

(1981) 08 MAD CK 0006
In the Madras High Court

V. Nageswaran and Others

APPELLANT

Vs

The Authorised Officer (Land Reforms) and Others

RESPONDENT

Date of Decision : 12-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21
Limitation Act, 1963 — Section 5

Citation : (1983) ILR (Mad) 291 : (1983) 96 LW 195 : (1983) 2 MLJ 67

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Judgement

T. Sathiadev, J.—In these writ petitions in the affidavits filed, though more than one point had been taken Mr. A. Ramanathan, learned

Counsel for the petitioners confines to a solitary point which relates to the scope of revisional and review powers, which could be exercised by the

Land Commissioner under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965, hereinafter referred to as Rules. It is

indisputable that after appellate orders were passed under Rule 10 by the District Revenue Officer, revision petitions were filed by the respective

petitioners to Land Commissioner, and he rejected all the petitions on the sole ground that they have been filed beyond the period of limitation

contemplated under Rule 11(3)(a) of the Rules. Thereafter the petitioners again filed review petitions and they were also dismissed by the Land

Commissioner holding that he has no power to review his own orders. Being aggrieved with these two orders of the Land Commissioner, these

writ petitions have been filed to quash both the orders.

2. Mr. A. Ramanathan would contend that when the power to be exercised by the Land Commissioner in revision, is found u/s 82 of the Land

Reforms Act and under Rule 62 of the Rules framed therein, he has the power to admit an application presented within 30 days, after the period of

60 days provided under Sub-rule (1), on being satisfied that there was sufficient cause for not presenting the revision on time, and hence the

manner in which the Land Commissioner had rejected the revision petitions was patently erroneous. He pleads that before ever an adverse order is

passed, it is obligatory on the part of the Land Commissioner to hear the party against whom an adverse order is to be passed, and thereafter to

pass final orders and that such a course had not been adopted. He then contended that, if for any reason Section 82 of the Act Rule 62 framed

thereunder cannot be invoked, then under Rule 11(3)(b) he is conferred with "suo motu powers which can be exercised within the period of 5

years of the date of the order of assignment, apart from the provisions made under Rule 11(3)(a) and hence, nothing prevented him from

entertaining the revision petitions, though at the instance of the petitioners.

3. On the point of power to review his own order, he refers to Rule 9 and the conditions of assignment in Form-F which enables modification or

cancellation of the assignment and which are nothing but exercises of powers of review.

4. Since common points are involved in all these petitions, a common counter-affidavit is filed wherein it is stated that all the revision petitions filed

were rejected as time-barred, and that Land Commissioner has no power to review his own orders and furthermore, when a fixed time-limit is

prescribed under the Rules; he cannot go beyond the rules. Rules, by themselves not contemplating a personal hearing, the rejection of the petition

without being heard, had not resulted in any illegal orders being passed.

5. The Government Pleader would Extend that the provisions of Madras Act LXIII of 1961 could have no application, will specific Rules have

been framed regarding disposal of surplus lands, and when provisions have been made for the exercise of the power of revision, reference to

Section 82 or Rule 62 of the Rules framed under the Act, would have no application.

6. As for an opportunity to be given, he submits that when the relevant dates are available, and the petitioners having presented the revision

petitions, they are not to be equated to that of respondents or assignees who

must be heard, before orders are passed adverse to their interest. As for personal hearing, when Rules do not contemplate for extending such an opportunity, it would be futile to ask for such a personal hearing to be given to the petitioners.

7. When specific rules have been framed regarding disposal of surplus lands and the present proceedings relate to such disposal of lands. only

Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, would be applicable. The Land Commissioner, while dismissing the revision

petitions as time-barred, has relied upon the following rule, being Rule 11(3)(a) which is as follows--

3(a) Any person aggrieved by the orders of the District Revenue Officer under Rule 10 may within 60 days from the date of receipt of such order

make an application for revision to the Land Commissioner: provided that the Land Commissioner may admit an application for revision upto 30

days after the expiry of the period aforesaid, if he is satisfied that the applicant had sufficient reason for not making it within the said period,

Sub-rule (6) of Rule 11, is to the following effect--

6 No order under this rule shall be passed without giving an opportunity to the assignee of being heard.

When the revision petitions were filed to find out whether they are filed within time or not, certainly the Land Commissioner would have the (sic) to

find out whether such petitions are within time or not. If they are filed beyond sixty days, but within 90 days from last date of the receipt of the

order of the appellate authority, then he has to satisfy himself as to whether the applicant was able to furnish sufficient reasons for not filing the

revision petitions on time.

8. It is only in such of those cases where the records clearly show that they have been filed beyond ninety days, he can reject a revision petition

without going into the question of sufficient cause being made out for not filing the revision as provided under proviso to Rules 11(3)(a) of the

Rules.

