IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.10.2021

PRONOUNCED ON : 27.10.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.11694 of 2012 and
MP.No.1 of 2012

1. P.Devaraj
   rep. by power agent
   S.N.Rathinasami

2. K.Shanthi
   rep. by power agent
   S.N.Rathinasami ..Petitioners

Vs.

1. The Land Commissioner,
   Chepauk, Chennai 600 005

2. The Assistant Commissioner,
   (Land Reforms),
   Madurai

3. The Sub Collector, Palani,
   Dindugal District

4. P.Subbulan

(R3 impleaded as per order dated 15.03.2021
in WMP.No.4954 of 2021 in WP.No.11694 of 2012
R4 impleaded as per order dated 05.08.2021
in WMP.No.7632 of 2021 in WP.No.11694 of 2012) ..Respondents

PRAYER:
The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the first respondent RC.D1/R.P.No.5 of 2009 (L.Ref) dated 23.03.2012 quash the same and consequently direct the respondents to hold that there are no surplus lands.

For Petitioners : Mr.A.Sivaji

For Respondents

For R1 to 3 : Mr.S.Silambanan, Additional Advocate General Assisted by Mr.M.R.Gokul Krishnan, Government Advocate

For R4 : Mr.D.Srinivasaraghavan for Mr.L.Shaji Chellan

ORDER

The writ petition is filed to issue a writ of certiorarified mandamus calling for the records of the first respondent in RC.D1/R.P.No.5 of 2009 (L.Ref) dated 23.03.2012 and quash the same and consequently direct the respondents concerned to hold that there are no surplus lands.

2. The first petitioner purchased certain extent of lands by two registered sale deeds dated 16.09.2008. The first petitioner is the bonafide purchaser for value without notice of agricultural land ceiling proceedings. They were executed by one, K.Subramania Gounder who is the power of attorney of one D.P.Selvamuthu and his two daughters. Insofar as the second petitioner is concerned, she purchased to an extent of 0.02.0 hectares in survey No.334/1, 0.31.0 hectares in survey No.334/3A, 1.46.5 hectares in survey No.335/1 and 1.83.5 hectares in survey No.336/1 situated at Thumallapatti village by the registered sale deed dated 16.09.2008 vide document No.1450 of 2008. She also purchased another property to an extent of 3.47 hectares comprised in survey No.334/3B and 3.920 hectares in survey No.337 by another sale deed dated 16.09.2008. Thereafter the first petitioner conveyed to an extent of 2.58.0 hectares comprised in survey No.338 and 1.21.5 hectares in survey No.339 by the registered sale deed dated 10.11.2008 in favour of one, D.S.Natarajan. The second petitioner also conveyed 1.53.5 hectares in survey No.336/1 and 2.27.0 hectares in survey No.337 in favour of the said Natarajan for valid sale consideration. Thereafter, the patta was transferred in favour of the second petitioner for remaining land. The petitioners filed statutory revision on 06.03.2009 under Section 82 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by No.17 of 1970 (hereinafter called as 'the Act') before the first respondent .

2.1 In fact, the petitioners have purchased the subject property after verification of the encumbrance certificate and also legal opinion received from the authority concerned.

However, the proceedings under the Act was initiated against one, Valliammal who was holding more than the ceiling limit of 15 standard acres. Her husband had owned property to an extent of 58.47 acres after deducting 20 acres gifted to his daughter on 08.05.1970 as per Section 21-A of the Act. It was valid since it was gifted to unmarried daughter. In view of Section 7 of the Act, he is entitled to hold one acre of dry land over and above the ceiling of 15 standard acres. His wife namely, the said Valliammal is entitled to hold her own lands of 36.09 ordinary acres. So family consisting Palanisamy will be holding 0.302 standard acres only as surplus, if at all and not 37 acres. The said Valliammal got 36.90 ordinary acres by the registered sale deed dated 04.02.1970 executed by her son. Her husband was holding 58.47 ordinary acres as on 15.02.1970. Therefore, the land held by the Valliammal is less than 10 standard acres which is permissible under law. While the proceedings were initiated, her husband was alive and subsequently continued as against the said Valliammal. He died on 19.12.1970 leaving behind his two sons and two daughters. The said Valliammal, the sons and daughters are entitled to have equal shares. Therefore, while fixing the ceiling, the second respondent ought to have fixed the ceiling of the said Palanisamy as on 15.02.1970 the crucial date and fixed the ceiling. After his death, it devolves on his heirs equally. Therefore, the entire share cannot be treated as Valliammal's share. It devolves on all his five heirs who are class I heirs equally entitled to. Altogether, she is entitled to have 25 standard acres and as such the proceedings initiated and continued against her are illegal and liable to be set aside. Therefore, the second respondent illegally arrived at and declared that the said land is surplus. The procedure contemplated under Section 23 (2) of the Act was not followed and the land owners are still holding unencumbered lands and the same may be declared as surplus instead of declaring encumbered lands.

