

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.12.2010

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION NO.11170 of 2003
and WPMP.No.30610 of 2003

V.Rajan Chellappa

.. Petitioner

vs.

1.The District Revenue Officer
Madurai.

2.The Special Deputy Collector
Revenue Court, Madurai.

3.The Tahsildar - Revenue cum
Record Officer of Agricultural Lands
Madurai South Taluk
Madurai.

4.The Property Officer
The Diocese of Madurai Ramanathapuram
Church of South India Trust Association
Madurai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, WP NO.11170 of 2003, writ petition praying to issue a writ of certiorari calling for the entire records of the 1st respondent in connection with the order dated 23.1.2003 made in R.P.No.1/2002, of the first respondent and the quash the same.

For petitioner : Mr.K.Venkatachalapathy, Sr.Counsel
for Mr.M.Sriram

For respondents : Mr.C.Mani Bharathi
Govt., Advocate for R.1 to R.3

Ms.Usha Raman for R.4

ORDER

The writ petition is filed challenging the order of the first respondent, the District Revenue Officer, Madurai in the revision filed by the petitioner against the order of the second respondent, the Special Deputy Collector dated 4.2.2002, which was made against the order of the third respondent, the Tahsildar, dated 31.5.2000.

2. The brief facts leading to the filing of the writ petition are that, the 4th respondent, the Property Officer, the Diocese of Madurai-Ramanathapuram Church of South India Trust Association, Madurai invited tenders for the lease of lands comprised in survey No.384 part measuring an extent of 1.5 acres in Madavakkam village, Madurai and the lands in survey Nos.55/1A and 55/1B to an extent of 5.5 acres in Thiruparangundram village, Madurai taluk.

a) It is stated that the petitioner participated in the tender process and he was the successful tenderer and a lease agreement was entered on 5.2.1987 for a period of three years for the consideration of Rs.6420/-. It is stated that the petitioner improved the dry lands by digging a well and erecting a pump set and by planting teak wood, tomato and other food grains and the petitioner is stated to be in possession of the lands even after the expiry of lease agreement.

b) After the expiry of the original period of lease, it was extended for a further period of three years from 1.1.1990 to 31.12.1992 by the first respondent on the same lease amount and it was again extended from 1993 to 1995 on the same amount of Rs.6240/- and thereafter, it was extended from 1996 to 1998 by the 4th respondent.

c) It is stated that the petitioner continues to be in possession and cultivating the lands. It is stated that when the petitioner sent a letter on 29.5.1999 for extension of lease for a further period of three years along with a demand draft for Rs.6240/-, it was returned by the 4th respondent stating that the lands are required by the 4th respondent for starting a school.

d) It was, in those circumstances, the petitioner approached the third respondent by filing an application under sections 4(2) and 5(2) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 10 of 1969, (in short, "Act 10 of 1969") to record him as a cultivating tenant under section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955 (in short, "Act 25 of 1955"). The said application in T.R.No.6/97 came to be allowed by the third respondent on 31.5.2000 on the basis that the lands are agricultural lands and the petitioner has been in possession and cultivating the same and therefore, is entitled for the protection under the Tamil Nadu Cultivating Tenants Protection Act, 1955.

e) It was, against the said order of the third respondent, the 4th respondent filed an appeal before the second respondent in

Appeal No.20/2000. However, in the appeal the 4th respondent failed to appear before the appellate authority, viz., the second respondent and therefore, the second respondent dismissed the appeal of the 4th respondent on 4.2.2002.

f) Aggrieved by the order of the 2nd respondent, the 4th respondent preferred a revision before the first respondent in R.P.No.1/2002 and that revision came to be allowed under the impugned order by the first respondent, against which the present writ petition has been filed.

3. The case of the petitioner is that the first respondent has failed to consider the orders of the second and third respondents to the effect that the petitioner is a cultivating tenant and the lease itself has been periodically extended by the 4th respondent and that the first respondent should have taken note of the fact that he became a Rajya Sabha Member during the period 1992-97 and there was possibility for him to put his physical labour in cultivating the lands and therefore, it cannot be said that he would not come under the definition of 'cultivating tenant' under section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955.

4. The order of the first respondent is challenged by the petitioner on various grounds including that the first respondent has failed to consider that the petitioner has been in possession and the lands are cultivating lands and the petitioner is continuously exercising his physical labour and by virtue of his becoming a Member of Rajya Sabha, he does not cease to be a cultivating tenant and as a cultivating tenant, the petitioner has been in fact cultivating the lands and it is not necessary for him to put his physical labour 24 hours a day and he is entitled to engage coolies to do cultivation and when the original and appellate authorities have in detail considered these aspects, the first respondent failed to consider the same.

5. Even though the 4th respondent has not filed a counter affidavit, learned counsel appearing for the 4th respondent has made his submissions during the course of arguments.

