



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) Nos.16867, 16868 and 19223 of 2016
and

W.M.P(MD)Nos.12230, 12231, 12232, 12233 and 13875 of 2016

M.Subramanian ... Petitioner in all W.Ps.
Vs.

1.The District Revenue Officer,
Trichy, Trichy District.

2.The Assistant Commissioner,
Revenue Court,
Trichy, Trichy District.

3.The Revenue Divisional Officer,
Trichy, Trichy District.

4.The Tahsidlar,
Trichy West, Trichy.

5.The Village Administrative Officer,
Pirattiyur East Village, Trichy West,
Trichy.

6.Kalika Parameswari Temple,
Periya Kammala Theru,
Trichy, Rep by its Executive Officer,
S.Rajendran.

.... Respondents all W.Ps.

Prayer in W.P(MD)No.16867 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 2nd respondent in Ma.No.P.28/2011 (Trichy) M.P.No.46 of 2011, dated 21.11.2011 and quash the same.

Prayer in W.P(MD)No.16868 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the fourth respondent to dispose of the application pending before him in T.R.No.2 of 2000 within a time frame to be fixed by this Court.

Prayer in W.P(MD)No.19223 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the third respondent dated 16.09.2016 vide proceedings in Na.Ka.No.A5/1917/2016 and quash the same.



For Petitioner : Ms.J.Anandhavalli
For Respondents 1-4 : Mr.N.S.Karthikeyan,
Additional Government Pleader.
For 6th Respondent : Mr.T.V.Shivakumar for
(In all W.Ps) Mr.H.Lakshmishankar

COMMON ORDER

Since the issue involved in all these writ petitions is common, they are disposed of by this common order.

2.Heard Ms.J.Anandhavalli, learned counsel appearing for the petitioner, Mr.N.S.Karthikeyan, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.H.Lakshmishankar, learned counsel appearing for the sixth respondent.

3.W.P(MD)No.16867 of 2016 has been filed challenging the order of eviction passed by the second respondent dated 21.11.2011 under the provisions of the Tamil Nadu Public Trust (Regulating Administration of Agricultural Lands) Act, 1961 (for short, 'Public Trust Act').

4.W.P(MD)No.16868 of 2016 has been filed for the issuance of writ of mandamus, to direct the Tahsildar, Trichy West, Trichy, the fourth respondent herein to dispose of the application pending before him in T.R.No.2 of 2000 within a time frame to be fixed by this Court.

5.W.P(MD)No.19223 of 2016 has been filed challenging the order passed by the Revenue Divisional Officer, Trichy, the third respondent herein on the application filed by the sixth respondent stating that the property in dispute is in possession of the sixth respondent temple.

6.The case of the petitioner, in brief, is as follows:-

According to the petitioner, an extent of 8.26 acres of agricultural land situate in Re.Sy.Nos.18/4, 40/2, 40/3, 44/7 and 44/2 of Pirattiyur Village, Srirangam Taluk, Trichy District belongs to Kalika Parameswari Temple, Periya Kammala Theru, Trichy, the sixth respondent herein. Earlier, one Ganesan, Panneerselvam and Ashokan were lessees under the sixth respondent temple. Thereafter, one Gurumoorthy was in possession of the said property as a sub lessee under the above said lessees. Later, the said Gurumoorthy was recorded as a cultivating tenant, subsequently, on 04.07.2000, the above said Gurumoorthy made over his right of lease in favour of the writ petitioner by means of registered document. Thereafter, in the year 2004, the petitioner filed an application before the fourth



respondent to record him as a cultivating tenant. The fourth respondent by an order dated 10.06.2004 recorded the petitioner as cultivating tenant. Challenging the above said order, the sixth respondent temple filed an appeal before the Assistant Commissioner, Revenue Administration, Trichy in A.P.No.25 of 2004. The said appeal was allowed by an order dated 27.07.2009 and the matter was remanded back to the file of the original authority, namely, the fourth respondent herein for passing orders after giving opportunity to both the parties.

