
(2015) 01 MAD CK 0349

In the Madras High Court

Case No : Writ Petition No. 15501 of 2011 and M.P. Nos. 1 and 2 of 2011

R. Ramesh and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71-A
Constitution of India, 1950 — Article 300A
Land Acquisition Act, 1894 — Section 17(1), 4(1)
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 10(1), 10(5), 12, 12(1), 18(1)
Transfer of Property Act, 1882 — Section 100, 16
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 11, 9

Citation : (2015) 01 MAD CK 0349

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

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; M.S. Ramesh, Additional Government Pleader, Advocates for the Respondent

Judgement

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

"The first petitioner submits that he has been executed the General Power of Attorney by the second petitioner dated 26.05.2006 authorizing him to initiate legal proceedings in respect of his properties, hence, the first petitioner has filed the above writ petition jointly. The petitioners jointly purchased punja land admeasuring 33.45 acres, 33.99 acres and 34.54 acres comprised in Survey Nos. 606/2B, 606/2C and 606/2D respectively in Ettaiyapuram Village from M/s. R. Dhanasekaran, Ayyappan and Jothimani by registered sale deed dated 22.05.2006 registered as document No. 847 of 2006 in the office of the Sub-Registrar, Ettaiyapuram. The petitioners also purchased 15.68 acres of punja land comprised in Survey No. 606/2A of Ettaiyapuram Village from M/s. R.Dhanasekaran, Ayyappan and Jothimani by registered sale deed dated 22.05.2006 registered in the office of the Sub-Registrar, Ettaiyapuram as document No. 846/2006. Thus the petitioners are absolute owners and in

possession and enjoyment of a total extent of 117.66 acres of land comprising survey Nos. 606/2A, 2B, 2C and 2D at Ettaiyapuram Village. The property was originally owned by late Raja Jegaveera Rama Muthukumara Venkateswara Ettappa Naicken Ayyan. He executed a settlement deed settling the property in favour of his daughter Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan. The petitioners' vendor purchased the property from the said Smt. Muthu Ranga Pushpa Rajalakshmi Kannappan and her sons and daughter. The petitioners effected the changes in the Revenue Records and all the Revenue records including the patta stand in the name of petitioners. The petitioners are paying the land tax to the revenue authorities. The petitioners are cultivating the land with grains like Moongdhall and other pulses."

2. The petitioners further submitted that during October 2010 the officials of the Power Grid Corporation of India visited their property and started private negotiation for the purchase of the property for setting up a sub station. During the same period the District Collector, Thoothukudi District wrote a letter to the third respondent herein seeking no objection certificate for purchase of the land on behalf of M/s. Power Grid Corporation of India. On receipt of the said notice the fourth respondent who is holding the office of the third respondent contacted the first petitioner and informed him that he will issue a no objection certificate provided a portion of the land transferred to one of his benamies.

3. He submits that suspecting the conduct of the fourth respondent, the petitioners also sought for certain information from the third respondent regarding the proceedings initiated under the Land Reforms Act with respect to the estate of late Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan and the various proceeding connected therewith, under the Right to Information Act 2005. The third respondent did not give the information sought for by the petitioners. The petitioners have filed an appeal before the second respondent seeking directions to issue the said documents. The second respondent directed the petitioners to approach the third respondent and receive the documents. The third respondent furnished certain documents sought for by the petitioners by his proceedings dated 10.06.2011 which was received by him on 17.06.2011. The fourth respondent further directed him to approach the second respondent to get the remaining documents.

4. He submits that in this background the third respondent issued the impugned notice dated 02.05.2011. He has sent a letter dated 17.05.2011 seeking the documents sought for by him and seeking extension of time to enable him to get certain documents from this Court with respect to earlier proceedings. He has also raised doubts regarding the jurisdiction of the third respondent to reopen the issue which has already become final. In the said reply he has narrated the conversation between him and the fourth respondent regarding the demand of the fourth respondent seeking transfer of a portion of the land in the name one of his benamies. In this regard he has also made complaints to the first respondent, the Director of Vigilance Anti Corruption and the second respondent.

The second petitioner also wrote a letter seeking extension of time to give reply. By letter dated 10.06.2011 the third respondent extended time for filing reply upto 14.07.2011.

5. He submits that during the year 2008 the Government acquired an extent of 4 acres of land owned by the petitioners comprising survey No. 606/2A, 2B, 2C, 2D for the purpose of National Highways and offered a meagre compensation. The Government passed an award No. 14/2010 dated 19.03.2010. The petitioners received the award amount and their claim enhancement of compensation is still pending. The third respondent did not make any claim when the Government informed him of the acquisition for Highways while seeking no objection certificate from the third respondent. The fourth respondent who is now discharging the functions of the office of the third respondent to fulfill his illegal demand in attempting to create doubt regarding the title of the petitioners over the property by initiating vexatious proceedings under the Land Reform Act.

6. He submits that the third respondent has no jurisdiction to issue the impugned notice. Originally the entire property of Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker was the subject matter of the proceedings under the Tamil Nadu Land Reforms (fixation of ceiling of land) Act, 1961 hereinafter called "the Act".

7. He submits that from the documents sent by the third respondent it came to light that the authorised officer under the Act issued a draft proposal under Section 10(1) of the Act fixing the ceiling limit for the holdings of Sri Raja Jagaveera Ramamuthukumara Venkateswara Ettappa Naicker Ayyan. In the said draft proposal the land in S. No. 606/2, 623/2 and 623/3 measuring an extent of 172.52 acres was included in the name of Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan D/o Sri Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan. The said Sri Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan gave objections to the said draft proposal. While dealing with the objections, the Authorised Officer by proceedings dated 15.03.1975 up held the objections of Sri Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan with respect to the holdings of Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan and excluded the land owned by Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan from the holdings on the ground that by a separate order dated 25.11.1974 she was already ordered to be excluded from the family and that consequently her property was also excluded. The first respondent notified the final statement under Section 12 of the Act on 23.04.1975. In the said notification the land owned by Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan including the land which is the subject matter of impugned notice was excluded. A notification under Section 18(1) of the Act came to be notified on 25.02.1976. In the said notification the property of Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan was not included. Hence the subject matter of the impugned notice has become final as early as on 15.03.1975.

