IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	19/02/2020
DELIVERED ON	20/03/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.547 OF 2015
&
C.M.P.NO.178 OF 2016

1. State of Tamil Nadu,
   Rep. by the District Collector,
   Namakkal, Thumman Kuruchi Village,
   Namakkal.

2. The Assistant Commissioner,
   (Land Reforms), Thangaperumal Street,
   Fire Station, Erode. .. Appellants

Versus

1.Marimuthu
2.Meenatchi .. Respondents

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 28.07.2009 made in A.S.No.49 of 2006, on the file of Sub Court, Namakkal, confirming the Judgment and Decree made in O.S.No.107 of 2001, dated 29.03.2004, on the file of Principal District Munsif Court, Namakkal.

For Appellants : Mr.S.T.S.Murthy
Additional Advocate General
Assisted by Mr.N.Manikandan &
Mr.Y.T.Aravid Gosh
Government Advocate

For Respondents: Mr.T.R.Rajagopalan
Senior Counsel
For Mr.C.Jagadish
Mr.N.C.Ashok Kumar for R1 and R2

JUDGMENT

This appeal arises out of the Judgment and Decree passed in A.S.No.49 of 2006 by the Sub Court, Namakkal, confirming the Judgment and Decree made in O.S.No.107 of 2001 by the Principal District Munsif, Namakkal.

2. Facts in brief:-

The defendants in O.S.No.107 of 2001 are the appellants. The plaintiffs are husband and wife and they instituted the suit praying for declaration, declaring that they are the absolute owners of the suit property; to declare that the order passed by the second defendant dated 14.02.2001 in Ref. No.8A/630/1410 & M.R.1/L.2/17-70 (A2), dated 20.01.2001 as null and void and for costs. They would claim that the first plaintiff, vide registered sale deed, dated 07.11.1990, purchased 4 acres and the second plaintiff purchased 2.06 acres in S.No.252/2A17 from one Mr.P.L.Lakshmi Narasimman. On 11.01.1991, their names were included as joint pattadhars and patta was issued in patta No.447, by sub dividing the property as S.No.252/2A17A. As such, they have been in possession and enjoyment of the suit schedule properties.

3. According to the plaintiffs, their vendor Mr.P.L.Lakshmi Narasimman owned 42.33 acres in S.No.252/2A and proceedings were initiated against him under the Land Reforms Act and eventually out of 42.33 acres, it was held that he is entitled to hold 37.50 acres in S.F.No.252/2A and the remaining 4.83 acres were declared as surplus and it was subdivided as S.No.252/2B. After the sub division, the plaintiffs purchased the lands in S.No.252/2A and no property was purchased by them in S.No.252/2B which was declared as surplus. While so, the second defendant without having any power, by an order dated 20.02.2001, sub-divided the land S.No.252/2A17A and assigned S.No.252/4 as if the plaintiffs own 1.92 acres only.

4. The suit was resisted by the defendants contending that the suit is not maintainable and in the additional written statement, it is stated that in the proceedings initiated under the Land Reforms Act, draft statement was issued under Section 10(1) of the Act on 09.09.1981 and a final statement was issued under Section 12 on 25.01.1984. Section 18(1) notification was issued on 25.02.1984. It is stated that the landowner Mr.P.L.Lakshmi Narasimman was having 20.58 acres in S.No.252/2, out of which, 4.83 acres were declared as surplus. The land 15.75 acres was held to be within the ceiling area and assigned as S.No.252/2A and the surplus was assigned as S.No.252/2B. It is also stated that the land purchased by the plaintiffs comes under S.No.252/2.

5. On the basis of the above pleadings, necessary issues were framed by the trial Court. To fortify the case of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A12 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B10 were marked. Upon consideration of the evidence adduced by the parties, the trial Court decreed the suit and the

same was confirmed by the first appellate Court. Aggrieved over the Judgment and Decree, the present appeal has been filed.

6. This appeal was admitted on the following substantial question of law:-

> "Whether the Civil Court jurisdiction is barred under Section 107 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which amendment was brought in the year 2003 when the relief was sought in a suit instituted in the year 2001?"

