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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.07.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)Nos.12165, 12166 and 12167 of 2021

and

W.M.P(MD).Nos.9578, 9579 and 9580 of 2021

Nabisalma ... Petitioner in W.P(MD).No.12165 of 2021
Sarammal ... Petitioner in W.P(MD).No.12166 of 2021
Mohamed Fathima ... Petitioner in W.P(MD).No.12167 of 2021

Vs.

The Authorised Officer Cum Revenue Divisional Officer,
Theni District, Theni. ... Respondent in all W.Ps

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, to direct the respondent to conduct enquiry as ordered by this Court in W.P (MD).Nos.11880/2008, 11881/2008 and 2416 of 2009 dated 25.08.2011 for concluding the rights of parties after providing opportunity to the petitioner to lead evidence both oral and documentary in the light of claim statement already before the respondent.

For Petitioners :Mr.V.K.Vijayaragavan
(In all W.Ps)
For Respondent : Mr.M.Lingadurai
(In all W.Ps) Government Advocate

COMMON ORDER

The issue involved in all these Writ Petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. Earlier Writ Petitions were filed before this Court in W.P.(MD).Nos.11880, 11881 of 2008 and 2416 of 2009 by the husband of the petitioner in W.P.(MD).No.12165 of 2021 the husband of the petitioner in W.P.(MD).No.12166 of 2021 and the petitioner in W.P.(MD).No.12167 of 2021, challenging the proceedings of the Land Commissioner, Chempauk, Chennai, dated 11.08.2008 and for a consequential direction to the Assistant Commissioner, Land Reforms, to conduct a de novo enquiry after giving opportunity to the petitioners. All these Writ Petitions came to be disposed of through a common order dated 25.08.2011. The relevant portions in the order are extracted hereunder:-



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"2. The facts leading to filing of all three writ petitions are, that late Thiru.K.E.Kadar Meeran was the owner of the land, situated at Uthamapalayam Village and neighbouring Villages. Late Thiru K.E.Kader Meeran had three sons i.e., Late Thiru.K.Syed Mohammed Ibrahim, Late Thiru K.Abdul Rahim and Late K.Mohammed Bashir.

3. The Assistant Commissioner, passed an order in exercise of powers under Section 9 (2) (b) of the Tamil Nadu Land Reforms (FCL) Act, 1961 (hereinafter referred to as "the Act"), dated 05.11.2002, declaring the land standing in the name of Late Thiru. K.Syed Mohammed Ibrahim, to be surplus. In pursuance to the order passed by the Assistant Commissioner, a Gazetted Notification was issued by the State Government in the Government Gazette on 31.01.2006.

4. Some of the legal heirs of Late Thiru.K.Syed Mohammed Ibrahim challenged the order passed by the Assistant Commissioner under Section 9 (2) (b) of the Act, by filing Revision under Section 82 of the Act.

5. The Land Commissioner, accepted the Revision partly, and remanded the case back to the Assistant Commissioner, to permit the land owner, to select the land, by following the observation made in the Revisional Order. The Assistant Commissioner was further directed, to incorporate necessary amendment in the final selection, in pursuance to the selection to be carried out, by the land owners, and thereafter, issue a Notification under Section 18 (1) of the Act.

6. The petitioners were not party to the proceedings. Therefore, are prima facie, not bound by the decision of the Authorities, and should have availed their remedy, under ordinary law.

7. However, keeping in view the fact, that the order of the the Assistant Commissioner passed under Section 9 (2) (b) of the Act, stands set aside, and the matter remitted back,



to the Assistant Commissioner, to determine the selection of the land, these Writ Petitions are being taken up to be disposed of on merit.