6. It is the contention of the learned senior counsel for the petitioner Mr.K.Venkatachalapathi, that for conferring the benefit of cultivating tenant under the Act 25 of 1955 on the petitioner, it does not require that during 24 hours the petitioner must be cultivating the lands and it is sufficient that he is in effective possession of the lands and cultivating the same. It is his submission that the petitioner being a Rajya Sabha Member during a portion of the period, was in fact cultivating the lands except the time when he was attending the Parliament session and after the period of his membership in Rajya Sabha came to an end, he has been continuously cultivating the lands and that aspect has not been considered by the first respondent.

7. On the other hand, it is the contention of the learned counsel for the 4th respondent that after 1998, the petitioner's tenancy has not been renewed and therefore, the petitioner cannot be deemed to be a tenant at all and the lease agreement having been expired, there is no scope for the petitioner to treat him as a tenant so as to claim himself to be protected under the Act 25 of 1955. It is her submission that merely planting teak would not amount to agricultural operation. She would submit that for cultivating teak, it would take 18 years and a person who occupies such lands cannot be treated as an agricultural operator. It is her submission that even in the entire 7 acres of land, the petitioner has cultivated teak in 70 cents and Cholan in one acre and coconut in 10 cents and the remaining portion of the lands is kept vacant. It is her submission that the order of the first respondent cannot be said to be either invalid or perverse or against the law.

8. I have heard the learned senior counsel for the petitioner and the learned counsel for the 4th respondent and referred to various documents.

9. The term 'cultivating tenant' is defined under section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955 (Act 25 of 1955) as follows:

"2(aa).Cultivating tenant-

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under tenancy agreement, express or implied; and

(ii) includes

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land;

(c) a sub tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(d) any such sub tenant who continues in possession of the land notwithstanding that the person who sublet the lands to such sub tenant ceases to have the right to possession of such land; but

(iii) does not include a mere intermediary or his heir;

Explanation: A sub tenant shall be deemed to be a cultivating tenant of the holding under the landlord if the lessor of such sub tenant has ceased to be the tenant of such landlord."

10. As per the said definition, even after determination of tenancy agreement, a person who continues to be in possession of the lands is included as a cultivating tenant and therefore, the contention of the 4th respondent that after 1998, the tenancy agreement has not been renewed and hence, the petitioner is not at all a cultivating tenant, is not a ground to reject the claim of the petitioner when it is admitted that the petitioner is in possession of the lands in question.

11. The term, 'cultivation' is defined under section 2(b) of the said Act to mean the use of the lands for the purpose of agriculture or horticulture. Section 3 of the Act gives protection to such tenant not to be evicted by the landlord even if it is in execution of a decree. Of course, under the said provision, if a tenant denies the title of the landlord and uses the land for other purposes than agricultural or horticultural purposes, then, the protection given may be denied to such a tenant.

12. A cultivating tenant under the Tamil Nadu Cultivating Tenants Protection Act, 1955 (25/55) can register himself as a tenant under the Tamil Nadu Agricultural Lands Record Tenancy Rights Act, 1969 which has been enacted for the purpose of preparation and maintenance of record of tenancy rights in respect of agricultural lands in the State of Tamil Nadu. Within the meaning of section 2(5) of the said Act 10 of 1969, the 4th respondent is the land owner and the petitioner is a tenant as per section 2(8)(i) of the said Act which states as follows:

" 2(8)(i) "tenant" in respect of any area, in the State (Other than the Kanyakumari District)-

(a) means in relation to any land to which the Tamil Nadu Cultivating Tenants Protection Act, 1955 applies a cultivating tenant as defined in clause (aa) of Section 2 of that Act and includes-

(i) a mattuparamdar referred to in clause (a) or clause (b) of Section 7 of the Tiruchirapalli Kaieruvaram and mattuparam Act 1958 (TN Act 36/1958); and

(ii) a possessory mortgagor, who, under a tenancy agreement, express or implied, with the possessory mortgagee contributes his own physical labour or that of any member of his family in the cultivation of the land subject to possessory mortgagee; and

(b) means in relation to any land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (TN Act 47/1961) applies a cultivating tenant as defined in the clause (5) of Section 2 of that Act;

13. The Record Officer is defined under section 2(7) of the Act 10 of 1969, who is an officer not below the rank of Deputy Tahsildar. In this case, the Record Officer is the third respondent to whom the petitioner approached for protection and recording himself as a tenant. The third respondent after conducting statutory enquiry as per the provisions of the Act 10/1969, specifically found in the enquiry that even though the lease was not extended by the 4th respondent after 1.1.1993, the possession of the petitioner in the lands continued from 1.2.1987 till date and he has been carrying on agricultural operations. In fact, the third respondent has specifically considered the case of 4th respondent that the petitioner was a Rajya Sabha Member from 1992 to 1998 and therefore there was no possibility for him to have himself or through his family members cultivated the lands during the said period, and also the case of the petitioner that even during that period when he was a member of Rajya Sabha he was himself carrying on the agricultural operations by engaging agricultural coolies who ought to have been performing agricultural operations along with him, and after elaborating the contentions of the learned counsel for the 4th respondent, the third respondent by exercising his statutory power, has recorded the petitioner as a tenant under the Act 10/1969.

