

(2013) 1 MLJ 677

Madras High Court

Case No: Writ Petition No. 6055 of 2000, W.M.P. No"s. 9098 and 9099 of 2000

R. Ranganathan and
Others

APPELLANT

Vs

L. Venkatapathy and
Others

RESPONDENT

Date of Decision: Dec. 18, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 47 Rule 1#Constitution of India, 1950 " Article 136

Citation: (2013) 1 MLJ 677

Hon'ble Judges: Elipe Dharma Rao, J; Aruna Jagadeesan, J

Bench: Division Bench

Advocate: A.S. Vijayaraghavan, for the Appellant; P. Wilson for B. Ravi Raja, Ms. A. Srijayanthi, Spl. Government Pleader, R. Thiyagarajan for R.N. Amarnath, V. Ajayakumar, K. Murugesan and T.R. Rajagopal for V. Anand, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Elipe Dharma Rao, J.

This writ petition was originally allowed on 28.7.2009 by a Division Bench of this Court, speaking through one of us

(Justice Elipe Dharma Rao). Aggrieved against the said order of this Court, Tmt. Vasanthamani (R. 7 & R. 24), wife of the deceased first

respondent Mr. L. Venkatapathy, preferred SLP (civil) Nos. 1008-1010 of 2011 (later converted as Civil Appeal Nos. 4393-4395 of 2012)

before the Honourable Apex Court. The Honourable Apex Court, by the order dated 9.5.2012, set aside the order of this Court on the ground

that the same had been passed against a dead person and remitted the matter back to this Court for fresh disposal. We extract hereunder the said

part of the order of the Honourable Apex Court:

One of the contentions urged at the Bar by Mr. L.N. Rao learned senior counsel for the appellant is that the order impugned has been passed

against a dead person inasmuch as on the date of the order under appeal, respondent No. 1, L. Venkatapathy who is survived by the appellants

herein had passed away. No effort to substitute the legal representatives of the deceased respondent having been made, the High Court proceeded

on the assumption that L. Venkatapathy was alive and that the matter could be disposed of by it without much ado.

In the circumstances, we allow these appeals, set aside the impugned order and remit the matter back to the High Court with the request that the

same may be heard and disposed of afresh in accordance with law. The impleading applicants shall be at liberty to apply to the High Court for

addition as party respondents with writ petition.

After remand, not only the legal heirs of the deceased first respondent, but also some other interested parties got impleaded as party respondents,

by filing necessary applications and we will deal with their respective contentions in due course.

2. While the legal heirs of the deceased first respondent, were brought on record as respondents 24 to 26 at the instance of the writ petitioners, the

widow of the deceased first respondent by name V. Vasanthamani (R. 24) has also filed a petition to substitute her in the place of her deceased

husband/first respondent and the same having been ordered, she is also figuring as respondent No. 7.

3. During pendency of the writ petition, after remand, the respondents 4 to 6 have filed a petition in WPMP. No. 264 of 2012, stating that they are

the owners of an extent of Ac. 2.18 in S. No. 284 of Uppilpalayam village, which was offered as an alternate land by the deceased first

respondent along with other lands belonging to the Government in S. No. 118/4B and 123/2A admeasuring Ac. 1.39 in Karunkulam village, which

is classified as "Eri Poramboke" land (Tank) before the Tamil Nadu Land Reforms Appellate Tribunal and the said Tribunal, by the order dated

31.8.1995 accepted the said offer of the deceased first respondent and declared the said lands as "surplus" lands instead of the earlier lands which

were declared as surplus and assigned to the writ petitioners. These respondents have filed I.A. Nos. 11 to 13 of 2011 in the above said SLP

Nos. 1008 to 1010 of 2011, praying to implead them as parties and the Honourable Apex Court, by the order dated 9.3.2012, while remitting the

matter to this Court has granted liberty to them to apply to the High Court for addition as party respondents and thus, these respondents have filed

the petition in WPMP. No. 264 of 2012 praying to implead them as party respondents and having allowed the said petition on 13.8.2012 by this

Court, they were brought on record as respondents 4 to 6. Immediately, R. 7/widow of the deceased first respondent (land owner) has filed a

petition in WPMP. No. 344 of 2012 praying to recall the order of this Court dated 13.8.2012 passed in the above WPMP. No. 264 of 2012

(bringing on record Respondents 4 to 6), stating that the said impleaded parties have not made her a party to the said impleadment petition. We,

by the order dated 16.10.2012, dismissed the said petition on the ground that we were of the considered view that all parties concerned with the

lis should be given opportunity to put forth their claims so as to render a binding judgment.

