

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.12926 and 19329 of 2017
and
W.M.P.Nos.13791 and 20839 of 2017

W.P.No.12926/2017

A.Shanmugam ... Petitioner

Vs.

1.The District Collector,
Coimbatore District,
Collectorate,
Coimbatore.

2. The Tahsildar,
Coimbatore North,
Coimbatore - 641 018.

3. R.Srinivasan ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents 1 and 2 to dispose of the petitioner's petition dated 10.05.2017 in the forthcoming Jamabandi, which is proposed to be held between 17.05.2017 and 31.05.2017 for inclusion his name in Adangal Register and other Village Records as he is in possession of the same.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.P.V.Selvakumar
Additional Government Pleader
for R1 and R2
Mr.N.Anand Venkatesh for R3

W.P.No.19329/2017

A.Shanmugam

.. Petitioner

Vs.

1.The District Collector,
Coimbatore District,
Collectorate,
Coimbatore.

2. The Tahsildar,
Coimbatore North,
Coimbatore - 641 018.

3. The Tenancy Record Officer
and Tahsildar,
Coimbatore North,
Coimbatore.

4. R.Srinivasan .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in his proceedings in T.R.No.1 of 2012/A1 dated 04.07.2017 and quash the same and further direct the 2nd respondent to dispose of the petitioner's petition dated 10.05.2017 after affording opportunities to the parties in accordance with law.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.P.V.Selvakumar
Additional Government Pleader
for R1 to R3
Mr.N.Anand Venkatesh for R4

COMMON ORDER

W.P.No.12926/2017 is filed for a Mandamus directing the respondents 1 and 2 to dispose of the petitioner's representation/petition dated 10.05.2017, wherein and whereby he sought for recording his name as cultivating tenant in the subject matter property.

2. W.P.No.19329/2017 is filed by the very same petitioner challenging the order passed by the 3rd respondent dated 04.07.2017 rejecting the request of the petitioner to record his name as the cultivating tenant.

3. The 3rd respondent filed a counter affidavit also with a petition to vacate the stay granted in these writ petitions.

4. The case of the petitioner is that his father was a recorded cultivating tenant in respect of the subject matter property and during his life time, the petitioner also was contributing his physical labour in cultivation of the lands. His further case is that after the demise of his father, he is cultivating the lands continuously by contribution his physical labour. It is stated that the petitioner filed application before the Tenancy Recording Officer and Tahsildar, Coimbatore, under Form-5 to record his name as the cultivating tenant in respect of the subject matter lands. The landlord namely, the 3rd respondent in W.P.No.12926/2017/4th respondent in W.P.No.19329/2017 opposed the said application. It is further stated that though the Tahsildar was originally pleased to allow the application, the said order was set aside by this Court in W.P.No.29341/2013 dated 25.04.2014 by remitting the matter for fresh disposal. A Writ Appeal filed by the petitioner in W.A.No.663/2014 against the said order of the learned single Judge was dismissed. Thereafter, the Tenancy Recording Officer passed an order and rejected the petitioner's claim for recording his name as a cultivating tenant. It is stated that the petitioner has preferred an appeal in A.P.No.4/2017 before the Revenue Court, Tiruchirapalli/Appellate Authority under the relevant statute. It is stated that the said appeal is pending. It is further stated by the petitioner that he also filed O.S.No.1208/2013 on the file of the II Additional Sub-Court, Coimbatore, for permanent injunction against the landlord and the said suit was decreed after contest. It is further stated that the landlord, though filed appeal in A.S.No.114/2014, no interim order is granted in the appeal. The said Appeal is still pending. Under such circumstances, the petitioner made the above application dated 10.05.2017 to include his name as "rhFgoahsh;" which term, according to the learned counsel, is to indicate his possession alone and not to indicate his status as cultivating tenant.

5. Learned counsel for the petitioner submitted that the impugned order passed by the 3rd respondent was without any notice to the petitioner, apart from the fact that the 3rd respondent is not having any jurisdiction to pass such order. He further contended that the 3rd respondent, even assuming having jurisdiction, has not taken into consideration of the Civil Court decree granted in favour of the petitioner. Therefore, the learned counsel submitted that the impugned order is to be set

aside and the petitioner's application has to be considered for entering his name as "சாகுபடியாளர்".

