IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.6254 OF 2017

1. Samuel Koilpillai
2. Imanuel
3. T.Soundarajan
4. J.Thanga Prabhakaran ... Petitioners

-Vs-

1. The Land Commissioner
Chepauk, Chennai – 600 005.

2. The Joint Commissioner
(Land Reforms)
Tirunelveli. ... Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ Certiorarified Mandamus calling for records and order dated 29.03.2016 in R.P.Nos.25 and 26 of 2013 on the file of the first respondent and quash the same as illegal and further directing the respondents to include the lands purchased by the petitioners in the retainable holdings of the land owner under Section 23(2) of the Tamil Nadu Land Reforms (Fixation of Ceiling) Act, 1961.

For Petitioners : Mr.J.Antony Jesus

For Respondents : Mr.Richardson Wilson
Government Advocate.

ORDER

This Writ Petition has been filed to call for the records and order dated 29.03.2016 in R.P.Nos.25 and 26 of 2013 on the file of the first respondent and quash the same as illegal and further directing the respondents to include the lands purchased by the petitioners in the retainable holdings of the land owner under Section 23(2) of the Tamil Nadu Land Reforms (Fixation of Ceiling) Act, 1961.

2. The case of the petitioners is that the father of the petitioners 1 & 2 and the petitioners 3 & 4 have purchased their respective property in the following manner :-

Sl. No.	Sy.No & Extent	Vendor	Vendee	Doc. No.	Date
1.	704/A/1B-2.42 704/A/3-A-11-16 Total 13.58 acres	P.S.Marthandam (Guardian) P.N.Marthandam (Minor)	Ganamuthu Nadar	519/1967	22.02.1967
2.	704/A/1B-2.42 704/A/3-A-11-16 Total 13.58 acres In which undivided legal heirs of Ganamuthu ½ share 6.79 acres	1.Suyambu Nadar 2.Chelladurai Nadar 3.Thayammal	Duraisamy Nadar	317/1969	31.01.1969
3.	704/A/1B-2.42 704/A/3-A-11-16 Total 13.58 acres in which delivered ½ share 6.79 acres	Duraisamy Nadar	Gnana Theepa	2447/2002	29.06.2002

Sl. No.	Sy.No & Extent	Vendor	Vendee	Doc.No.	Date
4.	704/A/1B-2.42 704/A/3-A-11-16 Total 13.58 acres in which delivered ½ share 6.79 acres	Gnana Theepa	Sundar Swamidass (Father of the petitioners 1 & 2)	1607/2005	20.10.2005

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2.	704/A/1B-2.42 704/A/3-A-11-16 Total 13.58 acres In which undivided legal heirs of Ganamuthu ½ share 6.79 acres	1.Suyambu Nadar 2.Chelladurai Nadar 3.Thayammal	1. T.Soundarajan 2. Thanga Prabakaran (the petitioners 3 & 4)	1788/2007	03.09.2007

3. According to them, after purchase of the properties, they are enjoying the properties by paying kist prior to the date of the assignment without any interruption. These lands were wrongly included and declared as surplus in the year 1973. The Assistant Commissioner of Land Revenue, Tirunelveli, arrived surplus from the holding of the land owners including the sold out lands and published the notification under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (herein after called as "the Act") in Tamil Nadu Government gazette dated 28.03.1973. Therefore, it was challenged before the first respondent in revisions by the petitioners in R.P.Nos.25 & 26 of 2013. The first respondent dismissed the revisions by an order dated 29.03.2016 and as against which, the present Writ Petition.

4. The learned counsel appearing for the petitioners would submit that the impugned notification dated 28.03.1973 suffers from serious procedural irregularities, material flaws and it is totally against the mandatory provisions prescribed in the Act. It is the duty of the respondents to verify the encumbrance of the land and to inspect the lands, which are going to be declared as surplus. If any interested person are involved in the above lands, they have to be given an opportunity to represent their interest. Though the land were declared as surplus in the year 1973, the charges have not been effected by the respondents up to the years 2006. In fact, the petitioners have verified the revenue records and the encumbrance certificate before purchasing the subject properties.

4.1. He further submitted that as contemplated under Section 23(2) of the Act a statutory mandate is imposed on the respondents to include the land sold by the land owners to the third parties, after the commencement of the Act, in the year 1967, though registered documents and the notification under Section 18(1) of the Act was published in the year 1973. Therefore the entire proceedings is hit by Section 23(2) of the Act. The said mandatory provisions are violated and the statutory notification should be served on the interested persons. The purchasers are being interested persons, they ought to have served with notice as prescribed under the Act. Further, the first respondent without considering those aspects dismissed the revisions on the ground of limitation. Therefore, there is no reason for not to include the sold out land in the retainable land of the land owner and the entire process is contrary to law and liable to be set aside.

5. Per contra, the learned Government Advocate appearing for the respondents submitted that all the procedures were duly followed before the issuance of notice under Section 18(1) of the Act. The land ceiling process were initiated against holding of one P.S.Marthandam, since his holding more than the ceiling area of 30.000 standard acres as on 06.04.1960 under the Act. The total holding of the land owner was determined as 67.681 standard acres and the draft statement under Section 10(1) of the Act was Published in the Tamil Nadu government gazette in the year 1969. It was published as contemplated under Rule 12 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules 1962 (herein after called as “Rules”). In fact, against the publication of draft statement, the persons who purchased the land from the said P.S.Marthandam raised objections on 16.02.1970 stating that they purchased the land ad measuring 10.60 acres by the registered sale deed dated 20.11.1968 and requested to delete the said lands from the surplus portion.

