(1981) 08 MAD CK 0037

In the Madras High Court

M. Devaraja Padayachi APPELLANT

Vs

The District Revenue Officer and Another RESPONDENT

Date of Decision : 04-08-1981

Acts Referred:
Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 — Rule 10

Citation : (1982) ILR (Mad) 200 : (1982) 95 LW 174 : (1982) 1 MLJ 404

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Judgement

T. Sathiadev, J.—Though in the affidavit filed in support of this writ petition several points have been taken, Mr. R. Ganesan, counsel for the petitioner, confines to only one point being that, the District Revenue Officer had no jurisdiction under Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 to take suo motu action When he has already exercised appellate powers under Rule 10 of the Rules, and hence the impugned order is without jurisdiction.

2. It is not in dispute that the District Revenue Officer had earlier dismissed the appeal preferred by the petitioner on 27th April, 1977. It is thereafter the petitioner preferred a revision to the Commissioner of Land Revenue, who by order, dated 22nd June, 1978, directed the District Revenue Officer to take suo motu action. A show-cause notice on 30th August, 1978, was issued by the District Revenue Officer, who had later on passed the impugned order, setting aside the order of assignment, dated 30th June, 1976. Mr. R. Ganesan, counsel for the petitioner, contends that when in a given case an appeal had been already heard by the District Revenue Officer as per Rule 11(2) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, he has no jurisdiction to initiate suo motu action, and if circumstances warrant it, it may be taken either by the Commissioner of Land Revenue or the Government, as the case may be. He refers to Rule 11(2), it being:

If in a case where no appeal has been presented under Rule 10, at any time within three years of the date of the order of assignment, the District Revenue

Officer is satisfied that there has been a material irregularity in the procedure or that the order was grossly inequitable or that it was passed under a mistake of fact or owing to fraud or misrepresentation or that the extent assigned together with other lands, if any, held by the assignee (other than a Co-operative Society) was in excess of five standard acres, he may set aside, cancel or in any way modify the order.

In respect of the suo motu powers conferred on the Land Commissioner under Sub-rule (3), or on the Government under Sub-rule (4) such a provision had not been made by stating that ''if in a case where a revision had been filed''; and therefore, when the three sub-rules dealing with the powers of suo motu to be exercised by concerned authorities had been differently worded, in respect of the District Revenue Officer, his right to initiate suo motu action within the period of three years, would not be available in a case where he has already exercised appellate powers.

3. Government Pleader in his turn would contend that when suo motu, power is admittedly available with the District Revenue Officer, it is immaterial whether an appeal had been already disposed of by him or not. The short his contention is, alongside the appellate powers being exercised it would not be improper for him to exercise suo motu powers as well. He states that when the appellate power had been already exercised in such cases, he could exercise the suo motu powers, to set right any mistake committed earlier in ordering assignment.

4. The contention raised by Mr. Ganesan by reference to the opening words in Rule 11(2) has force, because, such a provision is not made in respect of suo motu powers exercised by the Land Commissioner and the Government. Evidently, a limited restriction had been placed on the suo motu powers of the District Revenue Officer, because such a provision made, excludes his right to exercise suo motu powers in such of those cases; in no respect the necessary or requisite powers of the other authorities to'' exercise suo motu powers, over the same matter during the same period, had not been unprovided for. In respect of the Land Commissioner, he may at any time within five years of the date of the order of assignment, exercise suo motu powers. Equally in a case where no appeal has been filed, within three years from the date of the order of assignment, the District Revenue Officer himself can exercise suo motu powers (presently called ''appellate authority''). As for Government, as per the amended rule, at any time after one year from the date of the Land Commissioner''s order or within five years from the date of order of assignment, whichever is less, it can exercise suo motu powers. Hence, by accepting the construction put by Mr. Ganesan, in no manner, the suo motu powers to be exercised to set aside erroneous orders, is No. deprived of, for the State.

5. A reading of Sub-sections (2) to (4) of Rule 11 would show that in a matter where the assignment order has been passed, and a period of three years had not elapsed, any one of the three authorities can exercise suo motu powers. When such a provision has been made for concurrent exercise of powers by all

the three authorities, by excluding the. District Revenue Officer to exercise suo motu powers only in such of those cases in which he has heard appeals, it cannot be claimed by the State that there is a likelihood of some of the assignees having secured orders by misrepresentation or by practice of fraud, escaping the attention of the State, and the State in turn being deprived of the powers to set aside or cancel those orders. When a specific exclusion had been made only for a specific contingency, by ascribing the normal meaning to those words, it results in the conclusion that, in such of those cases where the appellate power had been exercised by the District Revenue Officers (appellate authorities), they would be precluded from exercising suo motu powers.

6. In such of those cases where District Revenue Officers come across any irregularity or inequitable orders passed, etc., it is for the concerned Authorised Officer or the District Revenue Officer to immediately bring to the notice of the Land Commissioner or the Government, which has the powers to take suo motu action and pass suitable orders thereon.

7. Therefore, in the instant matter, when the District Revenue Officer had already exercised appellate powers he had no jurisdiction to take suo motu action and on this basis the impugned order passed by him is set aside and the rule nisi is made absolute. There will be no order as to costs.

8. The disposal of this matter would not preclude the competent authority to exercise suo motu powers and in doing so, the time taken during the pendency of the writ petition would be, excluded.