14. The 4th respondent having not satisfied with the order of the 3rd respondent recording the petitioner as a tenant, chose to file appeal before the second respondent as per section 6 of the Act 10/1969 which is as follows:

" Sec.6.Appeal:- Any person aggrieved by an order made under sub section (8) of section 3, sub section (3) of section 4 of sub section (3) of section 5 may within such period as may be prescribed appeal to such authority as may be specified by the Government in this behalf (hereinafter referred to as the appellate authority) and the decision of such authority on such appeal shall, subject to the provisions of Section 7 be final."

15. Having filed such a statutory appeal, it is seen that the appellant failed to appear before the appellate authority, however, the petitioner being the respondent before the appellate authority filed a detailed counter. It is pertinent to note that the second respondent, the statutory appellate authority, in spite of the fact that there is no appearance on behalf of the 4th respondent, considered the appeal on merit including the contents in the grounds of appeal filed by the 4th respondent, apart from the counter affidavit filed by the petitioner, and dismissed the appeal, since the 4th respondent failed to appear. It was, in those circumstances, against the said order of dismissal passed by the second respondent, the 4th respondent filed a revision before the first respondent, the

District Revenue Officer under section 7 of the said Act which is as follows:

" Sec.7. Revision: The District Collector [or such officer as may be specified by the Government in this behalf] may of his own motion or on the application of a party call for and examine the record of any record officer or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit.

Provided that the District Collector [or the said officer] shall not pass any order prejudicial to any party unless he has been given a reasonable opportunity of being heard."

16. It is specifically stated by the petitioner in the grounds of the writ petition that while the revisional authority is the District Collector, there is no specific order by the Government authorizing the District Revenue Officer, Madurai to exercise the revisional power. However, the second respondent, the appellate authority, while dismissing the appeal of the 4th respondent has stated that against his order, if there is any objection, revision would lie to the District Revenue Officer, Madurai. It is based on the same, the 4th respondent filed the revision before the first respondent, the District Revenue Officer. However, there is nothing on record to show that the petitioner has raised any such objection before the first respondent at the time of hearing the statutory revision by the first respondent.

17. A reference to the impugned order of the first respondent shows that the first respondent has referred to the adangal extracts for faslis 1398 to 1401 and 1405 which relate to the period up to 1996. Admittedly, during that period, the lease executed by the 4th respondent in favour of the petitioner was in operation. It was, only thereafter, from 1999 there has been no extension of lease. The petitioner is stated to be a Rajya Sabha Member during the period from 1992 to 1997, the period during which the 4th respondent himself accepted the petitioner as a tenant and therefore, in that context, the action of the first respondent in considering the nature of lands or the conduct of the petitioner during the period viz., up to 1996 is totally irrelevant. In any event, there is no bar either for a Rajya Sabha Member or a Member of Parliament or a Member of State Legislature to be a cultivating tenant for, it is not as if a cultivating tenant is required to actually carry on agricultural operation throughout the year and even a Member of Parliament who is expected to be in the Parliament during the session, can certainly be a cultivating tenant, if he cultivates during the cultivating season.

Therefore, the assumption as if the petitioner being a Member of Rajya Sabha cannot be cultivating the lands through any of his family members is totally unfounded.

18. Further, the observation of the first respondent as if the period of lease was already over and as per the conditions of lease after the lease period was over, the petitioner has to hand over the possession to the 4th respondent is again irrelevant and totally opposed to the very term, 'cultivating tenant' which empowers him to be a cultivating tenant, if he is in possession of the agricultural lands, even after the lease period. Therefore, it is a total non-application of mind on the part of the first respondent in respect of possession and there is no difficulty to conclude that the first respondent has proceeded on the basis of assumption and presumption and not on the factual context and therefore, I am of the considered view that the order of the first respondent is opposed to law and liable to be set aside and the matter to be remanded back to the first respondent for fresh consideration.

19. Accordingly, the writ petition stands allowed and the impugned order of the first respondent stands set aside and the matter is remitted back to the first respondent for fresh consideration on merits and in accordance with law based on the observations made herein and the first respondent shall pass orders accordingly within a period of 12 weeks from the date of receipt of copy of the order. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Revenue Officer, Madurai.

2.The Special Deputy Collector, Revenue Court, Madurai.

3.The Tahsildar - Revenue cum Record Officer of Agricultural Lands
Madurai South Taluk, Madurai.

Copy to : The Section Officer, VR Section, High Court, Madras.

1 cc To Mr.Sriram, Advocate, SR.91756

Order in W.P.No.11170 of 2003

GV (CO)

RH (19.1.11)