8. He submits that the second respondent by exercising his powers under Section 82 of the Act by proceedings dated 21.04.1979 took up a suo moto revision proceedings on the following grounds:

"i) The lands mentioned in Annexure-A to the Respondents notice dated 21.4.79 belonging to the petitioner had not been included in the holdings of the land owner and therefore, a direction u/s. 18(A) had to be issued and thereafter further action taken by the Authorised Officer in accordance with the provisions of Section 9 and other provisions of the Act with opportunity to the land owner to make his representation in respect of holdings and surplus to be determined after inclusion of these lands.

ii) Out of an extent of 1248.66 ordinary acres, equivalent to 323.804 standard acres, which were exempted under Section 73 of the Act, it was found that certain lands were not eligible for such exemption as they are not orchards, topes and exclusively used for growing fuel trees. The lands shown under section II in Annexure-B to the respondents notice dated 21.4.79 were alienated after the notified date and had to be dealt with under section 23(2).

iii) The land in S. No. 1 measuring 170.43 acres of Pungavarnathan Village included in the holdings of the petitioner had to be excluded, because, the ryotwari patta issued therefore under the provisions of the Act, 26/48 was cancelled by the Settlement authorities as the land was treated as tank poramboke.

iv) The lands mentioned in Annexure-6 to the respondents notice dated 21.4.79 which were declared as surplus, had to be included within the retainable area of the land owner, because, they ceased to be the property of the land owner after the notified date."

The said proceedings does not refer to the holdings which were excluded by the authorised officer by order dated 25.11.1974 which is confirmed by the Authorised Officer in his order dated 15.3.1975. By order dated 05.10.1979 the second respondent set aside the notification issued under Section 12(1) dated 23.04.1975. The second respondent published a cancellation notification under Section 18(c) of the Act in the Tamilnadu Government Gazette dated 21.05.1980 cancelling the notification issued under Section 18(1) of the Act dated 25.2.1976. Questioning the order of the second respondent dated 05.10.1979, Sri Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan filed W.P. No. 566 of 1980 before this Court. By order dated 11.08.1986 this Court was pleased to quash the said proceedings of the second respondent dated 05.10.1979 and remanded the matter for fresh consideration by the second respondent in accordance with law. After the order passed by this Court, a fresh enquiry was conducted by the second respondent with regard to the holdings of Sri. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan after giving notice to all parties and published an amendment notification dated 22.02.1995 to the notification issued under Section 12(1) of the Act dated

23.04.1975. The said notification is followed by a notification under Section 18(1) of the Act on 19.10.1995. In the notification dated 22.02.1995 and 19.10.1995 the holdings of Muthu Thanga Pushpa Rajalakshmi Kannappan was not dealt with and consequently the property in Survey No. 606/2 which is presently owned by the petitioners was not included in the notification.

9. He submits that as stated above the petitioner's vendor purchased the property from Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan and her sons and daughters by registered sale deed dated 15.12.1995. The petitioner have purchased the property during the year 2006. While the petitioners purchased the property there was no proceeding pending, on the contrary, the property excluded by orders of the authorised officer. The revenue records stood in the name of the vendors of the petitioners.

10. He submits that the third respondent sent a proposal dated 27.12.2010 to the second respondent sought for suo moto revision as if by order dated 15.03.1975, the authorised officer overruled the objection of Sri. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan under Section 10(5) of the Act. This statement is contrary to facts. The authorised officer upheld the objections in his proceedings dated 15.03.1975. However, the second respondent did not act on the basis of the report of the third respondent.

11. He submits that the third respondent is interested in harassing the petitioners and thereby forcing the petitioners to part with a portion of the property in the name of the benamies of the fourth respondent. Since the third respondent could not persuade the second respondent to act on the incorrect facts mentioned in his report, he initiated the impugned proceedings.

12. He submits that the action of the third respondent is malafide. The third respondent created false records in order to cause wrongful loss to the petitioners. The letter of the third respondent dated 27.12.2010 contained false statements as if the orders of the Authorised Officer dated 15.03.1975 the objections to delete the name of Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan from the family of Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan was negated by the Authorised Officer. The said statement is persi false and intended to cause wrongful loss to the petitioners. Since the petitioners refused to oblige the illegal demands of the fourth respondent, he initiated the impugned proceedings. As stated above the order of the authorised officer goes to show that the land owned by Smt. Muthu Thanga Pushpa Rajalakshmi Kannappan was already excluded from the proceedings under the Act.

13. He submits that the action of the fourth respondent is malafide. He intended to cause loss to the petitioners. The fourth respondent is only interested in taking a portion of the petitioners land for himself by coercing the petitioners by initiating illegal and vexatious proceedings. Hence, this writ petition is filed.

