

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 02.11.2018

CORAM:
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.3916 of 2008
and
M.P.No.1 of 2008

P.Govindasamy

... Petitioner

Vs.

1.The District Collector,
Collectorate, Nagapattinam.

2.The Superintendent of Police,
Nagapattinam District.

3.R.Rajasekar,
S/O. Rasu,
Sub-Inspector of Police,
Mayiladuthurai Town Police Station,
Mayiladuthurai TK.,
Nagapattinam District.

4.C.Manipillai

5.The Executive Officer,
Sri Mayuranatha Swamy
Devasthanam,
Mayiladuthurai.

...Respondents

(R5-suo moto impleaded as per order
dt.25/06/2018 in W.P.No.3916/2008)

Prayer: Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, to direct the 1st respondent to conduct the enquiry and retrieve the lands situated at No.77, Nallathukudi Village, Mayiladuthurai, Nagapattinam District as per the direction, F.No.7/56/2007 rep. dated 12.10.2007 and handed over to the petitioner.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.R.S.Selvam
for R1, R2 Government Advocate

for R4 : R.Shivakumar

for R3 : No appearance (Served)

ORDER

The petitioner has prayed for a Writ of Mandamus to direct the 1st respondent to conduct the enquiry and retrieve the lands situated at No.77, Nallathukudi Village, Mayiladuthurai, Nagapattinam District as per the direction, F.No.7/56/2007 dated 12.10.2007 and handed over to the petitioner.

2.The case of the petitioner is that he is the agricultural farmer who has holding the lands at Nallathukudi Village in S.No.77 and it was registered under Section 3(5) of the Tamil Nadu Agricultural Lands Record of Tenancy Act,1969. He would further content that the lands belong to Sri Mayuranatha Swamy Devasthanam, which has thousands of acres fertile agricultural land in and around Mayiladuthurai and the entire lands belong to Thiruvaduthurai Aathinam. In the year 1950, Devasthanam has distributed the land to local landless people including the petitioner and 12 persons, they all belong to scheduled caste community. The 3rd and 4th respondents had an enquiry regarding the said lands given to the petitioner and others. Since the lands were not cultivated due to drought prevailing at that point of time, one Mr.Kaliyapermal had approached the petitioner and sought for leasing the said lands to him and he promised that he will return the lands back and accordingly the petitioner agreed for the same, but subsequently, the lands were encroached by the 3rd and 4th respondents.

3.The 3rd respondent being Sub-Inspector of Police, Mayiladuthurai Town Police Station and as such as he had no right to occupy the land and purchase the same. The petitioner has become landless person and he has sent representation to the 1st and 2nd respondents and even lodged the police complaint to the Inspector of Police against the encroachment, but the officials refused to accept the same, since the third respondent was working as a police officer. The petitioner has filed a petition before the National Commission for SC/ST dated 06.10.2007 and the said commission has forwarded the complaint and also recommended to the 1st respondent that the complaint may be enquired and retrieve the lands as per Section 3(i) (iv) & (v) of the SC/ST Act, 1989. Since, there was no action taken against the said representation and also the 3rd respondent was consistently threatening him, they have to invoke the writ jurisdiction. When the matter was listed on 20.06.2018, the Government Pleader was directed to get instructions and report back on 25.06.2018 and accordingly the Government Pleader has produced a proceedings of the Tahsildar, Mayiladuthurai and wherein it is found that after representation made by the authorized representatives of Arulmigu Mayuranathasamy Temple, the names of four persons were included in the place of old tenants which includes the petitioner Thiru.Govindasamy. As per the instructions from Thasildar, Mayiladuthurai, after due

process the Tahsildar has issued orders approving the applications only for four persons which does not include the petitioner, vide his proceedings which are as follows:

- 1.No. Form V 5/2008 A2 dated 11.02.2008 (M.Rathi)
- 2.No. Form V 2/2008 A2 dated 11.02.2008 (Malathi)
- 3.No. Form V 10/2008 A2 dated 04.02.2008 and (R.Senthamarai)
- 4.No. Form V 6/2008 dated 04.02.2008 (L.Rajeswaran)

It is clear from the above that when the petitioner name has been removed, no opportunity was given to the writ petitioner except stating that from local enquiry wherein, it was revealed that the petitioner has already given consent for release of tenancy, but, no evidence for the consent was produced. Hence, the Government Pleader was directed to produce all the relevant records on 27.06.2018 and on that day, an unregistered 10 Rupees stamp paper Released Deed dated 19.10.1995 was alleged to have been written and signed by the petitioner, has been produced. It has been found from the said Release Deed dated 19.10.1995 that the petitioner was not able to cultivate the lands for the 15 years and the same has been left as Tharisu and no lease amount has been paid and arrears of lease amount has to be paid to the Government. Hence, he has given the release in favour of one Latha, for which, he has taken a sum of Rs.16,667/- as release amount and he or his legal heirs have no right over the said land. It could be also seen that the petitioner has also given consent for mutation of names in the revenue records pursuant to the said release deed. When the letter was produced, the counsel for the petitioner submitted that no release deed was signed by the said Govindasamy, the petitioner herein.

