

(2014) 09 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No. 11602 of 2005 and W.V. M.P. No. 3 of 2011

M. Palanichamy

APPELLANT

Vs

The Assistant Commissioner

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 6

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 3(25)

Citation : (2014) 09 MAD CK 0225

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-

The first petitioner submits that the second and third petitioners are his brothers. The first petitioner has purchased the lands in S. No. 1311 and 1312B of Thalavaipattinam Village, Dharapuram Taluk, along with one Chennimalai Gounder, by a registered sale deed dated 17.06.1980 for valid consideration from the second respondent/Vetriselvi. The said sale deed was registered as Doc. No. 1771 of 1980, on the file of Sub Registrar, Dharapuram. After purchase, the first petitioner and the joint owners of the land enjoyed the same without any interference. On 25.04.2001, the joint owner Chennimalai Gounder conveyed his land to the first petitioner by a registered sale deed.

2. By a registered sale deed under Doc. No. 1773 of 1980 one Muthammal became the owner of the lands covered by the said sale deed in S. No. 1269 and 1270 of the same Village from the third respondent. By another registered sale deed one Veluchamy became the owner in respect of the extent of lands mentioned there in S. No. 1269 and 1270 from the third respondent. The petitioners 2 and 3 became the owners pursuant to a registered sale deed dated 12.07.2001, executed in their favour by Tmt. Muthammal and Veluchamy. Each of the petitioners is in possession and enjoyment of their respective lands and doing cultivation. The land comprising in Survey Nos. 1269 and 1270 and 1311

are classified as wet lands and having irrigation facilities from Amaravathi Reservoir Scheme.

2. The petitioners additionally added that when they were peacefully enjoying the lands, the first respondent/the Assistant Commissioner, (Land Reforms), Erode, tried to interfere with the petitioners peaceful possession and enjoyment of the said lands, as if the same were declared as surplus under Tamil Nadu Act 58/1961 as amended by Tamil Nadu Act 17/1970 in the holdings of the fourth respondent. The petitioners further submit that during the last week of February 2005, the first respondent and his subordinates came for inspection of lands in question. When the petitioners enquired, they were informed that the lands in question were already declared as surplus in the holdings of the fourth respondent. With very great difficulty, they were able to get a copy of notification declaring surplus as if the fourth respondent is the owner. On receiving this information, the petitioners enquired their vendors and they informed that they have not received any notice from the Land Ceiling Authority. The petitioners have also learned that no notice was also issued to their predecessor in title. On account of the violation of the principles of natural justice, the proceedings taken against the petitioners lands is to be declared as null and void.

3. The first petitioner is a joint pattadhar in S. No. 1311 and 1312 till 25.04.2001. Thereafter, the first petitioner is the absolute owner of the entire lands in the said survey numbers. Till now, no notice was issued to the first petitioner. As far as the petitioners 2 and 3 are concerned their vendors, were not served with any notice. The petitioners 2 and 3 steps into the shoes of their predecessor in title and hence whatever right available to their predecessor in title prior to 1980 will devolve on the petitioners 2 and 3 herein. Hence, the proceedings initiated and continued behind the back of the petitioners and their predecessor in title is bad in law. The petitioners further submit that their vendors were not put on notice about the proceedings. Hence, steps could not be taken in time. The petitioners further submit that immediately on coming to know about the proceedings, the petitioners herein took steps. From the date of knowledge alone, the limitation begins to run. The impugned order of the first respondent cannot be validly challenged before any other authority. On the ground of limitation, the revisional authority will dismiss the case. The petitioners have no other alternative remedy and hence they have approached this Court by way of the present writ petition.

