

(1985) 11 MAD CK 0029
In the Madras High Court

The State of Tamil Nadu and Another	Vs	APPELLANT
C. Chandra Mohan and Others		RESPONDENT

Date of Decision : 05-11-1985

Acts Referred:

Citation : (1986) 1 MLJ 382

Hon'ble Judges : S. Natarajan, J

Bench : Division Bench

Judgement

S. Natarajan, J.—These two writ appeals have been filed by the State against the order of S. Mohan, J. in W.P. Nos. 772 and 773 of 1977. W.P. No. 772 of 1977 has been filed by Thiru Chandramohan and W.P. No. 773 of 1977 has been filed by his father Thiru Venkatakrishnan for seeking issue of a writ of certiorari to quash the orders passed by the Land Commissioner, Board of Revenue rejecting the revisions filed by the respective petitioners on the ground that they had been filed beyond the time limit of sixty days prescribed under the rules. The learned single Judge passed a short order directing the Land Commissioner, Board of Revenue, to take up the revisions after condoning the delay and deal with the same on merits. Disputing the correctness of this order, the State has preferred these appeals.

2. The limited facts which require to be set out before the contentions of the appellants are gone into, are as under: Thiru Venkatakrishnan was found to have a total holding of 47.26 ordinary acres equivalent to 26.96 standard acres as on 15.2.1970. After allowing an exemption to the extent of 8.50 ordinary acres equivalent to 3.37 standard acres under Sections 3(22) and 73(viii) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (hereinafter referred to as the Act), the net extent of holdings of the landholder was arrived at 38.79 ordinary acres equivalent to 24.43 standard acres. He was allowed to retain 15 standard acres and the draft statement u/s 10(1) of the Act was published in the Tamil Nadu Government Gazette dated 24.10.1973. The notification set out that 12.85 ordinary acres equivalent to 9.43 standard acres constituted his excess

holding. The draft statement is alleged to have been served on the landowner by affixture on 4.2.1974. The landowner filed an objection u/s 10(5) of the Act on 4.3.1974. His objections were considered and orders u/s 10(5) of the Act were passed on 22.4.1974. Certain modifications were carried out in the abovesaid order and by reason of it, the extent of surplus was reduced to 11.38 ordinary acres equivalent to 8.59 standard acres as against 12.85 ordinary acres equivalent to 9.43 standard acres notified in the draft statement. The final statement u/s 12 of the Act was prepared and duly published in the Tamil Nadu Government Gazette dated 5.6.1974. This statement is also said to have been served on Venkatakrishnan and his son Chandramohan by affixture on 5.9.1974. The notification u/s 18(1) of the Act was published in the gazette on 4.12.1974. The lands notified as surplus were taken possession of by the Government on 9.1.1975.

3. Against the publication of the final statement u/s 12 of the Act, Venkatakrishnan and Chandramohan filed revision petitions before the Land Commissioner. The Land Commissioner dismissed the two revision petitions on 31.12.1976 on the ground that they had been preferred beyond the time limit of sixty days prescribed under the rules. In order to assail the dismissal of the revisions in the abovesaid manner, Venkatakrishnan and Chandramohan have filed W.P. Nos. 772 and 773 of 1977. Without giving reasons for sustaining the contentions of the writ petitioners, the learned single Judge has directed the Land Commissioner to condone the delay and take the revisions on file and dispose them of on merits. Since according to the State, there is no provision either under the Act or under the Rules framed thereunder for the delay being condoned, the learned single Judge's order is assailed and therefore these writ appeals have been filed.

4. Mr. Rajkumar, learned Government Advocate for the appellants contends that the respondents in the respective writ appeals should have actually filed appeals to the Land Tribunal against the draft statement made u/s 10(5) of the Act and having failed to do so, they cannot seek to file revisions. The further contention is that even if they are allowed to file revisions, they should have filed them within a total period of 90 days from the date of the notification u/s 12 of the Act because Rule 62 of the rules framed under the Act lays down that every application to the Land Commissioner for revision u/s 82 of the Act shall be presented within sixty days from the date on which the order sought to be revised was communicated to the party and that in appropriate cases, the Land Commissioner may condone a delay of thirty days in filing the revision if he finds bona fide reasons for condoning the delay. According to the Government Advocate, when a time limit has been prescribed by the rules, it will not be open to the Court to direct the Land Commissioner to condone any delay beyond the limit prescribed under the rules and take up the revisions and dispose them of on merits. By way of authority for this argument, the Government Advocate places reliance on the decision reported in *Sanga Pillai Vs. State of Tamil Nadu and Others*, . That was a case where delay had occurred in preferring an appeal to

the Land Tribunal. The rules provide for a time limit of thirty days for filing an appeal. It further empowers the Land Tribunal to condone a delay of thirty days in excess of the prescribed thirty days in filing the appeal if bona fide grounds were found to exist. In that case, the appeal had been filed beyond the maximum period allowed viz., 30 days + 30 days. P.R.Goku-lakrishnan, J. as he then was, held that the Land Tribunal had exceeded its powers in excusing the delay beyond the period of thirty days in preferring the appeal and therefore, the order of the Tribunal was manifestly an erroneous one.

