



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2021

PRONOUNCED ON : 21.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P. Nos.7406 & 7407 of 2017

and

W.M.P.Nos.22192 & 22193 of 2017

S.Bhuvaneswaran ...Petitioner in W.P.No.7406 of 2017
S.Vaitheeswaran ...Petitioner in W.P.No.7407 of 2017

Vs

1.The Secretary Revenue Department,
Puducherry Secretariat,
Puducherry.

2.Sub-Collector (Revenue) /
Deputy Collector (Revenue)
North-cum-Authorised Officer
(Land Reforms),
Puducherry.

.... Respondents in both W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to quash the undated order No.4439/DC(R)/LR/2016 by the second respondent, further directing the second respondent herein to reconsider the representation dated 30.09.2009 along with the rejoinder dated 24.11.2014 and 19.01.2015 respectively, in the exercise of power conferred under Section 22(2)(a) of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973.

In both W.Ps

For petitioners : Mr.Srinath Sridevan,
For Mr.R.Udhaya Kumar

For Respondents : Mr.J.Kumaran
Additional Government Pleader
(Pondicherry)



COMMON ORDER

These Writ Petitions have been filed for issuance of Writ of Certiorarified Mandamus, to quash the undated order No.4439/DC (R)/LR/2016 by the second respondent, further directing the second respondent herein to reconsider the representation dated 30.09.2009 along with the rejoinder dated 24.11.2014 and 19.01.2015 respectively, in exercise of power conferred under Section 22(2)(a) of Pondicherry Land Reforms(Fixation of Ceiling on Land) Act, 1973.

2. The case of the petitioners is that they purchased the land to an extent of 3.66.75 hectares situated at Manaveli Village, Ariyankuppam Commune, Pondicherry, by five registered sale deeds dated 18.09.2006. When the petitioners decided to transfer the said land in favour of the third party, they came to understand that the said land was under land ceiling proceedings and consequently, it has been declared as Government land. On verification, they came to understand about that the original land holder of the said land one K.Selvaraj was in excess of land under Section 4 of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (hereinafter called as "the Act") and consequently, the proceedings initiated by the second respondent during the year 1978. However, the said proceedings had not concluded after issuance of a final statement on 04.04.1990. Therefore, the original land holder transferred the excess land to the third party, who in turn, had transferred the same in favour of the petitioners. Only in the year 2009, the second respondent, that too, after a lapse of 19 years had issued a proclamation order on 26.02.2009.

3. In pursuant to the proceedings initiated under Section 4 of the Act on 04.04.2009, the petitioners sent a detailed representation to the second respondent to remove the said land from the final statement dated 04.04.2009. Since no action was taken, the petitioners were constrained to file the Writ Petitions before this Court in W.P.Nos.26790 & 26791 of 2009. However, they were dismissed and aggrieved by the same, the petitioners preferred appeals before this Court in W.A.Nos.760 & 761 of 2013. They were disposed of by common order dated 22.03.2016 and held that the petitioners have made out a case for mandamus as sought for seeking the benevolence of the Government to exercise its power under Section 22(2)(a) of the Act. Therefore, the petitioners sent another representation on 23.05.2016 to the first respondent, in view of the order passed in the Writ Appeals. However, the same was rejected for the reason that there is no provisions in the Act to exchange the other lands of the transferee is equal in area, in lieu of their land that have been acquired by the Government. The rejection of the order is impugned in these Writ Petitions.



4. The second respondent filed a counter stating that the land reforms proceedings were initiated under the Act in respect of the land holdings of the assessee one Raghavan @ R.K.Selvaraj, whose land, the petitioners herein have purchased from one Abdul Casim. The said Selvaraj had held the lands situated at Arianakupam, Murungapakkam, Manavely, Thavalakupam, Thengaithittu and Abishegapakkam Revenue villages of Pondicherry. Therefore, the Authorised Officer, on 13.09.1978 published after following the procedures prescribed by the Act, published the final statement in Form No.10 under Section 11 of the said Act vide Gazette No.129, dated 13.09.1978. Aggrieved by the same, the land owner and his wife, along with their son, filed appeals before the Principal Sub Court, Pondicherry, in LTCMA Nos.4, 5 & 6 of 1978 and the same were dismissed.

5. Aggrieved by the same, they have filed Civil Revision Petitions before this Court in CRP Nos.2190, 2191 and 2164 of 1978 and all the Civil Revision Petitions were dismissed by this Court with a direction to the Authorised Officer to publish the revised statement excluding the lands that were included in the Land Reforms proceedings under the Land Reforms Act. In compliance of the order passed by this Court, a draft revised statement in Form No.8 under Section 9 of the Act was published in the Gazette No.114, dated 29.09.1988. The final statement in Form No.10 as contemplated under Section 11 of the Act was published in Part-I of the Gazette No.66, dated 04.04.1990. However, no objections were received by the Authorised Officer from the land holder and his legal heirs in response to the notice. The Authorised Officer issued summons in Form No.6 as contemplated under Section 68 of the Act for enquiry.

