

(2011) 06 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No. 8145 of 2004

K. Thulasi, K. Krishnan, K. Murugan and Mrs. K. Rajammal APPELLANT

Vs

A. Dhanam, Assistant Commissioner (L.Re forms) and The RESPONDENT
Commissioner, Land Reforms

Date of Decision : 07-06-2011

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 18(1), 83

Citation : (2011) 8 MLJ 123

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T.L. Ram Mohan, SC for B. Sivakumar, for the Appellant; M. Dhandapani, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The four Petitioners, who are residents of Andal Kuppam Village, Saidapet Taluk filed a revision u/s 83 of the Tamilnadu

Land Reforms (Fixation of Ceiling on Land) Act, 1961 before the Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai, challenging an

order dated 03.04.2000. The said revision petition was not numbered.

2. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as CRP No. 1954 of 2003. However, a

learned Judge of this Court opined that no Civil Revision Petition will lie as the officers whose orders under challenge were not a Court but only

statutory authorities. Therefore, the CRP was converted into writ petition and notice was ordered.

3. The case of the Petitioners was that they are the legal heirs of late Kuppasamy who held land in S. No. 259/2A of Kadapakkam Village as

cultivating tenant. After the demise of Kuppusamy, the Petitioners continue to hold the land as cultivating tenant under the Vennkkanna Chowdry

Charity to whom the land belonged to. A proceeding under Land Reforms Act was initiated and notification u/s 18(1) was published in the Tamil

Nadu Government Gazette on 24.03.1982 declaring that the land measuring to the extent of 1.24 acres in S. No. 259/2A was surplus. In view of

the declaration, the land so declared as surplus stood vested with the Government and it has to be allotted to landless poor in terms of Surplus

Land Rules. Even among those landless poor, a person under holding of the land either as tenant or otherwise coming within the purview of

landless poor can have a preferential claim over other persons.

4. It was submitted that, after notification u/s 18(1) dated 24.03.1982 the Assistant Commissioner, the second Respondent initiated action to assign

surplus lands by issuing notice in Form #B#. The Authorised Officer by an order dated 03.02.1983 assigned the land in S. No. 259/2A in favour

of Murugesan (60 cents) and Muthu (64 cents) without confirming to the provisions of the Act. The request for the issue of certified copies of the

order was turned down by the Authorised Officer. Hence the Petitioners filed a writ petition being W.P. No. 8635/1983. By an order dated

04.10.1993, this Court directed the Authorised Officer to issue a certified copy of assignment proceedings.

5. After receipt of the order dated 03.02.1983, the Petitioners preferred an appeal to the Land Tribunal, Thanjavur. The appellate authority

declined to entertain the appeal holding that the Petitioners were not aggrieved parties. Once again the Petitioners filed W.P. No. 7900 of 1985. In

view of the formation of the Tribunal, the matter was transferred to the Tribunal and re-numbered as TRP.181/1991. The Appellate Tribunal

directed the appellate authority to take up the appeal and to dispose of the same on merits.

6. The Appellate Authority took up the appeal filed by the Petitioners and issued notice to the Respondents and also directed the Special Tahsildar

to conduct a special enquiry. After enquiry and verification, the appellate authority found that the proceedings were not properly followed in case

of assignment and consequently cancelled the assignment dated 03.02.1983 in favour of Murugesan and Muthu. After the said order, it was found

that the land in question were under the enjoyment of Kuppusamy Naicker and his father Thiagaraja Naicker and after the death of Kuppusamy

Naicker, the legal heirs of Kuppusamy Naicker.

7. Subsequently, the Authorized officer again initiated proceedings for the assignment of land in favour of the Petitioners. At the time of issuance of

pattain favour of the Petitioners by the Authrosied Officer, the first Respondent preferred a revision before the Land Commissioner stating that she

had purchased the land measuring 12 cents by a sale deed dated 09.03.1992 and also obtained an interim stay of grant of patta. Finally, the Land

Commissioner on 26.10.1999 held that the declaration of surplus land has become final and the Petitioners are holding the land as cultivating tenant

and they have preferential right. The subsequent purchase after notification was in S. No. 259/2B and not in 259/2A.