14. The fourth respondent namely Joint Commissioner has filed a counter

statement and refused the above writ petition, he submits that he came to know that the petitioners have purchased certain properties from their vendors at Ettayapuram Village. Initially the Power Grid Corporation of India required certain lands situated at Ramanuthu Village and as a routine, the District Collector made a communication to this respondent to know about the status and the character of the said lands. Therefore, this respondent made a reply stating that the lands were already subject matter of proceedings under the TNLR (FCL) Act. Subsequently, the Power Grid Corporation of India, by their letter dated 07.12.2010, required lands situated at Ettayapuram Village alleged to have been purchased by the petitioners to the District Collector, Thoothukudi. In turn, the District Collector, Thoothukudi in his office letter dated 07.12.2010 directed this respondent to furnish the status of the lands in Ettayapuram Village. On 27.12.2010, this respondent made a communication to the Director of Land Reforms, who is the competent authority narrating the status of the land required by the Power Grid Corporation of India. On receipt of the aforesaid letter, a letter was forwarded to the first respondent for further course of action. Subsequently, the first respondent by his letter dated 23.03.2011 directed the second respondent to initiate action under the TNLR (FCL) Act and correspondingly, the second respondent herein in his office letter dated 29.03.2011 directed this respondent to invoke the provisions of the Tamil Nadu Land Reforms Act in respect of the properties situated at Ettayapuram Village.

15. Therefore, the respondent as a competent authority issued a show cause notice to the original owners of the land owner and the petitioners herein on 02.05.2011. That being the true facts, out of mere frustration, the petitioners herein made personal allegations against this respondent with an ulterior motive, therefore, this respondent was constrained to file this separate counter. He submits that the writ petitioners have filed this writ petition challenging a notice dated 02.05.2011, issued by him in his official capacity as Joint Commissioner (Land Reforms), Tirunelveli, the third respondent herein, for passing an order under Section 9(2)(b) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58/61 as amended by Act 17/70.

16. He submits that the petitioners have filed another W.P. No. 14739 of 2011 challenging proceedings initiated under the Land Acquisition Act by the District Collector, Thoothukudi, in which case also, he has been impleaded as the fifth and sixth respondents both in official and personal capacity by name respectively. He submits that the counter affidavit filed in this writ petition may be read as part and parcel as counter affidavit for W.P. No. 14739 of 2011.

17. He submits that the averments in para 3 of their affidavit are denied. It is submitted that this respondent is not aware of the alleged visit of the officials of the Power Grid Corporation of India during October, 2010 to the petitioners' lands or the private negotiation for the purchase of the lands for setting up a sub station. It is submitted that it is denied that the District Collector, Thoothukudi wrote a letter to the third respondent herein seeking no objection certificate from

the third respondent herein for purchase of the petitioners" land on behalf of Power Grid Corporation of India. It is also equally denied the allegation by the petitioners that the fourth respondent, who is holding office of the third respondent herein contacted the petitioner and that the third respondent herein will issue no objection certificate provided a portion of the land transferred to one of his benemies. In fact, it is submitted that the District Collector, Thoothukudi and the Tahsildar, Ettayapuram wrote letters in Rc. No. C2/60982/10, dated 01.10.2010 and Rc.B1/12414/2010, dated 05.10.2010 respectively to the third respondent herein stating that it is proposed to acquire lands under the Land Acquisition Act for setting up a sub station by Power Grid Corporation of India in Ramanuthu Village and not the petitioners" lands in Ettayapuram village and furnished certain survey numbers seeking information as to whether those survey numbers are covered by the Land Reforms Act. It is submitted that after verifying the relevant records available, the third respondent herein sent a reply to the District Collector in Lr. No. C1/413B/VKM, dated 02.11.2010 that the lands proposed to be acquired in favour of Power Grid Corporation of India were already notified as surplus lands under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act and vested with the Government. It is further informed by the third respondent herein that, however, the surplus lands at Ramanuthu Village were assigned to landless agricultural labours under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 with a specific condition that the assigned lands during 1996 are liable to be resumed to the Government, if they are required for any public purpose within a period of 20 years from the date of assignment and the same shall be retained by the Government and placed at the disposal of requisitioning body viz. Power Grid Corporation of India under rule 13 of the Rules. At this stage it is pertinent to note that this respondent have no option for demanding any transfer of property in the name of his benami since the petitioners" lands were situated at Ettaiyapuram Village. Hence, it is submitted the contention in this para is totally denied.

18. He submits that the averments contained in para 4 of their affidavit are denied as false and the third respondent herein has not furnished the information sought for by the petitioners on 18.03.2011 under the Right to Information Act relating to the proceedings conducted against one Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan. The third respondent herein has already submitted the relevant records to the second respondent herein seeking orders on 27.12.2010 itself. The third respondent received back the relevant records only in the first week of April, 2011. Further, the third respondent herein has also been deputed and engaged in conduct of General Election for Assembly. In the meantime, it is submitted that the petitioners herein have filed an appeal to the second respondent under the Right to Information Act. However, the information sought for by the petitioners were furnished on 10.06.2011 for six items called out from 45 volumes of files and the third respondent further advised the applicant to get the remaining two items from the first and second respondents herein, since they were not readily

available with the third respondent herein.

19. He submits that with regard to the averments contained in para 5 of their affidavit it is submitted that the contention in this para is denied as false. The impugned notice dated 02.05.2011 was issued by the third respondent herein only with reference to the decision and directions of the first and second respondents have issued instructions in their letters dated 23.03.2011 and 29.03.2011 respectively to initiate action under the Land Reforms Act for notifying the lands as surplus and reserve the same under Rule 13 of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 for placing the required lands at the disposal of the Power Grid Corporation of India Limited. It is further submitted that the complaint sent to the second respondent herein was denied by the fourth respondent herein by way of a letter dated 10.06.2011 sent to the second respondent herein in the capacity of third respondent herein.

