



W.P(MD)No.18478 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18478 of 2014

and

M.P(MD)Nos.2 & 3 of 2014

1.Santha

2.Malarvizhi

... Petitioners

Vs.

1.The Land Commissioner,
Chepauk, Chennai.

2.K.P.Balasubramanian

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order vide R.P.No.15 of 2013 dated 08.07.2014 passed by the first respondent and quash the same.

For Petitioners : Mr.S.Anwar Sameem

For Respondents : Mr.NGA.Natraj
Government Advocate for R.1

Mr.R.Narayanan for R.2



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ORDER

Heard the learned counsel on either side.

2. The petitioners challenge the order dated 08.07.2014 passed by the Land Commissioner, Chepauk, Chennai in R.P.No.15 of 2013. The said review petition was filed by K.P.Balasubramanian / the second respondent herein. The second respondent is none other than the brother of the writ petitioners herein.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The first respondent has filed counter affidavit and the learned Government Advocate took me through its contents. He pointed out that the impugned order is well reasoned one and that it does not call for interference. He pressed for dismissal of the writ petition.

5. The learned counsel appearing for the second respondent sailed along with the learned counsel for the petitioners.



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6.I carefully considered the rival contentions and went through the materials on record. The basic facts are not in dispute. They have been set out succinctly in the impugned order itself. Proceedings under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by Tamil Nadu Land Reforms (Reduction of ceiling on Land) Act, 1970 (TN Act No. 17/70) were initiated against one Krishnaveni Ammal. The order under Section 9(2)(b) of the Act was passed on 24.12.1977 determining her total land holdings as 54.62 ordinary acres equivalent to 30.407 standard acres as on 15.02.1970 and 15.407 standard acres were declared as surplus.

7. The land owner was called upon to certify the list of lands to be declared as surplus. She did not respond. Hence, the land in S.F.No.225/1 was selected for declaration as surplus under Section 10(3) of the Act. Draft statement under Section 10(1) of the Act was published on 25.12.1991. Final statement under Section 12 of the Act and notification under Section 18(1) of the Act were also published on 16.09.1992 and 21.04.1993 respectively. 7.56 acres of land in S.F.No.225/1 was declared as surplus. Thereafter, assignment proceedings were initiated. Applications for assignment were invited. The petitioner's family applied in response to the assignment. Their father, the petitioners herein, the second respondent herein (brother) and Sournamari were assigned 1.5 acres each on 20.08.1983. The assignment made



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in favour of K.Periyasamy and P.Balasubramanian was cancelled on 19.12.2007. This order was put to challenge in W.P(MD)No.5171 of 2017 by the second respondent herein. On the sole ground that principles of natural justice were not complied with, the writ petition was allowed on 21.06.2022. It is stated that after remand, no fresh order has been passed till date.

8. The second respondent in the meanwhile had filed R.P.No.15 of 2013 questioning the declaration itself. It is relevant to note that in the Revision Petition filed by the second respondent, the first respondent herein alone was the sole respondent before the Land Commissioner. Even while dismissing the Revision Petition, the Land Commissioner rendered the finding that the assignment made in favour of the members of K.Periyasamy's family was fraudulent. The first respondent herein was directed to take steps for cancelling the assignments after enquiry by considering their status on the date of assignment. Challenging the same, the present writ petition has been filed.

9. I wanted to know if the second respondent had challenged the impugned order independently. The answer is in negative. However, to support the petitioner's counsel, the learned counsel appearing for the second respondent drew my attention to the order dated 30.03.2022 made in W.A.(MD)Nos.177 of 2010 and 253 of 2011. The Hon'ble Division Bench in



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the said decision had observed in a different context that when once the superior officer, namely, the Commissioner of Land Administration had directed cancellation of pattas, grant of opportunity by the District Collector in the enquiry would be a mere farce.

10. It was also observed that a positive direction to cancel the pattas which was not the subject matter of proceedings before him was not warranted and it would be beyond the jurisdiction of the Commissioner. In the present case also, the issue that arose before the Land Commissioner was whether the declaration made under Section 18 of the Act was bad or not. The Land Commissioner had dismissed the Revision Petition as time-bared. The validity of the assignment made in favour of the petitioners was not the *lis* before the Land Commissioner. Technically the Land Commissioner did go beyond the brief. But I am of the view that when illegality is staring on the face of the record, the authority concerned cannot close his or her eyes. However, positive direction for cancellation could not have been issued. Some tentative observations can be made and the concerned authority should be asked to revisit the issue after giving notice to all the stake holders.