7. Mr.S.T.S.Murthy, learned Additional Advocate General, appearing for the appellants would urge that the Courts below without any locus standi simply entertained the suit, even though, the appellant clearly and categorically stated in the written statement that the jurisdiction of the civil Court is barred. It is further contended that the proceedings initiated against the landowner culminated in issuing notification under Section 18(1) of the Act and the declaration made under Section 18(1) of the Act has become final. What has been challenged in the suit is the subsequent notification issued for sub dividing the surplus land and the plaintiffs are the purchasers of the notified surplus land. Hence, the Judgment and Decree of the Courts below are liable to be set aside. In this regard, the learned Additional Advocate General relies on the judgment of this Court in Karuppan (died) & others v. The State of Tamil Nadu and others [2013 (5) LW 76].

8. Per contra Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of the respondents would argue that it is true the proceedings initiated under the Land Reforms Act against the vendor of the plaintiffs attained finality by issuing notification, dated 25.01.1984, however, the land measuring an extent of 4.83 original acres (1.93 standard acres) in S.No.252/2B was declared as surplus. It is further contended that the land purchased by the plaintiff comes under the ceiling limit of the landowner and assigned as O.S.No.252/2A, but the Authorized Officer without having any jurisdiction has made amendments to the notification issued under Section 18(1) of the Act. Therefore, the plaintiffs had rightly sought declaratory relief and for consequential reliefs and hence, the suit is maintainable. In support of the said contentions, he invited the attention of this Court to the decisions in [Kadayanallur Town Senaiyar Thalaivar Samuthayam Vs. The Assistant Commissioner, Land Reforms [2013 (5) CTC 291] and in Rajaganapathy Ganesan v. Union of India [2011 (6) CTC 306].

9. Before dealing with the rival contentions, it would be useful to refer the reasons and object of the The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961

[hereinafter referred to as "the Act"]. The Act was enacted to achieve an object of reducing inequalities in the ownership of the agricultural land and the Government had decided to prescribe maximum extent of agricultural land a person may hold. The Government brought a number of amendments to the main Act. I would like to refer the relevant Sections and amendments, those are necessary for disposal of this appeal:-

10. Section 5 of the Act deals with ceiling area for an individual and in case of every family consisting of not more than 5 persons as 30 standard acres. Subsequently, the Government felt that the object of the Act was not achieved and thought it fit to reduce the ceiling from 30 standard acres to 15 standard acres. By an Act 41 of 1971, necessary amendments were made to the Act, reducing ceiling area from 30 standard acres to 15 standard acres. The Act exempts certain lands from the purview of the Act.

11. Section 7 of the Act says that no person shall except as otherwise provided under the Act, is entitled to hold land in excess of the ceiling area on and from the date of commencement of the Act. Section 8 stipulates that every person, who holds land in excess of the ceiling area shall file a return containing particulars of the land to the Authorized Officer within 30 days from the date of commencement of the Act. Section 9 of the Act empowers the Authorized Officer to collect information from any person, who holds land in excess of the ceiling area, but failed to furnish the return under Section 8 of the Act or furnishes incorrect or incomplete return. Section 10 deals with preparation and publication of draft statement. Under the said Section, the Authorized Officer is directed to prepare a draft statement in respect of each person, holding or deemed to have held land in excess of the ceiling on the basis of the information furnished under Section 8 or information collected under Section 9 and further directs to serve the draft statement on the persons interested in the land viz., landowners, tenants, creditors and if any objection is received within 30 days from the service of such notices, the Authorized Officer was directed to consider the same after providing opportunity to the person interested and thereafter, publish a final statement under Section 12 of the Act.

12. Section 15 provides power to the Authorized Officer to make necessary corrections of the bona fide mistakes in the final statement made under Sections 12 and 14 of the Act, on his own motion or on application of the parties. The surplus land specified in the final statement shall vest with the Government absolutely on the publication of the notification issued by the Government. Under Section 94 (2) of the Act, the Government is empowered to frame necessary Rules for disposal of

the surplus land and as per the Rules framed in the year 1965, a person can be assigned a maximum extent of 5 acres. In 1971 amendment, the area was reduced to 3 acres in case of dry land and 1 1/2 acres in case of wet land. The Section 3 (40) deals with fixation / calculation of the standard acre. Section 107 says that no civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by the authorized officer, Board, the Land Commissioner, the Land Tribunal or other authority. Rule 17 of the Tamil Nadu Reforms (Fixation of Ceiling on Land) Rules, 1962, deals with publication of final statement under Section 12 or 14 under Form 9. The statement referred to in sub-Rule (1) shall be published in the manner specified in Rule 12 (2). The statement referred to in sub-rule (1) shall be served on the persons referred to in Section 10 (5) in the manner specified in Rule 8.

