that the publication of gazette notification is illegal and without application of mind. Initially, the above lands were belonging to the said Kamaludeen before the year 1970 and one Mrs.K.M.Fathima Kani, wife of the said Kamaludeen acting as the power agent has executed two sale deeds in favour of one Mr.Natarajan Mar Suthiyar in Document Nos.1179/1986 and 1180/1986, both dated 29.08.1986. Further, in the document No.1179/1986, total lands measuring an extent of 9 acres and 80 cents in Survey Nos.215/2, 217/9 and 213 were sold and in document No.1180/1986, total lands measuring an extent of 8.49 acres in Survey Nos.211/2, 214, 304, 220/2A and 221/2 were sold. Thereafter, the said Natarajan Mar Suthiyar executed a registered sale deed in favour of one Mohammed Farook, dated 05.10.1987 and the said Mohammed Farook sold the above lands to one Mr.Mohammed Khajali in the year 1991. Thereafter, the said Mohammed Khajali executed a registered sale deed in favour of the petitioner. Though, initially the property owned by Kamaludeen and subsequently, the legal heirs of the said Kamaludeen have executed two sale deeds in favour of the Natarajan Mar Suthiyar and thereafter, the petitioner had purchased the property from him. The respondents without affording any opportunity to the petitioner have initiated the land ceiling proceedings. Hence, the learned counsel prayed to

allow the Writ Petition.

4. Mr.J.Ramesh, learned Addl. Government Pleader appearing for the respondents would submit that as per Sec.7 of the Reforms Act, no person shall, except as otherwise provided in this Act, but subject to the provisions of Chapter VIII, be entitled to hold land in excess of the ceiling area. Since the landowner Mr.K.M.Kamaludeen held lands in excess of the ceiling area as on 15.02.1970 and as per the Reforms Act, all excess lands are to be declared surplus and distributed to eligible persons under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. Any transaction effected by the landowner after 15.02.1970 to till date of publication of notification is void under Sections 22 and 23 of the Act. Sec.22 relates to the transaction effected between the date of commencement of the Act, i.e. 15.02.1970 and the notified date 02.10.1970. Sec.23 relates to the transaction effected after the notified date, but before the publication of notification under Sec.18(1) of the Reforms Act. In the present case, the publication of notification was issued on 06.08.2008. In view of the amended Act, any alienation after the notification is invalid. In the present case, the alienation is after the notified date i.e. on 15.02.1970. Though it is not covered under Sec.23 of the Reforms Act, however, it is covered under Sec.4 of the Reforms Act. Hence, in the present case, the petitioner has purchased the property only on 23.06.1998. Hence, it is clearly hit by Section 4 as well as Section 23 of the Reforms Act. Accordingly, he prayed for dismissal of the Writ Petition.

5. On perusal of the entire records, it is seen that originally, the property owned by Kamaludeen and the said Kamaludeen died on 03.09.1975. The said Kamaludeen's wife Mrs.K.M.Fathima Kani is the power agent and the said K.M.Fathima Kani had sold the land in Survey No.215/2, 217/9 and 213, total land measuring an extent of 9 acres and 86 cents to one Natarajan Mar Suthiyar vide registered sale deed dated 29.08.1986. From the successive purchaser of the above said land to an extent of 2.28 acres was purchased by the petitioner on 23.06.1998. The said transaction was effected by the power agent of the landowner's wife after the notified date i.e. on 15.02.1970, but before the publication of notification under Sec.18(1) of the Reforms Act dated 06.08.2008. Hence, the said transaction was hit by Sec. 23 of the Reforms Act. Therefore, the transaction made after the notified date and other other transactions are all void as per Sec.23 of the Reforms Act. In the present case, the undisputed fact is that the petitioner as well as the petitioner's vendors have purchased the property after the notified date i.e. on 15.02.1970. Hence, it is not valid one.

6. For better appreciation, the provisions of Land Reforms Act is extracted hereunder :-

"Section 23. Transfers or sub-divisions made or effected before the publication of notification under sub-section (1) of Section 18.---.....

(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 authorised officer shall calculate the ceiling area of such person as if no such transfer or sub-division had taken place."

7. In the present case, admittedly, the petitioner has purchased the property on 23.06.1998. Hence, in view of the above provision, the sale is invalid. Further, the landowner K.M.Kamaludeen, the landowner herein held lands more than the ceiling limit as prescribed under Sec.5 of the Reforms Act, as amended by the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (Tamil Nadu Act, No.17/70) as on 15.02.1970. As per Sec.8 of the Act, the landowner should file his return in Form 2 to the authorised officer. In the present case, the petitioner has not filed his return, notices were issued to the legal heirs of the landowner to appear for enquiry with relevant documents on 26.05.1995, 07.01.1997, 25.04.1997, 26.05.1997, 13.05.1997, 04.06.1997 and 10.07.1997 and they were served to the wife of the landowner and legal heir of the landowner 02.06.1995, 08.05.1997, 30.05.1997, 26.06.1997 and 24.07.1997. However, the legal heirs of the landowner did not respond to the notices issued by the authorised officer. Accordingly, the authorised officer, the Assistant Commissioner (Land Reforms), Mayiladuthurai collected information through the field staff and revenue records as per Section 9(2)(a) of the Reforms Act. On the basis of the field report and the village accounts, the total holdings of the landowner was arrived at 32.27 ordinary acres equivalent to 24.48 standard acres as on 15.02.1970.