6. The land owner, by a communication dated 16.04.2008, furnished the details of lands, which he intends to retain and surrender to the Government. He did not raise any objections for taking over the lands by the Gazette dated 04.04.1990. However, he was ready to surrender only 06.03.94 hectares of surplus lands, whereas, the Government notified 43.17.80 hectares of his lands as surplus. The necessary approval was accorded by the Government for issuance of notification of Form No.13 as provided under Section 17(1) of the Act. As per Section 17(3) of the Act, the proclamation was issued on 26.02.2009, including the lands purchased by the petitioners and the subject property is deemed to be vested with the Government free from all encumbrances.

7. While being so, the petitioners submitted their representations and also filed Writ Petitions. It were dismissed for the reason that the petitioners do not have locus to question the action of the authorities under the Act, except the land owner who has not only sold the surplus land but also sold



the land which are to be retained. However, the Hon'ble Division Bench of this Court in Writ Appeals held that the petitioners have made out a case for mandamus as sought for seeking the benevolence of the Government to exercise the powers under Section 22(2)(a) of the Act.

8. The contention of the petitioners is that the other lands of the petitioners in lieu of the surplus land declared was thoroughly examined by the respondent, passed the order impugned in the Writ Petition dated 14.02.2017, thereby rejecting the same. If the second respondent accedes to the substitution of the petitioners land available somewhere in lieu of the surplus lands taken over, which is situated very close to the Puducherry Town limits and possess lot of potential value, it will open the flood gates insofar as, the implementation of the agricultural lands ceiling proceedings are concerned and it may result in the spate of similar representations in order to substitute the valuable surplus lands in lieu of un-potential and barren lands. The petitioners could not be considered as a bonafide purchasers of the lands in question and it is clear that they purchased the surplus lands with full knowledge and awareness with a view to speculate and make undue benefit out of the surplus land which has been declared as Government land and prayed for dismissal of the Writ Petitions.

9. Mr.Srinath Sridevan, learned counsel appearing for the petitioners submitted that Section 22(2)(a) of the Act permits for exchange but has rejected the implementation of the said provisions as not possible for sole reason of being impracticable to Act. The second respondent though aware of the fact that in case of transfer of ceiling lands, the option of exchange could be exercised by the transferees, had on account of practical reasons, rejected the petitioners' right to seek protection embodied under Section 22(2)(a) of the Act. The reason quoted by the second respondent has practical difficulty for exercise of such right curtails the bonafide petitioners of their right guaranteed under the said statute. It impairs the petitioners and they are left to suffer such huge loss for no fault of them. The second respondent without even attempted to adopt any procedure as contemplated under Section 22(2)(a), mechanically passed an arbitrary order.

10. The learned counsel for the petitioners further submitted that the provisions under Section 22(2)(a) makes it to protect the rights of the bonafide purchaser, directs the Government to exercise the power conferred under the said Act, which has a right conferred upon the bonafide purchasers and it cannot be taken away except in accordance with law. The second respondent passed an order after lapse of 19 years and failed to verify the status of the land assessed 19 years before.



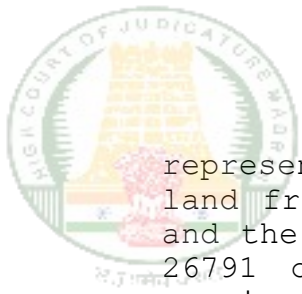
Therefore, prayed for set aside the order passed by the second respondent.

11. Heard Mr.Srinath Sridevan, learned counsel appearing for the petitioners and Mr.J.Kumaran, learned Additional Government Pleader (Pondicherry) appearing for the respondents.

12. The Land Reforms proceedings were initiated under the Act in respect of the land holdings of the assessee R.K.Selvaraj. On 13.09.1978, the Authorised Officer published final statement in Form No.10 under Section 11 of the Act vide Gazette No.129, dated 13.09.1978. Aggrieved by the same, R.K.Selvaraj and his wife along with their son, filed an appeal before the Principal Sub Court, Pondicherry, in LTCMA No.4, 5 & 6 of 1978 and the same were dismissed. It was also confirmed by this Court in CRP.No.2190, 2191 & 2164 of 1978. Thereafter, a draft revised statement in Form No.8 under Section 9 of the Act was published in the Gazette No.114, dated 29.09.1988. The final statement in Form No.10 under Section 11 of the Act was published in Part-I of the Gazette No.66, dated 04.04.1990. The Authorised Officer served copies of the Gazette to the interested parties through Tahsildar on 18.02.2008. Neither any objection nor any representation was received from the land owners in response to the notice. Thereafter, the Authorised Officer issued summons in Form No.6 as provided under Section 68 of the Act, directing the land owners to appear in person.