4. Respondents 8 to 18 have filed an impleadment petition in WPMP. No. 303 of 2012 stating that they are the legal heirs of one M. Saminathan

and P. Kaliappan, who are also the assignees along with the writ petitioners and two others in S. Nos. 209/1 and 262/1 of Uppilpalayam village.

They have stated that though the said M. Saminathan and P. Kaliappan were assigned the lands, they were not put in possession of the lands

assigned to each of them on some pretext or other, in spite of all their best efforts, since the deceased first respondent (the land owner) L.

Venkatapathy shrewdly managed to keep the officials at bay with no interference. They have also stated that the deceased first respondent L.

Venkatapathy has fictitiously offered the lands belonging to some other persons before the Tribunal, as alternate lands. We have allowed this

impleadment petition by the order dated 9.10.2012 and thus, these respondents were brought on record as respondents 8 to 18.

5. Likewise, respondents 19 to 23 have filed WPMP. No. 266 of 2012, stating that they are the legal heirs of other brothers of the deceased first

respondent and that late L. Venkatapathy did not have absolute title over the lands declared "surplus" as per Section 18(1) notification, as the all

the brothers of L. Venkatapathy (numbering four) have partitioned their properties by a registered partition deed dated 24.3.1960. Therefore, we

have allowed this impleadment petition on 15.10.2012, thus bringing these persons as party respondents 19 to 23.

6. Coming to the background of the entire litigation, the deceased first respondent Mr. L. Venkatapathy is the owner of the land, who was

attracted by the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (hereinafter referred to as the Act), since as

on the date of commencement of the Act i.e. on 15.2.1970, he was holding 58.45 ordinary acres equivalent to 18.407 standard acres since the

area was more than the ceiling area of 15 standard acres allowed u/s 5 of the Act.

Pursuant to a notice issued by the Assistant Commissioner of

Land Reforms, the deceased first respondent filed his return in Form No. 2 on 8.7.1982 and after conducting enquiries as contemplated u/s 9(2)

(b) of the Act, an order dated 7.10.1985 was passed, determining the total holding of the family of the land owner at 58.45 ordinary acres,

equivalent to 18.407 standard acres, equivalent to 5.367 standard acres, u/s 6 of the Act as on 15.2.1970, after allowing a ceiling of 15 standard

acres and another 5.367 standard acres as "Streedhana" of the family of the land owner.

7. Accordingly, on 22.1.1986, a draft statement u/s 10(1) of the Act, proposing to declare surplus of 3.407 standard acres of land u/s I was

published in the Government Gazette and a copy of the same was also served on the first respondent on 1.4.1986, for which the deceased first

respondent filed his objections on 2.5.1986 u/s 10(5) of the Act and considering the objections, the Assistant Commissioner, Land Reforms,

Coimbatore passed an order on 8.10.1987 and the copy of the said order was also served on the deceased first respondent on 12.10.1987. In

the said order, the surplus was determined at 2.302 standard acres, after granting him an allowance pursuant to objection No. 2 raised by him and

the other objections were over-ruled and the deceased first respondent was directed to furnish the details of the land to be declared as "surplus"

within seven days from the date of receipt of the order u/s 10(5) of the Act and he was also put on notice that on his failure to furnish the details,

suo motu action will be taken. But, the deceased first respondent, for the reasons best known to him, did not furnish the details of the lands to be

declared as "surplus" and hence the final settlement u/s 12 of the Act was published in the Gazette on 2.12.1987 and a copy of the final statement

was sent by registered post with acknowledgment due to the deceased first respondent and on 3.2.1988, a notification u/s 18(1) of the Act was

published in the Gazette and it was also served on the deceased first respondent on 26.2.1988.

