BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2017

CORAM:
THE HONOURABLE MR.JUSTICE V.PARTHIBAN
W.P.(MD) No.7586 of 2016
and
W.M.P(MD)Nos.6346 and 10550 of 2016

V.Valliappan : Petitioner

Vs.

1.The Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.

2.The District Revenue Officer,
Pudukkottai, Pudukkottai District.

3.S.Marimithu
The District Revenue Officer,
Pudukkottai, Pudukkottai District.

4.Saravanan : Respondents

Prayer : This Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari to call for the records pertaining to the impugned order made in Ni.Mu.3549/2016/D3 dated 13.04.2016 passed by the second respondent and quash the same.

For Petitioner : Mr.C.Jegannathan
For Respondents :Mr.A.Muthukaruppan
Additional Government Pleader
(for R1 & R2)
Mr.K.Mahendran (for R4)

*****

O R D E R

This writ petition has been filed by the petitioner challenging the impugned order made in Ni.Mu.3549/2016/D3 dated 13.04.2016 passed by the second respondent.

2.It is stated that the petitioner is an agriculturist and cultivating tenant in the land comprised in S.No.310 of 2011 in Ponnamaravathi West Village, Pudukkottai District for more than five decades. He has constructed a thatched house in the above said survey number and has been living with his family for years together. The petitioner has filed an application before the Record Officer/Tahsildar, Ponnamaravathi Taluk, on 04.03.2010, under the Tamil Nadu Agricultural Land Record of Tenancy Act 1969. An enquiry was conducted by the competent authority and the petitioner's name was included in the record of tenancy as per the Tamil Nadu Agricultural Land Record of Tenancy Act 1969 by proceedings dated 21.02.2011. Therefore, the petitioner had become the cultivating tenant in respect of said survey number and his status having been recognized by the proceedings passed by the competent authority. The fourth respondent herein, who is inimical to the interest of the petitioner, had filed an appeal before the Revenue Divisional Officer, as against the order passed by the Tahsildar, dated 21.02.2011 in Appeal No.10 of 2013. The said appeal was partly allowed in respect of the same survey number for an extent of 0.16.0 Hectares and to that extent, the order passed by the Tahsildar was set aside by the Revenue Divisional Officer, by its order dated 15.12.2014. The petitioner preferred a revision petition before the second respondent contending that he is the only cultivating tenant and the fourth respondent filed a suit for permanent injunction in O.S.No.1 of 2011 before the District Munsif Court, Thirumayam, which was dismissed, and therefore, he had no right to claim the tenancy rights overlooking the right of the petitioner. The petitioner also contended that originally, the Tahsildar has conducted a detailed enquiry and recorded tenancy in favour of the petitioner and therefore, the order passed by the Revenue Divisional Officer was incorrect and erroneous.

3.The second respondent issued notice of enquiry in the revision petition originally on 08.04.2015 and subsequently adjourned on 21.04.2015, however, subsequently, by proceedings dated 08.05.2015 rejected the revision petition confirming the order passed by the Revenue Divisional Officer dated 15.12.2014. According to the petitioner, originally notice of enquiry was issued for appearance of parties on 21.04.2015 and accordingly, the petitioner appeared through his counsel, but the fourth respondent did not appear and therefore, the enquiry was postponed to 12.05.2015. However, before the next date of hearing, the second respondent hurriedly passed the order on 08.05.2015 itself without conducting any enquiry, which was actually scheduled to be take place on 12.05.2015. In the said circumstances, the petitioner was constrained to file a writ petition in W.P(MD) No.8349 of 2015 challenging the order passed by the second respondent dated 08.05.2015. The said writ petition was allowed by this Court on 08.12.2015 by setting aside the order passed by the second respondent, dated 08.05.2015 on the ground of violation of principles of natural justice. Further, this Court has remanded the matter back to the second respondent for passing fresh order, after affording reasonable opportunity of hearing to all the parties concerned.

4.Pursuant to the above direction issued by this Court in the abovesaid writ petition the second respondent issued an enquiry notice on 01.04.2016 stating that the enquiry will be conducted on 12.04.2016 and directed the parties to appear with all necessary documents to substantiate their respective claim.

