



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P. NO.12240 OF 2004

AND

WPMP NO.14306 OF 2004

1. Angammal
2. Amirtham
3. Meenakshi Sundaram
4. Gururajan
5. Anjanadevi

... Petitioners

Versus

1. The Revenue Tahsildar - cum -
Agricultural Lands Tenancy
Rights Registering Officer,
Uthamapalayam.
2. The Authorised Officer,
Land Reforms
Dindigul - 1.
3. The Authorised Officer and
Assistant Commissioner
(Land Reforms), Madurai.
4. Karuppayi Ammal

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records comprised in the proceedings of the first respondent dated 22.01.2003 in T.R. No.9 of 2002 and quash the same and consequently forbear the fourth respondent from in any manner interfering with the right, possession and enjoyment of the properties by the petitioner.

For Petitioners : Mr.P.Seshadri

For Respondents : Mr.T. Chezhiyan,
AGP for RR-1 to 3
Mr.A.Ashok Kumar for R4



ORDER

This writ petition has been filed to quash the proceedings dated 22.01.2003 in T.R. No.9 of 2002 issued by the 1st respondent dated 22.01.2003 in T.R. No.9 of 2002 and quash the same and consequential direction to forbear the 4th respondent from in any manner interfering with the right, possession and enjoyment of the properties of the petitioners.

2. It is the case of the petitioners that the father of the petitioners 2 to 5 L. Muneeswaran owned certain pieces of land in Chinnamanur Village of Uthamapalayam Taluk and the 1st petitioner is the wife of said L.Muneeswaran. Pursuant to notification published on 27.11.1974 under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, an extent of 5.86 ordinary acres of land equivalent to 4-535 standard acres was declared as surplus in the holdings of their father. Aggrieved by the same, their father preferred revision petition and subsequently, the 1st respondent vide his order dated 28.12.1976 declared an extent of 3.350 standard acres as surplus lands. Based on the aforesaid order, the authorities concerned assigned the surplus lands in favour of four persons viz., P.Karuppiyah to an extent of 0.52 acres, P.Pandian to an extent of 0.52 acres, M.Raman to an extent of 0.52 acres and M.Durairaj alias Ayyar Theavar to an extent of 1.35 acres. Later the matter was taken before the Appellate Tribunal and the 2nd respondent has passed the order dated 28.10.1995 in MR.I./M64/UPM/17-70, thereby finally declared only an extent of 0.504 standard acres as surplus lands. In the meanwhile, their father died and subsequently, the petitioners filed an application before the authorities for delivery of possession of lands assigned in favour of four assignees referred to supra after deducting an extent of 0.504 standard acres of land pertaining to M.Durairaj alias Ayyar Theavar, who also died. Therefore according to them, the said land assigned in favour of four persons has to be revested only to the petitioners as the surplus part of land declared to an extent of 0.504 acres alone should vest with the Government. While notification under Section 18(1) of the Act published on 27.11.1974 giving effect in the above regard, surprisingly, the 1st respondent passed an order, based on the claim submitted by the 4th respondent as cultivating tenant in the year 1976, without considering the proceedings issued under the Land Reforms Act for the lands assigned in favour of the four persons referred to supra. Aggrieved by the said order, this writ petition has been filed seeking to quash the impugned order.

3. Learned counsel for the petitioners submitted that the order impugned herein issued by the first respondent is contrary



to law and ultra vires the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act. He further argued that by issuance of the said impugned proceedings, recognising the 4th respondent as a cultivating tenant ignores procedures contemplated under the said Act, and the said proceedings has been passed due to influence and the same is liable to be set aside. Also he submitted that the said impugned proceedings suffers lack of jurisdiction and the same was issued without providing sufficient opportunity to the petitioners and hence, he prays to set aside the said impugned proceedings and accordingly to allow this writ petition.

4. Per contra, Mr.T. Chezhiyan, learned Additional Government Pleader appearing for the official respondents, placing reliance upon the counter submitted that the procedures contemplated under the law were followed by the 1st respondent while passing the proceedings and opportunity was granted to the petitioners. He also submitted that the 4th respondent, who is the contesting respondent also died as stated in paragraph No.8 of the counter filed by the 4th respondent.

5. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record. Though notice has been served on the 4th respondent however, no one has entered appearance on behalf of the 4th respondent.

6. The facts are not in dispute. Initially, the lands belonging to the petitioners' father to an extent of 5.86 ordinary acres were declared surplus and notification under Section 18(1) of the said Act was also published. Later, the 1st respondent after considering the entire materials declared an extent of 3.350 standard acres as surplus lands. It is an admitted fact that based on the order of the 1st respondent, the authorities assigned the surplus land in favour of four assignees, stated supra. However, in the revision, the appellate authority finally declared the lands only to an extent of 0.504 standard acres as surplus in the holdings of the petitioners.

7. Be that as it may. From the above, it is evident that the lands barring an extent of 0.504 acres, were erroneously declared as surplus earlier and assigned in favour of four persons have to be revested to the petitioners. Though it is contended by the petitioners that surplus lands were declared in the year 1974, and the 4th respondent claimed his right as cultivating tenant, by virtue of an order passed in the year 1976, however, this Court is not inclined to dwell into the issue in the absence of appearance on behalf of the 4th



respondent. However, the fact remains that though the respondents claim that opportunity was given to the petitioner before passing the order, a perusal of records reveal that the impugned order was passed without hearing the petitioners. Further the impugned order also is silent on the aspect about the cultivation carried on by the 4th respondent in the lands, which were recorded to him. One of the main ingredients for the record to survive is the fact that the lands should have been put to use for cultivation on the assignment being given to the 4th respondent.

8. For the reasons aforesaid, the impugned order passed by the 1st respondent suffers the vice of illegality and violation of principles of natural justice and is therefore not sustainable. Further, the first respondent has also not considered the subsequent order passed by the 2nd respondent under the Land Reforms Act before passing the impugned order, necessitating this Court to cause its interference in the impugned order.

9. Accordingly, the order in T.R. No.9 of 2002, dated 22.01.2003, issued by the 1st respondent is hereby set aside and the matter is remanded to the 1st respondent for fresh consideration. The 1st respondent shall pass orders on merits and in accordance with law after affording an opportunity of personal hearing to the petitioners as well as the Legal Heirs of the 4th respondent. It is made clear that the legal heirs of the 4th respondent can claim their right only if they establish cultivation by contributing their physical labour.

10. In the result, the writ petition stands allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Revenue Tahsildar - cum -
Agricultural Lands Tenancy
Rights Registering Officer,
Uthamapalayam.



2. The Authorised Officer,
Land Reforms
Dindigul - 1.

3. The Authorised Officer and
Assistant Commissioner
(Land Reforms), Madurai.

+1cc to M/s.P.Seshadri, Advocate, S.R.No.13656

+1cc to the Special Government Pleader, S.R.No.14585

W.P.No.12240 of 2004

SKM(CO)
RLP(01/04/2022)