9. Therefore, if a Land Commissioner is to reject a revision petition, he must give an opportunity to the petitioners to show sufficient reason, if the

petitions have been filed beyond sixty days, but within 90 days of the receipt of the order;

10. There will certainly be occasions when to office of Land Commissioner may compute the period of limitation wrongly and reject them without giving opportunity to the petitioners to state how the revision petitions are on time, which would prejudicially affect the case of the petitioners, because as stated by the Land Commissioner, he has no power to review his own order. If a petition is to be dismissed "in limine" on the aspect of limitation, undoubtedly it would affect the rights of parties, and therefore, such a party must be given an opportunity to satisfy the Commissioner, that the revision petition is on time and even otherwise, that it is has been filed within the period 90 days and that sufficient cause was existing for the delay in filing the petition beyond the period of 60 days from the date of the receipt of the order.

11. In fact, while rejecting the revision petitions, he had stated in respect of W. P. No. 3282 of 1978 that the petitioner had not stated the date of receipt of the appellate orders, and the fair copy of the order was signed on 6th January, 1978, and the revision has been filed on 11th April, 1978, and even if a reasonable transit time is allowed, it has been filed after the expiry of sixty days and therefore, the revision petition is rejected as time barred. When date of the receipt of the order is not available, it is not proper for the Land Commissioner to reject the petition because he cannot precisely calculate the period for the purpose of limitation unless the starting point for such a calculation is definitely known to him. Being unaware of such a crucial date, he should endeavour to ascertain it from the concerned revision petitioner, failing which his order, would be erroneous, because of a wrong period being computed under Rules 11(3)(a) of the Rules. Even if there is an omission by the petitioner to mention about the date of receipt of the order, and if a decision is to be arrived at for rejecting the petition as time-barred then, the Land Commissioner has to address the petitioner to furnish the correct date, and on failure to furnish the relevant date, it will then alone be open to him to pass further orders thereon. Apart from the date of receipt of order being known, if an order to reject the petition as time-barred is to be passed, since under the proviso to Rule 11(3)(a) in such of those matters which arc beyond 60 days of the date of the receipt of the order and within 90 days therefrom, the petitioners have a right to show a sufficient cause, the Land Commissioner has to give an opportunity to those petitioners to state

sufficient cause, if already necessary petitions have not been filed along with the main revision petitions. What is contemplated under proviso is akin

to what is provided u/s 5 of the Limitation Act (sic) which is as follows:

5. Extension of prescribed period in certain cases.--Any appeal or any application, other than an application under any of the provisions of Order

21 of the Code of Civil Procedure, 1908 (V of 1908) may be admitted after the prescribed period if the appellant or the applicant satisfies the

Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Courts have held that in all these cases where sufficient cause could be shown, the petitioner has to be given an opportunity of satisfying the Court

or the Tribunal of the circumstances which had precluded him from filing a petition in time. Therefore, it is obvious that ever before an order is

passed rejecting a petition as time-barred which is adverse to the interests of the petitioner, an opportunity has to be extended to the petitioner to

place the necessary materials.

12. It is not uncommon to find that the period of limitation being computed wrongly by any office and to avoid hardships ensuing to petitioners,

who would be able to clarify to what extent error had been committed in computation of time, it is eminently a proper course to inform the

petitioner, as to how the period had been calculated, and if he is not able to dispute the manner in which the time has been calcite, then the Land

Commissioner can proceed to dispose of the petition accordingly.

13. Mr. Ramanathan referred to Rule 11(6) of the Rules to show that the intention in framing rules was to give an opportunity before an adverse

order is passed, though Sub-rule (6) may relate to assignees as such.

14. Even if a specific provision is not found, it has been well-settled that before an adverse order is passed, and more so when the order will result

in the main petition itself being dismissed on "point of limitation", the affected person must be given an opportunity for making his representation on

that aspect before orders are passed rejecting the petition. In revision petitions filed beyond 60 days but within 90 days, when the proviso

contemplates Land Commissioner being, satisfied about sufficient cause, it can happen only if he invites the representations of the petitioners, and

not otherwise. It is not necessary to give a personal hearing, but what is

required to be done, before the petition is rejected as time-barred, is the petitioner is to be informed of the manner in which the period of limitation had been calculated, so that he may offer his explanations therefore, and if they are found to be unsatisfactory, further orders may be passed in accordance with the Rules.

15. Mr. Ramanathan filed a tabulated statement for the 8 writ petitions, and as per dates furnished therein, in respect of six writ petitions, they have been filed beyond sixty days, but within 90 days of the receipt of the orders. If what is claimed is corrects the rejection of these petitions as time-barred, by the Land Commissioner, would be certainly erroneous. If a proper opportunity had been extended, the petitioners would have been able to satisfied as provided under the proviso.

