BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.387, 5283 of 2007, 906 of 2008, 7431, 13849, 16285 of 2013, 4086 of 2015, 21422 of 2016, 5600 of 2017, 20650 of 2018, 14132, 19028, 22572, 23086, 24767, 24772 of 2019, 4358, 5931, 5950, 6651, 6656, 6713 of 2022
and
WMP(MD)Nos.15312, 15313 of 2016, 4488, 4489, of 2017, 18412, 18413 of 2018, 10601, 15332, 19820, 19821,, 21377, 21373, 21374 of 2019, 19091, 19092 of 2021,
and
MP(MD)Nos.2 of 2007, 1, 2, 2, 3 of 2015, 21181, 21376, of 2019, 3352, 3387, 3397, 3392, 3399 of 2023,

in WP(MD)No.387 of 2007 : -

Sudalai Muthu ... Petitioner

Vs.

1.Medai Dhalavai K.Thirumalaiyappa
Mudaliar (died)

2.T.R.Alagappa Mudaliar
Rep.by his power agent Shanthilal

(R2 was amended vide order dated 12.11.2018 in
MP(MD)No.1 of 2009)

3.Assistant Commissioner (Land Reforms),
Tiruvandram Road,
Tirunelveli.

4.The State of Tamil Nadu,
Rep.by Revenue Secretary,
Fort St.George, Chennai – 9.

5.Kalidoss ... Respondents

(R5 is substituted for the deceased
1st respondent vide order dated 12.11.2018)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd and 4th respondents in respect of proceedings in the Tamil Nadu Government Gazettee No.48A published in Annexure to Part VI Section 1 dated 13.12.2006 in respect of the holding of the second respondent herein and quash the same as illegal, arbitrary and unenforceable consequently direct the respondents 3 and 4 to cause fresh publication of the proceedings u/s. 10(1) of the Act after giving opportunity to interested persons and thus render justice.

For Petitioner : Mr.V.K.Vijayaragavan

For Respondents : Mr.M.Sivakumar for R1

Mr.M.Thilagar for R2

Mr.N.Satheeshkumar
Additional Government Pleader for R3 & R4

COMMON ORDER

All these writ petitions arise out of proceedings initiated under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 58 of 1961). Medai Dhalavai Family had owned 627.25 standard acres of land in Ariyakulam and Maruthur Villages in Tirunelveli District. The lands stood in the name of Seevalaperi Chatram. The Authorized Officer (Land Reforms), Tirunelveli applying the statutory mandate set out in Section 6 of the Act notified that the Seevalaperi Chatram Trust held 17.5% in the overall land while the huqdaars of the land held 82.5% of the land. It was declared that 93.074 standard acres held by the trust was found to be surplus. Statement under Section 12 of the Act was published in Tamil Nadu Gazettee dated 10.12.1986. Notification under Section 18(1) of the Act was published in the Tamil Nadu Government Gazette dated 11.02.1987. It was declared that 93.074 standard acres equivalent to 323.78 ordinary acres held by Seevalaperi Trust were notified as surplus. The Assistant Commissioner (Land Reforms), Tirunelveli who was the assigning authority initiated proceedings under the provisions of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965. Order bearing Roc No.C1/M-IV/A/PCO dated 30.04.1987 was issued. As per the said order, the surplus lands in Ariyakulam Village, Palayamkottai Taluk were ordered to be assigned in favour of the applicants named therein. As many as

116 individuals were identified and allotted. They were required to remit the land value in installments. Earlier, the government had assigned 82.20 ordinary acres of land in favour of Ramakrishna Thapovanam for starting a Women College vide G.O Ms.No.2361 Revenue Department dated 23.12.1988.

2.Aggrieved by these developments, the members of Dhalavai Family filed revision petition before the Land Commissioner. The revision was allowed vide proceedings dated 04.05.1987. Ramakrishna Thapovanam filed WP No.11793 of 1990 questioning the order dated 04.05.1987 passed by the Land Commissioner. Sevalaperi Chatram filed WP No.835 of 1990. Two members of the Dhalavai family filed WP No.5661 of 1990. These writ petitions were transferred to Tamil Nadu Land Reforms Special Appellate Tribunal, Santhome, Madras – 4 and renumbered as TRP Nos.563/1991, 8/1992 and 9/1992. All the three petitions were heard together. TRP Nos.563/1991 and 8/1992 were dismissed. In view of the order passed in the said TRPs, TRP No. 9/1992 was not pressed.