20. He submits that as regards the averments in para 6 of their affidavit, it is hereby denied that the third respondent herein did not make any claim during 2008, while taking over an extent of 4.00 acres out of 117.65 acres in S. Nos. 606/2A, 2B, 2C and 2D. The fourth respondent herein was not holding the office of the third respondent herein during 2008. Further, it is denied that the third respondent was not made aware of the payment of compensation on 19.03.2010 by anyone. It is also equally denied that the fourth respondent herein, who is now discharging the functions of the office of the third respondent herein is attempting to create the doubt on the title of the petitioners to fulfill his illegal demand by initiating vexatious proceedings. The fourth respondent herein in the official capacity as third respondent herein has initiated action to issue the impugned notice on the basis that the first and second respondents have issued instructions in their letters dated 23.03.2011 and 29.03.2011 respectively to initiate action under the Land Reforms Act for notifying the lands as surplus on the petitioners' holdings and reserve the surplus lands under Rule 13 of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 for placing the required lands at the disposal of the Power Grid Corporation of India Limited. In this connection, it is further submitted that the above said position of land viz. 4.00 acres acquired for National highways will be accommodated in the retainable portion (within the ceiling limit) viz. 15,000 standard acres allowable under the Land Reforms Act during the course of the proceedings. The proceedings initiated by the third respondent is not a vexatious one but are statutory and the petitioners have the liberty to file appeals/revisions, etc. at the appropriate forum provided in the Act itself, if they are aggrieved by the proceedings initiated by the third respondent. Further, it is submitted that in as much as the petitioners have made an allegation of prejudice, the third respondent has since made a request to the second respondent to order transfer of the case to another Authorized Officer to conduct further proceedings on the petitioners' holdings. It is submitted that it is under consideration of the second respondent for issuing an order Section 99 of the Act for conducting the further proceedings by transferring the files from the third respondent to another

authorized officer.

21. He submits that with regards to the averments in para 7 of their affidavit it is submitted that the petitioners are wrong in contending that the third respondent is lacking jurisdiction, since Section 7 read with Section 5 enables the third respondent herein to initiate proceedings at any time against the holdings any person on or after the date of commencement of the Act, if the person holds lands in excess of the ceiling limit. The Section 23 of the Act also contemplates to declare any subsequent sales by the original owners as void. It is therefore submitted that this contention is untenable.

22. He submits that as far as the averments in para 8 of their affidavit it is submitted that the contention of the petitioners the holdings of the original landowner Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan were excluded from his father's holdings. It is submitted that Section 7 of the Land Reforms Act contemplates that no person shall hold lands in excess of the ceiling limit prescribed under Section 5 of the Act on or after the date of commencement of the Act and therefore, there is no limitation in this regard. Therefore, the third respondent is right in initiating action against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. Hence, the submission by the petitioners the proceedings have become final is incorrect in that the finality has come only in the case of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan and not in the case of his daughter Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan.

23. He submits that as regard the averments contained in para 9 of their affidavit it is submitted the petitioners have narrated the events of proceedings from 1979 to 1995 against the holdings of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan, in which the S. No. 606/2, now held by the petitioners, did not figure. It is submitted that it is true that the S. No. 606/2, now held by the petitioners, did not figure in the subsequent proceedings conducted against the holdings of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan, after those lands were excluded by the orders dated 15.03.1975. However, action against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan was liable to be initiated separately treating her as an independent family.

24. He submits that as regards the averments contained in para 10 of their affidavit the petitioners have submitted that there was no proceeding pending at the time of the purchase of lands by them in 2006. It is submitted that Section 7 of the Land Reforms Act contemplates that no person shall hold lands in excess of the ceiling limit prescribed under Section 5 of the Act on or after the date of commencement of the Act and therefore, there is no limitation to initiate action on the holdings of any landowner and therefore, the third respondent is right in initiating action against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. In fact, it is submitted that any transfers to anyone, effected by the original landowner, who is attracted under the Act after the notified date of the

Act, before the publication of notification under Section 18(1) of the Act declaring and vesting the surplus lands in Government, is void under Section 23 of the Act.

25. He submits that by the petitioners in para 11 of their affidavit that the third respondent sought for a direction under Section 18-A of the Act, as if by the order dated 15.03.1975, the authorized officer overruled the objection of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan and therefore, the second respondent did not act on the basis of the report of the third respondent. It is submitted that the second and third respondents, upon verifying the relevant material records, have taken decision and given instructions to the third respondent in their letters dated 23.03.2011 and 29.03.2011 to initiate action under the Act against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. The question of giving direction under Section 18-A of the Act will arise only, if the lands proposed to be included in the holdings of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan, whereas the proceedings now initiated are against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan treating her as a separate person as defined under Section 3(14) of the Act. Hence, it is submitted that the contention is also not tenable.

26. He submits that the petitioners state that in para 12 of their affidavit the third respondent initiated the impugned proceedings on incorrect facts. It is submitted that the second and third respondents have examined the issues with reference to the material records and gave directions to the third respondent in their letters dated 23.03.2011 and 29.03.2011 to initiate action by the third respondent under the Land Reforms Act.

27. He submits that it is wrong on the part of the petitioners as stated in para 13 and 14 of their affidavit that the action of the third respondent is malafide and added that the letter dated 27.12.2010 of the third respondent contains false statements. It is submitted that the letter dated 27.12.2010 of the third respondent is purely based on the material records which are tangibly evident. It is submitted that the third respondent is right in initiating action against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. Hence, the submission by the petitioners the proceedings have become final is incorrect. In fact, the finality has come only in the case of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan and not in the case of his daughter Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. Further, it is submitted that in as much as the petitioners have made an allegation of prejudice by the third respondent, the third respondent has since made a request to the second respondent to conduct further proceedings by another authorized officer, which is under consideration of the second respondent for issuing an order Section 99 of the Act for conducting the further proceedings by transferring the files from the third respondent to another authorized officer.

