IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.19253 of 2008
and
M.P.No.1 of 2008

Vasagan .. Petitioner

Versus

1. The District Revenue Officer,
   Collector's Office, Tiruvarur District.

2. The Special Deputy Collector,
   Collector's Office, Tiruvarur.

3. The Tahsildar cum
   Mannargudi Taluk office
   Mannargudi, Thiruvarur District.

4. Tmt. Sathiyabama .. Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent in Ku.Vu.Pa.Se.Ma. No. 3/ 2007/U4, set aside the order dated 23.02.2008.

For Petitioner : Mr.S. Sathiachandran

For Respondents 1 to 3 : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

For Respondent - 4 : Mr.S.K.Rakhunathan

ORDER

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The petitioner has prayed for a writ of Certiorari to set aside the order of the first respondent in Ku.VV.Pa.Se.Ma. No.3/2007/U4 dated 23.02.2008.

2. The case of the petitioner is that he belongs to a village called Kunniur and he was cultivating the lands belonging to one Seetha Raman. The petitioner has been cultivating the lands in S.No.133/1, 133/2, 133/8A and 136/2, measuring 0.20.0, 0.88.0, 0.39.0 and 1.12.0 hectares

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respectively and in total measuring 2.59.0 hectares in Kunniur Village in Mannarkudi Taluk. The petitioner is a tenant in respect of the said lands and he applied to the 3rd respondent to record his name as tenant in respect of the above lands. The 3rd respondent had sent a notice to the land owner and after holding an enquiry, directed to include petitioner's name as tenant in respect of the above stated lands by his proceedings dated 27.05.2004. The land owner remained ex-parte in the said enquiry.

3. Aggrieved over the said order of the 3rd respondent, the 4th respondent filed an appeal before the 2nd respondent and the 2nd respondent entertained the appeal, though it was filed after a long delay and even without issuing notice to the petitioner. It is also stated that the appeal filed by the 4th respondent is not maintainable as she is not competent to file an appeal on behalf of the land owner. The 2nd respondent has also not considered the legal aspects and passed an order on 16.06.2005 and allowed the appeal filed by the 4th respondent and a copy of the order was sent to the petitioner herein.

4. Aggrieved by the order of the 2nd respondent, the petitioner filed a revision petition before the 1st respondent and the 1st respondent without going into the merits of the case and the contentions of the petitioner herein, has dismissed the Revision petition by order dated 18.06.2007, which is the order impugned herein. The petitioner would contend that the order of the first respondent is in total violation of principles of natural justice, since the first respondent failed to note that the second respondent appellate authority had passed the order setting aside the order of the third respondent without even affording an opportunity to the petitioner. The first respondent ought to have considered the same and remitted the matter back to the second respondent for fresh consideration. The petitioner would also contend that the claim of the 4th respondent, who is a wife of one Swaminathan Iyer, that she is the owner of the the land, is not maintainable, since, the said Seetharaman has not given any power of attorney to her. Therefore, the petitioner seeks for fresh adjudication by the first respondent by giving opportunity to the parties concerned.

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5. The first respondent had filed a counter wherein it is submitted that after conducting a detailed enquiry, the second respondent had passed the order in Tho.Mu.Ku.U.Pa.Me.Mu.No.02/ 2006 dated 28.11.2006 and cancelled the order of the 3rd respondent dated 27.05.2004 stating that the land in dispute is not owned by one Seetharaman, as stated by the petitioner. Aggrieved over the said order, the petitioner had filed a Review Petition before the 1st respondent who had conducted a detailed enquiry and by order dated 23.02.2008 had cancelled the order of the 3rd respondent dated 27.05.2004 stating that the petitioner

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has failed to prove that he is the tenant, under the owner.