13. Accordingly, the land owner by the communication dated 16.04.2008, furnished details of land which he intends to retain and surrender to the Government under the Act and did not raise any objections that would have a bearing on the matter of taking over the lands under the Gazette dated 04.04.1990. However, he was ready to surrender only 06.03.94 hectares of surplus lands, whereas, the Government notified to an extent of 43.17.80 hectares of his lands as surplus. Thereafter, the transfer was accorded as provided under Section 17(1) of the Act. Form-13 notified the surplus lands to an extent of 43.17.80 hectares is required for public purpose was duly served to the land owner. Thereafter, as per proclamation dated 26.02.2009 under Rule 22 of the Pondicherry Land Reforms (Fixation of Ceiling on Land Disposal of Surplus Lands) Rules, 1975, the surplus land of the land owners including those lands purchased by the petitioners herein were acquired under the Act. Thereafter, it is deemed to be vested with the Government free from all encumbrances.

14. Admittedly, the petitioners have purchased the subject land from one Abdul Casim by 5 registered sale deeds dated 18.09.2006. Thus, it is clear that only after issuance of final statement dated 04.04.1990 and after issuance of the proclamation order dated 26.02.2009, the petitioners submitted a



representation on 13.09.2009 requesting to remove the subject land from the final statement dated 04.04.1990. It was rejected and the same was challenged before this Court in W.P.Nos.26790 & 26791 of 2009. Both the writ petitions were dismissed and aggrieved by the same, the petitioners filed Writ Appeals in W.A.Nos.760 & 761 of 2013.

15. The Hon'ble Division Bench of this Court, by an order dated 22.03.2016, allowed the Writ Appeals and held that the petitioners made out the case for mandamus as sought for seeking the benevolence of the Government to exercise its power under Section 22(2)(a) of the Act. It is relevant to refer to the provisions under Section 22(1), 22(2)(a), 22(2)(b) and 22(3) as follows :-

"22. (1) Except where a person is permitted in writing, by the authorised officer, a person, holding land in excess of the ceiling area applicable to him under section 4, shall not, after the commencement of this Act, transfer by sale, gift or otherwise or make any partition of any land held by him or any part thereof until the excess land, which is to be acquired by the Government under section 17, has been determined and taken possession of by or on behalf of the Government.

(2) (a) If any person makes any transfer, whether by sale, gift or otherwise, of any land in contravention of the provisions of sub-section (1) : the Government may, in the first instance, take possession of land, equal in area to the land which is to be acquired by the Government, from out of the land held by such person, and where such recovery from the person is not possible from the transferee.

(b) Where there are more transferees than one, the deficiency of the surplus area shall be made up from each of the transferees in proportion to the land transferred to them.

(3) Any person who transfers any land in contravention of the provisions of sub-section (1) shall be punishable with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months or with both."

From the above provisions, it is clear that the person holding land in excess shall not transfer by sale, gift or otherwise. If such transfer is made, the Government shall take possession of land equal in area to the land which is to be acquired from out of the land held by the transferee and where such recovery from the person is not possible then from the transferee i.e., petitioners herein.



16. Accordingly, the petitioners have moved the Government by way of representation as contemplated under Section 22(2)(a) of the Act. The only contention raised by the petitioners is that the second respondent did not even take any steps to take possession of lands equal to the land sold out from the transferee, mechanically dismissed the request for the reason that practically it is not possible. Admittedly, there are many transferees of the surplus land, the lands are to be taken from each of the transferees in proportion of the land transferred to them to compensate for the deficit surplus lands. Therefore, the second respondent rightly passed the order, which is practically not possible.

17. That apart, the petitioners cannot be considered as bonafide purchasers of the land in question since, it is clear that the petitioners have purchased the surplus lands with full knowledge and awareness and with a view to speculate and make undue benefit out of the surplus land, which has been declared as Government Land. Moreover, the lands are available in various villages and in majority of the cases, the lands are also plotted into layouts. Therefore, it is not possible to consider the request of the petitioners to substitute any other lands in lieu of the surplus lands taken over. Hence, the second respondent has rightly rejected the request made by the petitioners. Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent and the writ petition is liable to be dismissed.

18. In the result, these Writ Petitions stand dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Lpp/mn

To

1.The Secretary Revenue Department,
Puducherry Secretariat,
Puducherry.



2.Sub-collector (Revenue) /
Deputy Collector (Revenue)
North-cum-Authorised Officer
(Land Reforms),
Puducherry.

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+2ccs to Mr.R.Udhaya Kumar, Advocate Sr No.48309
+1cc to the Government Pleader (Pondy) Sr No.48264

W.P. Nos.7406 & 7407 of 2017 and
W.M.P.Nos.22192 & 22193 of 2017

CP (CO)
PR (10/11/2021)