13. A plain reading of the above provisions would make it clear that there is no ambiguity with regard to the procedure to be followed to declare the land as surplus. In the instant case, the respondents instituted the suit for declaration of their right over the suit property and for other reliefs. According to the plaintiffs, they became absolute owners of the property by virtue of the registered sale deed, dated 07.11.1990. There is no dispute with regard to the proceedings initiated against the landowner Mr.P.L.Lakshmi Narasimman culminating in issue of the Gazette dated 25.01.1984.

14. A perusal of the notification would amplify that the land owner / Mr.P.L.Lakshmi Narasimman is entitled to hold / retain 15.75 acres in S.No.252/2A and 21.75 acres in S.Nos.245, 256, 260/2, 255/2, 252/1 within the ceiling limit and the land measuring an extent of 4.83 acres equivalent to 1.93 standard acres in S.No.252/2B was declared as surplus.

15. It must be seen that the Authorized Officer (Land Reforms) Erode, by his proceedings, dated 31.03.1984, invited applications from the original persons for assignment of surplus land, in which, it is categorically stated that as per notification issued under Section 18 (1) of the Act, in the Government Gazette No.90, dated 25.02.1984, the lands in S.No.252/2B of Vasanthapuram Village, Namakkal Taluk, Salem District was declared as surplus. Subsequently, S.Nos.252/2A was subdivided in the year 1985 under UDR scheme and it was assignee as S.Nos.252/2A1 to 252/2A25. The plaintiffs purchased the land in the year 1990, which was subdivided as S.No.252/2A17. S.No.252/2B which was declared as surplus in the year 1984 underwent subdivisions as S.Nos.252/2B1, 252/2B2 and 252/2B3. Thereafter, till 13.10.2000, there was no sub division. However, on 20.01.2001, the Assistant Commissioner, Land Reforms, Erode

further subdivided the land in S.No.252/2A17A and assigned S.No.252/4 and held that the land measuring 4.83 acres in S.No.252/2A17A as surplus.

16. In the matter on hand, the contention of the respondents / plaintiffs is that the notification issued under Section 18 (1) of the Act, dated 25.01.1984 has become final and the Authorized Officer (Assistant Commissioner) Erode has no jurisdiction to make alterations or additions in the notification issued under Section 18(1) of the Act. As stated supra, Section 15 of the Act gives power to the Authorized Officer to make necessary corrections in the notification issued under Sections 12 or 14 of the Act, if he is satisfied that the mistake was bona fide. But, in the instant case, the Authorized Officer has made alterations and corrections to the notification issued by the Government under Section 18(1) of the Act. Section 18 of the Act, makes it clear that immediately after issuance of the notification, the land which was declared as surplus shall vest with the Government, but the plaintiffs are not purchasers of the land, which was declared as surplus in the notification issued under Section 18(1) of the Act.

17. A similar issue came up for consideration before this Court in [Kadayanallur Town Senaiyar Thalaivar Samuthayam Vs. The Assistant Commissioner, Land Reforms [2013 (5) CTC 291]. In that case, the suit was filed for declaration and injunction. It was resisted by the defendants, contending that in view of Section 77 of the Act, jurisdiction of the Civil Court is barred. Both the trial Court as well as the appellate Court, non suited the plaintiff on the basis that the plaintiff is a religious institution and religious trust and it is barred from approaching the civil Court. On appreciation of the evidence, the learned Single Judge, came to the conclusion that the plaintiff was neither a religious institution or religious trust and hence, the suit is not barred under Section 77 of the Act. The relevant paragraphs are extracted hereunder:-

> "16. Now the Court has to look into the legal aspects involved in the present case.
>
> 17. The authorities concerned have proceeded on the basis of Sections 2(2), 20-A & 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. Section 2(2) of the said Act reads as follows:-
>
>> Notwithstanding anything contained in sub-section (1), no such Religious Institution of Religious Trust of a public nature as is referred to in sub-section (1) shall acquire by any means whatsoever any land after the date of the commencement of this Act.