3.Challenging the same, Civil Appeal Nos.12090 & 12091 of 1996 were filed. During the pendency of the appeals before the Hon'ble Supreme Court, the land owners submitted a compromise proposal before the Government of

Tamil Nadu. The said compromise proposal was accepted by the Government. The same was recorded and the appeals were disposed of in accordance with the compromise entered into between the parties on 06.03.2003. Earlier, the dispute was regarding the character of Seevalaperi Chatram. While the huqdaars argued that it was a private trust, the government contended that it was a public charitable trust. In the compromise, the huqdaars agreed that Seevalaperi Chatram can be treated as public charitable trust and it is entitled to retain five standard hectares. The huqdaars also agreed to restore the assignment made in favour of Ramakrishna Thapovanam. What they wanted was retention of the lands in Ariyakulam Village. According to them, the surplus lands in Kaliyavur Village could be taken by the government.

4.On 01.03.2005, the Commissioner of Land Reforms, Chepauk, Chennai called upon the Assistant Commissioner (Land Reforms), Tirunelveli to take further action and make necessary changes in terms of the order passed by the Hon'ble Supreme Court of India in the aforesaid Civil Appeals. The said communication specifically mandates the Assistant Commissioner (Land Reforms), Tirunelveli to make necessary changes in village and taluk accounts in respect of Ariyakulam Villages in respect of 90.05 acres of land which were declared as surplus and assigned to the landless poor. Pursuant to the said communication, the Authorized Officer and Assistant Commissioner (Land Reforms), Tiruenveli issued proceedings dated 21.04.2005 transferring the lands assigned on 11.02.1987 and placed the same in the retainable area of the shareholders of Seevalaperi Chatram. The Tahsildar, Palayamkottai thereafter effected necessary changes in the revenue record on 16.05.2005. Thereafter, the Assistant Commissioner (Land Reforms) issued notice dated 30.06.2005 informing the assignees that assignments made in their favour will be cancelled. On 17.08.2005, the Assistant Commissioner (Land Reforms), Tirunelveli issued proceedings formally cancelling the assignment of 229.32 acres made on 11.02.1987. Thereafter, G.O Ms No.98 Revenue Department dated 13.02.2006 was issued modifying the earlier notification published in Tamil Nadu Government Gazette dated 11.02.1987. The said notification speaks of 295.75 ordinary acres in Kaliyavoor Village and 82.20 ordinary acres in Ariyakulam Village. 82.20 acres in Ariyakulam Village has already been assigned in favour of Ramakrishna Thapovanam. It is true that the land owners had accepted the same before the Supreme Court. In the Seevalaperi Trust, 9 huqdaars were having interest. Their respective shareholdings are as follows :

1	Thiru.D.A.Ramasamy Mudaliar	36	Share
2	Thiru.D.A.Theetharappa Mudaliar	36	Share
3	Tmt.MDR.Kalyani Anni	43	Share

4	Thiru.MDR.Renganatha Mudaliar	43	Share
5	Heirs of MDT.Kumarasamy Mudaliar	86	Share
6	Tmt.MDS.Vadivammal Anni	11	Share
7	Tmt.MDS.Muthammal Anni	11	Share
8	Tmt.MDS.Kanthimathi Anni	11	Share
9	Tmt.MDS.Subbammal Anni	11	Share
		288	Share

Draft statements under Section 10 of the Act were published in various stages and one after another against various huqdaars/legal heirs. Final statement in respect of each of the huqdaars /their legal heirs was published in Government Gazette dated 26.12.2012. In the meanwhile, there had been alienations both by the huqdaars as well as the assignees. Petitions were filed before the Land Commissioner also. Revised final statement under Section 12 of the Act was issued and published in Government Gazette dated 11.12.2019. In this factual background, various writ petitions came to be filed. They can be broadly be classified under the following categories :

a) writ petitions filed by the huqdaars

b) writ petitions filed by the assignees

c) writ petitions filed by the purchasers from the huqdaars

d) writ petitions filed by the purchasers from assignees

Since the assignments made in the year 1987 were cancelled, the assignees as well as the purchasers from them felt aggrieved and filed the above writ petitions. The purchasers from the huqdaars felt aggrieved because the lands purchased by them had been included in the surplus landholdings. As far as the huqdaars are concerned, they had filed writ petitions only for concluding the proceedings and for issuance of patta.

5.Heard the learned Senior Counsel on either side.

