

(1980) 08 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 4870 of 1978

B.R. Abdul Rahiman Sahib

APPELLANT

Vs

The Authorised Officer Land Reforms

RESPONDENT

Date of Decision : 28-08-1980

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 12, 14, 15, 18, 3(2)

Citation : (1981) ILR (Mad) 282

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for S.M. Amjad Nainar, for the Appellant; C. Chinnaswami, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—The Petitioner held the following extents of land in Thanjavur Taluk, as on 6th April, 1960 i.e. the date of commencement of the Tamil Nadu Land Reforms (Fixation of ceiling on Land) Act, 1961, as amended by Act XVII of 1970 (hereinafter referred to as the Act.):

In the Name of R. Abdul Rahimam : Thanjavur Taluk:

Name of the Ordy. Acres. Std. Acres.

(1) (2) (3)

Thanjaver taluk

Garasanayagapuram village .. 6.36 5.57

Papanasam taluk-

Veeranam village 29.60 2433

Total .. 35.96 29.90

In the Name of His son Asaraf Ali who was minor an 6th 1970, i.e. the date of commencement of the Act:

Name of the Place Ordy. Acres. Std. Acres.

(1) (2) (3)

Thanjavur taluk-

Narasarayagapuram village .. 7.66 3.58

Papanasam taluk-

65. Regunathapuram 14.81 9.16

Total .. 22.47 12.74

Grand Total .. 58.43 42.64

2. The Authorised Officer by his proceedings, dated .26th April, 1965 treated the minor son of the Petitioner as a member of the family and fixed the ceiling limit at 30 standard acres. On that basis, he parsed orders treating an extent of 7.64 acres as surplus. Against this order, the Petitioner preferred an appeal to the land Tribunal in Civil Miscellaneous Appeal o.64 of 1965. The land Tribunal, Thanjavur, by its judgment dated 25th October, 1965 allowed the appeal and ordered the exclusion of the land held by the son of the Petitioner Asaraf Ali who was then a major and to work out the surplus afresh, if any. Against this order of the Land Tribunal, the Authorised Officer preferred Civil Revision Petition No. 1499 of 1966 to this Court. By the judgment dated 19th January, 1971, the civil revision petition was dismissed and the order of remit was confirmed. During the pendency of the fresh enquiry and pursuant to the order of this Court in Civil Revision Petition No. 1499 of 1966. the Petitioner was granted ryotwari patta for 112.99 ordinary acres of inam Land in Nilagiri Therku Thottam in Thanjavur taluk. The Authorised Officer by his proceedings dated 30th April, 1973 computed the holdings of the Petitioner as under:

Name of the Place. Ordinary Standard

Acres. Acres.

(1) (2) (3)

Thanjavur taluk-

Narasanayagapuram village .. 6.36 5.57

Nilagiri Therku Thottam 112.99 28.25

Papanasam taluk-

Veeranam Village 29.20 24.33

Total .. 148.95 58.15

On this basis, he declared that the Petitioner had a surplus of 26.15 standard acres. It was the submission of the Petitioner that an extent of 112.99 ordinary acres in Nilagiri Therku Thottam was non-agricultural in character and the lands were not fit for any cultivation, Further, the land was situate as a contiguous block adjoining the Thanjavur Medical College and the land has been divided into house sites for sale even prior to 1960. In fact the lay-out has been sanctioned as early as 15th November, 1961 by the joint Director of Town planning, Madras. On this basis, exemption was claimed for inclusion of this extent of land stating that it would not fall within the ambit of the Act. The Authorised officer negatived the claim of the Petitioner for exemption of this extent of 112.99 ordinary acres by his order dated 30th April, 1973 consequently, he declared the surplus and a statement was also put to that effect in the Tamil Nadu Government Gazette, dated 16th May, 1973.

