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W.A.No.1821 of 2011 & W.P.No.15230 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2024

PRONOUNCED ON : .06.2024

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**W.A.No.1821 of 2011 & W.P.No.15230 of 2002
and
M.P.No.1 of 2011 in W.A.No.1821 of 2011**

[W.A.No.1821 of 2011]

M/s.NEPC India Ltd.
Rep. by its Director,
Mr.Tirupathi Kumar Khemka,
No.36 Wallajah Road,
Chennai – 600 002.

... Appellant

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to the Government,
Revenue (L.R.2(1)) Department,
Fort St. George, Chennai – 9.

2. The Assistant Commissioner,
Land Reforms Erode – 638 002.

3. The Assistant Commissioner,
Land Reforms, Tirunelveli – 627 002.

... Respondents



Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 07.06.2011 made in W.P.No.9746 of 2004 and thereby allow the writ petition by issuing command to the third respondent.

[W.P.No.15230 of 2002]

M/s.NEPC India Ltd.
Rep. by its Director,
Mr.Tirupathi Kumar Khemka,
No.36 Wallajah Road,
Chennai – 600 002.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to the Government,
Revenue (L.R.2(1)) Department,
Fort St. George, Chennai – 9.

2. The Assistant Commissioner,
Land Reforms Erode – 638 002.

3. The Assistant Commissioner,
Land Reforms, Tirunelveli – 627 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for all the records in relation to G.O.Ms.No.595, Revenue, dated 08.12.1998 and Letter (Permanent) NO.497 dated 12.11.2001 passed by the First Respondent and quash the said orders viz., G.O.Ms.No.595, Revenue dated 08.12.1998 and



Letter (Permanent) No.497 Revenue (L.Ref II) dated 12.11.2001 Department of the First Respondent and direct the First Respondent either to grant permission to hold the lands as per the Applications made by the Petitioner or to exempt the lands owned by the petitioner from the purview of Act LVIII of 1961 by virtue of Sec. 3(22) of Act LVIII of 1961.

For Appellant and Petitioner
in both the petitions : Mr.S.R.Rajagopal,
Senior Counsel for
Mr.Aditya Saranga Rajan

For Respondents in both
the petitions : Mr.A.Selvendran,
Special Government Pleader

COMMON JUDGEMENT

S.M.SUBRAMANIAM J.

The unsuccessful writ petitioner before the writ Court is the appellant in the Writ Appeal No.1821 of 2011. The appellant instituted another W.P.No.15230 of 2002, challenging the Government Order issued in G.O.Ms.No.595 Revenue, dated 08.12.1998, and the Letter (Permanent) No.497 Revenue (L.Ref II) dated 12.11.2001 passed by the Government of



Tamil Nadu and to direct the Government to grant permission to hold the lands as per the applications made by the petitioner under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961, (herein after referred as “Land Ceiling Act”). Since the issues raised in the writ petition and writ appeal are one and the same, both the cases are tagged together and the present common order has been passed.

2. The petitioner is NEPC India Ltd. The petitioner company filed a Special Revision Petition in SRP.No.4 of 2002, before the Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai, under Section 83 of the Land Ceiling Act, challenging the order dated 12.11.2001, passed by the Secretary to Government, Revenue Department, in G.O.Ms.No.497. Consequent to the abolition of the Land Reforms Appellate Tribunal, the matter stood transferred to this High Court and converted as a Writ Petition and notices were ordered to the parties.

3. The petitioner states that their company was in possession of lands in excess of the Land Ceiling Act. The company was owning 2,248.20 acres of land in Coimbatore and Erode Districts. By way of sale, they had



transferred substantial lands in favour of other companies. They filed applications prior to sale and after sale under Section 37-A of the Land Ceiling Act to the Government, seeking exemption from the Land Ceiling Act.

4. The Government held that even during the pendency of the exemption application, filed under Section 37-A of the Land Ceiling Act, the petitioner had sold the properties and their actions were found illegal and in violation of the Land Ceiling Act. Accordingly, the exemption applications were rejected. The Government held that under Section 7 of the Land Ceiling Act, the petitioner had contravened the provisions of the Land Ceiling Act. Thus, further action was proposed to be initiated under Section 20 of the Land Ceiling Act. The said order of rejection, issued in G.O.D.No.595, Revenue (Land Reforms) dated 08.12.1998, is under challenge in W.P.No.15230 of 2002. Pertinently, the writ petition itself was instituted after a lapse of about four (4) years from passing of the rejection order. The writ petitioner continued to send representations to the then Minister for Revenue and requested to reconsider their earlier decision. Several such representations were submitted to the Hon'ble Minister for



Energy and to the Government, repeatedly.