2.2 The land comprised in survey Nos.334/1, 334/3A, 334/3B, 335/1, 336/1, 333/1, 333/2 and 338 were the subject matter of attachment before judgment in civil court proceedings. In fact, there is charge over the said property by the Indian Bank, Palani Branch. Since the decree holder failed to execute the decree, steps were taken to raise attachment and ordered on 11.08.2003. All the attachments were raised and entered in the Sub Registrar's Office. After scrutinising the records along with other revenue documents, the petitioners herein have purchased the said properties. The said properties were also subject matter of the suit in OS.No.136 of 1998 on the file of the District Munsif Court, Palani for partition. In fact, the ex-tenants of the lands comprised in survey Nos.333 and 338 have relinquished their tenancy rights by executing the release deed in favour of the land owner as on 12.06.2003. Therefore, after scrutinising all the revenue records, the petitioners have purchased the subject land. Therefore, the petitioners or their vendors had absolutely no knowledge about the proceedings and no notice was served to them. The petitioners came to know about the proceedings only in the month of December 2008 and after obtaining details and filed revision in RP.No.5 of 2009. It was dismissed by order dated 23.03.2012.

3. Mr.A.Sivaji, the learned counsel for the petitioners would submit that the husband of the said Valliammal had not left any Will much less a Will dated 15.11.1970. If the existence of the said Will is proved in the manner known to law, then the said Valliammal had absolute rights over the property under the Will. On account of non existence of the Will, the respondents have to proceed as if the land of the said Palanisamy will devolve on all his legal heirs and not his wife alone. The entire claim based on oral Will is not permissible in law. The Will in question is not a registered Will. Hence, in the absence of the Will, the second respondent has no jurisdiction to proceed against the land owner. However, the respondents proceeded on the basis of the Will dated 15.11.1970. As per Section 2 (h) of the Indian Succession Act, 1925, a Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. Under Sections 65 and 66 of the said Act, oral Will is permissible for soldiers, airman, etc. subject to the conditions contemplated therein. Therefore, the deceased Palanisamy will not come within the definition of the said Section for claiming under the Will. Hence, in the absence of the document, it cannot be presumed that there is a Will and the said Valliammal succeeded to her husband's estate absolutely. The Will shall be attested by two or more witnesses. The procedure for this attestation is also provided under Section 63 of the said Act.

3.1 He further submitted that notice under Section 18(1) was served on the son of the said Valliammal. It is not valid in law and contrary to the Rule 8(d) of the Rules. The second respondent has been conferred power to decide the title issues under Section 11 of the Act after notice to the parties concerned. The aggrieved party, if any, can also have right to challenge the same before the Land Tribunal. It was not duly followed by the second respondent and the second respondent usurped the power of the civil court and decided the title issues contrary to the Act. In fact, Section 13 of the Act stipulates that the second respondent has to exclude the lands covered by title disputes. Under these circumstances, the first respondent cannot hold that the land vested with the Government by the proceedings initiated by the second respondent. When there is no such document is available i.e. Will for the husband of the said Valliammal i.e. Palanisamy, the second respondent has no jurisdiction to initiate proceedings under the Act.

4. The respondents 1 to 3 filed counter and Mr.S.Silambanan, Additional Advocate General submitted that the petitioners are being the subsequent purchasers of the subject property have no locus to question the declaration of surplus from the holdings of the land owner i.e. Valliammal. They have purchased the subject property only in the year 2008 which have been already vested with the Government free from all encumbrances as per Section 18(3) of the Act as early as on 13.12.1978. When the subject land became Government land, it could not be the subject matter of any conveyance by private individuals in favour of others and such transaction is wholly void. The petitioners had purchased the land after 30 years of the proceedings and vested with the Government. Therefore, the petitioners are not entitled for notice. In fact, the land owners agitated the declaration before the Land Commissioner under Section 82 of the Act and also before the Tamilnadu Land Reforms Special Appellate Tribunal under Section 83 of the Act. Both were dismissed and aggrieved by the same, the land owner did not prefer any appeal and it became final and conclusive. Therefore, the petitioners cannot step into shoes of the land owner and question the legality of the proceedings which was concluded as early as in the year 1978.