28. He submits that as regards the contention in ground (a) and (b) it is incorrect on the part of the petitioners to contend that the notice under Section

9(2) can be issued only in cases where a notice issued under Section 9(1) is not complied with. In this connection, it is submitted Section 9(1) contemplates that if any person has held land in excess of the ceiling area fails to furnish the return under Section 8 or furnishes an incorrect or incomplete return, the authorized officer may issue a notice to such person to furnish the return, etc. In the case on hand, the return was already filed by Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan, in which he has also included the land holdings of his daughter Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. Further, the fact of lands held by Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan was not denied either by Muthu Thanga Pushpa Rajalakshmi Kannappan herself or by the petitioners. Hence, the impugned notice issued by the third respondent for passing an order under Section 9(2)(b) is in order, which is with reference to the facts available in the material records and in accordance with the provisions contained in the Act.

29. He submits that with regard to ground (c) and (d) the original landowner Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan, in her letter dated 13.05.2011, has sought for the details, which were already furnished to her by the third respondent in his letter dated 10.06.2011. In fact, the time sought for by the petitioners for collecting necessary details themselves were also granted by the third respondent in his letter dated 10.06.2011. It is submitted that the delay in furnishing the information is not willful and but beyond his control.

30. He submits that the contention raised in ground (e) is denied it is misconception on the part of the petitioners to contend that the action of the third respondent in issuing the impugned notice after the lapse of 40 years from the commencement of the Act is without jurisdiction. It is submitted that Section 7 contemplates that no person shall hold lands, on or after the commencement of the Act, in excess of the ceiling limit prescribed under Section 5 of the Act. Hence, it is implied that the authorized officer shall initiate action under the Act against any person at any time without any limitation.

31. He submits that contention raised in ground (f) and (g) are denied. It is submitted that the question of issuing a no objection certificate will not arise at all before the conclusion of the proceedings initiated under the Land Reforms Act, which will take very long time to conclude in accordance with the provisions contained in the Land Reforms Act, subject to the right of the petitioners and interested persons concerned to appeals/revisions, etc. The third respondent has initiated action only on the instructions given by the second and third respondents herein. It is submitted that as the action in issuing the impugned notice by the third respondent cannot be an act of victimization and this respondent has no motive or to gain anything. It is submitted that the contention of the petitioners in ground (h) that the revisionary powers under Section 82 of the Act was already exhausted is untenable. In fact, the third respondent initiated action with reference to the enabling provisions contained Section 7 of the Act and therefore, this contention is equally not tenable.

32. He submits that the submission by the petitioners in ground (i) that the proceedings have become final is incorrect. In fact, the finality has come only in the case of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan and not in the case of his daughter Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. It is true that an order was on 25.11.1974 deleting the holdings of the daughter viz. Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan from the family fold. An order under Section 10(5) of the Act was also passed by the authorized officer on 15.03.1975, in which the exclusion of the daughter's holding was confirmed. However, action against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan have been initiated. There is no limitation on this and therefore, the third respondent is right in initiating action against the holdings of Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. It is submitted that Section 7 enables the authorized officer to initiate action on or after the date of commencement of the Act.

33. As regards the contention raised in ground (j) it is submitted that the third respondent is a gazetted officer authorized by the Government as per Section 3(5) of the Act to exercise the power of the authorized officer under the Act and no malafides can be attributed on the discharge of his official functions. The proceedings issued by this respondent were perfectly in accordance with the provision of the Act and in good faith, keeping in mind the public purpose for which the lands were to be acquired. He submits that the contents raised in writ petition are not tenable. It is submitted that there is no merit in the above writ petition.

34. The Additional Government Pleader has filed relevant documents 1 to 9 pertaining to the above case, besides the highly Additional Government Pleader Mr. M.S. Ramesh has also filed additional typed set of papers which contains 24 documents supporting his case.

35. The highly competent counsel Mr. R.N. Amarnath, appearing for the petitioners submits that on 27.01.1963, the late Raja Ettappa Naicker filed a return with regard to his holdings in Form-11 under Tamil Nadu Land Reforms fixation of ceiling on land Act 58 of 1961. Therefore, a draft statement issued under Section 10(1) of the Act, dated 31.12.1965. Thereafter, the respondents had issued proceedings dated 15.03.1975 and communicated that the lands belonging to the daughter of Raja Ettappa Naicker, namely Muthu Thanga Pushpa Rajalakshmi Kannappan to an extent of 172.52 acres, comprised in Survey Nos. 606/2, 626/2 and 623/3 respectively were ordered to be excluded from the land reforms proceedings initiated against the Raja Ettappa Naicker on the ground that the daughter got married on 13.06.1960 by treating her holdings as her own family holdings. The highly competent counsel further submits that the return filed by the Raja Ettappa Naicker wherein it was mentioned in Clause-VII, that of 12.01.1960 a registered partition deed was made even prior to the commencement of the lands reforms act. The commencement of the Act had been notified dated 02.05.1962. Therefore, the subject matter of the lands had

not been fallen under the Land Reforms Act 58 of 1961.