8. The pleaded case of the petitioners, in all these Writ Petitions, is that the orders passed by the Assistant Commissioner under section 9(2) (b) of the act, and that of the Revisional Authority, are without jurisdiction, and suffers from error apparent on the face of record, in as much as the Assistant Commissioner, while determining the surplus land of late Thiru.K.Syed Mohammed Ibrahim, has proceeded on the presumption that the total land holding of late Thiru.K.Syed Mohammed Ibrahim, was inherited by Late Thiru.K.S.Kadar Meeran, as sole heir under a Settlement, which is factually not correct.

9. The stand of the petitioners in all the three writ petitions, is that Late.Thiru.K.E.Kader Meeran had by way of three registered settlement, had transferred the land in favour of his three sons in the year 1970, before his death. In pursuance to the settlement, each of his son became owner of the land, under the settlement, in his own right, and therefore, the land falling up their share could not be included in the land of Late Thiru. K.Syed Mohammed Ibrahim, or in any predecessor of the petitioner, being the owner of the land.

10. The petitioners were entitled, to notice surplus proceedings. The impugned orders, therefore, are challenged, being in violation of the principle of natural justice, as the persons interested / owners of the land, have not been given an opportunity of hearing.

11. This contention deserves to be accepted, it is well settled law that in determining the surplus land, all the persons interested, are to be heard before an order is passed. The petitioner, being absolute owner of the land by inheritance from their predecessors, were to be heard, before any adverse order was passed against them, in declaring their land as surplus by taking it to



be that of Late Thiru. K.Syed Mohammed Ibrahim.

12. It was also the contention of the learned counsel for the petitioner, that the Assistant Commissioner, while passing the impugned order under Section 9(2)(b) of the Act, did not record a finding, that the total land was inherited by Late Thiru. K.Syed Mohammed Ibrahim in exclusion to his brothers.

13. In absence of the finding, the order passed by the Assistant Commissioner, cannot be sustained, as it suffers from error apparent on the face of record.

14. As already noticed above, there is no necessity to go into the merits of the contentions raised..

15. For the reason, that the petitioners were not parties to the proceedings either before the Assistant Commissioner or before the Commissioner, but, keeping in view of the fact, that the case has been remanded back to the Assistant Commissioner for re-determination of the area to be land owners area, these writ petitions are disposed of, by giving liberty to the petitioners to approach the Assistant Commissioner, to file their claim as owner of the land, for being taken out of the surplus area.

16. In that event, the Assistant Commissioner is directed to consider the claim of the petitioners, while determining the surplus area of Late Thiru. K.Syed Mohammed Ibrahim, and record a finding, as to whether the land was inherited by the petitioner, and is not be considered to be that of share of Late Thiru. K.Syed Mohammed Ibrahim, for being declared surplus.

3. The grievance of the petitioner is that inspite of the above directions issued by this Court, no enquiry has been conducted by the respondent and left with no other option, the present Writ Petitions have been filed before this Court seeking for appropriate directions.



4. Heard Mr.V.K.Vijayaragavan, learned counsel appearing for the petitioners and Mr.M.Lingadurai, learned Government Advocate appearing for the respondents.

5. Taking into consideration the facts and circumstances of the case and the directions issued by this Court in the earlier order extracted supra, there shall be a direction to the respondent to proceed further with the enquiry in line with the earlier order passed by this Court after affording opportunity to all the parties concerned and final orders shall be passed by the respondent on its own merits and in accordance with law, within a period of three (3) months from the date of receipt of a copy of this order.

6. The petitioners are directed to make a fresh representation to the respondent along with all the relevant documents and also a copy of this order.

7. All these Writ Petitions stand disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Authorised Officer Cum Revenue Divisional Officer,
Theni District,
Theni.

+3 CC to M/s.V.K.VIJAYARAGHAVAN, Advocate (SR-23016[F] dated 19/07/2021)

+1 CC to M/s.GP (SR-23328[F] dated 20/07/2021)

W.P(MD)Nos.12165, 12166.
and 12167 of 2021
19.07.2021

ES (CO)

LR (30.07.2021) 5P 6C