4. At the time of admission, this Court granted status quo in the above writ petition. In order to vacate the interim order on behalf of the first respondent, the Assistant Commissioner, (Land Reforms), Erode, has filed a counter affidavit, which is as follows:-

The first respondent submits that Thiru. P. Rengasamy Gounder, S/o. Thiru Palanichamy Gounder was a person attracted under the Tamil Nadu Land Reforms (FCL) Act 1961 as amended by the Tamil Nadu Land Reforms (RCL) Act, 1970. Accordingly, action was initiated and after conducting necessary enquiries. Draft

statement under Section 10(1) of the Act was published in Tamil Nadu Government Gazette on 01.08.1973. The landowner filed his objections against the demand statement. After considering the objections, the orders under Section 10(5) of the Act were passed on 19.09.1974. Aggrieved by the passing of orders under Section 10(5) of the Act, the landowner filed an appeal before the Land Tribunal in C.M.A. No. 52/75. The Land Tribunal in its order dated 28.04.1976 remanded the matter for enquiry. Accordingly, an enquiry was conducted and an order was passed on 17.11.1978 under Section 3(22) of the Act. Final Statement under Section 12 of the Act and Notification under Section 18(1) of the Act were published on 31.01.1979 and 25.07.1979 respectively. The landowner filed a revision petition before the Land Commissioner (L.Ref.) Erode, in his orders in D1/R.P.97/79, dated 31.08.1979 to pass an order under Section 10(5) of the Act as a result of the remanded enquiry conducted pursuant to the direction of the Land Tribunal dated 28.04.1976. Accordingly, an order under Section 19(5) of the Act was also passed on 14.01.1980. Aggrieved by the orders of the Assistant Commissioner, dated 14.01.1980, the landowner filed an appeal before the Land Tribunal. The appeal was dismissed in LTA. No. 9/80, dated 29.06.1982. However, the landowner filed C.R.P. No. 3842/82 before this Court. But, the Civil Revision Petition was dismissed by this Court on 23.07.1985, confirming the orders of the Assistant Commissioner, dated 14.01.1980. Subsequently, an order under Section 22 of the Act was passed by the Assistant Commissioner on 20.09.1991 declaring the transactions effected by the landowner in favour of his two daughters viz., Venmal and Vetriselvi for an extent of 14.78 acres and 15.58 acres respectively as void and included in the holdings of the landowner.

5. Accordingly, an order under Section 15 of the Act for amending the Final Statement and the 18(1) Notification already published was passed on 20.09.1991. While passing the orders under Section 15 of the Act, apart from ordering inclusion of an extent of 30.36 acres which was directed to be added in the holdings of the landowner under Section 22, an extent of 14.78 acres (S.F. No. 290 = 6.48 acres + S.F. No. 291 = 8.30 acres = Total 14.78 acres) which was donated to the Boodan Board by the landowner was also ordered to be deleted from the holdings. Accordingly, the Final Statement already published under Section 12 of the Act on 31.01.1979 and notification under Section 18(1) of the Act was published on 25.07.1979 were amended on 10.08.1994 and 12.06.1996 respectively. Thus, the total extent of surplus declared has become 54.76 ordinary acres equivalent to 15.543 standard acres. In the meantime, aggrieved by the orders passed under Section 22 of the Act, dated 20.09.1991, the landowner filed an appeal before the Land Tribunal. The Land Tribunal, in its order passed in L.T.C.M.A. No. 4/92, dated 07.06.1993 has dismissed the appeal. The Special Revision Petition filed before the Tamil Nadu Land Reforms Special Appellate Tribunal in S.R.P. No. 18/94 was dismissed on 14.02.1995. Further, a Special Leave Petition was filed before the Hon'ble Supreme Court of India, New Delhi against the judgment of the Special Appellate Tribunal. The Hon'ble

Supreme Court of India dismissed the S.L.P. No. 1473/95. However, the two daughters of the landowner viz., Vetriselvi and Venmal filed a review petition before the Tamil Nadu Land Reforms Special Appellate Tribunal to implead them as parties in the matter already decided by the Tamil Nadu Land Reforms Special Appellate Tribunal in S.R.P. No. 18/94, dated 14.02.1995. But the Tamil Nadu Reforms Special Appellate Tribunal dismissed the review petition in D. No. 35/97 dated 21.03.2001. However, the landowner's daughters filed W.P. No. 12360/2001 before the High Court against the orders of the Tamil Nadu Land Reforms Special Appellate Tribunal dated 21.03.2001. The Division Bench in its order dated 09.07.2001 has dismissed the W.P. No. 12360 of 2001.