The petitioner felt that he cannot get proper justice from the hands of the second respondent, who had hurriedly passed the earlier order on 08.05.2015 itself without conducting any enquiry, and this Court had set aside that order. Further, the petitioner felt that the appearance before the same officer would not help him, as no impartial adjudication would happen in the hands of the second respondent. In such circumstances, the petitioner challenged the notice of enquiry dated 01.04.2016 in W.P(MD) No.7348 of 2016 and the said writ petition was admitted and notice was ordered. Pending disposal of the said writ petition, the second respondent seems to have passed the impugned order dated 13.04.2016 confirming the earlier order passed on 08.05.2015 and directed the parties to settle their dispute by approaching the competent court of law. Since the petitioner was not properly heard even after the earlier order dated 08.05.2015 was set aside by this Court, he has approached this court by way of this present writ petition seeking the relief as stated supra.

5.The learned counsel appearing for the petitioner would strongly submit that the second respondent without affording proper opportunity of hearing to the petitioner and without appreciating the materials produced by the petitioner in proper perspective, has mechanically passed the order confirming the order passed by the Revenue Divisional Officer, earlier. Even the present impugned order does not disclose as to whether there was any proper consideration of the claim put forth on behalf of the petitioner. The learned counsel would contend that the second respondent deliberately overlooked the materials submitted on behalf of the petitioner and recorded in his proceedings, as if, nothing was produced and re-confirmed the earlier order dated 08.05.2015. By virtue of the mechanical order passed by the second respondent without due consideration and examination of the claim by the petitioner, the petitioner is made to suffer grave prejudice and hardship. According to the learned counsel for the petitioner, the adjudication by the second respondent in a causal manner without any serious application of mind, has resulted in negation of valuable right of the petitioner for being recognized as cultivating tenant, as originally held by the competent authority, after due and proper enquiry. The learned counsel for the petitioner would contend that the manner, in which, the second respondent has conducted enquiry and passed the order, cannot be countenanced in law and on facts and therefore, he prayed for setting aside the order passed by the second respondent.

6.Per contra, the learned counsel appearing for the fourth respondent would submit that because the order passed by the second respondent on two occasions was not in favour of the petitioner, the petitioner cannot be allowed to complain against the conduct of the second respondent and cannot be allowed to assail the order again and again. The second respondent has passed well considered order after taking into consideration of all the relevant materials and the petitioner did not produce any materials before the second respondent in respect of his claim and therefore, the second respondent rightly rejected the claim of the petitioner. In such view of the matter, the learned counsel appearing for the respondents both officials and private have prayed for dismissal of the writ petition.

7.I have given my anxious consideration with regard to the submissions of counsels appearing for the parities.

8.There is a considerable force in the contention of the counsel appearing for the petitioner that the second respondent has passed the order, which is impugned in the writ petition, in a rather causal manner without properly exercising the power vested in law. It is incumbent upon the second respondent to examine rival claimants of the parties critically in proper perspective and should render a clear finding as to the rival claims to the parties. Any order passed by the second respondent would one way or other prejudice the right of the one of the parties to the proceedings. In such circumstances, the second respondent is expected to discharge his statutory duties by affording proper opportunity to the parties concerned and after eliciting their objections and the materials produced by the petitioner. In the absence of such consideration by the second respondent, the order passed by him cannot be sustained at all.

9.In view of the above, I am of the considered view that the impugned order passed by the second respondent dated 13.04.2016 in Ni.Mu.3549/2016/D3 is liable to be interfered with and therefore, the same is set aside and the matter is remanded back to the second respondent for fresh disposal, after affording adequate opportunity to the petitioner as well as the fourth respondent and pass fresh orders, within a period of four weeks from the date of receipt of a copy of this order.
(*)"In the meanwhile,there shall be an order of Status quo".

10.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AD II)
Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To
1.The Commissioner of Revenue Administration,
  Chepauk, Chennai - 600 005.

2.The District Revenue Officer,
  Pudukkottai, Pudukkottai District.
+1cc to M/S.C.Jeganathan,Advocate,SR.16871/17**(52198)**
(*)Amended as per order of this Court dated 17.04.2017

W.P.(MD) No.7586 of 2016
and
W.M.P(MD)Nos.6346 and 10550 of 2016
22.03.2017

SKN
kk/JC/SAR 4-04.05.2017-5P-4C