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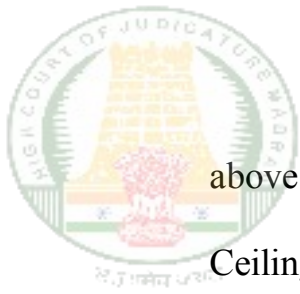
5. The Government by letter dated 12.11.2001, in G.O.Ms.No.497 Revenue, considered all the representations sent and held that there was no new ground adduced for grant of exemption and confirmed the original order of rejection passed in G.O.D.No.595 dated 08.12.1998. The Government opined that the land covered by the Land Ceiling Act cannot be allowed to be sold. Consequently, the request of the petitioner was rejected. Challenging the said rejection order, dated 12.11.2001, Special Revision Petition came to be filed before the Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai, which was transferred to the High Court and converted as a writ petition.

6. Mr.S.R.Rajagopalan, learned Senior Counsel appearing on behalf of the appellant/petitioner would contend that the Government ought to have exempted the land in view of Section 3(22) and 3(19) of the Land Reforms Act since the lands were not used for agricultural purposes. Mainly, it is contended that the application seeking exemption under Section 37-A of the Land Ceiling Act, filed by the petitioner and several reminders thereafter



sent were not considered by the Government. When the Government has not considered the applications for many years, it is to be construed as deemed exemption. The sale of excess land by the petitioner without permission, under Section 37-A of the Land Ceiling Act cannot be construed as violative of the provisions of the said Act. There is no prohibition for sale of excess land held by the land owners. Mr.S.R.Rajagopal, learned Senior Counsel would contend that Section 20 of the Land Ceiling Act has been misinterpreted by the Writ Court and the petitioner, in the present case, did not contravene any of the provisions since the applications submitted were not even disposed of by the Government. When there is an option to utilise the excess land for industrial or commercial purpose, the application filed by the land owners ought to have been considered within a reasonable period of time. Non-consideration would result in deemed permission and therefore, the order passed by the writ Court is liable to be set aside.

7. The learned Special Government Pleader, appearing on behalf of the respondents would oppose by stating that there is no dispute that the Land Ceiling Act and its provisions would apply to the land held by the petitioner company in excess of the ceiling. When excess land over and



above the ceiling, under the Act is not disputed, Section 37-A of the Land Ceiling Act is the relevant provision under which commercial or industrial undertaking, after getting permission from the Government, can hold the land in excess. The learned Government Pleader would contend that the concept of deemed permission would not arise at all, since the provisions under the Act are expressed and would apply for the case of the writ petitioner. Application under Section 37-A along with Section 20 and Section 7 of the Land Ceiling Act would portray that the petitioner has violated the provisions of the Act without obtaining permission under Section 37-A of the Act and they have sold the land which is illegal. Once the land vest with the Government under the Land Ceiling Act, the land owner cannot sell the same without permission from the Government under Section 37-A of the Act. Thus, both the writ appeals and the writ petition are liable to be rejected.

8. The petitioner company was permitted to hold an extent of 260.73 1/4 acres of land in Pannikulam Village, Kovilpatti Taluk, Tuticorin District, for airline operation and wind energy in G.O.Ms.No.42 Revenue, dated 19.01.1993, to utilise the same for specified purposes within a period



of ten years. In addition, the company acquired vast extent of lands (approximately 2500 acres) in various parts of Tamil Nadu, for the erection of Wind Mills, and selling the lands together with the wind mills erected thereon to various companies. The company has applied for permission under Section 37-A of the Land Ceiling Act. The details regarding the three applications filed by the petitioner company are as under:

1.	<i>NEPC ML/46/95, dated 21.09.04 Communicated in Govt. Lr.No.69880/LR II (1) dt.30.09.94</i>	<i>1399.81 1/4 acres in 15 Villages Coimbatore, Tirunelveli & Kanyakumari District.</i>
2.	<i>NEPC ML/46/95, dated 30.03.95 Communicated in Govt. Lr.No.69880/LR II (1) dt.04.05.95</i>	<i>Additional extent of 1100.21 1/4 acres in Coimbatore, Erode,, Tirunelveli & Kanyakumari District.</i>
3.	<i>NEPC ML/46/95, dated 28.09.96 Communicated in Govt. Lr.No.69880/LR II (1) dt.30.09.96</i>	<i>93.10 acres in Vavipalayam Village of Coimbatore District.</i>

TOTAL EXTENT

1 st Application	:	1399.81 1/4 acres
2 nd Application	:	1100.21 1/4 acres
3 rd Application	:	93.10 acres

Total	:	2593.12 1/2 acres

9. The Assistant Commissioner (Land Reforms) Erode, in his letter



dated 17.02.1998, reported that the petitioner company acquired an extent of 2248.20 acres of land in his jurisdiction and sold out an extent of 455.49 3/4 acres of land to various other companies, during the pendency of the application filed under Section 37-A of the Act. It was informed that the petitioner company has violated the provision of the Act.