4.1 He further submitted that only the family member who held lands as on the date of commencement of the Act i.e. on 15.02.1970 can get entitlement of 10.000 standard acres as 'Sreedhana'. Since she acquired land only on 02.05.1970 and as such she is not entitled for 'sreedhana'. Regarding the existence of the Will, the said Valliammal herself never disputed the existence of the Will and in fact raised a plea before the Land Commissioner to treat the Will dated 15.11.1970 as null and void and the same was rejected by the Land Commissioner as well as the Tamil Nadu Land Reforms Special Appellate Tribunal. In fact, the two sons of the said Valliammal, after death of their father Palanisamy filed objection and stated that the said Palanisamy Gounder executed Will dated 15.11.1970 in favour of their mother Valliammal and the said submission was duly considered by the authorised officer and the extent was deleted from their holdings. Therefore, it is made clear from the pleadings of the erstwhile land owner and the sons of the Palanisamy Gounder that there was Will dated 15.11.1970 in favour of the said Valliammal and as such the petitioners are being subsequent purchasers have no locus to challenge the existence of the said Will. Section 23 will apply only to the transactions effected after the notified date and before the notification under Section 18(1) of the Act. Acceptance of alternate lands cannot be done after the lands vested with the Government as per Section 18(3) of the Act.

5. Mr.D.Srinivasaraghavan, the learned counsel for the fourth respondent would submit that the fourth respondent is one among the assignee of the surplus land declared by the Government. The petitioners are not erstwhile owners of the land in issue and they are absolutely strangers. They are subsequent purchasers who have no locus to question the declaration of surplus lands from the holdings of the erstwhile land owner i.e. Valliamml since the land was already vested with the Government free from all encumbrances as early as on 13.12.1978. After period of three decades, it cannot be challenged by the petitioners who are being the subsequent purchasers. Originally, the land admeasuring 9.325 standard acres owned by the said Valliammal was declared as surplus under the Act. All the mandatory requirements were complied with by the authorities and the notification under Section 18 of the above said Act was published in the Tamilnadu Government Gazattee dated 13.12.1978. In fact, she filed revision before the Land Commissioner under Section 82 of the Act in RP.No.40 of 1980 challenging the said notification issued under Section 18(1) of the Act. It was dismissed and confirmed the declaration as valid one. Aggrieved by the same, she also preferred Special Revision Petition in SRP.No.34 of 1992 before the Tamilnadu Land Reforms Special Appellate Tribunal and the same was dismissed. Thus, the declaration of surplus land became final. Suppressing all those facts, the petitioners have now challenged the proceedings in the present writ petition. After the declaration of surplus, assignment of those lands to the eligible poor were initiated under the Tamilnadu Land Reforms (Disposal of Surplus Land) Rules 1965. The fourth respondent applied to the Special Tahsildar (Land Reforms), Dindigul to assign the surplus land considering his family circumstances. He had participated in the enquiry of assignment of land. He was assigned with 77 cents of land in survey No.334/3A in Thumbalapatti Village, Palani, Dindigul District by the proceedings dated 30.08.1980, and totally 36.09 acres of land in various survey Nos. were also assigned to 37 persons by the same proceedings including the fourth respondent. He was also informed that after disposal of the writ petition, he would be issued patta for the said assigned land.

6. Heard, Mr.A.Sivaji, the learned counsel for the petitioner, Mr.S.Silambanan, Additional Advocate General appearing for the respondents 1 to 3, and Mr.D.Srinivasaraghavan, the learned counsel for the fourth respondent.

7. Originally the subject land was owned by one, Valliammal. Her husband Palanisamy Gounder acquired land to an extent of 78.47 ordinary acres equivalent to 20.302 standard acres through the partition made among himself and his two sons in the year 1964. She also acquired the property to an extent of 36.09 ordinary acres equivalent to 9.022 standard acres through the gift deed executed by her son on 04.02.1970 registered on 02.05.1970. Thus, the holdings of the family of the Palanisamy Gounder i.e. as on 15.02.1970 in Section I - 78.47 ordinary acres and in Section VI - 36.09 ordinary acres. He gifted to an extent of 20.00 ordinary acres equivalent to 5.000 standard acres of land in favour of his unmarried daughter Selvam through document No.779 of 1970 dated 08.05.1970. The said transaction was attracted under Section 21-A of the Act and as such it was excluded from the holdings of the said Palanisamy Gounder. On 19.12.1970, he died leaving the remaining properties in favour of his wife through the Will dated 15.11.1970. Accordingly under Section I, the properties received by her through her husband Will dated 15.11.1970 to an extent of 58.47 ordinary acres and under Section VI through settlement deed dated 04.02.1970 executed by her son to an extent of 36.09 ordinary acres.