6. The 4th respondent has filed her counter stating that the petitioner is not entitled to have his name recorded under Act 10 of 1969. Be that as it may, it is the duty of the petitioner under the provisions of Tamil Nadu Record of Rights Act to give correct Survey Number, extent and the name of the land owner, the details of the commencement of tenanacy and payment of rent and also execution of the lease deed. But, the petitioner filed an application against one Seetharaman giving his address as Agraharam Street, 42 Kunniyur Village, Mannargudi Taluk as his land lord. But the said Seetharaman is not a resident of that village but is permanent resident of Maharashtra State. The record officer/third respondent sent summons only to the village address. When the summons were returned unserved, the Record Officer ought to have taken steps to ascertain the correct address of the landlord and sent notice to the correct address. but it was not done and further, under law, if a person is not served, paper publication in the news papers ought to have been effected and the same was also not done. The third respondent without first ascertaining the owner of the lands and without going through the land records erroneously recorded the petitioner name under Act 10 of 1969. Therefore, she filed an appeal before the second respondent as power agent of Seetharaman. The second respondent verified the Government records and found that the extents given were not correct. The Appellate authority also further found that items 1 to 3 stand in the Government records in the name of Swaminathan, husband of the fourth respondent herein, and not in the name of the Seetharaman. In so far as item no.4 is concerned the same belong to the Government having been taken over under the Tamilnadu Land Reforms Act and thereafter assigned to Seetharaman. I state that item no.4 being admittedly belong to the Government having been taken over under the Tamil Nadu Land Reforms Act, the authority constituted under Land Reforms Act assigned the lands in favour of Seetharaman. As per conditions of assignment, the assignee must cultivate the lands personally and the assignee has no right under law to lease out the lands and if any such lease is created the same is legally void and illegal. The lease of item No.4 alleged by the petitioner is neither true nor valid under law. The second respondent considered these legal aspects and held that items 1 to 3 do not belong to Seetharaman and that item No.4 belongs to Government. When the said Seetharaman is not the owner of the lands mentioned in the petition, the appellate authority rightly allowed the appeal and dismissed the application of the petitioner. Thereupon the petitioner filed a Revision Petition before the first respondent. The first respondent also concurred with the findings of the second respondent and held that the petitioner failed to prove the tenancy between himself and the land owner and dismissed the Revision Petition. The authorities constituted under Act 10 of

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1969 have correctly decided the case on the basis of the Government Records and after conducting detailed enquiry that too after affording the petitioner with full opportunity to substantiate his case. There are no merits in the above writ petition and the petition is vexatious unsustainable and an abuse of process of this Hon'ble Court and the same is liable to be dismissed.

7. Heard the learned counsel for the petitioner, learned Additional Government Pleader for the respondents 1 to 3 and the learned counsel for the fourth respondent and perused the materials available on record.

8. This Court, before admitting the case, on 25.09.2008 had granted an order of Status quo and as per the said order the petitioner is still in possession of the said lands.

9. It could be seen from the records that the 3rd respondent, in his order dated 27.05.2004 made in Ku.u.pa.No.1/2004/A6, has recorded that there were no documents produced by the petitioner at the time of filing the affidavit before the 3rd respondent and it is stated that the same will be produced at the time of trial or during the enquiry. It is also stated in the said order that the notice was sent to the owner namely Seetharaman to his village residential address and it is clear from the evidence that the petitioner is known by the adjacent lands owners and he had got the right to cultivate the said lands from the rightful owner and he is cultivating the lands from 1996 onwards and paid the lease to the land owner till 2002 and due to heavy flood and drought in the year 2002 and 2003, he was not able to cultivate the land and not able to pay the lease to the land owner.