10. The petitioner company applied for permission, under Section 37 of the Act, to hold lands in Tirunelveli, Kanyakumari and Coimbatore Districts on various dates to the Government as follows:

	<u>Acres</u>
21.09.94	1034.17 1/2
04.05.94	787.45 1/2
03.10.97	93.10
20.10.97	181.60
12.08.98	259.69

	2356.02
<i>Nandavanampalayam in Erode District</i>	
	152.04 1/2

	2508.06 1/2

After considering all the petitions given by the company the Government passed orders. Therefore, the contentions of the petitioner company are



baseless.

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11. The learned Senior Counsel for the petitioner would rely on the Government Order issued in G.O.Ms.No.596, Revenue and Disaster Management Department dated 24.10.2020, and contended that even after the sale of the land by the land owner, in violation of the Act, the application seeking permission can be considered and order may be passed. Therefore, applying the said Government Order, the case of the petitioner is to be considered.

12. The **Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 58/61)** was enacted with a view to reduce the disparity in the ownership of the agricultural land and concentration of such land with certain persons and to distribute such land among the landless poor.

13. It also provides fetters on the right to hold lands paving way for



equitable distribution among the citizens. Considering the scope and reasoning behind the enactment, a wider interpretation will have to be given to a welfare legislation. The Court will have to adopt a goal oriented approach by acting as an activist and a catalyst. While dealing with welfare legislation of so fundamental a character as agrarian reform, the Court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation. Therefore, wider interpretation has to be given considering the object of the Act and proper reading of the provisions contained therein.

SCOPE OF SECTION 37-A OF THE LAND CEILING ACT :

14. Sub Section (1) to Section 37-A enumerates that *“if any industrial or Commercial undertaking desires to acquire any land in excess of the ceiling area or desires to hold land acquired in excess of the ceiling area, it shall make an application to the Government for permission to acquire such land or for permission to hold such acquired land, as the case may be. Every such application shall be in writing and contain such particulars as may be prescribed. The application must be made within the time limit stipulated.”*



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15. Sub Section (2) to Section 37-A denotes that *“the Government may grant the permission for the whole or part of the land specified in the application, subject to such conditions as they deem fit or refuse to grant such permission. The order granting such permission shall contain the particulars of the land in respect of which such permission is granted.”*

16. Sub Section (3) to Section 37-A contemplates that *“the Government shall, in deciding whether to grant or refuse the permission under sub-section (2), take into consideration the following factors, namely:*

(a)the nature of the industrial or commercial operation;

(b)whether the excess land is required for immediate use or use in future; and

(c)such other particulars as may be prescribed.”

17. Pertinently, Sub Section (4) to Section 37-A stipulates that



“Notwithstanding anything contained in this Act, no industrial or commercial undertaking which has been approved by the Government under clause (iv) of Section 73 before the date of the publication of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act 1972 (Tamil Nadu Act 20 of 1972) in the Tamil Nadu Government Gazette, shall be entitled to hold or acquire land in excess of the ceiling area unless such industrial or commercial undertaking has obtained the permission of the Government under this section in respect of such excess land”

18. The above provisions would amply make it clear that without permission from the Government, no industrial or commercial undertaking can be established in the excess land. Therefore, getting permission of the Government under Section 37-A of the Act, for seeking exemption or to sell the land, is mandatory.

19. Let us now look into the spirit of Section 7 which speaks about



“Ceiling on holding land” and clearly stipulates that “On and from the date of the commencement of this Act, no person shall, except as otherwise provided in this Act, but subject to the provisions of the Chapter VIII, be entitled to hold land in excess of the ceiling area”

20. Therefore, the excess land under the Act vest with the Government absolutely. Any person, including the land owner, has to obtain permission from the Government, under 37-A of the Act, for the purpose of utilisation of the excess land under the Land Ceiling Act. Once the land absolutely vest with the Government, any dealing of the land by the land owner is illegal and violative of the provisions of the Land Ceiling Act.

21. Section 20 of the Land Ceiling Act provides penalty for future acquisition in contravention of Section 7. Sub Section (1) of Section 20 reads as under:

“If as a result of any transfer of land either by sale, gift (other than gift made in contemplation of death), exchange, surrender, agreement, settlement or otherwise effected on or after the notified date, the extent of land held by the transferee exceeds the ceiling area, then, the right, title



or interest accrued, in his favour by virtue of such transfer in the land in excess of the ceiling area shall, as a penalty for contravention of the provisions of section 7, be deemed to have been transferred to the Government with effect from the date of such transfer, on the declaration made by the authorised officer within whose jurisdiction such excess land or the major part thereof is situated. The authorised officer shall record in writing the reasons for such declaration.”