3. Aggrieved against this order of the Authorised Officer, the Petitioner preferred an appeal to the Land Tribunal in Civil Miscellaneous Appeal No. 143 of 1979 before the Tribunal the same contention was reiterated concerning this extent of 112.99 ordinary acres that it would not fall within the definition of the land as defined in Section 3(2) of the Act. It was not agricultural land, but a house site. The Tribunal, by its judgment dated 19th October, 1973 held that the lands were not capable of being used for agricultural purposes and they had been divided into house sites and holding that the view of the Authorised Officer was perverse, accepted the claim of the Petitioner and allowed the appeal. The said judgment, not having been further taken up in revision, become final and conclusive. This being so, after the passing of Tamil Nadu Act XVIII of 1970 by which the ceiling limit came to be reduced from 30 to 15 standard acres, an enquiry took place as to the extent of surplus and to be declared as far as the Petitioner was concerned. On that basis, the holding was computed as under:

Name of the Place. Ordinary Standard

Acres. Acres.

(1) (2) (3)

Papanasam taluk

Veeranam village .. 15.35? 12.54

Tanjavur taluk-

Narasanyapuram villages .. 6.36 5.57

Total 21.71? 18.11

The result was that extent of 3.11 standard acres in Narasanayapuram village was declared as surplus. A notification was published in the Tamil Nadu Government Gazette on 7th July, 1974, of which the Petitioner was furnished a copy on 2nd September, 1974. To this communication, the Petitioner requested that the surplus land in Veeranam village. Thereupon the Authorised officer, by his proceedings, dated 27th October, 1976 proceeded to compute the compensation payable, to the Petitioner pursuant to the notification, dated 17th July, 1974. On the representation made by the Petitioner to declare the surplus in Veeranam village by his proceedings, dated 15th December, 1976 the Authorised Officer fixed the compensation payable to the Petitioner at Rs. 17,130.36. Concerning this a notification was also published in Form 22 in the Tamil Nadu Government Gazette, dated 15th December, 1976.

4. By this proceedings, dated 8th June, 1978 the Authorised Officer informed the Petitioner that a bona fide mistake had occurred in computing the compensation and he proposed to rectify the same u/s 59(9) of the Act. By his proceedings, dated 25th November, 1978, the compensation was computed at Rs. 14,528.04 and interest at Rs. 3,400/4. It requires to be noted that in all these proceedings the extent of 112.99 acres which was declared to be house site by the Land Tribunal in its judgment, in Civil Miscellaneous Appeal No. 143 of 1973, dated 19th October, 1973 was excluded.

5. Long after the publication of the final statement by the impugned notice, dated 5th December, 1978, proposals were made to start a fresh enquiry u/s 9 of the Act including the 112.99 acres of land in Nilagiri Therku Thottam in the holding of the Petitioner. It is at this stage this writ petition has been preferred for prohibition prohibiting the Respondent from making the enquiry. Before I proceed to deal with the contentions of the Petitioner, one other fact requires to be noted for the sake of completeness. An extent of 4.24 acres in Nilagiri Therku Thottam was acquired by the Government for housing the Tharjavur Medical College. The land Acquisition Officer awarded a compensation of Rs. 39,088.75. Against the said award the matter was referred u/s 18 of the Land Acquisition Act to the learned Subordinate Judge of Thanjavur in Land Acquisition Original Petition No. 138 of 1974. It was clearly held by the learned Subordinate Judge on reference that the land acquired was a house site and, therefore, the compensation was increased to Rs. 87,230.25. The objection in this writ petition by Mr. M.R. Narayanaswami, learned Counsel for the writ Petitioner, is two fold:

(i) In so far as the Land Tribunal held in Civil Miscellaneous Appeal No. 143 of 1973 that the extent of 112.99 acres would not fall within the ambit of the Act since it will not be covered by the definition of the land u/s 3(22) of the Act, any present attempt to include the same will be to undo a binding judgment between the parties. It is not open to the Authorised officer to start a fresh enquiry on the ground that a bonafide mistake has been committed with regard to the character of the land. This is all the more so when, in the proceedings taken after the Tamil Nadu Act XVIII of 1970, dated, 18th August 1974, this particular extent was excluded. Not only that, the land Acquisition proceedings by which an extent of 4.24 acres was acquired would also clearly establish the fact that the land was only a house site and not an agricultural land. Whatever it may be there is total lack of jurisdiction to start proceedings afresh to make a binding and a conclusive judgment of the land Tribunal and (ii) the Government has now proposed to acquire the remaining land in this 112.99 acres by adopting this subterfuge in view of the fact that the compensation has to be paid to the Petitioner on the basis of the market value of the house sites. Therefore, any attempt to deprive the Petitioner of his valuable holding attempting to include it as agricultural land is nothing but mala fide.