6. The first respondent additionally added that the action was pursued to assign the lands under the Tamil Nadu Land Reforms (DSL) Rules already initiated. Accordingly, the surplus extent of 54.76 acres was assigned in favour of 45 persons by the Assistant Commissioner (L.Ref.), Erode, on 12.11.2003. Necessary changes have been ordered to be carried out in the revenue records. While steps were taken to execute the "F" deed and to hand over possession, M/s. Cadbury India Limited of Kottayam filed a petition before the Land Commissioner stating that it purchased an extent of 10.00 acres in S. No. 351/2 (Old No. 272/A) vide Doc. No. 974/85, dated 24.07.1985, that the extent of 10.00 acres is in its possession for industrial establishment and that therefore, the above extent of land may be deleted from the notification under Section 18(1) of the Act. The Land Commissioner passed orders in proceedings D1/R.P.18/8004, dated 13.12.2004, dismissing the revision petition as time barred.

7. The first respondent further added that challenging the orders passed by the Land Commissioner, Cadbury India filed a writ petition in W.P. No. 6481 of 2005 seeking a direction to the Land Commissioner to send the records and quash the order dated 13.12.2004 of the Land Commissioner and direct the Land Commissioner to consider the revision petition on merits and grant appropriate relief under Land Reforms Act either by substituting other surplus lands of landholder, Arangasamy Gounder for the land sold to the Company for industrial purpose. The company also filed a writ miscellaneous petition No. 7078/05 in W.P. No. 6481/2005 seeking an order of injunction restraining the Assistant Commissioner (L.Ref) Erode, and his subordinates and men for taking possession of the land in its occupation and interfering in any manner the peaceful possession and enjoyment of the land and building thereon pending writ petition. On this W.P. M.P. No. 7078 of 2005, this Court, in its order dated 28.02.2005 in W.P. M.P. No. 7078 of 2005 in W.P. No. 6481 of 2005 has passed an order that status quo as on date to be maintained till the disposal of the writ petition. In the meanwhile, M. Palanichamy and two others who are purchasers of the declared surplus lands, filed the present writ petition before this Court seeking a direction to the Assistant Commissioner (L.Ref.) Erode, by calling for the records in MR1/39/R/17-70 and No. E3/31286/93 (L.Ref.) and quash the same in so far as it relates to the petitioners concerned. The writ petitioners also filed a writ miscellaneous petition No. 12651 of 2005 in the High Court to stay all further

proceedings in MR4/288/17-70 pursuant to the orders of the Assistant Commissioner (L.Ref.) Erode, in MR1/39R/17-70 pending W.P. No. 11602 of 2005. On this writ miscellaneous petition, this Court has passed an interim order on 07.04.2005 to the effect that there shall be an order of status quo as on the date shall be maintained. Then, this Court, in its order passed on 06.01.2010 in W.P. M.P. No. 12561 of 2005 in W.P. No. 11602 of 2005 made absolute the interim order passed on 07.04.2005.

8. The first respondent further submits that S. Murugaraj an unsuccessful applicant for assignment in proceedings MRIV/288/17-70, also filed an appeal before the Land Tribunal, Chennai in APDSL.1/2005, to quash the assignment order passed by the Assistant Commissioner (L.Ref.) Erode, in MRIV/288/17-70, dated 12.11.2003. The Land Tribunal/District Revenue Officer, Chennai passed an order on 21.02.2005 granting stay of order passed by the Assistant Commissioner (L.Ref.) Erode, on 12.11.2003 in MRIV/288/17-70. The first respondent further submits that there is a Civil Suit pending in O.S. No. 496/2004, filed in the District Munsif, Dharapuram by one Tmt. Thilagavathi who purchased on 06.06.2002 an extent of 4519 square feet (0.10 acres) in S.F. No. 351 (Old S.F. No. 272A) of Thalavaipattinam Village from one Palanisamy (Purchaser) which was originally owned by Land Holder P. Arangasamy Gounder seeking relief against the District Collector, Erode, and Assistant Commissioner, Land Reforms, Erode.

