
(1986) 06 MAD CK 0023
In the Madras High Court
Case No : W.P.No. 316 of 1980

V.C. Ganesan

APPELLANT

Vs

The Authorised Officer (Land Reforms) Coimbatore and The
Land Commissioner, (Land Reform) Board of Revenue,
Chepauk, Madras-5

RESPONDENT

Date of Decision : 18-06-1986

Acts Referred:

Citation : (1986) 06 MAD CK 0023

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : S. Kanniah, for the Appellant; P. Chandrasekaran, Government
Advocate, for the Respondent

Final Decision : Allowed

Judgement

Nainar Sundaram, J.—In this writ petition the petitioner challenges the final statement under S. 12 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Act LVIII of 1961), hereinafter referred to as "the Act". The preceding facts have got to be necessarily taken note of to appreciate the grievances expressed by Mr. S. Kanniah, learned counsel appearing for the petitioner. On 25th August, 1975, the first-respondent passed an order under S. 9 (2) (b) of the Act holding that the petitioner and his family members fell below the ceiling limit of fifteen Standard Acres and further action in the case was dropped. On 31st December, 1976, the second-respondent purported to invoke the powers under S. 82 of the Act and proposed to direct the first-respondent to take action under the Act on the ground that the petitioner ought not to have been excluded from the mischief of the Act. The petitioner objected and there was a hearing in which the petitioner was represented by his counsel. There is a contention urged before me that the order passed earlier under S. 9 (2)(b) of the Act is not at all amenable for revisional powers under S.82 of the Act. For some time nothing was heard of from the second respondent and this provoked the

petitioner to make an enquiry as to whether the second-respondent has chosen to pass any order under S. 83 of the Act. The second-respondent on 21st September, 1977 informed the petitioner that no order has been passed in the case. On 18th July, 1978, the Authorised Officer (Land Reforms), Kancheepuram, purported to invoke the powers under R. 11 of the Rules framed under the Act, issued a summons to the petitioner under R. 11 (2) to appear for hearing on 25th July, 1978. I find from the files produced by the learned Government Advocate that earlier on 9th April, 1977, a communication had emanated from the second-respondent to the first-respondent wherein it has been stated that there ought not to have been orders passed under S. 9 (2)(b) and the opinion expressed was that the case could be reopened by the first respondent. However, to the summons from the Authorised Officer (Land Reforms), Kancheepuram, the petitioner through his counsel objected on 2nd September, 1978. According to the petitioner, thereafter he received only the impugned final statement under the Act from the first respondent, which is of the date 30th November, 1979. It is now claimed by the respondents that on the ground that the action dropped earlier was not in conformity with the provisions of the Act, there was an initiation of fresh proceedings and that led to the preparation and publication of a draft statement under S. 10 (1) of the Act on 13th June, 1979, a copy of which was served on the petitioner by registered post on 26th July, 1979 with a notice in Form 7, and since the petitioner did not file any objection under S. 10(5) of the Act within the prescribed time, this led to the publication of the final statement impugned in the writ petition. There are very many points which the learned counsel for the petitioner wants to urge. But, he is more on the vital aspect that once an order had come to be passed under S. 9(2)(b) of the Act, holding that the petitioner and his family did not hold any surplus extent and further directing that the case should be dropped, the first-respondent had no suo motu power to reopen that order, under the guise of review, and initiate fresh proceedings which are stated to have culminated in the final statement impugned. In the counter-affidavit, the source of power for the first-respondent is stated to be referable to R. 11(1)(h) of the Rules which says that the proceedings of the Authorised Officer shall be summary and shall subject to the provisions of the Act and the rules as far as possible be governed by the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) with regard to the review of orders passed on ground of apparent error.

2. What the learned counsel for the petitioner would contend is that if the power of review is to be exercised as per the provisions of the Code of Civil Procedure, 1908, herein-after referred to as "the Code" the very Code does not clothe the courts themselves with suo motu power of review and the power could arise only on an application by a party aggrieved. It is a well settled proposition that the power of review cannot be assumed unless conferred expressly by the statute which constituted the tribunal or authority concerned. This could not be claimed to be a case of bona fide clerical or similar errors. The power in such a contingency is given under S. 15 of the Act and a decision of the Bench of this

Court Syed Rabia Beevi Vs. The Authorised Officer, Land Reforms and Another, consisting of Veeraswami, C.J. and Gokulakrishnan, J. (as he then was), has taken the view that under the guise of that power there could not be rectification of matters on merits that it is not intended that a finding arrived at in a solemn and quasi-Judicial fashion could be set at naught merely because the officer is satisfied that a bona fide mistake has been made; and that S. 15 applies only to mistakes in the correctness not of the merits, but of the form of the entry in the final statement, just as S. 15(b) is directed against clerical or arithmetical mistake Vide Syed Rabia Beevi Vs. The Authorised Officer, Land Reforms and Another, The learned counsel for the petitioner also brings to my notice another decision of the very same Bench in Chellammal and Alamelu Ammal v. The Authorised Officer, Land Reforms, Madurai and The State of Madras by the Secretary to Government, Revenue Department, Fort St. George, Madras-9 W.P.No. 2899 of 1967 dated 10-3-1970 : concisely in reported in 1970 2 M.L.J. 4 where it has been countenanced that once the Authorised Officer examined the question of ceiling and found as a result that the lands in the given instance amounted to less than the ceiling and hence no further proceedings were required, that would be a final order and no provision is to be found in the Act to re-open such an order on the administrative directions of the Board of Revenue and the Authorised Officer could have no such jurisdiction. In the present case also we find that the initiation of fresh proceedings was the result of the administrative directions of the second-respondent. Hence, I have to uphold the primary contention of the learned counsel for the petitioner that the first-respondent could not have jurisdiction to review the proceedings which got settled by his order passed earlier, and the subsequent proceedings culminating in the impugned final statement are wholly incompetent.

Apart from the above aspect, in fairness I must record also the other contentions urged by the learned counsel for the petitioner, so that it may not be stated that he had no other ground, other than the one dealt with by me earlier, to urge. Other contentions can be summed up as follows:-

- (1) Before the initiation of fresh proceedings, the petitioner was not called upon to make his representation against such initiation and he was not given any notice preceding the exercise of the power of review assuming that was available and could be validly exercised;
- (2) Earlier orders were passed under S. 9(2)(b) of the Act and thereafter if there was an intention to prosecute the proceedings under S. 10 (1) of the Act, there ought to have been a further enquiry before the draft statement is prepared and here there was no such enquiry at all;
- (3) The draft statement along with notice in Form 7 was not at all served on the petitioner as now claimed and the acknowledgement that is found in the file is not found accompanied with any copy of Form 7, so as to attach any credibility to the present claim;

(4) There was no date given as to when exactly the draft statement, together with the notice in Form 7 was dispatched; and

(5) There is no postal receipt produced corresponding to the postal acknowledgement found in the file.

There is no need to deal with these contentions because the petitioner through his counsel has succeeded in having the primary contention sustained, as above. Accordingly, the writ petition is allowed. No costs.