

Durai Singh and ors. Vs. Assistant Commissioner and ors.

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Court : Chennai

Decided On : Jul-06-2012

Judge : C.T.Selvam, J.

Acts : Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 - Section 82; [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.5342 of 2006 and W.P.M.P.No.5729 of 2006

Appellant : Durai Singh and ors.

Respondent : Assistant Commissioner and ors.

Advocate for Def. : Mr.R.Rajeswaran, Adv.

Advocate for Pet/Ap. : Mr.M.V.Krishnan, Adv.

Judgement :

Writ Petition filed under Article 226 of the [Constitution of India](#) praying to issue a Writ of Declaration declaring G.O.145, Revenue (L.R.1-2) dated 04.03.2005 consequent to the order of the third respondent in D1/RP19/1998 Land Reforms, dated 10.04.1998 as illegal, null and void.

ORDER

1. The petitioners have filed this Writ Petition for a declaration declaring G.O.145, Revenue (L.R.1-2) dated 04.03.2005 consequent to the order of the third respondent in D1/RP19/1998 Land Reforms, dated 10.04.1998 as illegal, null and void.

2. Shorn of unnecessary particulars, the relevant facts which require mention are as follows:

One Dorairaj, was the owner of properties in Dalavoipattinam and Chinnakkampalyam villages. His holding of an extent of 22.36.0 hectares (5.589 std. Acres), was found to be in excess of the ceiling limit under the Land Reforms Act. The lands in Dalavoipattinam village were found suitable for distribution to the landless poor and accordingly, assignment thereof was made in favour of the petitioners. A tentative value was fixed and the petitioners had also made initial payment in respect thereof in sums of Rs.50/-. As regards the properties held by the said Dorairaj in Dalavoipattinam village, a temple viz., Sri Varadaraja Perumal temple claimed title over the same resulting in proceedings before Court which eventually ended in favour of Dorairaj. In the mean while, Dorairaj moved a review petition in R.P.No.19 of 1998 before the Land Commissioner inter alia submitting that in the event of lands which stood in his name being found in excess as an outcome of pending litigation regards the property situated in Dalavoipattinam village, he was willing to offer the properties in Chinnakkampalyam village for the purpose of acquisition. This plea was accepted by the Land Commissioner, who under orders dated 10.04.1998 informed that in the event of the litigation in respect of holdings in Dalavoipattinam village, concluding in favour of Dorairaj, his holdings in Chinnakkampalyam village, may be taken up for the purpose of acquisition and distribution to the landless poor. Pursuant to such order and upon conclusion of the legal battle, G.O.145, Revenue (L.R.1-2) dated 04.03.2005, was issued informing that the holdings of Dorairaj which were found to be in excess were in Dalavoipattinam village.

3. The contention made on behalf of the petitioners is that the order of the Land Commissioner in his proceedings in D1/RP19/1998 Land Reforms, dated 10.04.1998, violated the provisions of Section 82 of the Tamil Nadu Land Reforms

(Fixation of Ceiling on Land) Act, 1961 (hereinafter referred to as Act). Under proviso to such section, it is incumbent upon the Land Commissioner, in considering a review petition (which in the instant case sought modification of the lands found in excess i.e., instead of lands in Dalavoipattinam village, lands in Chinnakkampalyam village were offered), to issue notice to all persons who may prejudicially be affected by orders passed therein. As the holdings of Dorairaj in Dalavoipattinam village already stood assigned to the petitioners and they also had made initial payment towards the price thereof, any order of modification of the Land Commissioner touching upon the lands which were found to be in excess would have a bearing upon the rights of the petitioners. In other words, the contention is that the issue raised in the review petition before the Land Commissioner is the offer of the land holder of lands in Chinnakkampalyam village instead of lands in Dalavoipattinam village. In the event of the Land Commissioner accepting such plea of the land owner, the same would have a material bearing on the interests of those in whose favour the land in Dalavoipattinam stood assigned. While so, the petitioners, as assignees would be persons who prejudicially could be affected by the orders of the Land Commissioner in R.P.No.19 of 1998 and accordingly, they ought to have been put on notice. Learned counsel, towards impressing upon this Court the need for authorities to satisfy themselves also as regards the easy and convenient enjoyment of lands found in excess of the ceiling area, drew our attention to the judgment of this Court in S.R.Ramasami Gounder v. The Authorised Officer, Land Reforms, Coimbatore [1977 (2) MLJ 241] wherein the following observations find place:

"5. Lastly, the argument is that the offer made by the holder has been unreasonably rejected by the Authorised Officer and the Land Tribunal also committed an error in mechanically accepting it. No doubt, under Section 10(4), if any person has specified the particulars of the land which he desires to retain within his ceiling area, the authorised officer shall, as far as practicable, but subject to the provisions of the Act, declare the same land as comprised within his ceiling area. The third proviso to this sub-clause says:

"Provided also that subject to the above provisions, the land which the authorised officer proposes to declare as surplus land under clause (xii) of sub-section (1)

shall, as far as practicable, be such as is capable of easy and convenient enjoyment."