10. It could also be seen from the said order of the 3rd respondent that the witnesses, namely one Mr.N.Ramalingam, K.Mathiazhagan and S.Sivagnanam had deposed that they are aware of the fact that the petitioner has been cultivating the said lands in the year 1996. Mr.Nagarajan, one of the witnesses had deposed that he was cultivating the lands of the 4th respondent and his cultivating lands are adjacent to the cultivating lands of the petitioner and the said lands belong to Seetharaman. It could be also seen that the petitioner was paying the lease amount to the land owner, for which copies of some receipts were issued. It is also stated in the said order dated 27.05.2004 by the Tahsildar that summons were sent to the respondent/Seetharaman on 19.02.2004 and 03.03.2004, but the same were not received by him and were returned. Therefore, the Tahsildar has made an entry marking the petitioner as tenant for the said lands, which reads as follows:-

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Village name	Survey No.	Extent Hectares	Classification
42. Kunniyur	133-1 133-2 133-8A 136-2	0.20.0 0.88.0 0.39.0 1.12.0	Nanjai Nanjai Nanjai Nanjai
	Total	2.59.0	

11. Aggrieved over the said order of the Tahsildar, one Sathyabama, 4th respondent herein, alleged to be the power agent of Mr.Seetharaman, S/o.Sundaresa Iyer, filed an appeal, dated 13.09.2006 stating that the said land owner Mr.Seetharaman, S/o.Sundaresa Iyer, was residing at Plot No.6, 24 Vijay Garden, Gadbandhar Road, Thane West, Maharashtra, but the petitioner has got the receipts from the owner, who was alleged to have been residing in the Kunniur address. In the said appeal, the second respondent has passed an order dated 28.11.2006, thereby cancelling the order of the Tahsildar dated 27.05.2004.

12. Challenging the said order of the second respondent dated 28.11.2006, the petitioner has filed a revision petition before the first respondent on 15.03.2007 stating that the fourth respondent is not the power agent of the said Seetharaman, S/o.Sundaresa Iyer and the fourth respondent herein is not a party to the tenancy application and the disputed subject lands are acquired by the Government under the Tamil Nadu Land Ceiling Act 1961 and assigned to Seetharaman, S/o.Sundaresa Iyer, under whom the petitioner is the tenant. The lower appellate authority has not considered this aspect. The lower appellate authority also failed to consider that once the land was acquired by the Government under the Land Ceiling Act, the previous land owner has no right on the said acquired land, but in the revenue records, the name of the previous owner Swaminathan, S/o.Narayanasami is wrongly shown till now.

13. The first respondent, District Revenue Officer, Thiruvarur District, after careful consideration, vide his proceedings dated 23.02.2008 made in Ku.oou.cee.ma.3/2007/ooo4 has cancelled the order of Tahsildar, Mannargudi, third respondent herein, dated 27.05.2004 stating that the petitioner has failed to prove the tenancy between him and the land owner and there are some discrepancies regarding the disputed lands and the Tahsildar has passed the exparte order in a hurried manner.

14. The first respondent, in the same proceedings dated 23.02.2008, has also cancelled the order of the second

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respondent herein, viz., The Special Deputy Collector, Thiruvarur dated 28.11.2006 based on the records received through the Right to Information Act that the subject lands are assigned to one Mr.Seetharaman as per Assignment No.3228/80 of the Land Reforms Commissioner. Mayiladuthurai and also the statement of the Village Administrative Officer, received through the Right to Information Act, that 0.75.5 Hectares Nanjai lands in S.No.136/2 was assigned to Mr.Seetharaman during the year 1994 and the said Mr.Seetharaman has paid the full consideration for the said land, but patta was not granted in his favour regarding the said survey number and the lands in other three survey numbers have been assigned through their Office to Mr.Seetharaman, as they are the excess lands acquired under the Land Ceiling Act, but the Village Revenue Records stood in the name of Mr.Swaminathan in Patta No.118. In the impugned order dated 23.02.2008, the first respondent has also directed the Assistant Commissioner (Land Reforms), Mayiladuthurai, to take action against the concerned officials for continuing the Patta No.118 in the name of Saminathan and for not making mutation of records. The copy of the said order was sent to the petitioner and all the respondents herein. Challenging the said order, the petitioner is before this Court.