4.The District Collector has filed a Draft Counter Affidavit signed by him and the Government Pleader would content that the 1st respondent has given the records and the lands belonging to Arulmigu Mayuranatha Swami Temple, Mayiladuthurai. In each survey field there were several cultivating tenants and their names were registered under the Tamil Nadu Agricultural Lands (Record of Tenancy) Rights Act. Insofar as the petitioner is concerned he was cultivating tenant in respect of following area.

R.S.No.134	1.68 Acre
R.S.No.136	0.42 Acre
R.S.No.142	0.90 Acre
R.S.No.145	0.27 Acre
Total	3.27 Acre

5.It was further submitted that (1) Tmt.Rajalakshmi Wife or Rajasekaran, Kottagam, Thiruvulandur (2) L.Rajeswaran, Son Logiyadasan, North Street, Mappadugai (3) M.Rathi Daughter of Mani, Mayuranathar South Street, Mayiladuthurai (4) Malathi Wife of Mani Mayuranathar South Street, Mayiladuthurai, have applied for change of registration of tenancy rights on 28.12.2007 and

the notices were sent to the said applicants and the land owner. During the said enquiry, the above four applicants have produced the surrender of tenancy executed by the writ petitioner herein. After conducting enquiry, the tenancy right has been ordered to be registered in the name of the applicants. But the petitioner has now filed this Writ petition as if the 3rd and 4th respondents have encroached the said lands. The petitioner has executed another unregistered surrender of lease deed on 19.10.1995 in favour of Saratha Wife of Kaliaperumal, which will prove that the petitioner has surrendered the lands to the temple through a letter of surrender. Hence it is not correct to say that the petitioner has got back the lands from the said Kaliaperumal. The said temple lands were leased out to various persons and so far the petitioner is concerned, the petitioner was cultivating an extent of 3.27 acre of lands in the above said Survey Nos. There is no records to prove that the petitioner is in the possession of the lands in question. If the petitioner is really cultivating the said lands in RS.No.134, 136, 142 and 145 he ought to have applied for registration of his name in the record of tenancy, hence, there is no basis for the claim.

6.The petitioner has not applied for registration of tenancy right along with the supporting records such as lease deed executed by the land owner or any evidence in support of his possession of the lands. In the absence of any records, no action can be taken on any flimsy representations. The petitioner has not produced any records to show that he was wrongfully dispossessed from the said land in question. Hence, he cannot take shelter under the caste and file this writ petition and therefore, the first respondent prayed for dismissal of the same.

7.From the above, it is clear that the petitioner was the cultivating tenant under the said temple and later 4 persons applied for Lease hold right over the said land in 2005 and the same has been allowed to four other. Since the temple authorities came to the conclusion by an unregistered surrender deed dated 19.10.1995 allegedly written by the petitioner Govindasamy and the same has been allowed and lands were allotted to them and the petitioner has no right to claim it again. The petitioner's contention is that he has been dispossessed by the powerful men and he denies the execution of lease or release deeds and the said deed is not a registered one within 10 Rupees stamp paper without any stamps and no person has even signed as witnesses. If document was produced before the authorities then the authorities ought to have called those persons interested for an enquiry, which has not been done. There is no materials to show that the notice was issued to the petitioner herein to appear before the authorities and produce the documents or materials to prove that he was a tenant and the other points for consideration. In the absence of all these details, the

authorities ought not to have come to a conclusion and allotted the land to some other person. The authorities ought to have given an opportunity to the petitioner to defend himself regarding his possession and other tenancy rights.

8.Hence, this Court is of the opinion that it could be appropriate for the respondent to conduct an enquiry after giving an opportunity to all the parties concerned to establish their case within a period of 3 months from the date of receipt of the copy of the order. This Court is not passing any order on the merits on the right of tenancy and it is for the authorities to conduct an enquiry and pass appropriate order regarding the issue of hand.

With the above directions, the writ petition is disposed of. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ji/nsd

To

1. The District Collector,
Collectorate, Nagapattinam.
2. The Superintendent of Police,
Nagapattinam District.
3. Sub-Inspector of Police,
Mayiladuthurai Town Police Station,
Mayiladuthurai TK.,
Nagapattinam District.
4. The Executive Officer,
Sri Mayuranatha Swamy
Devasthanam, Mayiladuthurai.

+1cc to Mr.P.Vijendran, Advocate, S.R.No.76039
+1cc to Mr.R.Shivakumar, Advocate, S.R.No.76035
+1cc to the Government Pleader, S.R.No.76455

W.P.No.3916 of 2008

SAI (CO)

rrs 26/02/2019