Mr.Sundaram Iyer's contention is that the words "easy and convenient enjoyment in the third proviso to sub-clause (4) has reference only to the retainer and not to the State which under the provisions on the statute is entitled to take them over from the holder. This does not appeal to me. The very purpose of agrarian reform is to slice off the extent of lands from the landholders for the avowed and benevolent purpose of passing them on to the landless poor, so that they could easily and conveniently enjoy it. In my view, the phrase "capable of easy and convenient enjoyment" in the third proviso to sub-clause (4) has a special connotation. Otherwise, every landholder would have the choice to give such useless land and probably inaccessible land or land which cannot easily or conveniently be enjoyed under clause (4) and the Authorised Officer would in equity be bound to accept the same and leave the rest. This does not appear to be the intendment of either the sub-clause or the object of the enactment either. The easiness and convenience referred to in the third proviso in sub-clause (4) has reference only to the State whose object is to pass on such lands taken over by it to others who do not own land, so that they could easily enjoy the same. The very purpose and object of the enactment would be lost if the holder's choice has to prevail."

4. Learned counsel for the petitioners submitted that the petitioners were residents of Dalavoipattinam village and the effect of G.O.145, Revenue (L.R.1-2) dated 04.03.2005, would be that they would have to tend to properties assigned to them 40 kms. away from their place of residence.

5. Learned Special Government Pleader submits that the proviso to Section 82 of the Act, touching upon notice to parties who may be prejudiced by an order of the Land Commissioner in exercise of power under Section 82 of the Act, would relate to persons who have any right of ownership over the land and not to persons such as the petitioners, who only are assignees thereof and had no vested right thereto. Taking this Court through Section 82 of the Act, he submits that the proceedings under particular sections mentioned therein all relate to that between the land

owner and the Land Commissioner.

6. This Court finds much force in the submission of learned counsel for the petitioners. This Court is unable to read down the proviso to Section 82 of the Act and accord the meaning that 'any party who might be prejudiced by an order of the Land Commissioner in exercise of powers under revision' would relate only to the land owner. The wording of the proviso is clear on terms and does not allow such a limited reading. The other submission of learned Special Government Pleader as regards the proceedings in respect of which revision under section 82 of the Act are entertainable also is not acceptable for the reason that it misses the wording in the section which allows for revision "in respect of any proceeding under this Act not being a proceeding in respect of which a suit or an appeal to the land tribunal is provided by this Act". Clearly in the instant case, the proceedings of the Land Commissioner are not in respect of a matter which allows of a suit or an appeal. As informed in the decision in *S.R.Ramasami Gounder v. The Authorised Officer, Land Reforms, Coimbatore* [1977 (2) MLJ 241], consideration regards easy and convenient enjoyment of property by the assignees is a relevant factor. Therefore, in circumstances where no notice stands issued to the petitioners regards the proceedings of the Land Commissioner in D1/RP19/1998 Land Reforms, dated 10.04.1998, the order therein would have to be interfered with.

7. Though the prayer of the petitioners is that the respondents be enjoined from in any manner interfering with the rights and possession of the petitioners' lands in R.S.No.419/2 (Old S.No.714/1), Dalavoipattinam (VII) Dharapuram, Taluk, Erode, this Court considers it appropriate to set aside the order of Land Commissioner in his proceedings D1/RP19/1998 Land Reforms, dated 10.04.1998 and require him to proceed therein afresh after issuing notice to the petitioners and come to a reasoned decision in the matter. It is needless to state that once this Court has set aside the order of the Land Commissioner dated 10.04.1998, the issue of G.O.145, Revenue (L.R.1-2) dated 04.03.2005, pursuant thereto, would have to be found bad in law.

8. Accordingly, this Writ Petition stands allowed and the order of the Land Commissioner dated 10.04.1998 is set aside. The Land Commissioner is directed

to proceed with the matter afresh after issuing notice to the petitioners and dispose of the same within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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