36. The very competent counsel vehemently argued that the entire property had been partitioned and separate possessions were allotted to the mother, sons and daughter. The said partition had taken place in the year 1986. On the strength of partition deed, the revenue authorities had issued separate pattas in the name of parties. As such, the subject matter of the landed property does not cover under the Lands Reforms Act. As per the patta and partition deed the owners of the properties namely Muthu Thanga Pushpa Rajalakshmi Kannappan, Gopalakrishnan, Venkatakrishnan, Ramadevi had executed a sale deed to and in favour of one Ayyappan, Jothimani, Dhanasekar and Gnanasekaran dated 20.12.1995. The sale deeds were registered on the file of the concerned Sub-Registrar Office, who in turn had executed two sale deeds to and in favour of the petitioners herein which were registered on the file of Sub-Registrar, Ettaiyapuram as documents bearing No. 846/06 and 847/06 dated 22.05.2006. In total 117.66 acres. Now the petitioners have occupied the said properties and enjoying the same from the date of this purchase. Under the circumstances, the power grid corporation of India had requested the District Collector to purchase the petitioners property through private negotiation for which a communication had been issued to the District Collector. After receipt of the said communication, the District Collector had sought details from the third respondent herein/Joint Commissioner, Land Reforms, with regard to the subject matter of the lands as to whether covered under the land reforms proceedings and they have also requested for issuance of no objection certificate for verification. It clearly proves that the petitioners are absolutely the owners of the property.

37. The highly competent counsel further submits that the third respondent herein had furnished false particulars to the Director of Land Reforms, Chepauk and sought to initiate suo motu revision against the land owners. The land owner Ettappa Naicker had submitted objection against the suo motu revision. However the lands held by Muthu Thanga Pushpa Rajalakshmi Kannappan were omitted to be included in the final statement. Under the circumstances, the Tahsildar, Ettaiyapuram had issued 4(1) notification under the old Act for acquiring the subject matter of the lands for formation of the Power Grid Corporation. It also clearly shows that the landed properties are belonging to the petitioners herein, therefore, the impugned proceedings dated 02.05.2011 had been issued by the third respondent herein under the Tamil Nadu Land Reforms, fixation of ceiling on land is not sustainable under law, knowing the fact the Land Commissioner i.e. second respondent herein raised various queries regarding the irregularities committed by the regular Tahsildar, Revenue Department and the third respondent herein. Thereafter on 21.04.2011 Administrative sanction of the Government for acquiring the lands by invoking Section 17(1) of the Land Acquisition Act for acquiring the said land. Further, the Government acquired 4 acres of land for the purpose of National Highways, which was part of the subject matter of the property. The Government also had passed an award on 19.03.2010 and the said land was taken and an award was passed. The

petitioners had received original award amounts and they made representation before the land acquisition officer for enhanced compensation which is still pending. The third respondent herein/Joint Commissioner, Land Reforms had issued a no objection certificate to the Land Acquisition Officer stating that the land was not subjected to proceeding under the Land Reforms Act. As such, the impugned proceedings is not suitable to proceed with any further. Further, the officials who are attached to the power grid corporation, visited the property started private negotiations. Besides the land acquisition officer had issued a notification under Section 4(1) of the Act for acquiring the remaining properties, thereafter Section-VI declaration was published.

38. The very competent counsel further submits that the petitioners name were printed in the notifications as interested persons of the lands. Therefore, the third respondent proceedings dated 02.05.2011 is not valid under law. After the Revenue records, sale deeds, Encumbrance certificate, respondents various proceedings, communications and notification under the Land Acquisition Act which were proved that the petitioners are absolute owners of the properties.

39. The learned counsel has cited 3 judgments supporting this instant case are as follows:--

"1. Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, AIR 2003 SC 3592 : (2004) 6 JT 70 : (2003) 6 SCALE 615 : (2003) 7 SCC 667 : (2003) 2 SCR 698 Supp

"A. Tenancy and Land Laws - Andhra Pradesh (Telaugana Area) Tenancy and Agricultural Lands Act, 1950 (21 of 1950) - S. 50-B(4) (as ins. in 1979) - Suo motu power of revision under - Time-limit for exercise of by Collector - Expression "at any time" - Meaning - Held, it implies within a reasonable time depending on the facts and circumstances of the case - It has to be construed contextually and reasonably and not in an unguided or arbitrary manner - Various factors such as effect on the rights of third parties due to passage of considerable time, change of hands by subsequent bona fide transfers, orders attaining finality under other statutes such as Land Ceiling Act - In case of fraud, such power can be exercised within a reasonable time from the date of detection or discovery of the fraud - Exercise of that power, without any convincing explanation for the delay, to anel validation certificates 13-15 years after issuance thereof and 10 years after insertion of S. 50-B(4) in the Act rightly held by High Court to be unsustainable - Moreover, such an order of High Court could not be interfered with at the instance of a party having only a remote interest in upholding of the revisional order, particularly when the State authorities had not challenged High Court's decision - However, where in similar factual situation the question of fraud in obtaining validation certificate and validity of transfers was specifically raised and established and the suo motu power was exercised within a reasonable time from the date of discovery of fraud, High Court's decision upholding the cancellation of validation certificates by the revisional order, upheld - Words and phrases - "at any time" -Contextual and reasonable construction

applied - Literal construction not applied."

2. *Situ Sahu and Others Vs. The State of Jharkhand and Others*, (2004) 7 JT 402 : (2004) 7 SCALE 884 : (2004) 7 SCALE 484 : (2004) 8 SCC 340