5.1. Likewise, one Thavasi Muthu Nadar also filed his objections on 09.02.1970 and requested to delete the lands which were purchased by him by the registered sale deed dated 20.11.1968 from the surplus portion. It shows that the draft statement was published properly. The vendors of the petitioners' land had not filed any objections against the proposed declaration of the subject land. Thereafter, the order was passed under Section 10(5) of the Act on 23.02.1972. The final statement under Section 12 of the Act published in the Tamil Nadu Government gazette on 12.04.1972. The final statement under Section 12 of the Act was published in various places. Thereafter, the notification under Section 18(1) of the Act was published in government gazette dated 20.03.1973.

5.2. He further submitted that after land ceiling proceedings, the assignment proceedings were initiated and the subject lands were assigned to three persons on 19.08.1975 and subsequently, it was cancelled on 26.03.1981 on the ground of non-remittance of the land value. Thereafter, the subject lands were re-assigned to five persons on 31.03.1982 and subsequently, the same was cancelled on 04.07.2005 on the very same ground. Thereafter, the subject lands were assigned to 13 persons on 02.01.2006 and all the assignee have remitted the land value and deed in Form F were also executed in favour of them. Therefore, the first respondent rightly rejected the revision petitions of the petitioners.

6. Heard, Mr.J.Anthony Jesus, learned counsel appearing for the petitioners and Mr.Richardson Wilson, learned Government Advocate appearing for the respondents.

7. The father of the petitioners 1 & 2 was purchased the subject land by the registered sale deed dated 20.10.2005 and the petitioners 3 & 4 had purchased the subject property by the registered sale deed dated 03.09.2007. The first sale was happened from the original owner on 22.02.1967 and subsequently, there were various transactions. On perusal of the records revealed that, the land ceiling proceedings were initiated against the holding of one P.S.Marthandam Pillai and published draft statement as contemplated under Section 10(1) of the Act. It was also published in the placed as contemplated under Rule 12 of the Rules on 02.01.1970, 07.01.1970 and 18.01.1970.

8. In fact, some of the purchasers, who purchased the lands from the original owner raised objections and requested to delete their lands purchased by them from the surplus portion. Even then, the original vendors of the petitioners did not raise any objections, though all the publication were made properly. Therefore, the order under Section 10(5) of the Act was passed on 23.02.1972. Final statement under Section 12 of the Act was published in the government gazette on 12.04.1972 and it was also published in various places on 29.05.1972 and 11.06.1972. Finally the notification under Section 18(1) of the Act was published in the government gazette on 20.03.1973, declaring that the extent of 57.85 acres including the subject lands to and extent of 2.24 acres in S.F.No.704/A1B and 11.46 acres in S.F.No.704/3A. The subject lands were assigned to third parties and they also remitted the land cost. Thereafter, the deed in Form F were executed in their favour.

9. The learned counsel appearing for the petitioners would submit that the second respondent ought to have included the subject lands in retainable area of the land owner and as such, the entire proceedings is directly hit by Section 23(2) of the

Act. It is seen from the Section 23(1) of the Act that the transfer or sub division made or effected on or after the notified date and before the publication of the notification under Section 18(1) of the Act, 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 transactions or subdivision had been taken place.

10. In the case on hand, the petitioners have purchased the subject lands on 20.10.2005 and 03.09.2007. Though the original vendors viz., one Ganamuthu Nadar purchased the subject properties on 22.02.1967, he ought to have raised objections like other purchasers, immediately after draft statement published under Section 10(1) of the Act dated 10.12.1969. Admittedly, the said Ganamuthu Nadar or the subsequent purchaser viz., Duraisamy Nadar had not raised any objections, in respect of the subject lands.

11. Further, the petitioners have filed revisions before the first respondent under Section 82 of the Act against the notification under Section 18(1) of the Act dated 28.03.1973. The Rule 12 of the Rules contemplates the time limitation for presenting application for revision before the first respondent under Section 82 of the Act. Accordingly, every application to the Land Commissioner for revision shall be presented within sixty days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant. The proviso says that Land Commissioner may admit the application presented within thirty days after the said period, if he is satisfied that the applicant had sufficient cause for not presenting it within the said period. Therefore, to file revision the time limit is 90 days in total. However, the petitioners filed revisions after the period of 40 years, challenging the notification issued under Section 18(1) of the Act, dated 28.03.1973. In fact, the subject lands were assigned to various persons and they have also remitted the land value and the deed in Form F were also executed in their favour.

12. It is also seen from the records, in the Taluk and Village accounts of 'A' register and Chitta, the declaration of surplus has been duly entered in the year 1973 and the same were reflected in the Chitta for the year 1964 as updated in the year 1973. It is noted as "Taken over to Government under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58/61 as per G.O.Ms.No.1328 Revenue dated 20.03.1973. Though, the said Ganamuthu Nadar purchased the subject land on 22.02.1967, his name or other purchasers name were not incorporated in the revenue records and they were not applied for any patta for the subject lands.

13. That apart, under Section 18(3) of the Act, all lands on declaration of surplus under Section 18(1) of the Act are vested in Government with free from all encumbrance and all rights are deemed to have extinguished. Therefore, the first respondent rightly dismissed the revisions filed by the petitioners and this Court finds no infirmity or illegality in the order passed by the first respondent. The Writ Petition is devoid of merits and is liable to be dismissed.

14. In the result, the Writ Petition stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Land Commissioner
   Chepauk, Chennai – 600 005.

2. The Joint Commissioner
   (Land Reforms)
   Tirunelveli.

+2cc to Mr.J.Antony Jesus, Advocate, S.R.No.49380, 49379

W.P.No.6254 of 2017

PVS(CO)
CS/20/10/2021