IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NOS.1219 AND 1220 OF 2011
AND
M.P.NO.1 OF 2011 IN BOTH W.A'S.

1. Pennarasi (died) ... Appellant/Petitioner in W.A.No.1219 of 2011

2. Tamilarasi

3. Bhuvaneshwari

4. Thiruvenkadasami

5. Tamilselvan

6. K.Ramadevi

7. K.Gangaparameshwari ... 2 to 7 Appellants in W.A.No.1219 of 2011

(Appellants 2 to 7 were substituted in the place of deceased sole appellant vide order dated 13.10.2014 made in M.P.No.1 of 2014 in W.A.No.1219 of 2011)

1. Veluthai

2. Kuzhanthai Velayutha Balasubramanian

3. M.Jeyakumar

4. Visalakshi ... Appellants/Petitioners in W.A.No.1220 of 2011

.Vs.

1. The Land Commissioner,
Land Reforms,
Chennai - 5.

2. The Land Tribunal,
   Land Reforms,
   Chennai - 5.

3. The Assistant Commissioner,
   Land Reforms,
   Madurai. `... Respondents/Respondents in Both Appeals

PRAYER IN W.A.NO.1219 OF 2011:-

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 07.06.2011 made in W.P.No.8603 of 2004 by a learned Single Judge of this Court.

PRAYER IN W.P.NO.8603 OF 2004:-

Writ Petition is filed for the issuance of Writ of Certiorarified Mandamus to call for the records and set aside the orders of the first respondent passed in D1/RP.No.8/2000 (L.Ref) dated 07/12/2000 and to direct the respondents to consider the grant of exemption and exclusion for the lands claimed and also to direct the respondents to exclude the lands belonging to Chellammal.

PRAYER IN W.A.NO.1220 OF 2011:-

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 07.06.2011 made in W.P.No.8609 of 2004 by a learned Single Judge of this Court.

PRAYER IN W.P.NO.8609 OF 2004:-

Writ Petition is filed for the issuance of Writ of Certiorarified Mandamus to call for the records and set aside the orders of the first respondent passed in D1/RP.No.5/2000 (L.Ref) dated 13/09/2000 and also to set aside the final statement published in Tamil Nadu Government Gazette under Section 12, dated 24/11/1999 and to direct denova enquiry and to direct the respondents to redetermine the holding of the petitioners after granting exemption and exclusion etc.

(In both W.A's)

For Appellants : Mr.Suresh Kumar
For M/s.K.M.Vijayan Associates

For respondents : Mr.T.Arunkumar
Government Advocate

COMMON JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

These Writ Appeals have been filed against the Common Order dated 07.06.2011 made in W.P.No.8603/2004 and W.P.No.8609/2004, by a learned Single Judge of this Court.

2. The brief facts of the case in W.A.No.1219/2011 is as follows:

(a) One Kandasamy Gounder married Nachammal, Muthammal and Chellammal. Nachiammal died without any issue. Thereafter, Muthammal and her son also died. Subsequently, Chellammal, 3rd wife alone was alive and through the 3rd wife Chellammal, one daughter by name Valliammal was born to Kandasamy Gounder. She married S.Meganatha Sundaraswamy Gounder to whom Pennarasi, the deceased 1st appellant was born. The said S.Meganatha Sundaraswamy Gounder and his daughter Pennarasi were holding the following acres of lands in Coimbatore and Madurai District on 06.04.1960:

	Ordinary acres	Std. Acres
Sri.S.Meganathasundarasami Gounder	172.55	54.066
Section I Property		
Smt.Pennarasi		
d30.Sri S.Meganathasundarasami		
Gounder (unmarried on 6.4.1960		
Sec.VI Property	142.06	37.517