15. It could be seen from the records that the petitioner had given the address of Mr.Seetharaman as the resident of Kunniyur Village. Hence, the Recording Officer has sent notice to the said residential address which has been returned unserved. The legal procedure is that if a person has not served notice, then paper publication should be effected, which has not been followed in this case. Except the copies of some receipts, no valid evidence has been putforth regarding the claim made by the petitioner. Moreover, the petitioner has not taken any steps to examine the said Mr.Seetharaman or his authorised power agent, to prove the receipts produced by him or to prove his claim that he is the tenant under the said Mr.Seetharaman. The petitioner, to got his name recorded in the tenancy books, should first establish his tenancy right under the owner and failing to do so the petitioner cannot be termed as a tenant under the landlord. Hence, as rightly held by the first respondent, the 3rd respondent, without even considering the fact who is owner of the lands and also without even going through the land records, has erroneously passed an exparte order in a hurried manner ordered for recording the petitioner's name as tenant of the subject lands. Hence, the first respondent is correct in cancelling the order of the third respondent dated 27.05.2004.

16. On perusal of the records, it could be seen that the petitioner claims tenancy right to the following extent of the lands in the following survey numbers:

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Village name	Survey No.	Extent Hectares	Classification
42. Kunniyur	133-1 133-2 133-8A 136-2	0.20.0 0.88.0 0.39.0 1.12.0	Nanjai Nanjai Nanjai Nanjai
	Total	2.59.0	

and the third respondent has ordered for marking the petitioner as tenant to the above said lands. But the fourth respondent herein, as power agent of Mr.Seetharaman, S/o.Sundaresh Iyer filed the appeal and claims right over the following survey numbers to the following extent as the said lands belong to her husband Mr.Swaminathan, S/o.Narayanasami:

Village name	Survey No.	Extent Hectares	Classification
Kunniyur	133-1 133-2 133-8A	0.08.0 0.35.5 0.16.0	Nanjai Nanjai Nanjai

The fourth respondent further stated that the 0.75.0 Hectares land in S.No.136/2 was Nanjai Waste land, assigned to Seetharaman during the year 1994 and as per the conditions of assignment, the assignee must cultivate the lands personally and the assignee has no right under law to lease out the lands to anybody and if any such lease is created, the same is legally void and illegal.

17. From the perusal of the claims of the petitioner and the fourth respondent, it could be seen that even though they mentioned the same Survey Numbers, they claim right over the different extent of the lands. The said fact was not considered by the second respondent. When there is discrepancies regarding the ownership of the land, the second respondent has to give opportunity to the parties concerned. But the second respondent, without giving any opportunity either to the petitioner or to Mr.Seetharaman, has erroneously passed the order concluding that since the said Mr.Seetharaman has no right over the said lands, he has not appeared before the Court. Hence, this Court is of the view that the first respondent has rightly cancelled the order of the second respondent also.

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18. As per the directions of this Court to report about the present status of the subject lands, the learned Additional Government Pleader produced records, viz., communication from the Tahsildar, Mannargudi, dated 28.07.2018, statement of the Village Administrative Officer dated 27.07.2018, Chitta etc.,

19. It could be seen from the records produced by the learned Additional Government Pleader that a communication from the Tahsildar, Mannargudi in RC.640/2018 B-1 dated 28.07.2018 was addressed to the Additional Government Pleader, wherein it is stated by the Tahsildar that the Village Administrative Officer, Kunniyur was enquired and the village accounts were scrutinized and lands were inspected with the Zonal Deputy Tahsildar, Sub Inspector of Survey, Mannargudi. As per the said communication, the present status of the lands in dispute is as follows:-

Sl. No	Survey Number	Extent Hec.	Classifi-cation	Details of land owner	Details of cultivator	Remarks
1	133/1	0.08.00	Wet	118, Swaminathan S/o.Narayanasami	Veeraiyan S/o.Rethinam	Paddy
2	133/2	0.35.50	Wet	118, Swaminathan S/o.Narayanasami	Veeraiyan S/o.Rethinam	Paddy
3	133/8A	0.16.00	Wet	118, Swaminathan S/o.Narayanasami	Samban S/o.Sithan	Paddy
4	136/2	0.75.50	Govt. Assessed wet waste	-	'B' Memo issued to Seetharaman and Rajagobal, cultivated by Boominathan S/o.Nagaiyan	Paddy