18. A plain reading of the said Section would go to show that after enactment of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, Religious Institution or Religious Trust of public nature is debarred from acquiring any landed property.

19. Section 20-A of the said Act reads follows:

> 'Penalty for future acquisition in contravention of certain provisions.--(1) Any acquisition of any land made in contravention of the provisions of sub-section (2) of Section 2, of sub-clause (ii) of clause (c) of sub-section (1), sub-clause (ii) of clause (d) of sub-section (1), clause (b) of sub-section (3-B) and of sub-section (3-C) of Section 5, shall be null and void, and any land which is so acquired shall, as a penalty for such contravention, be deemed to have been transferred to the Government with effect from the date of such acquisition on a declaration made by Authorized Officer within whose jurisdiction such land or the major part thereof is situated. The Authorized Officer shall record in writing the reasons for such declaration.'

20. A mere reading of Section 20-A of the said Act would clearly reveal that if there is any contravention as mentioned in Section 2(2) of the said Act, the authorities are empowered to take a proper action as per Section 20-A of the said Act.

21. In the instant case, it has already been pointed out that the Plaintiff is neither a Religious Institution nor Religious Trust. Therefore initiation of proceedings itself by the authorities concerned under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is totally illegal.

22. It is an admitted fact that by virtue of Ex. B.3, the land in question has been acquired.

23. The Courts below have concurrently non-suited the Plaintiff mainly on the grounds that the Plaintiff has contravened the provisions of Section 2(2) of the said Act and further the Civil Court is not having jurisdiction by virtue of Section 77 of the said Act. It has already been discussed and ultimately found that the Plaintiff is neither Religious Institution nor Religious Trust and therefore, the concurrent

findings given by the Courts below to the effect that the Plaintiff has contravened the provisions of Section 2(2) of the said Act is totally illegal.

24. On the side of the contesting defendants, it is urged that as per provision of Section 77 of the said Act, Civil Court is not having jurisdiction to entertain the present Suit.

.....
.....

29. It has already been pointed out that the authorities concerned have proceeded on the basis of Section 20-A by way of holding that the Plaintiff is a Religious Trust. In the instant case, absolutely there is no evidence for the purpose of coming to a conclusion that the people of the Plaintiff are professing a particular religion. Further the Plaint is not proceeded on the basis to the effect that the Plaintiff is a Religious Trust. Considering the fact that the Plaintiff is neither a Religious Institution nor a Trust, the entire approach made by the authorities concerned is totally erroneous.

30. The Courts below without considering the status of the Plaintiff and also without considering the applicability of Section 77 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, have erroneously non-suited the Plaintiff on the basis of the reasons mentioned supra and therefore, the concurrent findings given by the Courts below for non-suiting the Plaintiff are really perverse.

31. The Plaintiff has purchased the Suit property by virtue of Ex. A.2. Since the Plaintiff has purchased the Suit property by virtue of Ex. A.2 and since the Plaintiff is neither a Religious Institution nor Religious Trust and since the authorities concerned have unnecessarily taken the proceedings, this Court is of the view that the Civil Court is having power so as to grant the reliefs sought for in the Plaint. Under the said circumstances, the substantial questions of law settled in the present Second Appeal are really having substance and altogether the present Second Appeal deserves to be allowed."