7.It is further stated that an ex-trustee of the temple was changed and one Rajendran is functioning as the present trustee of the temple who was impleaded as 6th respondent herein. It is further stated that the pending the above application, the said Rajendran filed a petition before the Revenue Court seeking eviction of the earlier lessee namely, Gurumoorthy under Section 19(i)(a)(2) of the Public Trust Act. It is further stated that the same Officer allowed the appeal and remanded the appeal filed by the sixth respondent in respect of recording of cultivating tenant has passed an order of eviction on the application of the sixth respondent on 21.11.2011. It is further stated that only after the sixth respondent taking steps to take possession of the property, the petitioner came to know about the same and he has also raised objections before the third respondent. Therefore, the third respondent has directed the fourth respondent to file inspection report. Since the above order has been passed without notice to the petitioner, the petitioner has filed W.P(MD)No.16867 of 2016 challenging the above said order dated 21.11.2011.

8.It is further stated that since the application filed by the petitioner to record him as cultivating tenant on remand by the Appellate Authority is pending before the fourth respondent, the petitioner has filed W.P(MD)No.16868 of 2016 seeking direction to the fourth respondent to dispose of the application pending before him in T.R.No.2 of 2000.

9.When the above matter stood thus, based on the complaint given by the sixth respondent that even after the order of eviction passed by the second respondent and the possession has been taken, now, the writ petitioner is interfering with the possession of the sixth respondent temple. Therefore, an enquiry was conducted by the Revenue Divisional Officer and after enquiry, the third respondent has passed an order stating that since the sixth respondent has already taken possession, no necessity to pass orders on the report submitted by the fourth respondent. Challenging the order passed by the third respondent dated 16.09.2016, W.P(MD)No.19223 of 2016 has been filed.



10. The sixth respondent, in all the writ petitions, has filed a counter affidavit inter alia contending that one Gurumoorthy came in as a sub-lessee under the original lessees and thereafter, became the direct tenant under the 6th respondent Temple and his name was recorded in the tenancy register maintained by the fourth respondent in the year 1992. The said Gurumoorthy was alone tenant of the sixth respondent Temple. The petitioner, is neither a cultivating tenant nor a sub-lessee. The said Gurumoorthy also stopped cultivating the lands of the 6th respondent Temple from the fasli year 1414 (around the year 2004).

11. It is further stated that in the mean time, the writ petitioner, who is running educational institution viz., Oxford Engineering College abutting the disputed lands, in a clandestine manner got a document registered on 04.07.2000 from the original cultivating tenant viz., Gurumoorthy, as if it amounting to transfer of rights of cultivating tenant. The sixth respondent temple or its trustees were not aware of such a document. Subsequently, the petitioner has filed a petition in T.R.No.2 of 2000 to record himself as a 'cultivating tenant'. Subsequently, he has also filed a suit in O.S.No.477 of 2001 before the District Munsif Court, Trichy wherein the temple is not a party. It is further stated that since they were not made as parties in T.R.No. 2 of 2000 only the Executive Officer/Takkar was made as 3rd respondent. The Executive Officer did not file any objections and did not defend the said application effectively. Hence, the fourth respondent allowed the said application on 10.6.2004 and recorded the petitioner as a cultivating tenant, without considering the very validity of the document dated 4.7.2000. Thereafter, challenging the order passed by the fourth respondent dated 10.6.2004, an appeal was filed by the Executive Officer before the third respondent. The third respondent, by an order dated 27.07.2009 set aside the order of the fourth respondent dated 10.6.2004 finding that the petition has been filed without impleading the landowner/suit temple and the Assistant Commissioner, H.R & C.E as parties and the matter was remanded back to the fourth respondent. The petitioner was not challenged the said order by way of any appeal or revision. After the said order dated 27.07.2009, no steps have been initiated by the petitioner to prosecute the matter before the fourth respondent and abandoned the same.