In view of the fact that Sections I and VI properties were more than the ceiling area of 30.000 and 10.000 standard acres respectively, a Draft Statement under Section 10(1) was published in the Fort St. George Gazette dated 27.4.1966. A copy of the Draft Statement u/s.10(1) together with No.7 notice were sent to Sri.S.Meganathasundarasami Gounder and Smt.Pennarasi for service. They were served on 29.5.1966 and 15.8.1966 respectively. Thereafter, the deceased 1st appellant's father S.Meganathasundarasami Gounder filed an objection on 26.07.1966 to the Draft 10(1) Statement, requesting to grant exemption for the entire extent of 46.26 acres in S.Nos.135/1 and 157/1 of

Maivadi Village under Section 74 of the Madras Land Reforms Act, 1961. It is also the claim of the Meganathasundarasami Gounder that he had no right over the lands notified as surplus in the holdings of Smt.Pennarasi in Sec.VI property as they were given to her by his mother-in-law as sreedhana lands. Similarly, the deceased 1st appellant Pennarasi also filed an objection to the draft 10(1) statement through her counsel on 18.9.1966 requesting to include her agricultural holdings with the unit of her husband in Palani Taluk and to declare the surplus lands in her holdings along with her husband's holdings in Madurai District.

(b) Thereafter, Meganathasundarasami was asked to appear for the enquiry on 20.08.1966 and accordingly, he appeared on the said date with a request to grant exemption under Section 74 of the Act, for the extent of 46.26 acres in S.Nos.135/1 and 157/1 of Maivadi Village, Udumalpet Taluk and he was granted exemption under Section 74 of the Act for an extent of 50.00 ordinary acres or 12.500 standard acres for the purpose of grazing. Since there is no provision in the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (hereinafter referred to as, 'the Act') for the grant of exemption for more than 50 acres under Section 74 of the Act, the matter was closed and his request under Section 27 of the Madras Land Reforms Act, for livestock breedings was also rejected by the Madras Land Board by order dated 8.12.1965.

(c) So far as the claim of Pennarasi was concerned, she was asked to appear on 4.10.1966 and accordingly, she appeared through her Counsel on 4.10.1966 with a request to include her hoardings with her husband's holdings at Palani Taluk, Madurai District. Since the said Pennarasi was unmarried on 06.04.1960 and she was a member of her father's family, her request was rejected and thereafter, it was found that there was a surplus 11.566 standard acres of land in the holdings of Sri.S.Meganathasundarasami Gounder and 27.517 standard acres of land in the holdings of Smt.Pennarasi. Accordingly, the Authorized Officer passed an order dated 13.02.1967.

(d) As against the order dated 13.02.1967 passed by the Authorized Officer, a revision was filed by them. The Land Commissioner took up the matter. The contentions raised before the Land Commissioner were as follows:

Contention (1) : That exemption and exclusion for the following lands are granted, then there will be no surplus in her holding:

KOTTAITHURAIPATTI VILLAGE

Sl.No.	S.No.	Extent
1.	490/1A	4.54 Acres Fuel Trees
2.	490/1	5.06 Acres Fuel Trees
3.	501/2B	5.75 Acres Fuel Trees
4.	493/1	2.66 Acres Coconut Trees
5.	499/2A	0.56 acres
6.	500/1	0.35 Acres Tank
7.	491/3	2.50 Acres Tank
8.	492/2	3.97 Acres Tank
9.	493/3	6.96 Acres Tank

MELKARAIPATTI VILLAGE

Sl.No.	S.No.	Extent
1	393	3.12 Acres Rocky
2	395	2.53 Acres Rocky
3	397	1.41 Acres 1 Not a land as defined u/s.3(22) of the Act
4	398/1	11.69 Acres ''
5.	702/2	0.30 Acres ''
6	708/2	7.86 Acres - Unfit for agricultural use
7	384/1	12.17 Acres Rocky
8.	707/1B	0.87 Acres Rocky

Contention II : that the following lands do not belong to Tmt.Pennarasi and they belonged to Chellammal, has to be deleted:

KOTTAITHURAI VILLAGE

Sl.No.	S.No.	Extent
1.	466/3	9.95 Acres
2.	474	4.31 Acres
3.	476/1	2.86 Acres
4.	498/2	22.70 Acres
5.	497	10.51 Acres
	Total	50.38 Acres