6. The learned Government pleader in supporting the notice would make two submissions: The character of the land was not, properly assessed earlier. After the passing of the Act XVII of 1979 action has come to be initiated and Section 15 of the Act would come to the rescue of the Authorised officer. Secondly in any event, what has been issued is only a notice and nothing prevents the Petitioner from urging all these contentions before the Authorised officer who, undoubtedly, will look into the matter, in its proper perspective.

7. I have detailed all the facts to highlight the issue involved, that issue being whether the Authorised officer has jurisdiction to issue a notice u/s 9 of the Act to start a fresh enquiry on 5th December 1978 proposing to include this 112.99 acres which was declared to be a house site and not agricultural land. It is well settled that prohibition will issue where there is lack of jurisdiction. In this case, I have not the slightest hesitation in holding that there is total lack of jurisdiction for the Authorised officer to issue the notice on 5th December, 1978 purporting to be u/s 9 of the Act. The reason why I hold so in that is Civil Miscellaneous Appeal No. 143 of 1973 the Land Tribunal held by its order, dated, 19th October, 1973 as under:

Section 3(22) of Act 58 of 1961 defines a land as an agricultural land, which is used or is capable of being used for agricultural purpose subservient to the forest lands, plantation and type are included in the said definition. But it has been specifically mentioned, that house sites and lands used exclusively for non-agricultural purposes are not included in the definition of the word "land". It is, therefore, evident, that lands which are house sites and lands, which are exclusively used for non-agricultural purposes cannot be taken into consideration while fixing the holding of a person under the Act. The Appellant has contested

that 112.99 ordinary acres of land in Nilagiri village do not satisfy the definition of the word "land" since all those lands are non-Agricultural lands and are only house sites. Admittedly these lands are remaining uncultivated. Exhibit P-3 is the extract from the adangal for fasli 1368 and the same shows, that there was no cultivation. It is therefore evident, that as on 6th April, 1960 the lands remained uncultivated. Exhibit P-4 is the endorsement made by the Agricultural income tax officer and the same shows, that the lands in Nilagiri village were not taken into consideration for assessing the Agricultural income tax. Exhibits P-3 and P-4 thus show, that the land remained uncultivated and this position has not been considered by the learned Authorised officer. Reference was made to the District Agricultural Officer and he has inspected the lands and he has sent his report which is found in page 259 of the file. The District Agricultural Officer has observed that the soil is of laterite type resembling the vallam series of soil classification and that the land in question is kept fallow without any cultivation for a number of years and that the land is undulated, full of shrubs and while and bills and that in the present condition, the land is not suitable for cultivation, of any crops. It is unfortunate, that while referring to the report of the District Agricultural officer the learned Authorised officer has not properly set out in the judgment the opinion of the learned District Agricultural officer. The Authorised officer has mentioned in the judgment, that the district Agricultural officer has stated, that dry crops can be raised. The district Agricultural officer has not stated, the dry crops can be raised. The District Agricultural officer has not stated, the dry crops can be raised on the lands in question. He has merely observed that dry crops can be raised in laterite type of soil. But he has specifically observed that the lands are not suitable for cultivation of any crops. It is therefore clear that the lands are not capable of being used for agricultural purposes or purposes subservient thereto. It is also seen from P-5 to exhibits P-7, that the lands have been divided into plots for house sites and the lay-out plan has even been approved by the District of Town Planning. It is therefore clear that the lands are capable of being used only as house sites. The learned Authorised officer has observed, that the division of the lands into plots house sites. It is obviously as incorrect statement. The lands were never agricultural lands and the fore the question of changing the character of lands does not arise. The learned Authorised officer has further pointed out that there is a Government open Air Jail adjacent to the lands and Red gram has been raised on those lands. The circumstances is again not relevant as we have to ascertain whether the lands of the Appellant are agricultural lands and the fact, that some crops has been raised on the adjacent land cannot show that the lands of the Appellant are agricultural lands. It is also seen from the judgment of the learned Authorised officer that 4.50 acres of lands of the Appellant have been actually occupied by Medical College. The learned Authorised officer has refused to exclude even that area. It is not known as to how the learned Authorised officer could have Held the land actually occupied by the Medical College to be agricultural land. It would thus he seen from the above discussion that the finding of the learned Authorised officer that 112.99 acres in Nilagiri village are agricultural lands in rather