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11. In this case, a categorical pronouncement adverse to the petitioners had been made behind their back. The question is not whether the Land Commissioner was right or justified. The question is where proper procedure was followed. Fairness of procedure is the essence of administrative law. In this case the order impugned in this writ petition is liable to be set aside on the ground of violation of the principles of natural justice.

12. In fact, I would endorse the stand of the Land Commissioner that five members in a single family could not have been assigned 1 ½ acres of land each. The object of assignment is to extend assistance to landless poor. But the Land Commissioner did not extend her scrutiny beyond.

13. It is seen from the records that the petitioner's mother / N.V.Soundarammal had purchased 7.56 acres vide sale deed dated 10.02.1972. It is a registered document (Document No.220/72) on the file of Sub Registrar, Bodinaickanur. The sale had taken place after the notified date. The transfer was obviously not valid. But Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is as follows:

“22. [Transfer or partition] made on or after the date of the commencement of this Act, but before the notified date. - (1) Where, on and after the date of the commencement of this Act, but before the notified date, any person has transferred any land held by sale, gift (other



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than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by request [or has effected a partition of his holding or part thereof], the authorised officer with in whose jurisdiction such land, holding or the major part thereof situated may after notice to such person and other persons affected by such transfer [or partition] and after such enquiry as he thinks fit to make [declare the transfer or partition to be void if he finds that the transfer or the partition, as the case may be], defeats any of the provisions of this Act.

(2) For the purpose of sub-section (1), if any transfer or partition has the effect of reducing the extent of surplus land in excess of the ceiling area, such transfer or partition, whether bona fide or not, shall be construed as defeating the provisions of this Act.”

14.It is firmly asserted by the petitioners as well as the second respondent that their mother N.V.Soundarammal was never put on notice. In the impugned order itself this contravention had been admitted. Paragraph 4 of the impugned order is as follows:

“4) The connected records were perused and from the records, it is evident that the petitioner's mother N.V.Soundarammal bought land to an extent of 7.56 acres in S.F.No.225/1 of Meenakshipuram Village of Bodinaickanur Taluk from the landowner Krishnaveniammal through Document No.220/72 dated 11.2.72. Though encumbrance over the land was brought to the notice of the authorities, the same was not considered and the above said land was declared as surplus. The provision of Section 23(2) has also not been applied by the Respondent. ...”



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15. The Land Commissioner after correctly noticing the breach of law has chosen to fasten the blame on the petitioners' family for not having questioned the declaration in time. The authorities cannot be allowed to take advantage of their own wrong. Even according to the authorities, Krishnaveni Ammal was entitled to retain 15 standard acres. Only remaining acres were declared as surplus. The petitioners had purchased the lands even before commencing the proceedings under the Act. The lands purchased by the petitioner's mother could have very well been brought within the retention portion. Admittedly, Krishnaveni Ammal did not file any returns. What the authorities ought to have done was to verify the encumbrance register. In fact, the Land Commissioner herself has fairly observed that the factum of purchase by the petitioner's family was within the knowledge of the authorities. Therefore, the petitioner's land could not have been identified as surplus lands. The very identification of the lands purchased by the petitioners as surplus lands was arbitrary and unreasonable. Probably realizing the same, the authorities subsequently atoned the earlier omission by assigning 7 ½ acres in favour of the petitioner's family. Technically the assignments were illegal. But if one adopts a holistic view of the matter, it can very well be justified. The Land Commissioner chose to look at the developments post-Section 18



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declaration. But she failed to pose the question as to whether the petitioner's land would, in the first instance, have been identified as a surplus land if the statutory duty under Section 22 of the Act had been discharged.

16. In this view of the matter, the order impugned in this writ petition is set aside. This writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.07.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Land Commissioner,
Chepauk,
Chennai.



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G.R.SWAMINATHAN, J.

MGA

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