8. Thereafter, on 22.3.1988, a notice for enquiry for disposal of the surplus land under the Tamil Nadu Land Reforms (Disposal of Surplus Land)

Rules, 1965 was issued and on 22.5.1988 assignment orders were passed in favour of the writ petitioners and others (whose legal heirs are

impleaded as Respondents 8 to 18) and assignment deeds were executed in favour of the assignees on various dates between 13.6.1988 and

21.6.1988.

9. While that being so, even though the deceased first respondent was having an opportunity to prefer an appeal before the Land Tribunal and

revision to the Land Commissioner against the orders passed u/s 10(5) and 12 of the Act, without availing the same and understandably to avoid

the limitation period, had, on 20.6.1988 filed a writ petition in W.P. No. 6544 of 1988 before this Court challenging the notification dated

5.1.1988 published u/s 18(1) in the Government Gazette dated 3.2.1988 and this Court, by the order dated 21.6.1988, granted interim stay of

further proceedings pursuant to the said order of the Government.

10. After constitution of the Tamil Nadu Land Reforms Special Appellate Tribunal, the said writ petition was transferred to the file of the Tribunal

and numbered as T.R.P. No. 2 of 1993. The assignees of the lands (the writ petitioners and others, the legal heirs of some of such assignees being

respondents 8 to 18) got themselves impleaded as party respondents to the said proceedings. Before the Tribunal, the deceased first respondent

has offered certain lands as alternate lands in lieu of the lands already declared as surplus lands (and assigned to some persons). Thereafter, the

Tribunal, by the order dated 31.8.1995, has disposed of the said matter. For better understanding, we extract hereunder the said order of the

Tribunal:

Pursuant to our interim direction dated 26.6.1995, the Assistant Commissioner in his report dt. 28.8.1995 has stated that the alternative lands

offered by the petitioner (L. Venkatapathy) in S. No. 118/B/4B and 123/2A-1 (1.39 acres) in Karunkulam Village, Thanjavur District as well as

an extent of 2.18 acres in S. No. 284/Part in Uppilipalayam village, Coimbatore District may be accepted. The said report will form part of this

order. We direct the Assistant Commissioner to issue suitable modifications to the Final Statement and the notification u/s 18(1) incorporating the

alternative lands towards surplus.

2. So far as the Respondents 4 to 7 are concerned, the learned counsel appearing for them, submits that though they were not put in possession of the lands assigned to them, yet they had paid some amounts towards the value of the land and for no fault of theirs, they should be deprived of the lands assigned to them.

3. Since the assignees had admitted that they were not put in possession of the lands assigned to them, the offer of the landowner of alternative surplus land may not be difficult to be accepted. Any amounts paid by the Respondents 4 to 7 towards the value of the lands assigned to them shall be refunded to them. As and when the Assistant Commissioner invites application under the Disposal of Surplus Land Rules for assignment of the surplus lands now offered by the petitioner, it is open to the respondents 4 to 7 herein to take their applications for assignment and it is observed that their applications may be considered sympathetically and in accordance with law.

11. The respondents 5 and 6 therein are Lakshmanan and Muthusamy, who are petitioners 3 and 2 respectively herein. The first petitioner herein viz. R. Ranganathan is the third respondent therein. Thereafter, the Tribunal has again taken up the matter "for being mentioned" on 4.12.1995 and passed the following order:

This case has come up for being mentioned. We accept the plea of the counsel for respondents 3 to 14. Instead of restricting the relief given to

Respondents 4 to 7, the relief is extended to Respondents 3 to 14. It is open to the respondents 3 to 14 to make their applications for assignment

and it is observed that their applications may be considered sympathetically and in accordance with law.

12. Aggrieved by the above said order, the writ petitioners herein have filed SLP No. 853 of 1996 before the Honourable Supreme Court and the

Honourable Apex Court has dismissed the said petition as withdrawn. The order of the Honourable Apex Court, dated 29.1.1996 is extracted

hereunder:

Learned counsel for the petitioner submitted that according to his instructions, the observations of the Tribunal in the opening part of paragraph 3

are not correct in the sense that no such admission as is referred to therein was made on behalf of the petitioners. The learned counsel submits that

he shall be approaching the Tribunal through a Review Petition. We record his statement. The SLP is dismissed as withdrawn.

