

(1969) 07 MAD CK 0026
In the Madras High Court

Sanna Raghava Reddy and Another	APPELLANT
Vs	
The State of Madras and Another	RESPONDENT

Date of Decision : 17-07-1969

Acts Referred:

Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961
— Section 7

Citation : (1970) 83 LW 86 : (1970) 2 MLJ 88

Hon'ble Judges : A. Alagiriswami, J

Bench : Division Bench

Judgement

A. Alagiriswami, J.—The writ petition raises an important question under the Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (hereinafter referred to as the Act). The petitioner had taken a lease of an extent of 87-05 acres of agricultural and pasture lands in Vallur Village, Ponneri Taluk belonging to the 2nd defendant-Devasthanam. This lease was entered into for a period of 15 years from 1st May, 1956 to 30th April, 1971. The petitioners allege that they have reclaimed the lands at a considerable cost and are cultivating the lands with their own physical labour, though, not all the lands have been reclaimed. After the Act came into force, the Authorised Officer has passed the impugned order holding that the petitioners are entitled to hold 2.77 acres and 3.37 acres respectively and they should surrender possession of the excess lands held by them to the Trust concerned. Though various contentions have been raised in this writ petition regarding the validity of the Act itself, none of them are pressed now. The only point that is pressed for consideration is that the Act nowhere provides the procedure for taking possession of the lands which are surplus to the lands which a cultivating tenant can hold and therefore the Authorised Officer was not competent to pass the impugned order.

2. Section 7 (1) of that Act provides that " where, on the notified date, any cultivating tenant under any public trust is in possession of land in excess of the cultivating tenant's ceiling area the possession of the lands which is held by the public trust and which is in excess of the cultivating tenants ceiling area shall

with effect from the date aforesaid, revert to the public trust subject to such rules as may be made in this behalf." Section 8 provides that " where any land reverts to the public trust u/s 7 the trustee of the public trust shall, within ninety days from the date of reversion lease out such land to (i) a co-operative society; or (ii) any person who is already a cultivating tenant; or (in) any person who not being already a cultivating tenant executes an agreement with the public trust that he will contribute his own physical labour or that of any member of his family in the cultivation of the land so leased out to him." u/s 18, subject to the provisions of section. 7 cultivating tenant under any public trust shall be evicted from his holding or any part thereof by or at the instance of the public trust. u/s 49, " if the trustee of any public trust, any cultivating tenant under any public trust or any other person contravenes any lawful order passed under this Act or obstructs any person from lawfully taking possession of any land for the possession of which such person is entitled in pursuance of any of the provisions of this Act or of any order passed thereunder, such trustee, cultivating tenant or other person shall be punishable with fine which may extend to five hundred rupees". u/s 59 (i) the Government have the power to make rules to carry out the purposes of the Act. Sub-section (2) of the section reads:

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for.

- (a) all matters expressly required or allowed by this Act to be prescribed ;
- (b) the procedure to be followed by Rent Courts and Rent Tribunals ;
- (c) the matters to be taken into account in determining normal gross produce ;
- (d) the fees to be paid in respect of applications and appeals under this Act;
- (e) the time within which appeals may be presented under this Act;
- (f) the notification of prices of agricultural produce for the purpose of fixing the cash value of the fair rent;
- (g) the rights and privileges to which a member of a tenant farming society shall be entitled and the obligations and liabilities to which such member shall be subject.

3. Rule 9 (to) of the Madras Public Trusts (Regulation of Administration of Agricultural Lands) Rules, 1962 framed under the Act, provides:

The public trust to "whom intimation has been given under the above sub-rule 9 (iii) may file objections, if any, before the authorised officer concerned within thirty days from the date of the receipt of the intimation. If no objection is filed, the authorised officer shall specify the lands intimated by the cultivating tenant as reverting to the public trust concerned on the notified date within thirty days after the expiry of the period fixed for filing objections as the case may be and communicate the same in Form No. 6 to the cultivating tenant and the public trust concerned.

4. Form No. 6 reads as follows:

In pursuance of the provisions of Section 7 of the Madras Public Trusts (Regulation and Administration of Agricultural Lands) Act, 1961, I...(authorised officer)...hereby declare the land noted in the Schedule in excess of the cultivating tenant's ceiling area to revert from the possession of the cultivating tenant...(name and address) to the public trust, namely...(name and address) and, further, direct the said cultivating tenant to hand over possession of the said land to the trustee, namely...(name and address) of said public trust not later than...(date).

Authorised Officer. (Signature). SCHEDULE. Station ; Authorised Officer Date : (Signature).

5. Rule 49 provides that " any order, decision or award passed by the Authorised Officer under the Act, shall be enforceable by an officer of the Revenue Department not lower in rank than Revenue Inspector."