"A. Tenancy and Land Laws - Chota Nagpur Tenancy Act, 1908 [(Bengal Act 6 of 1908) as amended by Bihar Act 25 of 1947] - Ss. 71-A and 46 - Power under S. 71-A to restore possession to members of the Scheduled Tribes over land alleged to have been unlawfully transferred - Exercise of - Limitation Act, 1963 - Art. 65 (as amended by Bihar Scheduled Areas Regulation, 1969, Regn. 4 & Sch.) - Applicability - Expiry of period of limitation (30 years) prescribed by the 1963 Act, held, is not a bar to the exercise of said power - But, that power cannot be exercised after an unreasonable long period of time during which third party interests might have come into effect - Land in question originally recorded in the names of K, B and J (ancestors of G belonging to Scheduled Tribe) - K and B, after death of J, surrendering tenancy pertaining to the said land to the landlord on 7-2-1938 - Soon thereafter i.e. on 25-2-1938, the landlord settling the said land on the appellants - Appellants in possession of the land and cultivating it - In 1978, G filing application under S. 71-A for restoration of the land in question on the ground that the appellants acquired the land fraudulently - Special Officer allowing the said application - S. 46 prohibiting transfer by a member of a Scheduled Tribe without the sanction of the Deputy Commissioner, not in existence in 1938 - No contravention of any other provisions of the Act - Even assuming that transfer was fraudulent, held, lapse of 40 years not a reasonable time for exercise of power under S. 71-A - On facts, Special Officer erred in allowing the restoration application - Limitation - Limitation Act, 1963 - Art. 65 (as amended by Bihar Scheduled Areas Regulation, 1969, Regn. 4 and Sch.)

B. Tenancy and Land Laws - Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) - S. 71-A - Words "at any time" - Import of - Powers of the Deputy Commissioner under - Exercise of - Held, the said words are evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. To prevent inroads upon the rights of the ignorant, illiterate and backward citizens - Hence, may be exercised even after the period of limitation but cannot be exercised after an unreasonably long time during which third party interests have come into existence - Limitation - Limitation Act, 1963 - Art. 65 (as amended by Bihar Scheduled Areas Regulation, 1969, Regn. 4 and Sch.) - Interpretation of Statutes - Basic rules - Determination of legislative intent." (Para 11)

3. (2010) 8 Supreme Court Cases 467 (*Sulochana Chandrakant Galande v. Pune Municipal Transport and Others*)

"A. Tenancy and Land Laws - Ceiling on land - Urban Land (Ceiling and Regulation) Act, 1976 - Ss. 10, 9 and 11 - "Vesting" of land in State free from all "encumbrances" after acquisition - Connotation of - Power of State to change user of land thereafter - Scope of - Held, said vesting means vesting of land in

State without any charge or burden in it i.e. State has absolute title/ownership over it - Landowner becomes persona non grata after vesting and has right to compensation only - Person interested cannot claim right of restoration of land on any ground whatsoever - Land once vested in the State cannot be divested and State has right to change user - Appellant not entitled to any relief on any ground whatsoever - Constitution of India - Art. 300A - Words and Phrases - "Vesting", "encumbrance" (Paras 13, 14, 16 to 22 and 39)

B. Property Law - Charges and Encumbrances - "Encumbrance" - Meaning - Held, means burden caused by an act or omission of man and not that created by nature - It means burden or charge upon property or a claim or lien on the land which is a legal liability and constitutes a burden on title which diminishes value of the land - Encumbrance thus, must be a charge on the property and must run with the property - Land Acquisition Act, 1894 - S. 16 - Transfer of Property Act, 1882 - S. 100" (Para 14)

40. The highly competent Additional Government Pleader appearing for the respondents 1, 2, 3 and 5 submits that the Power Grid Corporation of India had sent a letter to the District Collector to acquire suitable lands at Ramanathu Village for the construction of 765/400 KV Sub Station to an extent of 120 acres on 16.09.2000. Again on 07.12.2010 the Power Grid Corporation of India sent another letter to the District Collector for the acquisition of 170.60 acres at Ettayapuram Village and requested the District Collector to acquire the said land under the old Act. The District Collector had sent a communication to the Power Grid Corporation of India and disclosed the available land particulars. The petitioners herein had sent a representation to the third respondent herein and sought information under the Right to Information Act regarding the subject matter of the lands. Thereafter, the impugned order had been passed. The erstwhile owner namely Tmt. Thanga Pushpa Rajalakshmi Kannappan had also sent objection notice to the third respondent dated 18.05.2011 and 29.07.2011.

41. The very competent counsel further submits that as per the "A" register the subject lands were belonging to Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan. Further, for acquiring the said lands necessary notifications were issued under the Land Reforms Act. Thereafter, the second respondent herein had set aside all earlier notifications and issued directions to the third respondent to initiate De-no proceedings dated 29.01.1974. Thereafter on 04.09.1974 fresh draft statements were published in the Tamil Nadu Government Gazette as per the Section 18(1) of the Act in the name of land owner Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan of Ettaiyapuram. Subsequently, the Land Commissioner set aside the final settlement dated 23.04.1975 with directions to include the omitted lands, accordingly cancellation notification was published and cancelled the final statement dated 09.05.1973 and 25.02.1973 respectively.

42. The highly competent counsel further submits that the petitioners namely Ettappa Naicker had filed a writ petition before this Court in W.P. No. 566 of

1980, the same was disposed of with a direction to give an opportunity to the land owner and consider his representation. Thereafter directions were issued on 07.08.1981 to include omitted lands and to amend the final statement dated 23.04.1975. Thereafter a revised notification was published in the Tamil Nadu Government Gazette on 19.10.1995. Under these circumstances, the District Collector, Tuticorin and the Tahsildar of Ettaiyapuram had issued proceedings dated 01.10.2010 and 05.10.2010 respectively to verify whether certain lands in Ramanathu Village were attracted under the land reforms act. After receipt of the said communications, the third respondent herein had informed to the District Collector stating that the lands in Ramanathu Village were already taken over as Surplus and assigned to landless agricultural labour during 1996 with specific conditions to receive the lands, if required for public purpose. Likewise, the District Collector and Tahsildar had sent a separate communication dated 07.12.2010 and 10.12.2010 respectively to the third respondent and sought whether the subject matter of the lands in Ettaiyapuram Village were attracted under the Land Reforms Act. The third respondent had informed to the second respondent that the lands are attracted under the reforms act. Therefore, the Commissioner of Land Reforms issued instructions to initiate action under the Land Reforms Act for taking over the surplus lands. The said instructions were issued on 23.03.2011 and 29.03.2011 respectively, this is the factual position of the case.