8. The respondents after following the procedure laid down under the Act, draft statement under Section 10(1) of the Act was published in the Tamilnadu Government Gazattee dated 03.03.1976 proposing to declare to an extent of 37.00 ordinary acres equivalent to 9.325 standard acres as surplus. It was served on her on 21.03.1976. She raised objections and after considering the said objections, an order under Section 10(5) of the Act was passed on 15.09.1976. It was duly served on her on 20.09.1976. Thereafter final statement under Section 12 of the Act was published in the Tamilnadu Government Gazattee dated 31.08.1977. It was duly served on her on 28.12.1977 followed by the notification under Section 18(1) of the Act published in the Government Gazattee dated 13.12.1978. It was served on the son of the land owner on 26.06.1979. Aggrieved by the same, land owner i.e. Valliammal filed revision petition before the Land Commissioner under Section 82 of the Act. In fact, while pending the said appeal, she also filed writ petition before this Court in WP.No.769 of 1981 for direction directing the Land Commissioner to dispose of her revision. As directed by this Court, Land Commissioner dismissed the revision in RP.No.40 of 1980 by order dated 25.04.1981. Aggrieved by the same, she filed writ petition before this Court in WP.No.7739 of 1981 and order passed by the Land Commissioner was set aside and remanded back to the Land Commissioner with direction to dispose of the same on merits. Again, the revision petition filed by her was restored and the revision had been taken up for enquiry. She

raised grounds that Will dated 15.11.1970 executed by her husband may be treated as null and void and the property may be treated as devolving on her and her two daughters into 1/3 share each. Her husband died on 19.12.1970 leaving the property admeasuring 58.47 acres in favour of the said Valliammal through Will dated 15.11.1970. In the said Will, there is no condition that the land has to be settled in favour of her two daughters.

9. Thereafter, the said revision was dismissed and aggrieved by the same, she filed Special Revision Petition before the Tamilnadu Land Reforms Special Appellate Tribunal and the same was also dismissed by order dated 20.08.1992 in SRP.No.34 of 1992. After dismissal of the Special Revision Petition, assignment proceedings were initiated and the lands were assigned to 37 persons on 30.08.1980 as per the provisions contained under the Tamilnadu Land Reforms (Disposal of surplus land) Rules, 1965. While so, the petitioners have purchased the subject land as stated supra and challenged the declaration proceedings against the said Valliammal under Section 82 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 before the first respondent.

10. The learned counsel for the petitioner mainly contended that the said Valliammal is entitled to hold the above land as 'sreedhana' is devoid of merits as provisions under Section 3 (42) of the Act defines 'Sreedhana' to mean any land held on the date of commencement of this Act by any female member of a family in her own name. It has given a wide scope to have any land registered in the name of any female member of a family as on the date of commencement of the Act. Therefore, the expression 'sreedhana' land refers only to the land held by a female on the date of commencement of the Act i.e. 15.02.1970 and not to land inherited by her or acquired by her as bequests at any subsequent point of time. The said Valliammal acquired an extent of land admeasuring 36.09 ordinary acres through the gift deed executed by her son dated 04.02.1970. Therefore, she is not entitled to hold the lands as 'sreedhana'. Likewise, he also raised another ground that on the death of her husband on 19.12.1970, the property devolved on his two sons and two daughters along with the said Valliammal who is being the wife. If the property of her husband is divided into five shares on 19.12.1970, the extent devolves on the sharers will be less than the ceiling limit has no force, since the husband of the land owner died on 19.12.1970 leaving certain properties to an extent of 58.47 acres in favour of the said Valliammal through Will dated 15.11.1970. In fact, she herself stated in her affidavit before the Land Commissioner dated 13.11.1979 that after demise

of her husband, he had left unregistered Will dated 15.11.1970 bequeathing his landed property in her favour. Therefore, the first respondent rightly dismissed the revision petition filed by the said Valliammal and declared as surplus by way of notification under Section 18(1) of the Act on 13.12.1978.

11. Thereafter, the entire land was declared as surplus and vested with the Government free from all encumbrances. The Government also had taken proceedings under the Tamilnadu Land Reforms (Disposal of Surplus Land) Rules, 1965 to assign the lands and the lands were assigned to eligible persons. Admittedly, the petitioners being purchasers of the land which are vested with the Government as early as during the year 1978. Therefore, they have no locus to challenge the declaration of surplus from the holdings of the said Valliammal.

12. As stated supra, the said Valliammal was given reasonable opportunity at every stage of proceedings and in fact, she also had challenged the proceedings in the manner known to law and failed. That apart, the petitioners have purchased the subject property in the year 2008 and they have challenged the publication of notification under Section 18(1) of the Act dated 13.12.1978 after three decades.

13. In view of the above, this Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Land Commissioner,
   Chepauk, Chennai 600 005

2. The Assistant Commissioner,
   (Land Reforms),
   Madurai

3. The Sub Collector, Palani,
   Dindugal District

+1CC to Mr.A.Sivaji, Advocate, Sr.No.55466
+1CC to Mr.L.Shaji Chellam, Advocate, Sr.No.55185

WP.No.11694 of 2012

RLD (CO)
K.RK. (17.11.2021)