
(1987) 06 MAD CK 0030
In the Madras High Court

Authorised Officer, Land Reforms

APPELLANT

Vs

Giriraj Gopanna Manradiar

RESPONDENT

Date of Decision : 15-06-1987

Acts Referred:

Citation : (1989) 1 LW 149 : (1989) 1 MLJ 370

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—This matter has been referred to us by a learned single Judge, on the ground that it involves an interpretation of the provisions of Section 73(vii) and Section 73(viii) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1964, and two decisions in P J. Vetrivel Gopanna Manradiar v. A.O. (Land Reforms), Coimbatore C.R.P. No. 2020 of 1980 dated 24-12-1981. and V.S. Parthasarathi Mudaliar v. A.O. (Land Reforms), Kancheepuram C.R.P. No. 522 of 1981 dated 25-3-1982. which are conflicting decisions of two learned single Judges.

2. The respondent held an extent of 133.36 ordinary acres, which is equivalent to 54-13 standard acres as on 15-2-1970 which is the relevant date. On the basis that the land held by him is in excess of the ceiling limit of 15 standard acres, a draft statement u/s 10(1) of the Act was prepared proposing an extent of 39.13 standard acres as surplus and the same was published in the Tamil Nadu Government Gazette dated 7-11-1973. The respondent filed his objection u/s 10(5) of the Act contending that out of 133.36 ordinary acres, an extent of 53-40 acres are coconut topes exempted u/s 73(viii) and Section 73(viii) of the Act, and prayed for exemption of that extent. The Authorised Officer held that an extent of 53-40 ordinary acres was a tope and granted exemption to those lands u/s 73(vii) and Section 73(viii) of the Act, in his proceedings dated 21-6-1974. It appears that some time in December, 1978, another Authorised Officer inspected the property and found that only in an extent of 39.68 ordinary acres there were old coconut trees and other trees and that in the rest of the extent the coconut

plants of 4 years and 5 years old were found and on that ground the exemption in respect of an extent of 13.72 acres was withdrawn and the exemption was sustained only in respect of 39.68 ordinary acres. Against this order, the respondent preferred an appeal to the Tribunal and the Tribunal (Subordinate Judge, Coimbatore in L.T A. No. 169 of 1979) allowed the appeal and set aside the order of the Authorised Officer, dated 21-6-1974, restricting the extent exempted. It is against this order, the above revision petition has been filed.

3. Before the learned single Judge, when it came up for orders, it appears that an argument was raised as to whether the Authorised Officer has any power of review so as to enable him to review the earlier order dated 20-6-1974, exempting 53.40 acres. Since on that question there was conflict of opinion, the learned Judge has referred this matter to a Division Bench.

4. u/s 8 of the Act, every person who, on the date of the commencement of this Act, held, or is deemed to have held land in excess of the ceiling area, shall furnish to the Authorised Officer, a return containing the particulars mentioned therein. u/s 9, if any person who has held or is deemed to have held land in excess of the said area fails to furnish the return u/s 8 or furnishes an incorrect or incomplete return under that section, the authorised officer may, by notice, require such person to furnish the return or the additional particulars as the case may be, within the time stipulated. On the basis of the return furnished u/s 8 or 9, and after making such enquiry as he may deem fit, the Authorised Officer prepares a draft statement in respect of each person holding or deemed to have held the land in excess of the ceiling area as provided u/s 10(1) and such draft statement shall be published and a copy thereof also shall be served on the person concerned under Clause (v) of Section 10. On receipt of that notice, the person on whom notice is served may file this objections and after considering the objections, giving an opportunity to the objector and after hearing him, the Authorised Officer shall pass an order. The draft statement shall be altered in accordance with the order passed u/s 10(v) and a final statement prepared and published as provided u/s 12. There are certain provisions in the Act relating to the exclusion of certain lands from the calculation of the ceiling area and there are certain other provisions providing for exemption of certain lands from the provisions of Act. The exemption provisions are contained in Chapter IX of the Act and in this particular case, we are concerned with Section 73(vii) and (viii). These two provisions read as follows:

73. Except as otherwise provided in Sub-section (2) and (3) of Section 5 and in Section 6 nothing contained in this Act shall apply:

(vii) lands converted on or before the 1st day of July 1959 into archards or topes or arecanut gardens, whether or not such lands are contiguous or scattered, provided that such lands shall be exempt only so long as they continue to be orchards, topes or arecanut gardens.

(viii) any land used exclusively for growing fuel trees on the date of the

commencement of this Act;

Provided that such land shall be exempt only so long as such land is used for such purpose.

5. In the instant case, as already stated, on receipt of the objections from the respondent-landlord, relating to the inclusion of 53.40 ordinary acres, on the ground that they are exempt u/s 73(vii) and (viii), the Authorised Officer originally excluded an extent of 53.40 ordinary acres as falling u/s 73(vii) and 73(viii) of the Act.