12. It is further stated that since the petitioner abandoned the record of tenancy proceedings in the year 2009 itself, it is not open to the petitioner to claim that the proceedings are pending before the fourth respondent. It is further stated that the petitioner is not at all a cultivating



tenant at any point of time and in any case after 27.07.2009. In the above circumstances, the sixth respondent filed a petition for eviction before the third respondent as against cultivating tenant Gurumoorthy, as the land was not cultivated after 2004 which is causing damage to the land and its fertility. It is further stated that the third respondent has passed an order of eviction and consequently delivery of possession has been taken on 06.05.2013 in the presence of officials of the Revenue Department. It is further stated that the educational institution of the petitioner is abutting the land in dispute and the land in dispute is touching the main road so as to gain frontage and passage and gradually to grab the property, he has obtained an invalid 'made over' document of cultivating tenancy and invented stories as if he being a 'cultivating tenant'. It is further stated that the adangal extracts from the year 2004 would clearly show that the land is lying fallow and is recorded as 'tharisu', all these facts have been affirmed in the proceedings of the third respondent, dated 14.09.2016. In the above circumstances, the sixth respondent prayed for the dismissal of the writ petition.

13.The Revenue Divisional Officer, the third respondent herein has filed a counter affidavit stating that a representation was made to the District Collector, Trichirappalli on the occasion of farmer's grievance day, the same was forwarded to the Revenue Divisional Officer for taking action regarding the encroachments made in the property of the sixth respondent temple. On receipt of the said representation, the third respondent has sent notice to the Joint Commissioner, HR & Ce Department, Trichy and Tahsildar, Trichy West and the petitioner herein for their reports. In the meantime, the order passed by this Court in W.P(MD)Nos.16867 and 16868 of 2016, dated 07.09.2016 brought to notice of the third respondent. Pending enquiry, based on the report submitted by the Tahsildar concerned and as per the report of the second respondent, the impugned order came to be passed. It is further stated as per the proceedings of the second respondent in P.No.28 of 2011, the property in dispute was handed over to the sixth respondent and therefore, the said representation was closed as no further action is required.

14.Ms.J.Anandhavalli, learned counsel appearing for the petitioner would submit that since the petitioner has already been recorded as a cultivating tenant on the appeal filed by the sixth respondent, the order has been set aside by the Appellate Authority and the matter has been remanded back to the fourth respondent and the same is pending. She would further contend that since the matter is pending with the fourth respondent, now, the sixth respondent without impleading the petitioner filed a



petition for eviction against original lessee namely Gurumoorthy under the provisions of Public Trust Act and also obtained an order of eviction behind the back of the petitioner. Apart from that till date, the petitioner is in possession and cultivating the said land and in such circumstances, the order passed by the second respondent is not sustainable in law. She would further contend that the petitioner being a sub lessee from the original lessee, he is an interested person in the land and without impleading him as a party, the sixth respondent obtained an order of eviction which is liable to be set aside. Even though alternative remedy available under Section 22 of the Public Trust Act, since the impugned order has been passed without issuing notice to the petitioner, he has filed writ petition. Apart from that even though the matter has been remanded by the appellate authority in respect of recording the petitioner as cultivating tenant in the year 2009, so far the fourth respondent did not pass any orders and hence, the fourth respondent should necessarily be directed to decide the matter and pass suitable orders. She would further contend that so far as the order passed by the third respondent dated 16.09.2016 holding that only the sixth respondent is in possession and enjoyment of the property without considering the fact that the third respondent has no jurisdiction to pass such order. She would further contend that the sixth respondent has committed fraud in getting an order of eviction from the third respondent against the said Gurumoorthy who is not in actual possession of the property. She would further contend that though the order of status quo granted by this Court in W.P(MD)Nos.16867 and 16868 of 2016, by an order dated 07.09.2016 which is still in force, the third respondent has passed the impugned order holding that the sixth respondent is in possession and enjoyment of the property and therefore, the said order is liable to be set aside. In support of her submissions, learned counsel for the petitioner relied on the following decisions:

(i) In Prema alias Rukmani Vs. The Record Officer and Special Tahsildar (Tenancy Records), Coimbatore reported in 1978 (12) MLJ 549;

(ii) In L.R. Ganapathi Thevar (dead) Vs. Sri Navaneethaswaraswami Devasthanam reported in AIR 1969 SC 764;

(iii) In Chandra Sekhar Singh Bhoi Vs. The State of Orissa reported in AIR 1972 SC 486 and

(iv) In Union Bank of India Vs. Khader International Construction reported in (2001) 5 SCC 22

15. Per contra, Mr. H. Lakshmi Shankar, learned counsel appearing for the sixth respondent would submit that against the order passed by the third respondent under the provisions of Public Trust Act only a revision lies before the District Court, without availing such remedy, the petitioner cannot maintain the



writ petition. If at all, the petitioner has got any grievance against taking possession, he has to only file a petition under Section 20 of the Public Trust Act and therefore, the petitioner cannot maintain the writ petition.

