

(1981) 11 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 5529 of 1979

Easwaramuthy

APPELLANT

Vs

The Authorised Officer, (Land Reforms) Erode and another

RESPONDENT

Date of Decision : 05-11-1981

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 10(5)

Citation : (1981) 11 MAD CK 0066

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : N. Sivasubramaniam for M/s. S. Pandi and P. Mohanasundaram, for the Appellant; A. Sivaji for Govt. Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—The matter arises under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58 of 1961, hereinafter referred to as the Act. Proceedings under the Act were initiated against the petitioner and the matter has come up to the stage of publication of the notification under S. 18(1) of the Act. By his order, dated 19th April, 1974 passed under S. 10(5) of the Act, the first respondent held that the lands in Survey Nos. 904/A1, 906/1 and 906/3 are full of stones and they are unfit for cultivation and hence the said lands of an extent of 11.29 acres are liable to be excluded from the holdings of the petitioner under S. 3 (22) of the Act. However, the first respondent, by order dated 15th May, 1979 purported to exercise powers under S. 15 of the Act, re-opened the question with reference to the exclusion of the above extent of lands, opined that the lands are fit for cultivation and in that view directed the amendment of the final statement so as to include the said extent of 11.29 acres in the holdings of the petitioner. As against this order the petitioner preferred a revision to the second respondent. The second respondent, while passing orders on 25th October, 1979, referred to the judgment of a Division Bench of this Court reported in Syed Rabia Beevi v. The Authorised Officer, Land Reforms, Madurai, and another 1970 II M.L.J. 700=83 L.W. 555, wherein it has been held that the scope of S. 15 (a) 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 S. 15 (b) is directed against clerical or arithmetical mistakes. The second respondent seemed to have felt the untenability of the order passed by the first respondent on 15th May, 1979 but however the second respondent proceeded to deal with the matter under S. 18A of the Act and directed the first respondent to include the said extent of 11.29 acres in the concerned survey numbers in the holdings of the petitioner for the purposes of the Act and calculate the ceiling area and surplus in accordance with the provisions of the Act. It is this order of the second respondent, dt. 25th September, 1979 that is being impugned in the present writ petition. Mr. S. Sivasubramaniam, learned counsel appearing for the petitioner, submits that the question of exclusion of the concerned extent got adjudicated by the order of the first respondent on 19th April, 1974 and, when this could not be re-opened pursuant to powers under S. 15 of the Act, more so, the second respondent cannot re-open the matter under S. 18A of the Act. The learned counsel further submits that the power under S. 18A of the Act could be invoked, if at all, only in a case where any extent of land which would come within the mischief of the Act and held by any person has been omitted to be included in his total holdings for the purposes of the Act and the power under S. 18A of the Act cannot be exercised by the second respondent in respect of matters which already got concluded by prior adjudication under the provisions of the Act itself.

2. On an appraisal of the language used in S. 18A of the Act and in particular with reference to S. 82 of the Act, I am inclined to countenance the submissions of the learned counsel for the petitioner. S. 18A of the Act reads as follows: Direction by Land Commissioner :? Where for any reason, the extent of and held by any person has not been included in the total extent of the land held by such person for the purposes of this Act, the Land Commissioner may, at any time, direct the authorised officer to include such land in such total extent and the ceiling area shall be calculated or recalculated, as the case may be, in accordance with the provisions of of this Act, and accordingly, the provisions of S. 9 and the other provisions of this Act shall, as far as may be, apply as if the extent of the land so included were mentioned in the return required to be furnished under S. 8.

If a particular extent of land held by a person has been the subject matter of proceedings under the Act and the question of tenability or otherwise of the inclusion of such extent of the land in the holdings of the person for the purposes of the Act has been gone into and adjudicated upon under the provisions of the Act, such a matter cannot be re-opened pursuant to the powers under S. 18A of the Act. As to whether a particular extent of land is liable to be excluded is also a matter which is liable to be decided under the provisions of the Act by the Authority constituted for that purpose. If a finding has been rendered that such an extent of land is entitled to exclusion, that finding, unless corrected either in appeal or in revision, whichever may be the process that is tenable under the Act, cannot be ignored and cannot be the subject matter of review or revision pursuant to powers under S. 18A of the Act. There is a specific power of revision

reserved for the Land Commissioner under S. 82 of the Act and there is a time limit prescribed for the exercise of powers under the Rules. The power reserved to the Land Commissioner under S. 18A of the Act can legitimately come into play in a situation where there has been a total omission to consider the cases of any land in the proceedings initiated under the Act and the orders passed thereon. But, if the particular extent of land had been the subject-matter of consideration in the proceedings under the Act and adjudication has been given over the same, it will not be competent for the Land Commissioner to re-open the matter under S. 18A of the Act. S. 18A of the Act is not meant to confer an independent or an additional power of revision or review on the Land Commissioner over matters which got adjudicated by earlier proceedings and the orders passed thereon. In view of the above position, it is not possible to sustain the order passed by the second respondent. Accordingly, this writ petition is allowed. There will be no orders as to costs.