6. Reverting to the statutory provisions, against any decision of the Authorised Officer u/s 10(v) of the Act the Government may within 90 days from the date of the decision, and any person aggrieved by such decision may within 30 days from the date of the decision, appeal to the Land Tribunal. The Tribunal, after giving the parties a reasonable opportunity of being heard, shall determine the case finally or remand the case, as the case may be. A revision to the Land Commissioner is provided in certain cases. u/s 83, a further revision is provided to this Court against the orders of the Land Tribunal. In the instant case, against the order dated 21-6-1974 of the Authorised Officer giving exemption of 53.40 ordinary acres as falling u/s 73(vii) and (viii) no appeal was filed by the Government and that order had become final. Section 15 provides for the rectification of bona fide mistakes and clerical errors and that provision reads as follows:

Notwithstanding anything contained in Section 12 and Section 14 the Authorised Officer may, either on his own motion or on the application of any of "the parties:

(a) if he is satisfied that a bona fide mistake has been made in regard to any entry in the final statement published u/s 12 or 14, make the necessary corrections therein.

(b) at any time, correct any clerical or arithmetical mistake in regard to any entry in such final statement.

7. Apart from questioning the revised order of the Authorised Officer dated 20-1-1979, on merits it was also contended that the order of the Authorised Officer dated 21-6-1974, and that the Authorised Officer has no such power of review, if there was any mistake in the order, which could not be considered as falling u/s 15, no power of review is available. As may be seen from Section 15 the power to rectify mistakes and clerical errors, would not include a power to review the order itself. Clause (a) to Section 15 relates to a bona fide mistake made in regard to an entry in the final statement published u/s 12 or 14, Clause (b) of Section 15 relates to a correction of any clerical or arithmetical mistake. A revising of any opinion as to whether a particular land is exempted or not, or even the extent of the land which comes under the exemption cannot certainly be brought u/s 15 of the Act.

8. In the decision reported in Radhakrishnan v. Authorised Officer, Land Reforms,

Kancheepuram 99 L.W.351 : (1986) 2 M.L.J. 57, one of us (V. Ramaswami, J.) held that there is no provision in the Act which enables the Authorised Officer to review his earlier order or to reopen a closed issue. The provisions of Section 15 deal with clerical or arithmetical mistakes and not a review of earlier order itself or passing of a fresh order. In that case, certain properties were originally taken as belonging to a joint family and later, on the basis of certain other materials available, the Authorised Officer wanted to review the earlier order holding that the property was the self-acquired property of the individual and not joint family property. It was held that it was not open to the Authorised Officer to review his earlier order and that Section 15 does not enable him to review that order.

9. In the decision reported in Parthasarathi Mu-daliar v. Authorised Officer, Land Reforms (1983) 1 M.L.J. 79, the learned Judge held that, unless it was a clerical error or a bona fide mistake contemplated u/s 15, the order cannot be revised. If the Government was aggrieved by the order, they could resort to Section 78 by filing an appeal and not otherwise. In so holding, the learned Judge followed an earlier decision in Syed Rabia Beevi Vs. The Authorised Officer, Land Reforms and Another, .

10. A Division Bench of this Court in the said decision reported in Syed Rabia Beevi Vs. The Authorised Officer, Land Reforms and Another, , held:

It seems to us that Section 15, having regard to the language employed does not amount to the usual power of revision. The power of revision is conventionally conferred by the Legislature by employing the words "If the Officer is satisfied about the legality, propriety and the correctness of the order". This is not the language of Section 15. The mistake that can be corrected u/s 16(a) is in regard to an entry in the final statement. It follows, therefore, that if the entry in the final statement is based upon the earlier decision after hearing the objections u/s 10 and 12, it is not contemplated that Section 15 is to cover such a situation. Elaborate procedure has been laid down by Sections 10 to 12 for preparing the draft statements, hearing objections and then disposing of the objections, publishing a final statement. Any finding that is arrived at in respect of the material entries in the form would be as a result of deciding the pros and cons in the light of the objections. If that is kept in view, it is obvious that, u/s 15, it is not intended that a finding arrived at in a solemn and quasi-judicial fashion could be set at naught merely because the officer is satisfied that a bona fide mistake has been made. If that were the intention, the language employed in Section 15 would have been different. What appears to us to be the scope of Section 15 is that it applies to mistakes in the correctness not of the merits, but of the form of the entry in the final statement, just as Section 15(b) is directed against clerical or arithmetical mistake.

11. The ratio of this judgment was also followed by another Division Bench in Chellammal and Anr. v. Authorised Officer, Land Reforms, Madurai and Anr. W.P. 2899 of 1967, dated 10-3-1970, of this Court. These decisions clearly established that Section 15 does not confer any power of review.