perverse. Excluding the said extent, it is clear, that the Appellant own. only 30-15 standard acres. u/s 7, extents not exceeding half an acre in case of wet lands and one acre in case of dry lands shall be excluded in calculating the total extent of lands held by any person. So the 15 cents, which is in excess can therefore be excluded. So excluded the holding of the Appellant is only 30 standard acres and, therefore, there is no surplus. This point is accordingly answered.

This speaks eloquently as to the character of the land. This judgment had become final and conclusive because it was not taken up on revision u/s 83 of the Act. Therefore, this is binding between the parties. There is no way to wriggle out of it. This order must have its full impact and say. However, the reason for issuing the present notice as seen from the counter affidavit filed by the Authorised officer indeed constitutes an interesting reading. It is as follows:

The land Tribunal had earlier treated the lands as not fit for cultivation. But now that the Director of Agriculture the highest authority on Agriculture has found that cashew plantation can be taken up even under the existing condition and that only "nominal" measures are necessary to bring the land under cultivation. Any casual visitor will be struck of the genuineness correctness etc. of this view. Therefore, the land come Under the definition of "agricultural lands. In the circumstances, the contention of the Petitioner that the judgment of the is land Tribunal is final, since no appeal was preference again as it, is incorrect, baseless, totally untenable and is bare of any merit because the proceedings under Act XVII of 1970 to declare the surplus as on 15th February, 1970 are independent and coparate with reference; to conditions circumstances and position as on that date There cannot be any res judicata on the conditions of a land its fitness, cultivability, etc. Even if it had been treated earlier, it could be due to error, insufficient, verification, etc., which would not effect proceedings under Act, XVII of 1970.

It really passes my comprehension as to how the Authorised officer was emboldened to file a counter-affidavit of this nature. This illustrates the need for Courts to act as bulwarks against the executive excesses. One is tempted to think that he should be thankful to providence that there are Courts in this land to protect the oppressed, namely, the citizen from the oppressor, namely, the Government. The stand of the Authorised officer runs counter to all accepted cannons of law. No judgment can ever be undone by these subterfuges. If the Government were anxious, the matter ought to have been taken up in revision and the correctness of the view of the land Tribunal extracted above must have been canvassed. For reasons best known to the Respondents that was not done. Presently to adopt a subterfuges is nothing but an act of bad faith The contention that the Director of Agriculture has opined that the land could be brought under cultivation and, therefore, it would fall within the definition of land u/s 3(22) of the Act is totally unacceptable to me. However eminent the authority may be in opining about the character of the land, that eminence cannot either dilute or do

away with the judgment rendered by a Court of law constituted under the Act.

8. Nor again, Section 15 could come to the aid of the Respondent. That section reads:

Notwithstanding anything contained in Sections 12 and 14 the authorised officer may, either of his own motion or on the application of any of the parties

(a) if he is satisfied that a bonafide 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.

In this case, where is a bonafide mistake? Who committed the mistake? If it is a mistake how then was it in the proceedings taken after amending Act XVII of 1970, dated 18th July, 1974, this came to be omitted? Not only that an extent of 4.24 acres was acquired under the Land Acquisition Act and the initial compensation of Rs. 39,088.75 came to be increased to Rs. 87,230.25 on a reference u/s 18 of the Land Acquisition Act on the ground that the extent of the land acquired for the neighbouring Medical College was a house site. Therefore, to say that it is a mistake is nothing short of callousness. The question posed by me above will always remain unanswered in view of the conclusive judgment of the Land Tribunal in Civil Miscellaneous Appeal No. 143 of 1973. for all these reasons, I have not the slightest hesitation in making the rule absolute, Accordingly, the writ petition will stand allowed. The Petitioner will be entitled to his costs which I award to express my displeasure at the subterfuge adopted by the Authorised officer.