RAJAMPATTY VILLAGE

Sl.No.	S.No.	Extent
1.	5	2.26 Acres
2.	14/1	3.78 Acres
	Total	6.04 Acres

When the revision was filed before the Land Commissioner, Chepauk, Chennai-5 taking up two contentions, namely, (a) exemption and exclusion for fuel trees and coconut trees, rocky, land unfit for agricultural purpose are also granted, then there would be no surplus in her holdings and (b) that the lands standing in the name of Chellammal, grandmother of Pennarasi are also considered on the basis of the decree and judgment passed by the civil court in O.S.No.935/1971 dated 24.11.1972 and the patta issued by the revenue authorities in some of the survey numbers, these lands ought to be deleted.

(e) The Land Commissioner finding no merit on either of the contentions raised rejected the revision as untenable. One of the reasons cited to reject the contention is that when the claimants are entitled to get exemption only to the maximum extent of 50 acres that was granted. Therefore, the first contention was found to be meritless. Coming to the second contention that Chellammal was able to get decree and judgment in O.S.No.935/1971 dated 24.11.1972 before the District Munsif Court, Palani, it was held that by virtue of Section 23 of the Act, any alienation or transfer effected on or after the notified date and before the publication of a notification under sub-section (1) of section 18 shall be void.

(f) In the present case, since the said Chellammal, grandmother of Pennarasi got a decree only on 24.11.1972 in O.S.No.935/1971, the said finding also could not be found fault with. Inasmuch as, the learned Commissioner has rightly appreciated the legality under Section 23 of the Act while dealing with the second contention. However, the matter was taken up before the Land Reforms Special Appellate Tribunal, Madras-600 004 in M.P.80/2001 in SRP.26/2001 and by order dated 18.10.2001, the Tamil Nadu Land Reforms Special Appellate Tribunal also confirmed the order passed by the Land Commissioner in Revision and thereafter, the appellant took up the matter before this Court.

(g) The learned Single Judge considering the claim made by the 1st appellant came to the conclusion that the claim of the appellant that the question of exemption of the lands was never raised at the time of the earlier enquiry and the saplings were newly planted with a view to get over the Ceiling fixed under the Act and the findings recorded by the revisional authority do not call for any interference. Against which the present Writ Appeal has been filed.

3. During the pendency of the present Writ Appeal, since the 1st appellant died, her legal representatives were substituted in her place.

4. Learned Counsel for the appellants heavily contended that when the deceased 1st appellant's grandmother Chellammal was having 56 acres of land out of 142.06 acres belonging to Kandasamy, indeed the rest of the extent of the land, namely, 86.06 acres of the land will be alone with Pennarasi. Explaining further, learned Counsel for the appellants stated that originally Kandasamy Gounder had 142.06 acres of land. Although he married three wives, namely, Nachammal, Muthammal and Chellammal, Nachammal died without any issue whereas Muthammal although had a son, both of them died before 1940. Therefore, the third wife survived and she gave birth to a only daughter Valliammal who also has given birth to the present deceased 1st appellant Pennarasi. Hence, as a matter of fact, when Chellammal, grandmother of Pennarasi was in possession of 56 acres of land out of 142.06 acres, after the death of her mother Valliammal who predeceased Chellammal, she is entitled to have 86.06 acres and then 56 acres of land cannot be put together in the holdings of Pennarasi. If the lands belonging to Chellammal to the extent of 56 acres are clubbed with Pennarasi, the appellants will be put to huge prejudice.

5. Admittedly, Chellammal filed a suit in O.S.No.935/1971 before the District Munsif Court, Palani and also got a decree and judgment dated 24.11.1972. Therefore, the doubt and suspicion raised by the respondents is that the decree and judgment obtained by Chellammal grandmother of the deceased 1st appellant cannot be included is unjustified and far from acceptance. But when we specifically posed a question to the learned Counsel for the appellants to accept his contention whether the said Chellammal has been issued with any revenue patta by competent officers to the extent of 56 acres of land, he replied to us in negative stating that although repeated efforts were taken they were unable to produce that clearly shows that if Chellammal grandmother of Pennarasi was issued with patta to the extent of 56 acres of lands that could have been placed before us or could have been placed before the revenue authorities or before the learned Appellate Tribunal which has not been done.