6.The learned Senior Counsel appearing for the assignees contended that when once the surplus lands had been identified and also handed over to the assignees, the government no longer had the power to enter into any kind of compromise in respect of such lands. The learned Senior Counsel contended that the compromise entered into before the Apex Court is nullity and liable to be ignored. He even characterized the conduct of the government as fraudulent. In fact, in the affidavits filed in support of the writ petitions by the assignees, it has been specifically pleaded that there was deliberate suppression on the part of the government. According to the learned Senior Counsel once this Court comes to the conclusion that the compromise entered into between the land owners and the government is nullity, all the consequential proceedings based thereon will have to be set aside. He relied on the decisions reported in (2008) 4 CTC 193 (Malarkodi v. The Secretary to the Government), 2007 0 Supreme (SC) 304 (A.V Pappaya Sasry v. Government of AP), (1996) 6 SCC 44, (2002) 4 SCC 628, (2007) 14 SCC 318, (2012) 7 SCC 318, (2012) 7 SCC 462 and (2012) 11 SCC 574. The learned Senior Counsel called upon this Court to allow the writ petitions filed by the assignees as prayed for. The learned counsel appearing for the purchasers from the assignees adopted the arguments advanced by the learned Senior Counsel.

7.Shri.V.K.Vijayaragavan, the learned counsel who appeared for the purchasers from the huqdaars submitted that they should be given the benefit contained in Section 23(2) of the Act. The learned Senior Counsel appearing for the land owners submitted that this Court cannot upset the compromise entered into between the parties and which was given the seal of imprimatur by the Hon'ble Supreme Court of India. He relied on Section 18(D) of the Act in support of this contention that the assignments made in the year 1987 cannot be taken as final and that they were subject to the decisions of any appellate court. In this case, the land owners lost before the land tribunal but aggrieved by the same, they had filed civil appeals before the Supreme court and the Civil Appeals were disposed of on 06.03.2003 and therefore, the assignments will have to abide by the said decision. That is what contemplated by the statute. His next argument was that if according to the assignees and purchasers from them, the compromise was fraudulent or is otherwise vitiated, the only remedy open to them is to move the Hon'ble Supreme Court. The assignees were very much aware about the compromise entered into between the government and the land owners in the year 2005. Hence, they ought to have moved the Supreme Court in the year 2005 itself. Without doing so, it is not open to them to challenge the validity of the compromise decree before this Court. Heavy reliance was placed on the decision reported in ***(2020) 6 SCC 629 (Triloki Nath Singh v. Anirudh Singh).*** His yet another argument was that as a result of the compromise between the parties, the statutory scheme was in no way be frustrated. At the end of the day, what matters is that the land owners should not hold lands beyond a particular ceiling limit. This has not been breached by the compromise. The assignees cannot insist that they should be assigned lands only in Ariyakulam Village. When they have no legal right as such, it is not open to them to maintain any challenge before this Court. He would also point out that most of the assignees had alienated the assigned lands in sheer breach of the terms and conditions of the assignments. In some cases, even before the expiry of the statutory period, the lands had changed hands. Such purchasers, according to the learned Senior Counsel, do not have any locus standi before this Court. He called upon this Court to dismiss the writ petitions filed by the assignees as well as the purchasers from them. He also added that there appears to be some internal dispute among the huqdaars. This can be worked out in separate proceedings and that ought not to come in the way of this Court from addressing the issue on hand.

8.I carefully considered the rival contentions and went through the materials on record. As per the statutory scheme as amended by the Tamil Nadu Act 17 of 1970, an individual can hold 15 standard acres. Of course, this would be subject to the definition of the term “family” as contained in Section 3(14) of the Act. The trust as already noted is entitled to hold 5 standard acres. The jurisdictional RDO informed the court that as far as the villages in question are concerned, one standard acre would mean four ordinary acres. In this case, apart from the trust, there are nine huqdaars. Even if I ignore the definitin of the term “family”, still the trust and the huqdaars would be entitled to hold not less than 140 standard acres.

9.The learned Senior Counsel appearing for the huqdaars would contend that the government itself had accepted that in view of the number of members comprised in each family, as many as 14 claims can be recognised. In

Ariyakulam Village, 82.20 acres had been assigned in favour of Ramakrishna Thapovanam and the same has been accepted by the land owners. That leaves us with 251 ordinary acres in Ariyakulam Village treated as the retainable portion of the land owners. Since one standard acre is equal to four ordinary acres, the trust and the huqdaars are entitled to retain not less than 560 ordinary acres in Ariyakulam Village. What has been treated as retainable portion is only 251 ordinary acres.