8. However, after the arguments were heard, on 26.10.1999 the land Commissioner by an order dated 03.04.2000 cancelled the assignment in

favour of the Petitioners and directed the Assistant Commissioner to allot the land in S. No. 259/2A in favour of the first Respondent. Challenging

the same, revision has been filed.

9. In the impugned order, curiously the Land Commissioner recorded the following findings as found in the last portion of the order:

In all the above cases, the purchasers of the surplus lands from Thiru. Sambu Prasad, had occupied the lands purchased by them by somehow or

other and they kept possession and enjoyment of those lands with them though the surplus lands wee assigned to some others by the Assistant

Commissioner (L. Ref) Villupuram without assessing the encumbrance and reality on ground as on the date of assignment. In view of such

precarious situation that crept in all the above cases, when the subsequent purchasers approached the Land Commissioner by way of Revision

Petitions, the then Land Commissioner with a view to resolve the tussle amicably and taking into account the lapses committed at each and every

stage of the land ceiling proceedings and the illegal activity of the landowner, he ordered to allot the land to the subsequent purchasers on collection

of guideline register price of the year of purchase. Based on the earlier decisions of the then Land Commissioners, I too feel that the issues involved

in these Revision petitions maybe resolved by allotting the lands purchased by

these revision Petitioners to themselves on collection of guideline register price of the year of purchase of the land as penalty for the subsequent purchase. For the reason that the purchased lands are under the possession and enjoyment of these purchasers # revision Petitioners ever since of their purchase, that induction of new facts through assignment will create never ending litigation apart from creating law and order problem as well that a portion of the land declared as surplus is under the possession and enjoyment of the Industrial Units as described above, that it will not easy to give effect to the assignment orders passed and that it will not be advisable to handover possession to the assignees who will not be able to re-convert the land for agricultural use, I feel in the interest of natural justice that the order of assignment made as per MRIV/886/17.70 dated 4.3.96 in favour of K. Thulasi and 3 others without verifying the real position on ground is hereby ordered to be cancelled. I also direct the Assistant Commissioner (L. Ref)Villupuram to allot the suit lands to the purchasers # revision Petitioners on collection of guidelines register price of the year of their purchase as a penalty since their purchase of the land is invalid as per land ceiling law. The revision Petitioners are also directed to apply to the assigning Authority for getting the lands allotted in their favour on payment of cost as aforesaid and to co-operate with the Assigning Authority for the early settlement of the issues involved in these cases. The Assistant Commissioner (L. Ref). Villupuram is also directed to submit necessary proposals in respect of another portion of the surplus landviz.1.95 acres taking into account all relevant factors into consideration and in the light of the observations and decision rendered in these cases, if he feels necessary.

10. These findings rendered by the Commissioner is contrary to the provisions of the Disposal of Surplus Land Rules. By such method, the very purpose of the distribution of surplus land to landless become frustrated and persons who purchase illegally will enjoy the benefit of the land and that is not the purpose for which the Rules have been made.

11. In this context, the learned Senior Counsel referred to the judgment of the Madhaya Pradesh High Court in Kamta Prasad and Others Vs.

Smt. Vidyawati and Others, , wherein if the subsequent purchaser of the land which is subject to litigation are subject to pendente lite, the Court

can pass preliminary order and thereafter issue notice to the land owner and cancel the allotment.

12. The learned Senior Counsel also referred to the judgment of the Supreme Court in Quilon Distt. Wholesale Coop. C. Stores Ltd. v. State of

Kerala and Ors. reported in 2005 10 SCC 282, wherein it was held that the claim of assignment cannot be a matter of right and it is circumscribed

by the procedure for allotment.

13. In the light of the above, the impugned order is liable to set aside. Accordingly it is set aside. The matter is remanded to the third Respondent

for fresh disposal in accordance with law. The writ petition stands allowed to the extent indicated above. If necessary, the authority is entitled to

issue notice to the subsequent purchasers and decide the issue. However, there will be no order as to costs.