18. In Rajaganapathy Ganesan v. Union of India [2011 (6) CTC 306], recovery proceedings initiated under the Income Tax Act was challenged and a similar defense was taken that the suit is barred by limitation. In those facts, the learned Single Judge of this Court has held that the suit is maintainable and the relevant paragraphs are extracted hereunder:-

> "11. A close reading of Section 293 would make it manifestly clear that a Civil Suit is barred only against an original order or a proceeding under the Act which is not conclusive. But in the case on hand, the Plaintiff has not challenged any such original order. The expression "original Order" denotes only an order of Assessment including the order of re-assessment as defined in Section 2(8) of the Income Tax Act.
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> 12. Now turning back to Rule 11(6) of Second Schedule to the Income Tax Act, it is crystal clear that it does not speak of any challenge to the original order of assessment or the order made by the Tax Recovery Officer on a claim made by a third party. This provision, instead, provides for a suit to establish the right, which he claims to the property in dispute.
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> 13. Thus, what is permitted under this rule is a civil suit at the instance of the claimant for the purpose of establishment of his right over the property and not a suit to challenge the order of the authority. If any such civil Suit is filed, the order of Tax Recovery Officer made on the claim shall, subject to the result of the suit, be conclusive. Therefore, in my considered opinion, Rule 86 of Second Schedule does not cover any order made on a claim under Rule 11 of Second Schedule. To put it precisely, such an order made on a claim application is not appeal able and so the bar contained in Section 293 of the Act is not applicable."

19. In the decision Karuppan (died) & others v. The State of Tamil Nadu and others [2013 (5) LW 76], relied on by the learned Additional Advocate General, 18(1) notification was published in the year 1974 and a fresh notification was issued in the year 1980, declaring some other land offered by the landowner. In pursuance thereto, assignments were made and a notification in Form (1) was issued by the Authorized Officer, fixing the compensation amount, that was challenged by the landowner in a civil suit. Notwithstanding the objections of the defendants, the suit was entertained and decided in favour of the landlord.

On the basis of the Decree, notification issued under Section 18 (1) was cancelled and a fresh notification was issued in the year 2006. The assignees in the earlier notification challenged the notification in the writ proceedings. While considering their case, it has been held by this Court that the civil Court lacks jurisdiction to entertain the suit and the said decision is factually distinguishable on facts. In the present suit, the prayer is to declare the right of the plaintiffs in the suit property. Hence, with great respect, this Court is not able to follow the decision referred by the learned Additional Advocate General.

20. It is appropriate to mention here that the plaintiffs in this case were not parties to the earlier proceedings initiated against the landowner under the Land Reforms Act and the present suit is not filed challenging the notification issued under Section 18 (1) of the Act. They approached the civil Court for declaration of their title over the property for the purchase made in pursuance of the notification issued under the Act. The Courts below having appreciated the entire evidence adduced by the parties, came to the conclusion that after declaring the land in S.No.252/2B as surplus, re-declaration of the land in S.No.252/2A17A as surplus by the Assistant Commissioner was done and that too without putting the parties on notice. It is settled law that the bar to the jurisdiction of the Civil Court would not apply in cases where the authorities act outside or in abuse of its power under the Act and the exclusion of the jurisdiction of the civil Court can have no application, where in the provisions of the particular Act has not been complied with or in confirmity with the fundamental principles of judicial procedure. In Ramakrishnan vs. Mayilsamy and Ors. [2007 (1) MLJ 72], this Court has held as follows:-

> "11. In the light of the above discussion, we now look into the questions of law raised by the appellant at the time of admission of this second appeal. In so far as the first substantial question of law is concerned, the powers of statutory authorities constituted under the Act are exercised in a summary manner and the claims of occupants are determined only incidentally and they cannot be equated with Civil Courts in respect of cases where they could do or the nature of relief that they could grant. The provisions relating to abolition and vesting of the property do not have the effect of obliterating or destroying such pre-existing rights. The manner in which authorities adjudicate such rights and the consequences of such adjudication disclose that they do not mean and even intend to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or

for that matter persons asserting competing claims, in their attempt to project a claim for patta. The jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which have, as their object and aim, to implement ryotwari settlement in the areas governed by them. It is well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved the existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings are also identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or court of competent jurisdiction."

21. Taking holistic view of the matter, the Courts below have held that the suit is maintainable. I concur with the decision of the Courts below and hence, the question of law is answered against the appellants.

22. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Subordinate Judge,
Namakkal.

2. The Principal District Munsif Court,
Namakkal.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.24393
+1cc to the Special Government Pleader, S.R.No.24504

S.A.No.547 of 2015 &
C.M.P.No.178 of 2016

MG(CO)
CS/18/11/2020