9. The first respondent further submits that while the matter stands as above, recently one Tmt. Vetriselvi daughter of the Land Holder P. Arangasamy Gounder has filed a suit in O.S. No. 136/2010 in the Sub Court, Dharapuram stating that she derived properties through registered partition deed No. 625/70 executed on 13.04.1970 and seeking declaration of title and injunction in respect of the following Survey Fields in Thalavaipattinam Village. She has impleaded the following respondents:-

O.S. No.

Defendants Impleaded Relief sought for

Properties involved

Old S.F.

Extent

Resurvey No.

136/2010

Sub Court,

Dharapuram

1. State of Tamil Nadu, represented by its Secretary, Land Administration FSG, Chennai.

Declaration of title and injunction restraining the defendants 1 to 3 their agent, their men from forcibly evicting the plaintiff from the suit property except due process as law 271 B

3.5 acres (out of 16.94 acres)

351/2

301

9.82 acres

97

1312B

1.25 acres

299/2, 6

1311B

0.92 acre (Out of 1.84 acres)

298/3, 4, 5,

Total

15.58 acres

Tmt. Vetriselvi has also filed an Interlocutory Application No. 455 of 2010 in O.S. No. 136 of 2010 seeking temporary injunction till the disposal of suit. It is ascertained that the above interlocutory application was posted for hearing on 10.01.2011. It is also submitted that the persons who were sanctioned assignment are agitating to issue Deed assignment in for "F" and put in possession of lands.

10. The first respondent further submits that action was initiated under the Land Reforms (RCL) Act 1970 against the holdings P. Arangasamy Gounder as on 15.02.1970 and final statement under Section 12 of the Act was published in Tamil Nadu Government Gazette dated 31.01.1979 and Notification under Section 18(1) of the Act was published in Tamil Nadu Government Gazette dated 25.07.1979. After orders under Section 22 of the Act passed by the Assistant Commissioner (L.Ref.), Erode, amendment to Final Statement and notification under Section 18(1) of the Act was published in Tamil Nadu Government Gazette dated 10.08.1994 and 12.06.1996 respectively declaring a surplus extent as 54.76 acres. As per these statements, the following lands which were held by the Land Holder, P. Arangasamy Gounder as on 15.02.1970 were declared as surplus.

Name of the Village

S.F. No.

Extent A.C.

Thalavaipattinam

271B

3.59

301

9.82

286

3.82

292

8.88

Total

26.11

1312

1.25

1311

0.92

1269

1.96

1270

0.12

266A

5.70

272A

15.87

435/2

2.83

Total

28.65

Grand Total

54.76

equivalent to 15.543 SA

Hence the following purchase made by the writ petitioners on 25.04.2001 and 12.07.2001 subsequent to 15.02.1970 are not valid, since all the proceedings were completed in the year 1996 itself i.e., before the date of purchase.

Name of writ petitioner

Date of purchase

Lands Purchased

Name of Village

S.F. No.

Extent

M. Palanisamy

25.04.2001

K. Rajamani and K. Thangamuthu

12.07.2001

Thalavaipattinam

1311

0.46

1269

1.96

1270

0.12

Total

2.08

Grand Total

2.54

Therefore, these contentions deserve no consideration at this distance of time.

11. The first respondent further submits that lands which were purchased by the first writ petitioner on 25.04.2001 and by the writ petitioners 2 and 3 on 12.07.2001 were held by the holder P. Arangasamy Gounder as on 15.02.1970 (the date of commencement of the Tamil Nadu Land Reforms (RCL) Act, 1970. The final statement under Section 12 of the Act was published on 31.07.1979 and amendment to Final Statement was published by the Tamil Nadu

Government Gazette on 10.08.1994, so also 18(1) Notification was published in Tamil Nadu Government Gazette dated 31.07.1979 and Modification to 18(1) Notification was published in Tamil Nadu Government Gazette dated 12.06.1996. It is obvious that the writ petitioners purchased lands only in the year 2001 after publication of Final Statement under Section 12 and 18(1) Notification. Hence, it is submitted that the writ petitioners were neither owners as on 15.02.1970 nor as on the date of publication of final statement under Section 12 and Notification under Section 18(1) of the Act. Hence, the question of issue of notice did not arise at all. Therefore, this contention deserves no merit.