20. It is also stated in the said communication that Tmt.Sathiyabama W/o.late Swaminathan is residing at Chennai and in possession of the lands in Sl.Nos.1,2,3 listed in the table. It is submitted that survey number 136/2 is classified as Government wet waste and is cultivated by Thiru.Boominathan S/o.Nagaiyan. The Village Administrative Officer has also given a statement to the above effect before the Tahsildar, Mannargudi, on 27.07.2018. It is also stated by the Village Administrative Officer that the said Swaminathan is no more.

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21. Eventhough the lands in S.Nos.133/1, 133/2 and 133/8A have been acquired by the Government and assigned to Mr.Seetharaman, S/o.Sundaresa Iyer, on perusal of the records produced by the learned Additional Government Pleader before this Court, viz., communication of the Tahsildar dated 28.07.2018, statement of the Village Administrative Officer dated 27.07.2018 and the village revenue records, which are attested by the Village Administrative Officer, Kunniyur and the Tahsildar, Mannarkudi on 27.07.2018,, it could be seen that the said Survey Numbers still stand in the name of 118-Mr.Swaminathan. In the impugned order dated 23.02.2008, the first respondent has directed the Assistant Commissioner (Land Reforms), Mayiladuthurai, to take action against the concerned officials for continuing the Patta No.118 in the name of Swaminathan and for not making mutation of records in the name of present owner, even though the lands were acquired and handed over to Mr.Seetharaman. Even thereafter, ie., even after a lapse of 10 years, neither the respondents nor the Assistant Commissioner (Land Reforms) have not taken any steps to mutate the records in the name of present owner. The said act of the officials is highly condemnable. Even though the petitioner was given opportunity to produce the records relating to his claim of tenant under the said Seetharaman, he has not taken any steps to prove his claim.

22. This Court also wants to point out that eventhough the fourth respondent claims that the subject property belongs to her deceased husband Mr.Swaminathan, S/o.Narayanasami, she has not filed the appeal before the second respondent as the legal heir of her deceased husband Mr.Swaminathan, but has filed the appeal as the power agent of Mr.Seetharaman, S/o. Sundaresh Iyer, in whose name the subject lands are assigned which is evidenced from the records received through Right to Information Act. The fourth respondent has also not produced any document to show that she is the power agent of Mr.Seetharaman and the said Seetharaman is residing at Maharashtra. It could be also seen that the petitioner himself is not interested to prove his claim and he had not make use of the opportunity given to him,

23. In the above facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the first respondent herein. Accordingly, this writ petition is dismissed and the order of the first respondent herein dated 23.02.2008 made Ku.Vu.Pa.See.Ma.No.3/2007/U4 is confirmed and the Assistant Commissioner (Land Reforms), Mayiladuthurai, is directed to take action against the concerned erring officials for continuing the Patta No.118 in the name of Mr.Swaminathan and for not making mutation of records. The officials concerned are directed to act in accordance with law and rules regarding

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this issue and are also directed to make mutation of records regarding the S.Nos.133/1, 133/2 and 133/8A, after deleting the name of Mr.Swaminathan, S/o.Narayanasami. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

MRA/smn

To.

1.The District Revenue Officer,
Collector's Office, Tiruvarur District.

2.The Special Deputy Collector,
Collector's Office, Tiruvarur.

3.The Tahsildar cum
Mannargudi Taluk office,
Mannargudi, Thiruvarur District.

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

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.74969
+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.73610

Writ Petition No.19253 of 2008
and
M.P.No.1 of 2008

BS(CO)

rrs 19/11/2018.

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