
(1990) 08 MAD CK 0032
In the Madras High Court

Seeranga Gounder and Others

APPELLANT

Vs

The Authorised Officer, Land Reforms (now redesignated as
Assistant Commissioner) and Others

RESPONDENT

Date of Decision : 31-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 17

Citation : (1990) 2 LW 248 : (1991) 131 MLJ 1

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The civil miscellaneous petition is for modification of the order passed in C.R.P. No. 2316 of 1983 by this Court by

directing the first respondent therein to drop the proceedings in respect of the lands in dispute. The writ petition is for issue of a certiorarified

mandamus calling for the records on the file of the first respondent in F2 Misc., Petition 11/88 (L. Reforms) in R.P. No. 75/88 and quash the order

dated 25.8.1988 and implead the petitioners as parties to the said R.P. No. 75/88. The petitioners in the civil miscellaneous petition and the writ

petition are the same.

2. Relevant facts are as follows: Petitioners' father by name Perumal Gounder was a tenant under the second respondent in the civil miscellaneous

petition and the third respondent in the writ petition, hereinafter referred to as the "land owner" with respect to an extent of 10.45 acres in S.F.

No. 28-A, 31 and 32 of Pudukalayanur Village of Sathi taluk, Periyar district. The land owner filed a petition u/s 17 of the Tamil Nadu Land

Reforms (Fixation of Ceiling on Land) Act, Act 58 of 1961, hereinafter referred to

as the "Act" for declaration u/s 61(3)(b) of the Act, read with Rule 51(1) of the Rules framed under the Act that Perumal Gounder was holding surplus lands to the extent of 10.45 ordinary acres equivalent to 4.857 standards acres over and above the cultivating tenant's ceiling area fixed under the Act. The Authorised Officer granted the prayer of the land owner by his order dated 25.4.1979, Perumal Gounder filed an appeal before the Land Tribunal in I.T.A. No. 33 of 1979. While it was pending Perumal Gounder died on 17.6.1980. Petitioners and another son of Perumal Gounder by name Ramasami came on record as the legal representatives of Perumal Gounder and continued the appeal. By order dated 28.2.1982 the appeal was allowed by the Land Tribunal. Against that order the landowner filed C.R.P. No. 2316 of 1983 in this Court. By order dated 26.2.1987 the civil revision petition was allowed by Sathiadcv, J., The relevant portion of the order in the civil revision petition reads as follows:

8. The standard acres for leased out lands is 4.857, and the total comes to 9.357 standard acres. Deducting 5 standard acres, 4,357 standard acres has to revert to petitioner herein.

9. Hence, the Authorised Officer (Land Reforms), Erode, will have to call upon the respondents to exercise the option as to which portion of the leased out lands of an extent of 00.50 standard acres they would like to retain, and then, balance extent to be reverted to landlord.

The petitioners referred to in the passage extracted above is the land owner and the respondents therein are the petitioners herein.

3. The present C.M.P. No. 8409 of 1989 has been filed for modification of the said order in the civil revision petition on the ground that this Court committed an error apparent on the face of the record in directing the excess extent to revert to the land owner instead of the Government.

According to the petitioners, under the provisions of Section 17 of the Act the excess extent held by a cultivating tenant over and above the

cultivating tenant's ceiling area should revert only to the Government as in this case, it has already been found that the land owner had an excess

extent over the area which could be held by him under the provisions of the Act. This petition was filed on 22.6.1989, i.e., about two years after

the disposal of the civil revision petition. According to the land owner, who is the

contesting respondent in the petition, the land owner, had no excess extent and the question excess extent was not finally determined at the time when the revision petition was disposed of and under the provisions of Section 17 of the Act themselves the excess extent should revert to the land owner only, and the order passed by this Court in the civil revision petition was correctly passed taking into account the relevant facts. The land owner also contends that the petition is not maintainable as it has been filed u/s 151, CPC for a modification of the order made in the civil revision petition. According to the land owner, the remedy which was available to the petitioners was a petition for review and an appeal to the Supreme Court of India. Not having availed of the same within the time prescribed by law, it is not open to the petitioners to file a petition for modification.

