

**A. Natarajan Vs. the Commissioner, Land Administration and ors.**

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**Court :** Chennai

**Decided On :** Aug-21-1996

**Reported in :** (1996)2MLJ425

**Appellant :** A. Natarajan

**Respondent :** The Commissioner, Land Administration and ors.

**Judgement :**

K.A. Swami, C.J.

1. This appeal is preferred against the order of the learned single Judge dated 16.7.1996 dismissing W.P. No. 9983 of 1996. As the matter lies in a narrow compass, learned Government Pleader is directed to take notice for the respondents, at the stage of admission. Accordingly, learned Government Pleader appears for the respondents. The appeal is admitted and heard for final disposal.

2. In the writ petition, the petitioner/ appellant has sought for quashing the order dated 4.7.1996 passed by the first respondent, refusing to grant an order staying the operation of the order passed by the District Collector, Tiruvannamalai Sambuvarayar District in Roc.B1/65678/92, dated 30.5.1996.

3. There was a proceeding initiated against the petitioner and another person, by name A. Perumal under the provisions of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as the 'Act') for evicting them from S.Nos. 60 and 65 of Arni Taluk and Town, Tiruvannamalai Sambuvarayar District, on the ground of

alleged encroachment on the aforesaid lands by them. In that proceeding, an order was passed on 30.5.1996 by the District Collector Tiruvannamalai Sambuvarayar District as an appellate authority, confirming the order of the original authority, directing eviction of the petitioner and another. Aggrieved by the said order, the petitioner/ appellant has preferred a revision petition under Section 10-A of the Act before the first respondent. Pending disposal of the revision, he has filed an application to stay the operation of the order of eviction passed by the District Revenue Officer on 30.5.1996. The revisional authority has rejected that application on the ground that there are no sufficient grounds to show that the order has been passed by the District Revenue Officer in violation of the verdict of the High Court.

4. It may be pointed out here that in the case of appeal or revision, preferred against the order directing eviction under Section 10 or Section 10-A respectively of the Act, by the person, who is directed to be evicted, if an interim order is not granted, it would result in eviction of the appellant or the revision petitioner, as the case may be, before deciding the case. It would be traversity of justice if the order of eviction is executed and given effect to even before the appeal or revision, as the case may be, is decided. Section 10-A of the Act, among other things confers suo motu or on application the power of revision on the 1st respondent (who is exercising the power of the then Board of Revenue against the order passed by the appellate authority. In the instant case, the appellate authority, viz., the District Collector has passed the order. Therefore, revision lies to the 1st respondent. Revision under Section 10-A of the Act can be exercised either suo motu or on an application by the aggrieved party, in either case it is intended to be exercised to set right the illegality or material irregularity committed by the authority in exercising the jurisdiction not vested in him by law or has failed to exercise a jurisdiction so vested in him or has acted illegally in the exercise of his jurisdiction. Thus aggrieved person is entitled to invoke the revisional jurisdiction under Section 10-A of the Act against the order which is revisable under Section 10-A of the Act.

5. Section 10-B of the Act, specifically deals with stay pending decision in appeal or revision. No doubt, Section 10-B of the Act gives a discretion to the appellate or

the revisional authority to stay the order under appeal or revision, but the discretion has to be exercised judicially and not arbitrarily. Refusal to grant stay must be based on relevant and valid grounds. If an order of eviction is given effect to, pending decision in the appeal or the revision, as the case may be, in the event the appellant or the revision petitioner succeeds in the appeal or in the revision, as the case may be, the damage that would be caused to the appellant or the revision petitioner as a result of eviction would be serious in nature. Therefore, pending disposal of the appeal or the revision, it is just and proper for the appellate or Revisional authority to suspend the order of eviction if the facts of the case warrant. If the appellate or the Revisional authority is satisfied that there is no merit in the appeal or revision, it would do well to dispose of the appeal within a short period and till then maintain the as status quo. Justice must not only be done, but it must also seem to be done. It would not be in the interest of justice to keep the appeal or revision pending for a long time, without granting stay in a case where the eviction is ordered.

6. We may also refer to one other contention urged by the learned Government Pleader that power under Section 10-A of the Act is a suo motu power, as such it cannot be exercised at the instance of a party. It is not possible to accept this contention, having regard to the provisions contained in Section 10A and Section 10-B of the Act. The words 'or on application' do indicate that a person, who is aggrieved by the order, can invoke the revisional jurisdiction by filing an application. In addition to that, Section 11(2) of the Act which provides period of limitation for making an application, also indicates that a person who is aggrieved by the order passed by the original authority, can invoke the revisional jurisdiction inasmuch as the said subsection specifically provides that no application for revision shall be preferred under Sub-section (1) of Section 10-A after the expiration of thirty days from the date on which the decision or order sought to be revised was received by the applicant.

7. For the reasons stated above, this writ appeal is allowed. The order dated 16.7.1996 passed in W.P. No. 9983 of 1996 is set aside and the writ petition is allowed in the following terms:

(i) The order dated 4.7.1996 passed by the first respondent in R.C.O.P. No. 27718 of 1996 (J2) is quashed.

(ii) The first respondent is directed to stay the order under revision and decide the revision petition within four (4) weeks from the date of the receipt of a copy of this order.

No costs. C.M.P. No. 11257 of 1996 is disposed of.

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