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16. So far as the filing of eviction petition under the Public Trust Act, learned counsel would submit that the petitioner is only claiming as a sub lessee and he need not be a party in the eviction proceedings and in the above circumstances, the petitioner did not implead him as a party to the proceedings. Apart from that absolutely there is no averment in the affidavit filed in support of this writ petition that the petitioner is cultivating the land by contributing his own physical labour and also admitted in the affidavit that the lands are kept vacant. In the above circumstances, the petitioner cannot consider as a cultivating tenant and he cannot claim any right over the property. Apart from that he would contend that the petitioner cannot claim any legal right under the alleged document said to have executed to be the original lessee, it is only a made over document and therefore, the petitioner cannot claim himself to be a cultivating tenant. There is no express or implied document to establish his claim and till date there is no evidence to show that the petitioner is paying rent to the sixth respondent.

17. The learned counsel further submitted that so far as the petition pending before the fourth respondent to record him as cultivating tenant, even though the matter was remanded back on 27.07.2009, so far, the petitioner did not take steps and abandoned his claim in T.R.No.2 of 2000, the petitioner cannot file a writ petition seeking a direction to dispose of the revision after 7 years and in view of the long delay, it is presumed that the petitioner waived his right in the above said application. Apart from that since the petitioner has not established that he is a cultivating the land by producing relevant documents. He would further submit that the sixth respondent has taken possession of the land as early as on 06.05.2013 and they are in possession of the property and the third respondent after conducting elaborate enquiry, considered the actual possession and passed the order. Therefore, there is no illegality or infirmity in the order passed by the third respondent. In support of his submissions, learned counsel appearing for the sixth respondent relied on a decision in Shabi Construction Company Vs. City and Industrial Development Corporation and another reported in (1995) 4 SCC 301.

18. I have considered the submissions made by the learned counsel on either side and perused the materials available on record.



19. The petitioner claiming to be a sub lessee under Gurumoorthy. The petitioner alleged that the above said Gurumoorthy made over the right of lease in favour of the petitioner by a registered document and transfer his right enjoyed by him in his favour. Thereafter, the petitioner said to have filed an application before the Tahsildar to record him as a cultivating tenant and the fourth has also passed an order recording the petitioner as a cultivating tenant wherein he has been impleaded the Executive Officer of the Temple. Consequently, the Tahsildar has also recorded his name as cultivating tenant. Challenging the same, one of the trustees filed an appeal before the Appellate Authority and the Appellate Authority set aside the order of the Tahsildar and remanded back to the fourth respondent to give opportunity to let in evidence and file documents by an order dated 27.07.2009 and on such remand, the matter is still pending with the fourth respondent.

20. In the meantime, the sixth respondent filed a petition before the second respondent under Section 19(i)(a)(2) of the Public Trust Act impleading the original lessee namely, Gurumoorthy as a party respondent. The second respondent passed an order of eviction in and by which the proceedings dated 21.11.2011 and thereafter, based on the order of eviction, the possession of the property was delivered to the sixth respondent on 06.05.2013. From the typed set of papers filed by the sixth respondent, it is seen that the Revenue Inspector, Lalgudi, taken possession of the land and handed over the same to the sixth respondent and he has also submitted a report before the Tahsildar, Lalgudi. Thereafter, now the petitioner filed W.P(MD) No.16867 of 2016 in the year 2016 after five years, challenging the order passed by the second respondent dated 21.11.2011 alleging that he came to know about the order only at the time of the sixth respondent is causing obstruction to his possession.