13. It is in these circumstances that the writ petitioners have filed Review Application No. 90 of 1996 in T.R.P. No. 2 of 1993 (W.P. No. 6544 of

1988) before the Tribunal, inter alia on the grounds that the petitioners, who are assignees of the land have at no stage admitted that they were not

put in possession of the land assigned to them; that the first petitioner has not been put in possession of the land, which was assigned to him but had

paid the full amount for the assignment and that the second and third petitioners were in possession of the land on 14.6.1988, which fact was also

reflected in the report of the Assistant Commissioner, Land Reforms, Coimbatore. They have further submitted that the Assistant Commissioner in

his earlier reports had stated that in respect of the alternative lands, the title did not stand in the name of L. Venkatapathy (the deceased first

respondent), but stood in other persons names and in fact, in one of the cases, namely, Karungulam village, he was one of the three co-owners and

the patta jointly stood in the names of three persons and in respect of another land, namely, the Uppilipalayam land, the land itself was land locked

and hence not accessible and therefore, it is obvious that the land was not suitable for assignment to others and even the report of the Assistant

Commissioner reveals that the land was land-locked.

14. It is also the case of the writ petitioners before the Tribunal that the deceased first respondent merely challenged the notification issued u/s 18

of the Act, which is only a consequential notification to the earlier orders dated 8.10.1987 and the final statement dated 2.12.1987, but those

orders were not challenged by the deceased first respondent and if the deceased first respondent was really aggrieved, he could have filed an

appeal within thirty days u/s 78 of the Act against the order u/s 10(5) to the Tribunal and further, if he was really aggrieved of the order dated

2.12.1987, made u/s 12, he could have filed a revision before the Land Commissioner u/s 82 of the Act and therefore, such a writ petition filed by

the deceased first respondent is not maintainable and having failed to exercise his options, the deceased first respondent cannot challenge the

Section 18 notification and offer alternative lands, particularly since this is a case in which further proceedings under the Disposal of Surplus Land

Rules had taken place and assignments had been made in favour of the present writ petitioners and assignment deeds were executed and even

physical possession was handed over to the petitioners 2 and 3 herein. Since the said Review Application was dismissed by the Tribunal, the

petitioners have come forward to file the present writ petition. As stated in the opening paragraphs of this order, this Court has originally allowed

this writ petition and on appeal, the matter has been remitted back to this Court by the Honourable Apex Court for fresh disposal and all the

parties have been brought on record.

15. During arguments, Mr. A.S. Vijayaraghavan, the learned counsel appearing for the writ petitioners, would argue that the deceased first

respondent has challenged the notification issued u/s 18, which is nothing but a consequential one to the earlier orders dated 8.10.1987 and the

final statement dated 2.12.1987, without challenging those orders and hence the very filing of the writ petition in W.P. No. 6544 of 1988 is not

maintainable and the Tribunal has not properly considered the aspect of assignment in favour of the writ petitioners.

16. Mr. P. Wilson, the learned senior counsel appearing for the legal representatives of the deceased first respondent (Respondents 7 and 24) and

Mr. V. Ajaykumar, learned counsel appearing for R. 26 would argue that the very review petition filed by the present writ petitioners before the

Tribunal in M.P. No. 90 of 1996 in T.R.P. No. 2 of 1993 (W.P. No. 6544 of 1988) is not maintainable, in view of the fact that no provision is

available in the Act to file such a Review, more so after withdrawing the SLP filed by them before the Honourable Apex Court.

17. On behalf of the respondents 4 and 5, Mr. R. Thiyagarajan, learned senior counsel appearing on their behalf would vehemently argue that the

deceased first respondent has offered the lands belonging to these respondents, as an alternative lands, thus playing fraud on the justice delivery

system and hence would pray to oust the claim of the deceased first respondent and his legal heirs.