4. With regard to the question of the maintainability of the petition, it is the case of the petitioners' counsel that no party shall suffer because of a mistake committed by the Courts and in this case, the Court committed a mistake in directing reversion to the land owner instead of the Government. Reliance is placed upon the judgment of the Supreme Court in *A.R. Antulay Vs. R.S. Nayak and Another*, . My attention is drawn to paragraphs 98, 103 and 104, which read as follows:

98. It is well settled position in law that an act of the court should not injure any of the suitors. The Privy Council in the well known decision of (Alexander) Redger v. Comptoir D'escompte De Paris (1869-71) L.R. 3 P.C. 465 : 17 E.R. 120 observed:

One of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression act of the court"" is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertaining jurisdiction over the manner upto the highest court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in courts. Brother Mukharji has also referred to several other authorities which support this view.

103. The Privy Council in *Debi Bakhsh Singh v. Mabib Shah* (1913) I.L.R 35 All.

331 pointed out that an abuse of the process of the court may be committed by the court or by a party. Where a court employed a procedure in doing something which it never intended to do and there is an abuse of the process of the court it can be corrected. Lord Shaw spoke for the Lords thus:

Quite apart from Section 151, any court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made.

It was pointed out by the Privy Council in *The Bolivar* AIR 1916 P.C. 85, that:

Where substantial injustice would otherwise result, the Court has, in their Lordships' opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties....

Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle *actus curiae neminem gravabit* an act of the court should prejudice no one.

104. To err is human, is the oft-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both.

5. The question before me is whether the principle enunciated by the Supreme Court in the above case is applicable to the facts of the present

case. In this case the land owner had executed two settlement deeds in favour of his relatives. By a settlement deed dated 14.2.1970, an extent of

4.53 1/2 acres of land was settled on Tmt. Lakshmi, the aunt's daughter of the land owner. By another settlement deed on the same day, an extent

of 16.75 acres was settled on Padmavathi Ammal, the aunt of the land owner. On 15.2.1970 the act came into force. That was the date of the

commencement of the Act. October 2, 1970 was the notified date. The Authorised Officer (Land Reforms) initiated proceedings u/s 22 of the Act

and by order dated 23.5.1974 held that the settlement deeds were nominal. An appeal was filed against the said order by the landowner in L.T.A.

No. 42 of 1975 and it was dismissed for default on 5.9.1975. An application to restore the same in I.A. Nos. 46 and 47 of 1976 were dismissed

on 2.8.1976. The land owner filed C.R.P. Nos. 3579 and 3580 of 1976 in this Court. Consequent to the declaration u/s 22 of the Act that the

settlement deeds executed by the land owner were nominal, the Authorised Officer passed an order u/s 10(5) of the Act proposing to declare an

extent of 10.47 standard acres as surplus. That order was dated 30.11.1976. Against that order, an appeal was filed in C.M.A. No. 57 of 1976

by the land owner and the same was allowed on 28.2.1977. The order of the Authorised Officer was set aside and the matter was remanded to

the Officer with a direction to give fresh opportunity to the land owner to prove that the settlement deeds dated 14.2.1970 were bona fide. On.

16.11.1978 the land owner withdraw C.R.P. Nos. 3579 and 3580 of 1976 in view of the fact that the matter was left open to be decided by the

Authorised Officer after remand in C.M.A. No. 57 of 1976. Though the remand was made in February, 1977, the Authorised Officer did not pass

any order after fresh enquiry till 30.7.1986 on which date he passed an order holding that an extent of 10.449 acres of land was surplus over and

the above the ceiling area of the land owner. The land owner filed an appeal against this, which was dismissed as barred by limitation. The land

owner challenged that order in a writ petition which ended in dismissal and the order in the writ petition confirmed on appeal by a Bench of this

Court. Against the order of the Bench the land owner filed a SLP and it is said to be pending in the Supreme Court.

6. Pursuant to the order dated 30.7.1986, the Assistant Commissioner (Land Reforms) sent a communication u/s 12 of the Act declaring certain

lands to be surplus. Against that the land owner filed R.P. No. 75 of 1988 on the file of the Land Commissioner, Madras. When the said revision

petition was pending the petitioners herein filed an application to implead themselves as parties to the said petition in F2/Misc. Petition 11/88. That

was dismissed by the Land Commissioner and his order is challenged by the petitioners in W.P. No. 10561 of 1988.