10.Now the only question that calls for consideration is whether the orders cancelling the assignment can be allowed to stand. Even though the learned Senior Counsel appearing for the assignees and the purchasers from the assignees pointed out that this Court should ignore the compromise arrived at before the Hon'ble Supreme Court as nullity, I am not persuaded by the said submission. In the decision reported in ***(2022) 5 SCC 736 (Sree Surya Developers and Promoters v. N.Sailesh Prasad***), the scope of Order 23 Rule 3 and Rule 3A of CPC was considered in the light of the earlier judgments. Order 23 Rule 3A of CPC states that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The said judgment holds that party to a concerned decree based on a compromise has to approach the same court which recorded the compromise. The question as to whether this bar would apply in the case of suits filed by persons who were not parties to the compromise would not arise. This is because Order 23 Rule 3 CPC states that after the court is satisfied that there has been a compromise, it shall record the same and pass a decree in accordance therewith so far as it relates to the parties to the suit. The assignees obviously claim only under the government. The government was a party to the compromise. The scope of the bar cannot be confined to the maintainability of an independent suit challenging the compromise decree. Even in a collateral proceeding, this bar is applicable. I hold that it is not open to the assignees and the purchasers from them to impeach the validity of the compromise based on which Civil Appeal Nos.12090 and 12091 of 1996 were disposed of by the Hon'ble Supreme Court of India on 06.03.2003. The assignees should have moved the Hon'ble Supreme Court for appropriate relief at the earlier point of time. So long as the judgment of the Hon'ble Supreme Court is holding good, the consequential orders cannot be interfered with.

11.Sections 18-C and 18-D of the Tamil Nadu Land Reforms (Fixation of Ceiling) Act, 1961 read as follows :

> “**[18C. Power of Government to cancel or modify notification under section 18(1) in certain cases.** - Where, as a result of any decision in any appeal or revision or other proceeding or in pursuance

of a direction under section 18-A, the notification published under sub-section (1) of section 18 requires cancellation or modification, the Government may, by notification, cancel or modify such notification to give effect to such decision and nothing in this section shall be deemed to prevent the issue of a fresh notification by the Government under sub-section (1) of section 18 in accordance with the provisions of this Act.]

[18D. Land not to have vested in certain cases. - (1) Where any notification,-

(a) is modified under section 18-B or 18-C, as the case maybe, by way of omission (whether relating to extent or survey number or otherwise), the land to which such omission relates, or

(b) is cancelled under section 18-C, the surplus land specified in such notification, shall be deemed never to have vested in the Government and the authorised officer shall make the necessary consequential modification in [the assessment roll] concerned. Any amount paid [under section 50] in respect of such land shall be recovered by the Government as if it were an arrear of land revenue.

(2) The land referred to in sub-section (1) shall stand reverted with effect from the date of the publication of the notification effecting the modification or cancellation, as the case may be, to the person lawfully entitled to such land and any assignment of such land by the Government to any person prior to such date shall be deemed to have been cancelled. No claim shall be enforceable in respect of such land against the Government or any person deriving rights from them, for the period from the date of the vesting of such land in the Government and ending with the date of reversion under this sub-section.]

The aforesaid statutory provisions will have to be given their fullest effect. In view of the modification of the earlier notification under Section 18(1) of the Act, the lands that were originally declared as surplus should be deemed never to have vested in the government.

12.I cannot help remarking that the government did not act fairly in the matter. When lands had already been assigned, the assignees ought to have been informed. In fact, assignments should not have been made when the matter had not attained finality. But, it is too late in the day to even lament.

13.In this view of the matter, the writ petitions filed by the assignees as well as the purchasers from the assignees are dismissed. As regards the purchasers from the huqdaars and huqdaars, they can definitely avail the benefit set out in Section 23(2) of the Act. The question of issuing patta will not arise at this stage. In the very nature of things, there will have to be enquiry into the respective claims. The writ petitions filed by the purchasers from the huqdaars are accordingly disposed of.

14.In the result, the writ petitions filed by the purchases from the assignees and assignees ie., WP(MD)Nos.4358 of 2022, 5600 of 2017, 22572 of 2021, 13849 of 2013, 14132 of 2019, 4086 of 2015, 5950 of 2022, 6651 of 2022, 6656 of 2022, 6713 of 2022 and 5931 of 2022 are dismissed. The writ petitions filed by the huqdaars and the purchasers from the huqdaars ie., WP(MD)Nos.5283 of 2007, 906 of 2008 and 7431 of 2013, 387 of 2007, 23086 of 2019, 24767 of 2019, 24772 of 2019, 16285 of 2013, 19028 of 2019, 20650 of 2018 and 21422 of 2016 are disposed of. No costs. Connected miscellaneous petitions are closed.

15.09.2023

Index : Yes / No
Internet : Yes/ No
skm

To

1.The Assistant Commissioner (Land Reforms),
Tiruvandram Road, Tirunelveli.

2.The Revenue Secretary, Fort St.George, Chennai – 9.

G.R.SWAMINATHAN, J.

skm

W.P(MD)Nos.387, 5283 of 2007, 906 of 2008, 7431, 13849, 16285 of 2013, 4086 of 2015, 21422 of 2016, 5600 of 2017, 20650 of 2018, 14132, 19028, 22572, 23086, 24767, 24772 of 2019, 4358, 5931, 5950, 6651, 6656, 6713 of 2022

15.09.2023