43. The highly competent counsel Mr. D. Kulasekaran appearing for the fourth respondent submits that the District Collector made a communication to the third respondent to know about the status and character of the said lands. On the said communication, the third respondent sent a reply stating that the subject of the lands under the Tamil Nadu Reforms Act. Further, the Power Grid Corporation of India sent a letter dated 07.12.2010 to the District Collector and informed him that they require lands for formation of Sub Station, hence the first respondent directed the second respondent to initiate proceedings under the Tamil Nadu Land Reforms Act, hence, the impugned order has been passed by the third respondent which is suitable for further action for acquiring the land under the said Act. Further, there was no private negotiation between the petitioners and the District Collector for purchasing the land for the Power Grid Corporation of India. This respondent never issued any no objection certificate in this regard. The subject matter of the lands had been acquired under the Tamil Nadu Land Reforms Act and the same vested with the Government. Some of the surplus lands were assigned to the landless poor people in the year 1996, further the impugned notice had been issued by this respondent on the instruction of the first and second respondents herein. This respondent was not aware regarding the acquisition of 4 acres which was belonging to the petitioners.

44. The highly competent counsel further submits that against the impugned order passed by the third respondent, the same can be challenged by way of appeal or revision, therefore, the writ petition is not maintainable. This respondent can initiate proceedings under the land reforms act, if the person

holds lands in excess of the ceiling limit. Further, the finality arrived at in the case of Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan and not in the case of his daughter Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan who is living as an independent family. Further, the subject land had been acquired under the Land Reforms Act. Therefore, the petitioners sale deeds are not valid. Further, the second and third respondent after scrutinizing the relevant records pertaining to the lands and given directions to the third respondent to take over the excess land. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

45. From the above discussions, this Court is of the view that:--

"(i) The respondents herein had initiated proceedings against Thiru. Raja Jagaveera Rama Muthukumara Venkateswara Ettappa Naicker Ayyan, his sons and daughters including Tmt. Muthu Thanga Pushpa Rajalakshmi Kanappan, dated 28.01.1963. Subsequently, the respondents had issued publications under the Land Reforms Act. As of now, there is no crystal clear particulars furnished by the respondents regarding surplus lands of the said persons. Further, there is no final proceedings regarding date in taking over these surplus lands from whom the surplus lands were taken, to what extent of the land etc.

(ii) The respondents have failed to produce revenue records in order to prove that as to whom the lands were standing to.

(iii) The second and third respondents namely Revenue Secretary and Special Commissioner had issued separate orders dated 23.03.2011 and 29.03.2011 respectively to the third respondent herein to initiate proceedings after invoking the provisions of the Tamil Nadu Land Reforms Act in respect of the properties situated at Ettaiyapuram Village. These two orders of the first and second respondents are not supporting any titles regarding the said properties. As such, the first and second respondents orders have become lapsed.

(iv) The petitioners have jointly purchased the lands admeasuring to an extent of 33.45 acres, 33.99 acres and 34.54 acres comprised in Survey Nos. 606/2B, 606/2C and 606/2D respectively in Ettaiyapuram Village from Mr. R. Dhanasekar, Ayyappan and Jothimani by registered sale deed dated 22.05.2009 on the file of Sub-Registrar, Ettaiyapuram. On the strength of the registered sale deed the petitioners have obtained patta from the Revenue Taluk Tahsildar dated 19.01.2006 and from the patta bearing No. 865, it clearly indicates that the properties were belonging to Ayyappan, Jothimani, Dhanasekar and Gnanasekaran. It clearly proves that the patta stands in the names of the erstwhile owners. The patta proceedings issued on the basis of revenue records, therefore, the first and second respondents order dated 23.03.2011 and 29.03.2011 are not adequate to proceed further.

(v) The respondents statements stating that they have taken over the surplus lands from Tmt. Muthu Thanga Pushpa Rajalakshmi Kannappan. As such, on what basis the third respondent issued an impugned order for taking over the

surplus lands from the same person. Therefore, the impugned notice dated 02.05.2011 is ill-consistent.

(vi) The respondents statements stating that the surplus lands one taken over from the land owners and assigned to the poor landless agriculturists. In this contention, the respondents have not furnished details regarding the taking over the possession and to whom the surplus lands are assigned. In the absence of crucial documents, the respondents proceeding are lapsed.

(vii) The Government have acquired 4 acres from the petitioners which is a part of Survey Nos. 606/2A, 2B, 2C and 2D for the purpose of implementing National Highways. The award amounts have been received by the petitioners under award No. 14/2010 dated 19.03.2010, besides the petitioners made an appeal to the Government for enhanced compensation. This proceeding clearly shows that the petitioners are joint owners of the subject matter of the land. The said acquisition proceedings had been initiated after scrutinizing the title deeds of the petitioners, therefore, the impugned notice dated 02.05.2011 issued by the third respondent is not valid and cannot be operated upon any further.

(viii) The Government had issued a notification under Section 4(1) of the old Act for acquiring the petitioners remaining lands for the purpose of the Power Grid Corporation of India dated 09.06.2011, thereafter 6 declarations was published on 22.06.2011 under the old Act. Under the circumstances, the third respondent's proceedings dated 02.05.2011 issued under Land Reforms Act which is not appropriate."

46. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides, perusing the typed set of papers, the views of this Court 1 to 8, the above writ petition is allowed. Consequently, the proceedings of the third respondent in Aa.A1/201/2011 dated 02.05.2011 is quashed.

47. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.