

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.5532 of 2012

1.P.Thulasimanian

2.P.Venkatachalam

.. Petitioners

Vs.

1.The Commissioner of Land Reforms,
Ezhilagam, Chepauk,
Chennai - 5.

2.The Assistant Commissioner,
Land Reforms,
Jawan Bhavan, Gandhiji Road,
Erode - 638 001.

3.The District Collector,
Erode District.

4.The Tahsildar,
Erode Taluk, Erode.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to forbear the respondents from interfering with the petitioners' right to property over the lands measuring an extent of 3 acres comprised in R.S.No.1341/2 and R.S.No.1342 (Old S.F.No.1218D) Thuyyampoondurai Village, Erode Taluk, which had been declared as the agricultural holdings of the petitioner's predecessor in title in pursuance to the order made in ADLR's - DI/3148/88, dated 24.02.1983 published in the Tamil Nadu Government Gazette Part VI Section 1 - Annexure No.12C, dated 30.03.1983.

For petitioner : Mr.N.Manokaran

For R1 to R4 : Mrs.P.Rajalakshmi, AGP

ORDER

The petitioners have filed this writ petition seeking to forbear the respondents from interfering with the petitioners' right to property over the lands measuring an extent of 3 acres comprised in R.S.No.1341/2 and R.S.No.1342 (Old S.F.No.1218D) Thuyyampoondurai Village, Erode Taluk, which had been declared as agricultural holdings of the petitioner's

predecessor in title in pursuance to the order made in ADLR's - DI/3148/88, dated 24.02.1983 published in the Tamil Nadu Government Gazette Part VI Section 1 - Annexure No.12C, dated 30.03.1983.

2. Heard the learned counsel appearing on either side.

3. It is averred in the affidavit filed in support of the writ petition that the land having an extent of 13.25 acres in S.F.No.1218D bearing Joint Patta No.565, was owned by S.P.Subbaraya Gounder and S.R.Sadasivam with 6.62 ½ acres and 6.61 acres respectively. When the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, (in short "Act") came into force, on 15.02.1970, the land owner Mr.S.P.Subbaraya Gounder was having an extent of 6.62 acres in S.F.No.1218/D situated at Thuyyampoondurai Village, Erode District. Whiles, Mr.S.P.Subbaraya Gounder, had executed a settlement deed dated 29.09.1970 in favour of his granddaughters, namely, P.C.Gayathri and P.Srividhya, by settling an extent of 3.62 ½ acres in S.F.No.1218/D. In view of the execution of settlement deed before the notified date i.e. 02.10.1970, the said extent of 3 acres were excluded under Section 21 A of the Act and thereafter, Draft Statement under Section 10(1) of the Act was published in respect of the remaining 3.62 ½ acres and accordingly, Draft Statement was also served on the land owner Mr.S.P.Subbaraya Gounder on 27.11.1975.

4. On receipt of the said Draft Statement, the land owner has filed his objections, which are extracted below:-

"a) That he sold away the land of 1.65 acres in S.F.No.1350 of Avalpundurai Village in Doc.No.446/60.

b) That though the field in S.F.No.1218D measuring an extent of 3.62 ½ acres in Thuyyampoonduria Village has been included in the L.B.P.Ayacut, agricultural operations are not carried out as it is Odai or (water way) and it is unfit for cultivation and that his extent to be exempted from the holdings.

c) That the fields shown in surplus list in the draft statement to be substituted by S.F.No.1355/A1 and 1355/E of Avalpoondurai as surplus lands."

Accepting the request of the petitioner, on 30.12.1975, the Authorized Officer had excluded 1.06 ½ acres out of 3.62 ½ acres in S.F.No.1218/D as the same is covered by drainage and saline. It is also further stated that out of 2.56 acres, 1.65 acres were already sold away by the land owner and that the same was

also accepted by the authorized officer as surplus land. Accepting the above said explanation offered by the petitioner, the Authorized Officer, vide proceedings dated 26.02.1975, notified the alternative land given by the petitioner as surplus and they are;

S.F.No.1355/A1 = 5.29 acres (new S.F.No.1388)

S.F.No.1355/E = 5.83 1/3 acres in Aval Poondurai Village

Pursuant to the above, Final Settlement reached under Section 12 of the Act also has been published in the Tamil Nadu Government Gazette and a copy of the final judgment order was also served on the land owner Mr.S.P.Subbaraya Gounder, and thereafter, Notification issued under Section 18(1) of the Act was also served on the said land owner on 29.12.1978. Subsequently, surplus lands of S.R.Sadasivam, which were notified, were assigned to the eligible persons on 07.08.1986. As the petitioners have purchased 3 acres in S.F.No.1218/D corresponding to R.S.No.1341/2 and R.S.No.1342 from P.C.Gayathiri and P.Srividhya who got settlement under Gift Deed dated 27.09.1970 from S.P.Subbaraya Gounder, the Revenue Authorities also issued patta, chitta and kist receipts in the name of the petitioners on 31.07.2000 and therefore, the respondents cannot interfere with the petitioners' right to properties of the land in question.