12. The first respondent further submits that there is no procedural or material irregularities in the proceedings as narrated in the history of the case. All the proceedings were taken in accordance with the provisions of the Tamil Nadu Land Reforms (FCL) Act, 1961 as amended. Therefore, the contention is not sustainable in law. The first respondent further submits that the impugned order did not suffer from error apparent on the face of records warranting interference by this Court. Proceedings under the Act in the case were initiated absolutely in accordance with the provisions of the Act. Therefore, this contention fails.

13. The first respondent further submits that lands were held by landholder P. Arangasamy Gounder as on 15.02.1970. Hence, action under Tamil Nadu Land Reforms (RCL) Act, 1970 was initiated. The partition of 15.58 acres and 14.78 effected by the Land Holder P. Arangasamy Gounder to his daughters Vetriselvi and Venmal respectively on 13.04.1970 were declared as void under Section 22 of the Act by the Assistant Commissioner (Land Reforms), Erode on 20.09.1991. When the partition deed itself was declared as void, the lands covered by the partition deed were treated as the holdings of the landowner. Therefore, this contention deserves no merit. Further, the writ petitioners were not owners as on 15.02.1970. The purchased properties only on 25.04.2001 and 12.07.2001. Hence, they were not entitled for notice. Therefore, this contention deserves no merit. Further, the writ petitioners were not owners neither as on 15.02.1970 (the date of commencement of the Act) or 02.10.1970 (the notified date of the Act) nor as on 12.06.1996 (the date of modification to Notification under Section 18(1) of the Act. Therefore, the sale transaction made in the year 2001 cannot be brought under the provisions of Section 23 of the Act. Hence, the writ petitioners have no locus standi to and as for relief under Section 23 of the Act. Moreover, the lands declared as surplus were also assigned in favour of 45 persons by the Assistant Commissioner (L.Ref.), Erode, on 12.11.2003 by observing the procedures laid down under the Tamil Nadu Land Reforms (DSL) Rules 1965, as amended. Therefore, the above writ petition is not maintainable.

14. The second and third respondents has produced a copy of the plaint in O.S. No. 136 of 2010 filed along with supplementary application I.A. No. 455 of 2010, on the file of Subordinate Judge, Dharapuram. In the same suit, the second respondent herein has filed the said suit against the Secretary, who is attached to the Land Administration, Chennai and the Commissioner, Land Reforms,

Chennai and the Assistant Commissioner, Land Reforms, Thanjavur, P. Arangasamy Gounder and S. Venmal, who is the third respondent herein and sought declaration that as per the partition deed dated 13.04.1970, she is in possession and enjoying the same. The said suit has been filed on 01.07.2010, after duly serving the suit summons on the defendants, as mentioned above, the Sub Judge, Dharapuram, decreed the suit as prayed for. Since the defendants had not come forward to contest the suit after receiving the Court summons, the said decree and judgment was passed on 31.03.2011.

15. The very competent counsel Mr. M.S. Sivaji appearing for the petitioners submits that all the writ petitioners are blood brothers. The first petitioner had purchased the land along with one Chennimalai Gounder under the registered sale deed dated 17.06.1980 from the second respondent, viz., Tmt. Venmal, after paying full sale consideration. The lands comprising in Survey Nos. 1311 and 1312 B of Thalavaipattinam Village, Dharapuram Taluk. The sale deed registered on the file of Sub Registrar, Dharapuram, bearing document No. 1771 of 1980. From the date of purchase, the purchaser is enjoying the said property with out any interference. The joint owner, viz., Chennimalai Gounder had sold his share over the said land to and in favour of the first petitioner herein. The third respondent/Venmal had executed sale deed to and in favour of one Muthammal and one Velusami for the lands comprised in Survey No. 1269 and 1270 on the Thlavaipattinam Village, in turn, they sold the property to and in favour of the second and third writ petitioners herein under a registered sale deed dated 12.07.2001. All the writ petitioners are in peaceful possession and enjoyment of their respective lands comprised in Survey Nos. 1269, 1270 and 1311, which were classified as wetlands and also having irrigation facilities from the Amaravathi Reservoir Scheme. As such, all the writ petitioners are absolute owners of the property.