5. Countering the arguments of the Government Advocate, Mr.G.Desappan for the respondents would say that Section 82 of the Act does not deny a right of revision to an aggrieved party merely because he had failed to file an appeal to the Land Tribunal against a draft statement made under Sections 10(2) or 10(5) of the Act. The counsel would therefore say that the respondents were entitled to file revisions u/s 82 of the Act. The further submission made is that in both the cases, the notifications had not been served personally on the respondents but are said to have been served only by means of affixture. In so far as service by affixture is concerned, the rules provide that it is the last mode of service that should be resorted to. But in this case, there is no material to show that service was sought to be effected either personally or through registered post and those attempts failed and therefore notice had to be served by affixture. Hence, the Counsel would state that this is a case where service had not been effected properly and in such a situation, there is no room for the Commissioner to say that the respondents should have preferred the revisions within a period of sixty days from the date of service, but since they had failed to do so, the revisions are not sustainable.

6. To appreciate the argument of Mr. G. Desappan, reference must be made to Rule 8 of the rules. It is in the following terms:

(8). Manner of service of notice or order under the Act or the rules:- Any notice or order issued or made under the Act or under these rules shall be served on the persons concerned in the following manner, namely:

(a) x x x x(b) x x x x(c) x x x x (d) In the case of an individual person, be served, -

(i) by delivering or tendering the notice or order to the person concerned or his counsel or authorised agent; or

(ii) by delivering or tendering the notice or order to some adult member of the family; or

(iii) by sending the notice or order to the person concerned by registered post acknowledgment due; or

(iv) if none of the aforesaid modes of service is practicable, by affixing the notice or order in some conspicuous part of the land, known place or residence or business of the person concerned.

7. On a consideration of the matter, we find that the above mentioned contentions of Mr. G. Desappan have irrefutable force. Even though the respondents had failed to prefer appeals to the Land Tribunal against the draft statement made u/s 10(2) of the Act, they will not stand precluded of their right of revision u/s 82 of the Act against a notification made u/s 12 of the Act. Then, what remains for consideration is whether the revisions had been filed within time or out of time. On this aspect of the matter, the question of limitation will come into the picture only if it is found that there has been valid service of notice on the respondents. To find out whether there had been valid service of notice, we must look into the provisions of Rule 8 which has been extracted above. As per this rule, any notice or order issued Or made under the Act has to be served on an individual person by (a) delivering or tendering the notice to him in person or through his counsel or agent; (b) by delivering or tendering the notice to some adult member of the family; and (c) by sending the notice or order to the person concerned by registered post acknowledgment due. Only if all the three methods fail, the authorities can have resort to serving the notice by affixture. In this case, there is no evidence to show that the first three methods of service of notice were attempted and all of them failed and thereafter, the authorities had to effect service of notice by affixture. Therefore, if it is to be held that notice had been served by affixture, it will not constitute valid service. When such a conclusion is reached, it goes without saying that the Land Commissioner cannot reject the revisions filed by the respondents on the ground that they had been filed beyond the prescribed period of two months from the date of service of notice. In such circumstances, we find nothing wrong or erroneous in the order of the learned single Judge. Though the learned single Judge does not give reasons for allowing the writ petitions, we find the order to be sustainable in law by reason of our independent examination of the relevant provisions of the Act and Rules. The Writ Appeals therefore deserve to fail and will accordingly stand dismissed. No costs.

8. Learned Government Advocate would state that even if the Land Commissioner finds merit in the contentions of the respondents, it will not be possible for him to give any relief to the respondents because the lands have been taken possession of by the Government and orders of assignment in favour of third parties would have been passed. We express no opinion on this aspect of the matter. All that is decided in the Writ Appeals is whether the dismissal of the Revision Petitions filed by the respondents on the ground of limitation is justified or not. Even the learned single Judge has only directed the Land Commissioner to consider the revisions on merits. Therefore, even if the Land Commissioner finds merit in the contentions of the respondents, what is the relief to be afforded to the respondents is a matter to be decided by him with reference to the provisions of law and the subsequent events that may have happened after the notifications were made.