12. It remains to notice the decision in C.R.P. 2020 of 1981 which has taken a slightly different view from the earlier judgment on the question of power of review. The question arose in that case, because the subsequent order made by the Authorised Officer was after the original order was set aside by the Tribunal and the matter was remanded for fresh disposal. When a fresh order was made in pursuance of a remand order, it could not be treated as an order of review. Even otherwise, we are of the view, that any observation made by the learned Judge relating to review is only obiter dicta and that decision also being contrary to the earlier Bench Judgment, we are unable to agree that it was correctly decided.

13. The next question will be as to how the proviso to Section 73(vii) and (viii) could be given effect to. In our opinion this can be done only by fresh proceedings initiated under those provisions on the ground that the exemption granted was no longer available. Any exercise of that power under that provision could not be considered as reviewing an earlier order, but treating the earlier order as conditional, fresh proceedings being initiated on the ground that the exemption is no longer available. As may be seen from Sub-section (vii) and (viii) of Section 73, if the land which is exempted continues to be used as orchard or tope or arecanut garden, or used for the purpose of growing fuel trees, it enjoys the benefit of exemption. The moment the land ceases to be used for such purposes, the land does not get the benefit of such exemption and it will have to be included in the holding of the land owner, u/s 7 on and from the date of the commencement of the Act, no person shall be entitled to hold land in excess of the ceiling area. The ceiling area fixed is 15 standard acres. No person is permitted to acquire land in excess of the ceiling area. But, if as a result of any transfer of land either by sale, gift, exchange, surrender, agreement, settlement or otherwise on or after the notified date, the extent of the land held by the transferee exceeds the ceiling area, then the right, title and 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 u/s 20, with effect from the date of such transfer, on a declaration made by the Authorised Officer. The Authorised Officer shall record in writing the reasons for such declaration and such declaration shall be made after giving an opportunity to the transferor, the transferee and other persons interested. Therefore, if the lands exempted u/s 73(vii) and (viii) do not continue to be used as orchards or topes or arecanut gardens, or are not used for the purpose of growing fuel trees then they will have to be treated as lands subsequently coming into the possession of the land holder, liable to be included in the ceiling area and considered under the provision of Chapter III relating to ceiling on future acquisitions. However, it should be made clear that the Proviso could operate only when there is a clear intention on the part of the owner not to continue to hold the same as orchard or topes or arecanut gardens or not to use the land for the purpose of growing fuel trees. Such intention should be manifest either from the use of the land for other purposes like cultivation after clearing

the trees or from other evidence of non user for the purposes provided under the exemption. Merely because certain trees wither away and in that place new trees are growing or the trees have been cut for the purpose of again raising orchards, topes or arecanut gardens or for growing fuel trees, it cannot be said that the intention was to treat it otherwise than as orchards or topes or arecanut gardens or lands to grow fuel trees. There may be a time lag between clearing the tope in order to raise new trees. But if the intention was to keep it as a tope and not to convert it into an agricultural land, then, so long as that intention continues and no overt act nullifying the intention of that purpose is available, the land owner shall be deemed to be entitled to exemption as provided under the Act. If once the land ceases to be a tope and an intention to treat it as regular cultivable land is found, then it could either be dealt with under Chapter III or as a case of not complying with the condition of keeping it as a tope under the original order. In both cases it cannot be considered to be a revision of the earlier order. But, it should be treated as a fresh proceeding under the relevant provision under the Act itself. Thus, though the Authorised Officer is entitled to make a fresh order when the land owner ceased to use the land as a tope or for growing fuel trees, there is no power to review the earlier order as such. In the present case, we are satisfied that the order of the Authorised Officer amounts to a review of the earlier order, because, when the first officer held that out of the total extent of 133.36 ordinary acres, an extent of 53.40 ordinary acres are topes and land used for fuel trees u/s 73(vii) and (viii). In the subsequent order made by the Authorised Officer, he reduced the extent of exempted lands as 39.68 ordinary acres. That certainly amounts to a review of the earlier order and not as a fresh proceeding for violation of the conditions earlier mentioned of keeping the land as a tope.

14. On merits also we find that the Tribunal was right in holding that the entire extent of 53.40 acres are still tope and are used for growing fuel trees and the restriction of the extent of 39.68 acres is wrong. The ground on which the exemption was withdrawn was that in the 39.68 acres, old coconut trees are to be found and in the remaining extent, young coconut trees of four years or five years are found. This was not a ground on which he can say that the land is not used for the purpose of a tope. There is no dispute that at the time the original order was made the entire areas was a tope. Probably after certain trees withered away, new coconut trees were planted and it is the new saplings which the subsequent officer has seen during his inspection. The intention of the land owner is clear by not using it for cultivation, but still using it for the purpose of tope by planting new saplings. The Tribunal has also discussed fully about the other facts, on the evidence available in this case and we are in agreement with the Tribunal that the lands are still used as tope and had not been converted as agricultural lands.

15. In the circumstances, the revision petition is dismissed. But there will be no order as to costs.