8. After obtaining the information under Sec.9(2)(a) of the Reforms Act, the authorised officer issued a notice under Sec.9 (2)(a) of the Reforms Act in Form-4 to the legal heirs of the landowner with the particulars of land holdings obtained on

04.08.2005. Though the notice was acknowledged by the legal heirs on 11.08.2005, they had not responded to the notice. Thereafter, based on the information collected on the inspection of lands, action under Sec.9(2)(b) of the Reforms Act was initiated and after allowing the ceiling area of 15.000 standard acres, it was determined that there is an acquirable surplus of 9.48 standard acres and therefore, an order under Sec.9(2)(b) of the Act was passed on 27.02.2006 directing the landowner to furnish the details of lands, he wished to offer as surplus lands.

9. Thereafter, the draft statement under Sec. 10(1) of the Reforms Act was published in the Tamil Nadu Government Gazette dated 08.11.2006 declaring an extent of 11.38 ordinary acres equivalent to 9.483 standard acres as surplus. Further, there were some printing errors in the draft statement, in order to correct the errors, an order under Rule 11(1)(h) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962 was passed on 20.11.2006. Thereafter, the draft statement under Sec. 10(1) of the Reforms Act was sent to the legal heirs of the landowner along with Form 7 directing the legal heirs to file any objections within 30 days from the date of receipt of the draft statement. It has been received by the Manager Thiru Yasir Arafath on 25.11.2006. Since no reply was received from the landowner, a draft statement was published in the consecutive places as contemplated under Rule 12(2) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962. Since no objections were received from the legal heirs of deceased landowner, the final statement under Sec.12 of the Act was published in the Tamil Nadu Government Gazette dated 08.08.2007 declaring an extent of 11.38 ordinary acres equivalent to 9.483 standard acres and it was served on 24.09.2007. Thereafter, following the publication of final statement under Sec.12 of the Reforms Act, notification under Sec.18(1) of the Reforms Act was published in the Tamil Nadu Government Gazette dated 06.08.2008 declaring an extent of 11.38 ordinary acres equivalent to 9.483 standard acres as surplus. Though the petitioner's vendor, original owner received the notice, the petitioner did not file any Writ Petition immediately. Further, he has chosen to file a Writ Petition only in the year 2010 stating that he has purchased the land in the year 1998 and the grounds raised by the petitioner are not acceptable one. Hence, the Writ Petition stands dismissed. However, the learned counsel appearing for the petitioner, on instructions, submitted that the petitioner is ready to provide the equivalent alternative site and accordingly, he may be permitted to file appropriate application before the authority for consideration. Since the petitioner himself has come forward to provide the alternative site equivalent to surplus lands, any application is filed, the respondents are directed to pass appropriate orders in

accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

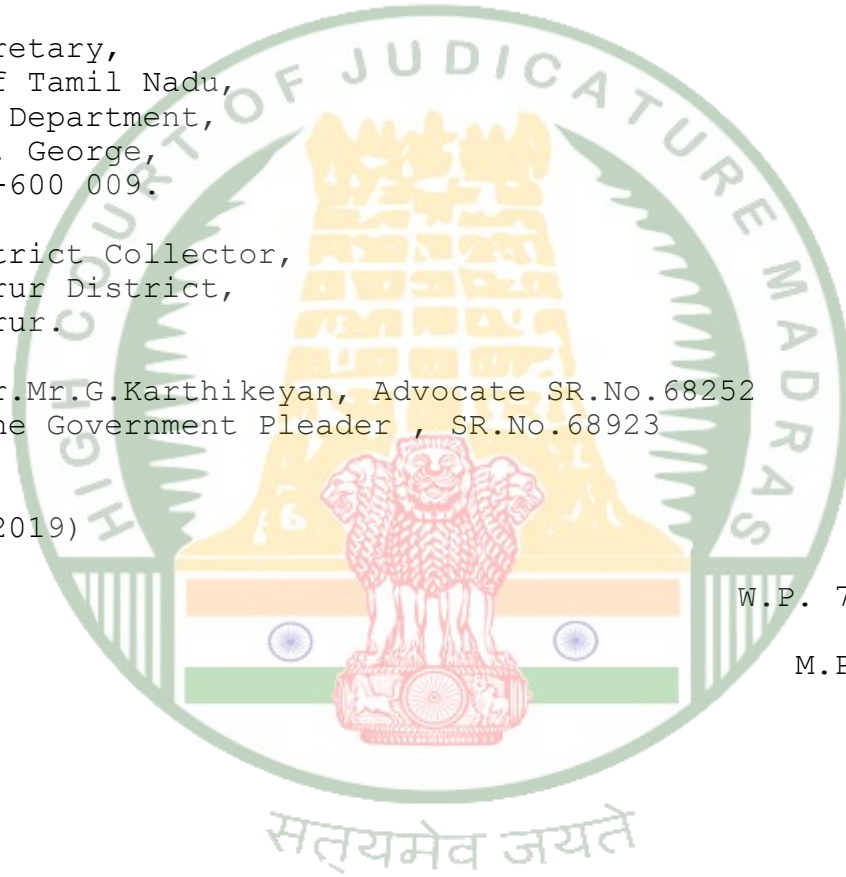
1.The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Thiruvarur District,
Thiruvarur.

+1cc to Mr.Mr.G.Karthikeyan, Advocate SR.No.68252
+1cc to the Government Pleader , SR.No.68923

MP (CO)
CB(30/09/2019)

W.P. 7301 of 2010
and
M.P. 2 of 2010



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