6. Surprisingly, even after listing the case before the authorized officer, the revenue authority and also the Special

Tribunal, and the learned Single Judge of this Court and even before us, not producing the patta to the extent of 56 acres clearly shows that there is no patta issued and even though the appellants are ready to produce any patta in the name of Chellammal the decree and judgment passed by the Civil Court in O.S.No.935/1971 are also hit by Section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which is extracted as follows for quicker reference:

''[23. Transfer or sub-division made or effected before the publication of notification under sub-section (1) of Section 18:- (1) Subject to the provisions of section 20 for the purpose of fixing, for the first time (after the date of the commencement of this Act], the ceiling area of any person holding land on the date of the commencement of this Act in excess of [15 standard acres]--

(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 dated and before the publication of a notification under sub-section (1) of section 18 shall be, and shall be deemed always to have them, void and accordingly, the authorized officer shall calculate the ceiling area of such person as if no such transfer or sub-division had taken place.

Explanation—This sub-section shall, on and from the 15th day of February 1970, have effect as if for the figures and words ''30 standard acres'', the figures and words ''15 standard acres'' had been substituted.

(2) It shall be the duty of the authorized officer to include the land so transferred or sub-divided, within the ceiling area of the transferor or the person who held the land immediately before such sub-division, as the case may be, as if no such transfer or sub-division had taken place.]''

A perusal of the above provision and the argument advanced by the learned Counsel for the appellants that the deceased 1st appellant herein is the only owner of the land to the extent of 56 acres has to be simply repealed for the reason that the decree and judgment passed in O.S.No.935/1971 dated 24.11.1972 are clearly and explicitly hit by Section 23 of the Act.

Therefore, we are unable to find any infirmity or error in the of the order passed by the revenue authority and the learned Single Judge.

7. Insofar as the W.A.No.1220/2011 is concerned, the appellants are Mrs.Veluthai and her daughter and sons. By the impugned order dated 13.09.2000, the 1st respondent refused to entertain the revision petition under Section 82 of the Tamil Nadu Land Reforms (FCL) Act stating that the holdings of the family will be determined only as on 06.04.1960, namely, the commencement of the original Act and at that time since all the land owners were minors, they will form part of the original family unit. Since they cannot have a separate unit in the ancestral property, they cannot be assessed as a separate unit. The correct extent of the land held by Pennarasi daughter of Valliyammal was 142.06 equivalent to 37.517 standard acres. It was also stated that one of these issues was raised at the time of enquiry under Section 10(5). Since the writ petitioner herself asked for exemption under Section 74 to an extent of 50 acres at the stage of enquiry proceedings and also got the same, no such exemption was pleaded at that time. Further, the usage on the notified date 06.04.1960 is relevant and the lands are capable of being brought under cultivation and the fact that there was coconut thope cannot be considered as they were only new saplings and hence, the exemption on that ground also cannot be accepted. Therefore, the learned Single Judge while confirming the order of the 1st respondent, namely, the Land Commissioner, Land Reforms, Chennai-5 in W.P.No.8609/2004 by a Common Order, dismissed the same in which we do not find any infirmity or illegality to interfere with the same.

8. In the result, both these Writ Appeals fail and the same are, accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Land Commissioner,
   Land Reforms,
   Chennai - 5.

2. The Land Tribunal,
   Land Reforms,
   Chennai - 5.

3. The Assistant Commissioner,
   Land Reforms,
   Madurai.

+2ccs to M/s.K.M.Vijayan Associates, Advocate, S.R.No.38314
+1cc to the Government Pleader, S.R.Nos.38470 & 38471

W.A.NOS.1219 AND 1220 OF 2011

RGN(CO)
PBS/11/02/2022