16. The next contention is that, in and event, under Rule 11(3)(b), Land Commissioner has "suo motu" powers, which can be exercised for a period of the five years from date of the order of assignment and hence he could have entertained the revision petitions. Mr. Ramanathan refers to

the decision of the Full Bench of this Court in *Munuswami Reddiar v. The Commissioner, H. R. and C. E. (Admit.) Department, Madras* 34

W.P.No. 2195 of 1972 (F.B.) and states that the power conferred on the Land Commissioner is more or less the same as conferred on

Government u/s 114(1) of Act XXII of 1959 and, therefore, these petitions could be entertained by exercise of "suo motu" powers. This point is

not further elaborated, because these writ petitions have to be allowed on the point of petitioners having not been extended a reasonable and fair

opportunity before the first impugned orders were passed. He states that at appropriate time, if circumstances warrant, he would canvass on this

point.

17. On the aspect of power of review, the Rules do not contemplate exercise of such a power by the Land Commissioner. The power of

cancellation of Assignment and of the conditions under the Assignment deed to modify or cancel it, cannot tantamount to exercise of power of

review, in the sense in which it is claimed in these petitions. Even on this aspect, he states that, if the petitioners are to be given an opportunity and

their petitions could be entertained by the Land Commissioner, the petitioners are not at this stage interested, on the aspect, whether he has power

of review or not.

18. Therefore, all these petitions are remitted to the Land Commissioner, who shall first inform the petitioners of the manner in which, the period

has been calculated for limitation purposes, and after receiving their written representations, he is to proceed to pass suitable orders thereon. As for

the scope of his powers, the copy of the Rules produced by the Government Pleader in G. O P. 601, Revenue dated 11th February, 1974 is

adopted in this judgment.

19. Before concluding, it is necessary to refer to paragraph Rule 6(a) of the counter-(sic) is to the following effect:

6 (a). The points involved in these writ petitions are similar to those dealt with A.M. Senjeevi v. Government of Tamil Nadu by Secretary, Home

Department, Fort St. George, Madras 9 and Anr. W.P. No. 5015 of 1979 dated 11th December, 1979 and Sakuntala Ammal v. Collector of

Arcot at Vellore and Anr. W.P.No.2065 of 1980, dated 22nd April, 1980 wherein this Honourable Court was pleased to dismiss the writ

petitions.

W.P. No. 5015 of 1979, dated 10th December, 1979 relates to a draft scheme for the route Arkonam to Thirukalukundram arising under the

Motor Vehicles Act and there is no discussion on the aspect of any revisional powers or about period of limitation.

20. W.P. No. 2065 of 1980 Sakuntala Ammal v. Collector of North Arcot at Vellore and Anr. W.P.No.2065 of 1980, dated 22nd April, 1980

relates to lands encroached upon in Thiruvannamalai Municipality and the application made by the petitioner therein, for assignment under B. S.O.

was rejected by Collector of North Arcot. An appeal was preferred to Board of Revenue which was dismissed as time-barred. The revision filed

to Government was rejected by a non-speaking order. Therefore, it was not a writ petition filed in respect of the powers exercised by Land

Commissioner. Even on the aspect of limitation, there was no dispute that the appeal was filed beyond the period of limitation. What was held

therein was, having allowed his right of appeal to get barred by limitation, it was not open to the petitioner to invoke Article 226 for quashing the

order of District Revenue Officer, which had become final, and hence the writ petition deserves to be dismissed. Therefore, the decision in W. P.

No. 2065 of 1980 also has no relevance or application to the points involved in all these writ petitions.

21. Therefore, both the decisions referred in the counter-affidavit, do not either relate to any petition filed under these Rules or pertain to the points

involved in these petitions. In the first decision a draft scheme under Motor, Vehicles Act was involved. There was no aspect of limitation being

discussed in that order. In the next order, the petitioner had admitted about filing a petition beyond the period of limitation, and the only aspect

considered was in spite of an application having been dismissed by the Board of Revenue, whether the petitioner can still challenge the order of the

District Officer, which ""had been passed earlier.

22. It is surprising to note that such wrong decisions are referred to and relied upon, and a claim made that the points involved in these petitions are

similar to those dealt with in those decisions, and therefore, the writ petitions have to be dismissed. This leads to misleading this Court, and if only

on such reference furnished the petitions are to be disposed of it would result in a wrong judgment being pronounced. It is not known as to how a

counter-affidavit had been approved, without even looking into these judgments. When a solemn affidavit is sworn to, it should carry behind it

precision and correct information, as writ petitions are disposed of, based on affidavits. No Government can ever afford to make a wrong

representation to a Court in an affidavit.

23. Counter affidavits with errors in dates and factual aspects, scanty counter affidavits as in W. P. No. 2820 of 1976, Thiruvannamalai Co-op.

House Building Society represented by Secretary Azariah R. Issacs v. State of Tamil Nadu, by Secretary R. D. & D. A. Department, Madras and

Anr. 1/2 knowingly avoiding to deal with important points taken by the petitioner in the counter affidavit are noticed and they delay in disposal of

causes and also result in adjournments to get clarifications and therefore, this sort of errors cannot be lightly looked upon. For what has been

sworn to in paragraph 6 (a) of the counter affidavit costs are awarded.

24. Hence these writ petitions are allowed with each. Advocate's fee is fixed at Rs. 150 in each one of the writ petitions.