16. The highly competent counsel appearing for the petitioner further submits that in the month of February 2005, the first respondent and his subordinates came to the petitioners land and informed that they acquired the said land under the Tamil Nadu Act 17 of 1970 from the fourth respondent. Thereafter, the writ petitioners scrutinized the Land Ceiling Proceedings including notification of the first respondent and came to know that the erstwhile owner had not received any notices from the first respondent declaring the lands as surplus. Therefore, the first respondent's proceeding has become null and void. Hence, the highly competent counsel entreats the Court that the first respondent's acquisition proceedings cannot be operated upon the petitioner's land. Further, the second and third respondents are land owners as per Section 3(25) and (33) of the Land Reforms (Fixation of Ceiling on Land), Act, 1961. The Land Ceiling Proceedings had been initiated without the knowledge of the erstwhile owners and purchasers. As per the Act, the petitioners and their predecessors including interested persons are entitled to receive notice before acquiring the land. Further, as of now, the writ petitioners are in physical possession and enjoying the same. Hence, the highly competent counsel entreats the Court to quash the

proceedings in MRI/39/R/17-70/A2 (E3/31286/93) (Land Reforms), passed by the first respondent.

17. The highly competent counsel Mr. A. Sasidharan appearing for the second and third respondents submits that both the respondents are the daughters of the fourth respondent. The third respondent, viz., Venmal had executed a sale deed to and in favour of one Muthammal and Velusami in lands comprising in Survey Nos. 1269 and 1270, who in turn had alienated the property in favour of the second and third petitioners herein under the registered sale deed dated 12.07.2001. The third respondent had executed a sale deed in the year 1980. The first respondent's Land Ceiling Proceedings is highly irregular since no notice was served neither the respondents 2, 3 and 4 nor the writ petitioners, including their vendors, viz., Muthammal and Velusami. The second respondent/Veriselvi had filed a civil suit in O.S. No. 136 of 2010, stating that she is entitled to the suit property exclusively by way of partition deed dated 13.04.1970. She also obtained a decree of declaration against the five defendants. The said decree has become final and in operation, therefore, the Land Ceiling Proceedings of the first respondent cannot be executed over the said lands since the said lands are covered under a Court decree.

18. Per contra, the very competent Additional Government Pleader, Mr. M.S. Ramesh submits that the second respondent herein had obtained exparte decree that can be set-aside at any stage. Further, ex-parte decree cannot be executed on the first respondent herein and others since the properties had been acquired and assigned to the private individuals. As such, the decree obtained by the second respondent is un-executable.

19. In reply, the very competent counsel Mr. A. Sasidharan submits that the said lands originally belonged to one Palanisami Gounder, the father of the fourth respondent herein and his brother Muthuswamy. The said Palaniswamy had expired intestate during the year 1946. Subsequently, the acquired properties and other items of property devolved upon the fourth respondent herein and his brother Muthuswamy. Both of them partitioned the said property of their father under the registered sale deed No. 2125 of 1959. From the date of partition, the fourth respondent and his brothers are in possession and enjoying the said properties as per the partition deed without any interference whatsoever.

20. The very competent counsel Mr. D. Ravichander appearing for the fourth respondent submits that the subject land of this petitioners and other items of the property were originally belonging to the father of the fourth respondent, who expired in the year 1946. After his demise, the fourth respondent and his brother Muthuswamy had partitioned the said property by way of registered partition deed as per Document No. 2125 of 1959. After partition, the fourth respondent herein and his two daughters are absolute owners of the property since the property was ancestral property, hence this is the factual position of the case. Under these circumstances, the first respondent had initiated Land Ceiling Proceedings on the fourth respondent alone, that too also not properly conducted