7. In the meanwhile, the Assistant Commissioner (Land Reforms), issued a notice u/s 18(1) of the Act. Against that also the land owner filed a

revision petition before the Land Commissioner in R.P. No. 179 of 1988. Both the revision petitions, viz., R.P. Nos. 75 and 179 of 1988 were

disposed of finally by the Land Commissioner by order dated 2.12.1988. The Land Commissioner allowed the revision petitions and set aside the

final settlement published in the Tamil Nadu Government Gazette dated 3.2.1988. He remanded the case to the Assistant Commissioner (Land

Reforms) for fresh disposal in accordance with the directions given by him in paragraph 6 of his order.

8. It is thus seen that at the lime when Sathiadev, J., disposed of C.R.P. No. 2316 of 1983, the question whether the land owner had any extent of

land in excess of his ceiling area was not decided finally and it was still pending for consideration.

9. It is now necessary to look the provisions of Section 17 of the Act.

Sub-Section (1) of Section 17 Of the Act reads as follows; ""Possession of land held by tenant to revert to the landowner in certain cases:

(1) Where any land held by any person as tenant is in excess of the extent of land which he is entitled to hold u/s 5 the possession of the land in

such excess shall, with effect from the date of the publication of the final statement u/s 12 or 14, revert to the land owner where and to the extent to

which the land of the landowner himself is not liable to be declared as surplus land in accordance with the provisions of this Act.

Under this sub-section the reverter should be only to the landowner but subject to the condition that such reverter will be only to the extent to

which a landowner himself is not liable to be declared as holding surplus land in accordance with the provisions of the Act, When at the time of the

disposal of the civil revision petition it had not been finally decided whether the landowner had excess extent over, and above the ceiling area, it

cannot be said that the provisions of Section 17(1) of the Act were not applicable to the landowner in this case. As per the sub-section referred to

above, he was certainly entitled to have the benefit of revision in the present case. That was why Sathiadev, J., directed reverter of the land to the

landowner and the Government had no right at that time to get a reversion from the tenants. Thus, on the facts it is clear that the only person

entitled to get reverter u/s 17(1) of the Act was the landowner and the contention of the petitioners herein that a direction should have been issued

by Sathiadev, J., for reverter to Government is wholly unsustainable.

10. Therefore, it is clear that there was no mistake or error in the order passed by Sathiadev, J., in C.R.P. No. 2316 of 1983. Consequently, the

petition for modification has to fail on the merits.

11. With regard to the maintainability of the petition it may not be necessary at

all for me to consider that question in view of the conclusion on the facts. However, learned Counsel for the petitioners having invited my attention to certain decisions including that of the Supreme Court I must make a reference to them and point out that they are not applicable to the facts of this case. In A.R. Antulay Vs. R.S. Nayak and Another, , the Supreme Court observed in paragraph 102 of the judgment that it being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. It is that reasoning which weighed with the Court to recall on order passed earlier by that Court. Moreover, in paragraph 107 of its judgment, the following observation is made:

We are sure that if precedent value is sought to be derived out of this decision, the court which is asked to use this as an instrument would be alive

to the peculiar facts and circumstances of the case in which this order is being made.

The above observation is enough to show that the decision of the Supreme Court in A.R. Antulay Vs. R.S. Nayak and Another, , cannot be used

as precedent in other case. That judgment depended upon the peculiar circumstances of that case. Having regard to the facts of this case that judgment will not apply.

12. Learned Counsel for the petitioners referred to the order of Shanmukham, J., in C.M.P. No. 3875 of 1980 in S.A. No. 1952 of 1963, order

dated 23.2.1981 and reported in Periasami Gounder v. Ramasami Gounder and Ors. (1981) T.N.L.J. 127. That was an application for

amendment of the decree u/s 152, Civil Procedure Code. The learned Judge observed that in order to promote justice and to maintain serenity in

the court records, he should give effect to the meaning and intention of the judgment and for that purpose, make the necessary order for

amendment. Relying on the judgment of the Supreme Court in Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, , the learned Judge

went on to consider the particular facts of that case and held that the intention of the learned Judge to pass a decree in the main case was not

reflected ultimately in the judgment as it stood with the result that the judgment and decree should be corrected. On that view, the learned Judge

granted the prayer in the application u/s 152, Civil Procedure Code. In view of the finding on the facts of this case, the ruling of Shanmukham, J.,

will not have any application.