6. It appears to me, on a reading of the above mentioned provisions of the Act and the Rules made thereunder, that the Act does not make provision for taking possession of a land which reverts a public trust under the provisions of Section 7. The provisions of this Act can be usefully compared with the Madras Land Reforms (Fixation of Ceiling Land) Act, 1961. u/s 18 of that Act, after the publication of the final statement under Sections 12 to 14, the Government shall subject to the provisions of Sections 16 and 17, publish a notification to the effect that the surplus land is required for a public purpose; on the publication of that notification the land specified in the notification shall be deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances. Under Sub-section (4) of that section, the authorised officer may, at any time, after the publication of the notification under Sub-section (1), take possession of any land specified in the said notification. There is no similar provision in the present Act which enables the Government or the authorised officer to take possession of the land which is declared to be surplus over and above the cultivating tenant's ceiling area. Such surplus only reverts to the public trust. That means, the public trust is entitled to the possession of the land, but that does not mean that the public trust itself can try to take possession without the aid of legally constituted agencies. In the absence of any other provision, laying down the procedure for taking possession of such lands, it would be necessary for a public trust to resort to civil Courts for taking possession of the land, which reverts to it u/s 7. Because of the provision of Section 8, the public trust is bound to lease the land which has reverted to it u/s 7, to the various categories of persons mentioned in Section 8. If it does, such persons would be entitled to get possession of the land so leased to them, of course, by resorting to the provisions of the general law and the legally constituted authorities for that purpose. There again there is no provision in the Act which says that the public trust can apply to any person or authority for being put in possession of the land which has reverted to it u/s 7 or that the

lessee from the public trust can apply to any tribunal or authority for being put in possession of the land leased to him.

7. Therefore, Section 49 of the Act which lays, down that, if any cultivating tenant-under any public trust contravenes any lawful order passed under the Act or obstructs any person from lawfully taking possession of any land for the possession of which such person is entitled in pursuance of any of the provisions of the Act, or of any order passed thereunder, he shall be punishable with fine, cannot apply unless some authority is vested with the power to pass an order for handing over possession. Unless there is some provision in the Act itself which says that the trust or the lessee from the trust is entitled lawfully to take possession of the land which reverts to the trust u/s 7 or which has been leased by the trust u/s 8, it cannot be said that any person is allowed to take possession of the land which has reverted to the trust u/s 7 or which has been leased by the trust u/s 8 or that such a person was trying lawfully to take possession. The reference to any order passed under the Act can refer only to an order which the authorities concerned are competent to pass under the Act. The rule-making power u/s 59 of the Act does, not enable rules to be made for the purpose of taking possession of lands which revert to the public trust u/s 7 or which have been leased by the public trust u/s 8. If a rule is to be made in pursuance of the rule making power u/s 59, there must be a provision in it specifically empowering the rules being made for such purpose. But there is no such provision. The mere fact that the Government is enabled to make rules for the purpose of the Act would not enable it to make rules to provide that persons authorised under the rules may take possession. Indeed, even the rules do not provide for persons or authorities taking possession of lands which revert to a public trust u/s 7 or lands leased out by the public trust u/s 8. Rule 9 (iv) only says that the authorised officer shall communicate to the public trust and the cultivating tenant concerned the lands intimated by the tenant as reverting to the public trust. It would therefore mean that thereafter the public trust will have to take necessary steps in the duly constituted Courts of the land for getting possession of the land. If it leases that land to any person u/s 8, such person will have to approach the duly constituted Courts of the land. The mere fact that Form No. 6 is referred under this sub-rule and that Form No. 6 contains words which would indicate that the authorised officer can direct a cultivating tenant to hand over possession of the land in excess of his ceiling area to the trustee, will not confer any power on the authorised officer to pass such an order. In the absence of any such power in Rule 9 (iv) itself and more so in the absence of any power conferred under the rule-making section enabling the Government to confer on any officer or authority power to take possession of the land which reverts to a public trust u/s 7, that portion of Form No. 6 which contains words indicating that the authorised officer may pass an order directing a cultivating tenant to hand over possession will have to be held as being beyond the rule making-power. Rule 49 cannot therefore carry the matter further. In enacting the statute itself under which no provision is made for taking possession of the land which reverts to a public trust

u/s 7, the Legislature must have contemplated that where a cultivating tenant does not voluntarily relinquish the surplus lands, it would be necessary for the trust to resort to the ordinary Courts of the land. Such an assumption is a reasonable one to make. If it was considered necessary to make a specific provision for taking possession of the land except by resort to the ordinary Courts of law, special provision must have been put in the Act itself or at least a specific provision must have been put in the section which confers rule-making powers on the Government to make rules for specific purpose. In the absence of such power, the mere occurrence in Form No. 6 of words which seem to show that the authorised officer has got power to direct a cultivating tenant to hand over possession would not confer such power on the authorised officer. Therefore in this case the authorised officer was not competent to say that the petitioners should surrender possession of the excess lands to the trust concerned. Even if it should be considered that he merely stated the legal position under the statute, it amounts to an order directing the petitioners to surrender possession of the excess lands which he has no power to make. That a landlord cannot himself take possession from a tenant of lands in respect of which the period of tenancy has expired has been laid down by the Supreme Court in *Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others*, .

8. The writ petition is allowed and the order of the authorised officer in so far as it directs the petitioners to surrender possession of the excess lands, is quashed. It is, of course open to the trust or any lessee from the trust to resort to the ordinary Courts for the purpose of taking possession of the surplus lands. If the intention is that possession should be taken without recourse to ordinary Courts, the Act will have to be amended for that purpose. No costs.