since notice was not issued on the owners of the property and interested persons. The third respondent herein had executed a sale deed in favour of one Muthammal and one Velusamy under a registered sale deed pertaining to the properties comprised in Survey Nos. 1269 and 1270 of Thalavaipattinam Village, in turn, the said properties had been alienated to and in favour of the second and third petitioners herein. The alienation took place in the year 1980, till such time, the petitioners are in possession and also respondents 2, 3 and 4 are also in possession without any interference. The first respondent's Land Ceiling Proceedings have been challenged before the various Departmental forums and also before the various Courts, wherein, the petitioners as well as respondents 2, 3 and 4 have established their case that they are in physical possession and as such, the first respondent's Land Ceiling Proceedings has not been materialized. Further, the second respondent herein had filed a title suit in O.S. No. 136 of 2010 along with an interlocutory application in I.A. No. 455 of 2010, on the file of Sub Court, Dharapuram against the respondents 1, 3 and 4 herein and the Commissioner of Land Reforms and the Secretary to the Land Administration. In the said suit, summons were duly served, even then, no one came forward to contest the suit. Therefore, the suit was decreed as prayed for by the second respondent herein. The said judicial decree is in force till today over the said property. Therefore, the acquisition proceedings have become vitiated and is liable to be set-aside. The very competent counsel further submits that that as per Section 6 of the Hindu Succession Act, the respondents 2 and 3 are also entitled to share of the subject matter of the property of both the daughters since the property is a joint family property. It clearly proves by registered partition deed bearing No. 2125 of 1959. Therefore, the first respondent's proceedings is not sustainable under law.

21. Per contra, the very competent Additional Government Pleader, Mr. M.S. Ramesh submits the Land Ceiling Proceedings had been initiated in the year 1973 under the Tamil Nadu Land Reforms Act, 1970, by the first respondent. The first respondent had strictly adhered to and acquired the land after notice served on the fourth respondent herein, who is the sole owner of the property as per the revenue records. The fourth respondent was possessing surplus land comprised in Survey Nos. 290 and 291 in Thalavaipattinam Village. After acquiring the said property, the fourth respondent has filed various cases before the Land Appellate Tribunal, High Court and Hon'ble Supreme Court of India, who lost the case before all the forums and as such, this acquisition proceedings had become obsolete. The first respondent had acquired the surplus lands to an extent of 54.76 acres from the fourth respondent. The said land were assigned in favour of 45 persons by the first respondent herein on 12.11.2003. Under the circumstances, one M/s. Cadbury India Ltd., Kortayam had filed a petition before the Land Commissioner stating that they had purchased the property to an extent of 10 acres and registered a sale deed. The said company had not established their case before the Land Commissioner, as owner of the property was not proved. Subsequently, they have filed a writ petition which was also

dismissed. Likewise, the writ petitioners herein also filed the above writ petition and challenged the first respondent's proceedings, this writ petition is also liable to be dismissed.

22. The very competent Additional Government Pleader, Mr. M.S. Ramesh further submits that one Tmt. Thilagavathi had filed a suit in O.S. No. 496 of 2004, on the file of District Munsiff, Dharapuram against one Palanisamy Gounder that the property was originally owned by a landholder, viz., the fourth respondent herein. The second respondent has filed O.S. No. 136 of 2010, on the file of Sub Court, Dharapuram against the respondents 1, 3 and 4 and two others as defendants. The said suit was set ex-parte and not a contested one. Therefore, the said decree cannot be executed against the first respondent herein besides all the respondents, viz., 2, 3 and 4 had colluded with each other and misconceived the said suit and obtained a fraudulent decree. Therefore, the said ex-parte decree and alienation took place among the various persons including writ petitioners are not sustainable under law since the acquisition proceedings had been initiated in the year 1973 and the same was concluded on 19.09.1974. Therefore, the subsequent alienations had taken place after acquiring the surplus lands from the fourth respondent herein. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

23. From the above discussion, this Court is of the view:-

(i) The subject matter of the property and other items of immovable property was originally belonging to the father of the fourth respondent herein, who died in the year 1946. After his demise, the fourth respondent and his blood brother, i.e., Muthuswamy had succeeded the property and partitioned the same among themselves under Registered Partition Deed bearing No. 2125/1959. As per the partition deed, the fourth respondent herein and his two daughters, viz., the second and third respondents herein are entitled to receive a share over the said property as per Hindu Succession Act since the properties are a joint Hindu family property succeeded by ancestral bequeathing. It clearly proves the same through the registered partitioned deed bearing document No. 2125/1959.