13. Learned Counsel for the petitioners drew my attention to the ruling of the Supreme Court in Jang Singh Vs. Brijlal and Others, . There also the

Court applied the maxim *actus curiae neminem gravabit* i.e., act of court should do no harm to litigant. It was found on the facts of that case that a

mistake has crept into the decree directing deposit of a particular amount by a particular date. On account of an error on the part of the officers of

Court in filing the challan, the Supreme Court held that the party should not suffer because of the error committed by Officers of Court. It is seen

from the facts that the amount deposited in Court within time as prescribed by the decree was short only by one rupee from the amount which

ought to have been deposited. In those circumstances, the Court allowed the appeal and granted time to the appellant for depositing the balance of

Rs. 1. That judgment does not apply to the facts of the present case.

14. Learned Counsel for the petitioners submits that in order to render justice, Court should be prepared to own its mistake and rectify. In this

case, I have found that there is no mistake. Further, the petitioners are not the aggrieved parties. If under the provisions of the Land Ceiling Act the

reversion cannot be for the benefit of the landowner, it can be only for the benefit of the Government and not the petitioners. Even according to the

petitioners, they do not challenge the finding of Sathidev, J., that they are holding an extent of land in excess of their ceiling area as cultivating

tenants. Once that finding is accepted, reversion must be to the landowner or to the Government and the excess extent cannot be retained by the

tenants in this case, the petitioners. Learned Counsel for the petitioners submits that if the land reverts to the Government, it will be open to the

petitioners to seek allotment of the surplus area to themselves as persons who were holding the land as cultivating tenants previously. That is only a

remote consequence and the possibility of an allotment in their favour by Government ultimately if they dispose of the surplus land would not confer

any present right on the petitioners to entitle them to seek a modification of the order of this Court. If at all, the Government was aggrieved by that

order it was for the Government to take necessary steps for getting the order rectified. But that has not been done in the present case. Hence the

argument that justice should be done by Court in this case is not available to the

petitioners even if it is held that there was a mistake or error in the order of Sathiadev, J.

15. Turning to the writ petition, the contention of learned Counsel for the petitioners is that the petitioners are necessary parties to the revision petition which was pending before the Land Commissioner as they had a claim for the surplus land. As I have stated earlier, the petitioners do not have any present right in the surplus land and there is only a remote possibility of the land being allotted to them, in the event of the surplus reverting to the Government. Thus they cannot claim to be necessary or proper parties before the Land Commissioner in the revision petition which was pending before him. The Land Commissioner has rightly held that the order of this Court in C.R.P. No. 2316 of 1983 was binding on him and the dismissal of the application to implead the petitioners as parties is quite just and proper.

16. Learned Counsel for the petitioners submits that the Land Commissioner had observed that the requirements of Section 17(1) of the Act did not appear to be satisfied on the facts of the case but he was helpless in view of the order of this Court in the Civil revision petition directing reversion of the land to the landowner. The observation made by the Land Commissioner is wholly unwarranted. On the facts of this case, as pointed out by me earlier, the Land Commissioner was in error in taking the view that the requirements of Section 17(1) did not appear to be satisfied in this case. In fact, it is a half-hearted finding which the Land Commissioner ought not to have rendered on the facts of this case. The question whether the landowner had land in excess of the ceiling area had not been finally decided at the time when the Land Commissioner dealt with the petition to implead the petitioners as parties to the revision petition. In those circumstances, he ought not have ventured to give a finding or make an observation that the requirements of Section 17 of the Act did not appear to have been satisfied. Hence no reliance can be placed by the petitioners on the observation of Land Commissioner.

17. Consequently, there are no merits in the writ petition and it has to fail. I have also held that there are no merits in the civil miscellaneous petition also. Hence both C.M.P. No. 8409 of 1989 in C.R.P. No. 2316 of 1983 and W.P. No. 10561 of 1988 are dismissed. Having regard to the fact

that the petitioners are only tenants, there will be no order as to costs.