18. Mr. K. Murugesan, the learned counsel appearing on behalf of the respondents 8 to 18 would submit that the Tribunal has failed to take into

consideration the fact that after completion of the entire proceedings, the lands were also assigned to the beneficiaries and the deceased first

respondent has invented certain grounds to challenge only the consequential notification issued u/s 18, without even challenging the earlier orders

passed. He would further submit that the lands were already assigned, after following due procedure and because of the fraud played by the

deceased first respondent, the assignees are not able to enjoy the fruits of such assignment. On such grounds, they would also pray to oust the

claim of the deceased first respondent and his legal representatives.

19. On behalf of the respondents 19 to 23, Mr. T.R. Rajagopalan, the learned senior counsel, would submit that the deceased first respondent is

not the absolute owner of the properties since there are other brothers of the deceased first respondent, who are also entitled to equal share in the

properties and therefore, according to them, the provisions of the Act have no application to the case of the first respondent. It is also the

contention of the learned senior counsel that no proper service has been effected on the deceased first respondent during the course of enquiry by

the authorities and hence, the initiation of the proceedings under the Act against the deceased first respondent are ab initio null and void. In support

of his arguments, the learned senior counsel appearing for these respondents would rely on the following judgments:

1. M.V.S. Muthuvel Vs. The Authorised Officer, Land Reforms Kovilpatti,
2. Tirumathi Manoranjitham Vs. The Authorised Officer (Land Reforms) and Another,
3. The State of Tamil Nadu and Another Vs. C. Chandra Mohan and Others,

20. The learned senior counsel appearing for the respondents 19 to 23, would also sail along with the learned senior counsel appearing for the legal

heirs of the deceased first respondent that the very review petition filed by the present writ petitioners before the Tribunal is not maintainable and

therefore, the Tribunal should not have entertained the said review petition. According to the learned senior counsel, the Act has not provided for

such a review and therefore, the Tribunal has committed a legal blunder in entertaining the review petition filed by the writ petitioners. It is also their

argument that as against the orders passed by the Tribunal in T.R.P. No. 2 of 1993, the petitioners have filed an SLP before the Supreme Court

and have withdrawn the same without any liberty granted by the Supreme Court and thus, the order passed by the Tribunal in T.R.P. No. 2 of

1993 has become final; as such, the review petition filed by the writ petitioners is not at all maintainable.

21. In support of such arguments, the learned senior counsel appearing for the respondents 19 to 23 would rely on the following judgments:

(a) Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, and

(b) Vinod Kapoor Vs. State of Goa and Others,

Maintainability of Review Application:

22. As this writ petition has been filed challenging the order passed by the Tribunal in Review Application No. 90 of 1996 in T.R.P. No. 2 of 1993

and since the very maintainability of the said review application has been questioned by the contesting respondents, we feel it necessary to take up

this issue of maintainability of the review application before the Tribunal first, before deciding other questions involved in the matter.

23. No doubt, the present writ petitioners, claiming to be the assignees, have filed SLP No. 853 of 1996 before the Honourable Supreme Court

and the Honourable Apex Court has dismissed the said petition as withdrawn. At the cost of repetition, we extract hereunder the order of the

Honourable Apex Court, dated 29.1.1996:

Learned counsel for the petitioner submitted that according to his instructions, the observations of the Tribunal in the opening part of paragraph 3

are not correct in the sense that no such admission as is referred to therein was made on behalf of the petitioners. The learned counsel submits that

he shall be approaching the Tribunal through a Review Petition. We record his statement. The SLP is dismissed as withdrawn.

24. It is in these circumstances that the writ petitioners have filed Review Application No. 90 of 1996 in T.R.P. No. 2 of 1993 (W.P. No. 6544 of

1988) before the Tribunal. The learned senior counsel appearing for respondents 19 to 23 and also the learned senior counsel appearing for the

legal heirs of the deceased first respondent would argue that since no liberty has been granted by the Honourable Apex Court to file the review

application, the same should not have been entertained by the Tribunal. The learned senior counsel for the respondents 19 to 23, in support of his

contentions, has pressed into service the judgment in Vinod Kumar v. State of Goa and (supra). In the said judgment, the Honourable Apex Court

has held that "an appeal by way of Special Leave under Article 136 of the Constitution against an order of the High Court after an earlier SLP

against the same order had been withdrawn without any liberty to file a fresh SLP is not maintainable".