21. From the perusal of the affidavit, there is no valid reason stated in the affidavit for the long delay of five years in filing the writ petition except stating that since he was not a party in the proceedings, he was not aware of the order till 01.08.2016. The reason stated by the petitioner for the above delay is not convincing. A person is claiming as a cultivating tenant and alleging that he is the cultivating tenant and he is in possession and enjoyment of the land, it is very difficult to believe the case of the petitioner that he is not aware of the proceedings initiated by the sixth respondent for eviction.

22. A perusal of the records produced by the fourth respondent would establish that the Revenue Inspector along with Village Administrative Officer taken possession of the land as



early as on 06.05.2013, and had really the petitioner in possession and enjoyment of the property, he could have taken steps to challenge the order of the second respondent at that time itself and having slept over for more than five years from the date of passing of the order and more than three years from taking possession of the land, now, it is not open to the petitioner to challenge the order of the second respondent. Hence, the writ petition is liable to be rejected on the ground of laches. Apart from that as against the order passed by the second respondent, there is a revision provided before the District Court under Section 22 of the Public Trust Act. Without availing such alternative remedy, now, the petitioner has filed writ petition under Article 226 of the Constitution of India and on the ground also, the writ petition is liable to be dismissed.

23. So far as W.P.(MD)No.16868 of 2016 is concerned, the prayer in the writ petition is to direct the fourth respondent to dispose of the application pending before him in T.R.No.2 of 2000 within a time frame to be fixed by this Court.

24. As discussed earlier, the appellate authority has remanded the matter as early as on 27.07.2009, the petitioner did not take any steps to get the application decided by the fourth respondent from 2009. Since the petitioner claims that he is a cultivating tenant, the petitioner has to prove that he is contributing his own physical labour or that any of his family members is in the cultivation of the land which is a basic requirement under law to claim such right. A perusal of records shows that the petitioner is running an education institution viz., Oxford Engineering College and the lands in dispute abutting to his educational institution. Apart from that when the petitioner himself admitted the land is kept vacant and the adangal extract filed by the sixth respondent also shows that the land has shown as 'tharisu' from the year 2004. In the above circumstances, there cannot be any occasion for the petitioner to cultivate land by contributing his own physical labour. That apart as per the order passed by the fourth respondent now the possession was also taken by the sixth respondent and the records produced by the sixth respondent would establish that the possession was already handed over to the sixth respondent.

25. The petitioner failed to establish by any material to show that he is in possession and cultivating the said land by contributing his own labour. In such circumstances, the petition filed by the writ petitioner to record as cultivating tenant itself is not maintainable. Hence, no useful purpose will be served in directing the fourth respondent to consider his application for recording his name as a cultivating tenant. Hence, W.P.(MD)No.16868 of 2016 is liable to be dismissed.



26. So far as W.P(MD)No.19923 of 2016 is concerned, the writ petition challenging the order passed by the third respondent, on a petition filed by the sixth respondent alleging that the writ petitioner is trying to encroach the temple property and take action against him wherein the third respondent conducted enquiry in which the sixth respondent and counsel on behalf of the petitioner appeared. The third respondent after considering the order passed by the Assistant Commissioner, dated 21.11.2011 and also considering the fact that the possession being taken by the sixth respondent closed the application as no further action is required. In view of the above findings, this Court finds no infirmity or irregularity in the order passed by the third respondent and there is no reason to interfere with the said order. Hence, W.P(MD)No.19223 of 2016 is also liable to be dismissed.

In the result, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS II)

/True Copy/

Sub Assistant Registrar

To

1. The District Revenue Officer,
Trichy, Trichy District.
2. The Assistant Commissioner,
Revenue Court,
Trichy, Trichy District.
3. The Revenue Divisional Officer,
Trichy, Trichy District.
4. The Tahsidlar,
Trichy West, Trichy.
5. The Village Administrative Officer,
Pirattiyur East Village, Trichy West,
Trichy.
Kanyakumari District 629163

+3cc to Ms.J.Anandhavalli, Advocate in SR Nos.79139,78667
+2cc to Mr.H.Lakhmi Shankar, Advocate in SR Nos.78831,78332

Order made in
Writ Petition (MD) Nos.16867,
16868 and 19223 of 2016
02.12.2016