6. Per contra, learned counsel appearing for the 4th respondent/landlord submitted that when the appeal is pending before the statutory appellate authority in respect of the petitioner's claim for recording his name as the cultivating tenant, the petitioner is not entitled to make the present application to record his name as the cultivating tenant. Therefore, he submitted that the present claim of the petitioner is not supported by any proceedings issued in his favour. He further pointed out that the Civil court decree granted in favour of the petitioner which was already appealed against, is only a bare injunction decree, which cannot be construed as declaring the status of the petitioner as cultivating tenant.

7. Learned Additional Government Pleader appearing for the official respondents supported the order of the 3rd respondent.

8. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioner in both the writ petitions, learned Additional Government Pleader appearing for the official respondents and Mr.N.Anand Venkatesh, learned counsel appearing for the 3rd respondent in W.P.Nos.12926/2017 and 4th respondent in W.P.No.19329/2017.

9. There is no dispute to the fact that the petitioner made an application before the competent authority under the relevant enactment namely, Tamil Nadu Agricultural Land (Records of Tenancy Rights) Act, 1969, to record his name as the cultivating tenant in respect of the subject matter property. The 4th respondent herein is the owner and opposed the said application. The original authority rejected the application of the petitioner and challenging such rejection, the petitioner filed an appeal before the Appellate Authority and the Appeal is still pending. Therefore, the fact remains that as on date the petitioner's claim as cultivating tenant has not been recognised by the competent authority and the said issue is still pending for consideration by way of appeal before the statutory Appellate Authority. Needless to say that unless and until such right is conferred on the petitioner by the competent authority, he cannot claim that his name has to be recorded in the revenue records as a cultivating tenant.

10. At this juncture, it is to be noted that the learned counsel for the petitioner has placed the submission before this Court as if the claim of the petitioner in this petition is not for recording his name as cultivating tenant and on the other hand, only to record the factum of his possession over the subject matter property. According to him, the word "சாகுபடியாளர்" referred to in his application does not mean a cultivating tenant. no doubt, the word "சாகுபடியாளர்" does not mean a tenant ("Fj;jifjhuh;") . At the same time, it certainly denotes that he is cultivating the lands. Undoubtedly, the petitioner already made a claim to record his name as cultivating tenant and therefore, the very application filed by the petitioner to record his name as "சாகுபடியாளர்" has to be taken to mean that he is claiming only such right to be recorded in the revenue records. Therefore, I do not find any force in the submission made by the learned counsel for the petitioner in this aspect.

11. Learned counsel for the petitioner raised three grounds in support of his contention. Firstly, it is his contention that the impugned order was passed without notice to the petitioner. The second contention is that the 3rd respondent has no jurisdiction to pass the impugned order. The third contention is that the Civil Court decree granted in favour of the petitioner has not been taken into consideration.

12. I have already pointed out that the petitioner's application seeking for recording his name as a cultivating tenant itself is not maintainable and sustainable, especially, when he has lost before the original authority under the relevant statute and the appeal filed by him is also pending and therefore, the said issue has not reached its finality. When such being the factual position, the very request of the petitioner for considering his application dated 10.05.2017 does not arise. Therefore, the order passed by the 3rd respondent, even assuming to be without jurisdiction has no relevance or significance when this Court is not inclined to entertain the very first writ petition viz., W.P.No.12926/2017 seeking for a mandamus as stated supra. The 3rd contention with regard to the civil court decree is also liable to be rejected as admittedly, the decree granted in favour of the petitioner is a bare injunction decree without declaring the status of the parties. Therefore, such decree cannot confer any right on the petitioner to get his name recorded as the cultivating tenant in the revenue records.

13. Therefore, I find that the petitioner is not entitled to succeed in both the writ petitions. Accordingly, both the writ petitions fail and the same are dismissed. It is made clear that this Court is not expressing any view on the merits and contentions with regard to the rights of the respective parties in respect of the proceedings before the Appellate Authority under the Tamil Nadu Cultivating Tenants Protection Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsi

To

- 1.The District Collector,
Coimbatore District,
Collectorate,
Coimbatore.
2. The Tahsildar,
Coimbatore North,
Coimbatore - 641 018.
3. The Tenancy Record Officer
and Tahsildar,
Coimbatore North,
Coimbatore.

+1 cc to M/s.A.Muthukumar Advocate sr 86513

+1 cc to M/s.N.Anand Venkatesh Advocate sr 85942

+1 cc to the Government Pleader sr 86886

W.P.Nos.12926 and 19329 of 2017

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