25. But, as could be seen from the above extracted portion of the order of the Honourable Apex Court, only after recording the statement of the

learned counsel appearing for the petitioner therein that he shall be approaching the Tribunal through a Review Petition, the matter was dismissed

as withdrawn by the Honourable Apex Court. However, same is not the situation in Vinod Kapoor v. State of Goa and Others (supra) case, relied

upon by the learned senior counsel for the respondents 19 to 23. In the said case, as could be seen from Para No. 7 of the order, since the

petitioner therein has already filed a review petition in the High Court, the learned counsel for the petitioner therein withdrew the petition. But, in the

case on hand, only to file a review petition, the matter was withdrawn by the present writ petitioners, which factum was also "recorded" by the

Honourable Apex Court. Therefore, this judgment relied on by the learned senior counsel for the respondents 19 to 23 has no application to the

facts of the case on hand.

26. The learned senior counsel appearing for the respondents 19 to 23 and also the learned senior counsel appearing for the legal heirs of the

deceased first respondent would strenuously contend that since there is no provision available under the Act for the Tribunal to entertain any

Review Petition, the very filing of the review application by the writ petitioners before the Tribunal is void ab initio. In support of such arguments,

they would press into service the judgment of the Honourable Apex Court in *Kalabharati Advertising v. Hemant Vimalnath Narichania and Others*

(supra), wherein it has been held that

It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial

orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in

review, if passed is ultra vires, illegal and without jurisdiction.

27. The Tamil Nadu Land Reforms Special Appellate Tribunal was constituted u/s 77C of the Act. u/s 77E of the Act, the powers of the said

Tribunal are notified as follows:

The Special Appellate Tribunal shall have the same powers, as are vested in a civil Court under the Code of Civil Procedure, 1908 (Central Act V

of 1908), including the power to punish for contempt.

28. Therefore, while u/s 77E of the Act, the Tribunal is vested with the same powers, as of the civil Court under the Code of Civil Procedure, it

will be within any prudent man's knowledge that the said Tribunal will have the power of review, like the one being enjoyed by the civil Court

under Order 47 Rule 1 CPC. Therefore, we cannot appreciate the arguments advanced on the part of the respondents 19 to 23 and the legal heirs

of the deceased first respondent that the Tribunal is not having the power of review.

29. Therefore, we have no hesitation to hold that the Tribunal is well within its powers, as conferred u/s 77E of the Act, to entertain the review

application filed by the writ petitioners, which has been filed by them, pursuant to the order of the Honourable Apex Court in SLP. No. 853 of

1996. Therefore, the judgments relied on by the learned senior counsel for the respondents 19 to 23 and also the learned senior counsel for the

legal heirs of the deceased first respondent have no application to the facts of the present case.

Whether notices were served on the deceased first respondent:

30. It is the contention raised not only on the part of the legal heirs of the deceased first respondent, but also the respondents 19 to 23 that no

proper opportunity was afforded to the deceased first respondent before passing the Section 18 Notification and that no notices were also served

on him. As already stated above, the learned senior counsel for the respondents 19 to 23 has also relied on certain judgments.

31. Insofar as the said judgments relied on by the learned senior counsel appearing for the respondents 19 to 23, in the first judgment cited M.

V.S. Muthuvel v. Authorised Officer, Land Reforms, Kovilpatti (supra), a learned single Judge of this Court has held as follows:

There is no dispute that the statute gives an option to the owner to retain such land as he wants within his ceiling area. It is true that the petitioner

has not exercised his option before. But at the stage of appeal before the Tribunal, the petitioner had come forward with a plea that he may be

permitted to retain some land declared as surplus in lieu of his offering an alternate land of the same extent. So long as the extent is the same and

there is no impediment in accepting the option now exercised by the petitioner, I do not see why the petitioner to whom the statute has given a right

of option, should be denied the benefit merely on the ground of delay in giving the option.