5. Drawing the notice of this Court paragraph No.7(x) of the counter affidavit, learned counsel for the petitioner submitted that the Revenue Divisional Officer, Erode, has admitted in the counter affidavit that the writ petitioners have purchased the land in S.F.No.1341/2 and 1342 (old No.1218D) in Thuyyampoondurai Village from the legal heirs of the land owner Mr.S.P.Subbaraya Gounder and it is further admitted that no land has been declared in S.F.No.1218D from the holdings of Mr.S.P.Subbaraya Gounder as surplus. It has been again re-stated in the last four lines of paragraph No.9 of the counter affidavit and for better appreciation, the same is extracted below:-

"9.....It is humbly submitted that no extent has been declared as surplus in S.F.No.1218D in Thuyyampoondurai Village from the holdings of the land owner S.P.Subbaraya Gounder....."

6. At this juncture, it is also pertinent to extract below the relevant portion of paragraph No.10 of the counter affidavit:-

"10..... Further, it is submitted that as per chitta, S.F.No.1218D in Thuyyampoondurai Village total extent is

13.23 ½ acres, joint Patta No.565, pattadars are S.P.Subbaraya Gounder and S.R.Sadasivam and S.P.Subbaraya Gounder having share of 6.62 ½ acres and S.R.Sadasivam having 6.61 acres.

Name of the Land Owner : S.P.Subbaraya Gounder

Village : Thuyyampoondurai

Total extent of S.F.No. : 1218D - 13.23 1/2 acres

Share owned by the land owner

S.P.Subbaraya Gounder in S.F.No.1218D : 6.62 ½ acres

Retainable area : 2.56 acres

Exemption under Section 21A of the Act : 3.00 acres

Excluded under Section 3(22) of the act as per order under Section 10(5) of the Act passed on 26.02.1976 : 1.06 ½ acres

Therefore, no extent in S.F.No.1218D in Thuyyampoondurai Village declared as surplus from the holdings of the land owner S.P.Subbaraya Gounder....."

7. In the light of the above admission made in the counter affidavit filed by the Revenue Divisional Officer, Erode, it is clear that the subject land belonging to the petitioners has not been declared as surplus. Therefore, the respondents have no right to interfere with the Rights of the petitioners in respect of the subject land.

8. Thus, in such view of the matter, the respondents are directed not to interfere with the Rights of the petitioners over the subject land belonging to the petitioners. Accordingly, with this direction, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Land Reforms,
Ezhilagam, Chepauk,
Chennai - 5.

2.The Assistant Commissioner,
Land Reforms,
Jawan Bhavan, Gandhiji Road,
Erode - 638 001.

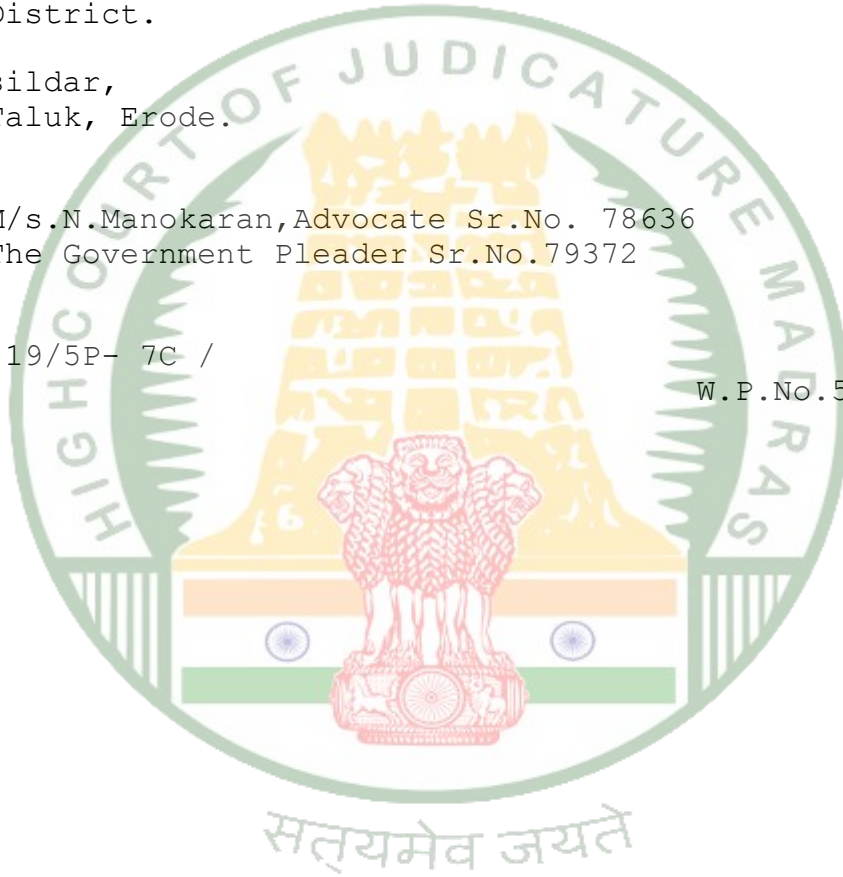
3.The District Collector,
Erode District.

4.The Tahsildar,
Erode Taluk, Erode.

+1 cc to M/s.N.Manokaran,Advocate Sr.No. 78636
+1 cc to The Government Pleader Sr.No.79372

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W.P.No.5532 of 2012



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