(ii) The Land Ceiling Proceedings had been initiated in the year 1973 by the first respondent for acquiring the surplus lands from the fourth respondent alone. The claim had not been initiated against the second and third respondents herein, who are also joint owners of the property as per the Hindu Succession Act. Therefore, the Land Ceiling Proceedings for acquiring the surplus lands becomes defunct as per parental document, bearing registration No. 2125/1959.

(iii) The counter statement filed by the first respondent discloses that the surplus land to an extent of 54.76 acres has been acquired from the fourth respondent and assigned to and in favour of 45 persons. In order to prove this contention, no documentary proof has been placed before this Court and as such, this contention cannot be entertained by this Court. Moreover, the alleged assignment in favour of 45 persons cannot be true for the reason that the civil Court in I.A.

No. 455 of 2010 in O.S. No. 136 of 2010, on the file of Sub Court, Dharapuram had protected the possession of second respondent by way of grant of interim injunction.

(iv) The second respondent has filed a permanent injunction suit for declaration restraining the respondents herein and two top most Government Officials with respect to the suit property, which is also subject matter of the above writ proceedings. The said suit was decreed on 31.03.2011 ex parte. As on date no one has come forward to set-aside the said decree. Therefore, the said decree can be operated upon against the respondents, especially, the first respondent herein.

(v) As per the counter statement filed by the first respondent, it reveals that the writ petitioners and others are still in possession. Therefore, this Court had granted an interim injunction, considering the physical possession of the property.

(vi) The first respondent's Land Ceiling Proceedings cannot be operated any further since the writ petitioners and others are already in possession and cultivating land without any interference whatsoever till now. Besides there is a shortcoming that no proper notice was served on the second and third respondents herein. Besides no notices were served on the subsequent purchasers, viz., the writ petitioners herein and M/s. Cadbury India Ltd., Kotayam.

(vii) The contention of first respondent and 45 beneficiaries is that the said acquired surplus lands have not been claimed so far from the occupants after initiating necessary legal proceedings for eviction for around 40 years. Under the circumstances, the first respondent's Land Ceiling Proceedings cannot be permitted to proceed any further since anomalies are visible in the face of it.

(viii) The registered sale deed dated 17.06.1980 are existing over the said subject matter of the property. Besides, the ex-parte interim injunction order and decree and judgment passed in I.A. No. 455 of 2010 in O.S. No. 136 of 2010, on the file of Sub Court, Dharapuram, are also in force.

(ix) Moreover, the respondents 2, 3 and 4 had executed a registered partition deed dated 16.04.1970. The same cannot be termed void for the simple reason that the respondents 2 and 3 had availed the benefit of Tamil Nadu Amendment Act, 1989, wherein equal rights were given to the women and they were treated as co-parceners. As mentioned above, the properties were ancestral in nature. Hence, in any proceedings initiated by the first respondent against the property, the respondents 2 and 3 are entitled to notice. Admittedly, the respondents No. 2 and 3 were not issued with any notice and hence, any proceedings against the said property is not binding upon them as it is a trite proposition of law that any proceedings initiated without affording an opportunity to the concerned persons is non-est in the eye of law. It is also worth to mention that the second respondent herein/Vetriselvi had filed a suit in O.S. No. 136 of 2010 on the file of Sub Court, Dharapuram seeking for a declaration that she is entitled to the

property by way of a registered partition deed dated 13.04.1970. In the said suit, she has made the first respondent herein as a party to the proceedings, besides the Commissioner of Land Reforms and State of Tamil Nadu. The first respondent in his counter had also mentioned about the pendency of the suit filed by the second respondent herein. The said suit came to be decreed by a judgment and decree dated 31.03.2011. As the said judgment has attained finality, the first respondent is bound by the same and is estopped to plead against the judgment and decree before this Court. In view of the same, the entire proceedings as against the respondents 2 and 3 is not valid and binding upon them. In view of the same, the petitioners being the purchasers from the respondents 2 to 4 are also protected with the defence of the respondents 2 and 3.

24. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed-set of papers filed by the parties and the view mentioned above as (i) to (ix), this Court perforce is inclined to allow the above writ petition. Consequently, the first respondent's proceedings in MRI/39/R/17-70/A2 is quashed and the said acquired land by the first respondent is discharged from the Land Ceiling Proceedings.

25. In the result, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.