32. In the second judgment relied on by the learned senior counsel for the respondents 19 to 23, *Tirumathi Manoranjitham v. Authorised Officer*

(Land Reforms) *Nagapattinam East (supra)*, the First Bench of this Court has held:

It is clear from Section 10(5) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land Act) that the draft statement shall be published and a

copy thereof shall be served on the persons concerned, the tenants, creditors and all other persons who in the opinion of the authorised officer are

interested in the land to which such draft statement relates. Section 12 of the Act deals with the publication of the final statement. This statement

according to the Section, must be published with details, of the holding and a copy thereof has to be served on the persons referred to in sub-

section (5) of Section 10.

33. In the third judgment relied on by the learned senior counsel for the respondents 19 to 23, *State of Tamil Nadu v. C. Chandra Mohan and*

Others (supra), a Division Bench of this Court has held:

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 the provisions of rule 8 must be looked into. 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, acknowledgement due. Only if all the three methods fail, the authorities can have resort to serving the notice by affixture. In the

absence of evidence to show that the first three methods of service of notice were attempted and all of them failed, even if it is to be held that

notice had been served by affixture, it will not constitute a valid service. When 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.

34. Relying on the above judgments, the learned senior counsel appearing for the respondents 19 to 23 would strenuously argue that since the

deceased first respondent was not afforded any opportunity by the authorities and no notice had also been served on him, the entire proceedings

commenced and completed by the authorities should be declared null and void.

35. But, a thorough perusal of the entire materials placed on record would show that on 22.1.1986, a draft statement u/s 10(1) of the Act,

proposing to declare surplus of 3.407 standard acres of land u/s I was published in the Government Gazette and a copy of the same was also

served on the land owner/deceased first respondent on 1.4.1986, for which the deceased first respondent filed his objections on 2.5.1986 u/s

10(5) of the Act and considering the objections, the Assistant Commissioner, Land Reforms, Coimbatore passed an order on 8.10.1987 and the

copy of the said order was also served on the deceased first respondent on 12.10.1987. In the said order, the surplus was determined at 2.302

standard acres, after granting him an allowance pursuant to objection No. 2 raised by him and the other objections were over-ruled and the

deceased first respondent was directed to furnish the details of the land to be declared as surplus within seven days from the date of receipt of the

order u/s 10(5) of the Act and he was also put on notice that on his failure to furnish the details, suo motu action will be taken. But, the deceased

first respondent, for the reasons best known to him, did not furnish the details of the lands to be declared as surplus and therefore, the final

settlement u/s 12 of the Act was published in the Gazette on 2.12.1987 and a copy of the final statement was sent by registered post with

acknowledgment due to the deceased first respondent and on 3.2.1988, a notification u/s 18(1) of the Act was published in the Gazette and it was

also served on the deceased first respondent on 26.2.1988. While that being the case that at each and every stage of the proceedings, the

deceased first respondent was put on notice and that the copy of the final statement was sent by registered post with acknowledgement due to the

deceased first respondent and on 3.2.1988, the notification u/s 18(1) of the Act was published in the Gazette and it was also served on the

deceased first respondent on 26.2.1988, we are unable to appreciate the contra contentions raised on the part of the respondents 19 to 23.

Therefore, the above judgments have no application to the facts of the case on hand.

Plea of the respondents 4 to 6 that they are the owners of S. No. 284 of Uppilipalayam village:

36. The 4th respondent has contended that he is the absolute owner of the lands in S. No. 284 situated at Uppilipalayam village, Coimbatore

Taluk and Coimbatore District. While so, the deceased first respondent while offering alternate land, had mentioned an extent of Ac. 2.18 acres in

S. No. 284 in Uppilipalayam village and the Government also, knowing fully well that the deceased first respondent is not having any interest in the

land, made the Tribunal to believe that the lands offered by the deceased first respondent were his own lands and got an order, thereby resulting in

modifying the notification dated 3.2.1988. Subsequently, when, at the instance of Muralidharan, son of Venkatapathy, served a memo on this

respondent on 5.12.2008 stating that himself and Others had applied for change of patta in their name, this respondent filed W.P. No. 1356 of

2009, impleading the said Muralidharan as respondents, questioning the jurisdiction of the Tribunal to issue the said memo, and by the order dated

27.4.2009, this Court had allowed the said writ petition. Thereafter, since he found out the discrepancy with regard to the extent, he filed O.S. No.