22. Hence Section 20 clearly reiterates that “*the land in excess of the ceiling area shall, as a penalty for contravention of the provisions of section 7, be deemed to have been transferred to the Government with effect from the date of such transfer, on a declaration made by the authorised officer.*” The deemed transfer of ceiling area to the Government, would be sufficient to form an opinion that prior permission from the Government before dealing with the excess land is mandatory.

23. The learned Senior Counsel, Mr.S.R.Rajagopal would submit that



a separate declaration is required by the competent authority. Once it is a deemed transfer to the Government, question of separate proceeding would not arise at all. The deemed clause contemplated under Section 20 of the Land Ceiling Act would indicate that the excess land under the Act absolutely vest with the Government. The deemed transfer of ceiling area itself is a declaration under the Act. The very spirit of the deemed clause is that prior permission must be obtained under Section 37-A of the Act before sale or utilisation of excess land. In the present case, the petitioner company has violated the provision of the Act.

24. The Hon'ble Supreme Court of India in the case of ***Project Officer, IRDP and others v. P.D.Chacko [(2010) 6 SCC 637]*** has held as follows:

"14.An exception clause is normally part of the enacting section, unlike a proviso which follows an enacting part. Crawford's Interpretation of Laws (1989), p.128, speaks of exception as follows:

"91.Exceptions and provisos.-... The



exception, however, operates to affirm the operation of the statute to all cases not excepted and excludes all other exceptions; that is, it exempts something which would otherwise fall within the general words of the statute."

15. It is trite law that an exception clause has to be strictly interpreted and cannot be assumed but be proved. An exception clause is always subject to the rule of construction and in case of doubt, it must befriend the general provision and disfavour the exception. If any category of person claims exception from the operation of the statute it must establish that it comes within the exception."

25. In the case of K.Seethalaxmi vs The Commissioner on 5 October, 2012, the Madras High court while disposing of the case vide common order held as follows :

"23. Assignment has been made in favour of the first petitioner, in each of the Writ Petitions, subject to certain conditions. The petitioners do not acquire any alienable right, before the expiry



*of 20 years, from the date of assignment. The assignments made to them, have been cancelled, for violation of statutory provisions, after giving them a reasonable opportunity. The purchasers, second petitioners in each of the writ petitions, have no right to be given an opportunity of making any representation before cancellation. Orders of cancellation of assignments have been served on the assignees. Persons, who claim a right or interest over the property, pursuant to an action, prohibited under the statutory provision, cannot demand that he should be provided with an opportunity, before cancellation. **Needless to state that no sale or transaction, in contravention of a statutory provision, can be recognised and approved by Courts. Any sale or transfer, during the period of assignment, contrary to statutory provisions, would not confer any right or interest, on the second petitioners, to enter into the shoes of the assignees, to challenge an order of cancellation, along with the assignees.***



26. The learned Single Judge formed an opinion that Section 37-A of the Land Ceiling Act is the only provision under which the commercial or industrial undertaking, after getting permission from the Government, can hold the land in excess under Section 37-A(2) of the Act. The Government has given discretion to grant permission and also to impose such conditions as are necessary except in accordance with section 37-A. The company cannot hold any land in excess, satisfied under section 7 of the Land Ceiling Act. Under section 37- A(5) of the Act, the Government vests with the power to cancel the permission on breach of any condition imposed.

27. Under Section 23 of the Land Reforms Act, if any transfer by way of sale or otherwise is made, such sale is held to be invalid. The property is deemed to be transferred on the Government under section 20 of the Act. The petitioner company cannot have a vested right in demanding protection under Section 37-A of the Land Ceiling Act, to hold on excess of the ceiling prescribed under the Act. Pertinently, the contravention of section 37-A will automatically result in invocation of Section 7 and 20 of the Land Ceiling Act. Consequently, the land deemed to be transferred to Government and therefore, all actions of the petitioner became invalid and none-est in law.



28. Thus, we do not find any infirmity in respect of the decision arrived at by the writ Court, which is in consonance with the provisions of the Act. Consequently, W.A.No.1821 of 2011 and W.P.No.15230 of 2002 are devoid of merits and are dismissed. However, there shall be no order as to costs. Connected miscellaneous petition is also dismissed.

(S.M.S.J.,)

(C.K.J.,)

.06.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

Sha

To

1.The State of Tamil Nadu, Rep. by Secretary to the Government,
Revenue (L.R.2(1)) Department, Fort St. George, Chennai – 9.

2. The Assistant Commissioner,
Land Reforms Erode – 638 002.

3. The Assistant Commissioner,
Land Reforms, Tirunelveli – 627 002.



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W.A.No.1821 of 2011 & W.P.No.15230 of 2



S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

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Pre-Delivery Order in
W.A.No.1821 of 2011 & W.P.No.15230 of 2002

.06.2024