937 of 2009 before the D.M. Court for permanent injunction against Muralidharan and as a counter the widow of Venkatapathy filed O.S. No.

354 of 2009 for declaration; that thereafter, both the suits were transferred to Sub Court and re-numbered as O.S. Nos. 1089 of 2010 and 663

of 2010 and by the common judgment dated 12.1.2012, the suit filed by the fourth respondent was allowed and the suit filed by the heirs of the

deceased first respondent was dismissed holding that the 4th respondent is the absolute owner. Therefore, on assessing the entire materials placed

on record in the teeth of the judgment of the civil Court, we have no hesitation to accept the claim of the respondents 4 to 6 that the deceased first

respondent has played fraud before the Tribunal and offered the land belonging to these respondents as alternative land, which was also

unfortunately accepted by the Tribunal.

37. With regard to the claim of the respondents 19 to 23 that the lands sought to be declared "surplus" by the authorities are not the absolute

properties of the deceased first respondent since they were partitioned between all the brothers of the deceased first respondent, we found from

the records that nowhere it is pleaded before the Tribunal at any stage of the case about the partition. The proceedings are pending before various

legal fora from the year 1988 and prior to that the proceedings were going on before the authorities concerned. In spite of the same, at no point of

time, these so-called co-parceners have got themselves impleaded and challenged the continuation of proceedings against the deceased first

respondent. Only after the matter got remanded from the Supreme Court, these respondents have come forward to file impleadment petitions, in

our considered view, only to defeat the provisions of the Act and to deprive the right of the assignees. Even as seen from the objections filed by the

land owner, nothing is pleaded about partition; he pleaded only about acquisition from his father R.V. Lamshmaiah Naidu. On a thorough analysis

of the entire materials placed on record, we have no hesitation to hold that these respondents might have been planted by the legal heirs of the

deceased first respondent, to defeat the proceedings and to deny possession and enjoyment to the assignees.

38. The deceased first respondent having allowed the proceedings to attain finality, had approached this Court by way of filing W.P. No. 6544 of

1988 with a contention that his objections were not considered properly and his declaration that he is having surplus land to the extent of Ac. 4.25

was also not accepted. The deceased first respondent having wantonly failed to utilise the opportunities afforded to him at each and every stage of

the proceedings, cannot be permitted to throw the blame on the authorities concerned as if he was denied audi alteram partem.

39. Further, we are of the considered view that the Tribunal has committed an irregularity and illegality in passing the order on the basis of the

report filed by the Assistant Commissioner with regard to the acceptance of the alternative land. The Assistant Commissioner knowing fully well

that the assignees have paid consideration towards value of the land, for the only reason that they were not put in possession of the land assigned

to them, had given a report that the offer of the land owner of alternative surplus land may be accepted, without even verifying the title of the lands

being offered by the deceased first respondent as alternative lands. A perusal of the report of Assistant Commissioner justifies the claim of the

petitioners 2 and 3 that they were put in physical possession of the properties and that the lands were assigned in the name of the first petitioner

and others, whose legal heirs are respondents 8 to 18. Further, when the proceedings u/s 10(5) and 12 of the Act having been complete without

any challenge by the landowner, the alternative lands offered by the landowner should not have been entertained by the Tribunal, particularly

without even verifying the title of the lands. Since analysis of the entire materials placed on record would show that the first respondent has played

fraud solely with a view to escape from the clutches of ceiling, had he been alive, we would have ordered for his prosecution. But, since he is no

more and further since we deem it not necessary to proceed against his legal heirs for the illegal actions of the first respondent, we refrain from

passing any orders to that extent.

For all the above reasons, this writ petition is allowed. The respondents 2 and 3 are directed to pass all consequential orders, to complete the

entire proceedings, within eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petitions

are closed.