

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.2209 of 2015
and M.P.Nos.2 and 3 of 2015

M.Muthusamy

...Petitioner

-Vs-

1. The District Revenue Officer /
Additional District Magistrate,
Collectorate Complex,
Erode 638 011,
Erode District.
2. The Special Deputy Collector/
Revenue Court,
Tiruchirapalli,
Trichy District.
3. The Tahsildar,
Erode Taluk,
Erode District.
4. T.Balasubramanian
5. M.Padmini
6. T.Sivakumar

..Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders dated 05.12.2014 made in Na.Ka.No.12625/2014/003 passed by the 1st respondent confirming the order dated 10.01.2014 made in Appeal No.2/12 (Erode) passed by the 2nd respondent, quash the same and consequently direct the respondents 1 to 3 to restore the petitioner's name as a Cultivating Tenant as per the order dated 14.02.2012 made in T.R.No.4/09/A1 passed by the 3rd respondent in respect of the lands measuring an extent of 1.31.5 Hrs., comprised in R.S.Nos.378/3, 413/2A, 413/5A and 413/5C of Chennasamudiram Village, Erode Taluk and District.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.B.Anand, G.A., for RR1 to 3
Mr.M.Guruprasad, for RR4 to 6

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the orders of the respondents 1 and 2 and for a direction to restore the petitioner's name as cultivating tenant.

2. According to the petitioner, the lands measuring a total extent of 1.31.5 Hectares in Survey Nos.378/3, 413/2A, 413/5A and 413/5C was originally owned by late Lakshmikantham. The petitioner was put in possession as a lessee on an oral lease about 40 years ago on the lease amount of Rs.3,500/- per annum. As such, he has been in continuous possession and enjoyment of the land as cultivating tenant and he has also improved the lands by digging borewell.

3. The petitioner approached the third respondent to record him as cultivating tenant under the provisions of Tamil Nadu Cultivating Tenants Protection Act. The said application was allowed on 14.02.2012. The order of the third respondent was set aside by the second respondent in an appeal preferred by the private respondents in this Writ Petition and the same was confirmed by the first respondent. Aggrieved over the same, the present Writ Petition has been filed.

4. Mr.N.Manokaran, learned counsel for the petitioner vehemently argued that the petitioner was recorded as tenant on the basis of the evidence of PWs 2 and 3, who were working as Village Administrative Officers of the Village, however, the respondents 1 and 2 without considering the material evidence rejected the application of the petitioner and hence they are liable to be set aside.

5. Mr.B.Anand, learned Government Advocate appearing for the respondents 1 to 3 made submissions in support of the order impugned in this Writ Petition.

6. Mr.M.Guruprasad, learned counsel for the respondents 4 to 6 would contend that though the petitioner had claimed to be a tenant for more than 40 years, but admittedly, the entire revenue records are standing in the name of the owners. The petitioner had taken inconsistent stand during the course of the proceedings and also in the averments in O.S.No.4 of 2010. The said suit instituted by the petitioner for permanent injunction

was dismissed by the Civil Court, holding that the petitioner is not in possession of the property and the judgment of the Trial Court was confirmed by the Appellate Court. The authorities have passed the orders on the basis of proper appreciation of evidence and the finding of fact, does not warrant interference. The learned counsel placed reliance on the decisions of this Court reported in 1996 (II) CTC 473 and 1998-1 L.W. 101.

7. In the case on hand, it is not in dispute that the property in question was originally owned by Lakshmikantham and the respondents 4 to 6 are the legal heirs of the original owner. It is pertinent to note that in the application filed before the third respondent, it is stated that the petitioner has been in possession of the property for 10 years on the rent of Rs.3,500/- per annum, but in the plaint filed in O.S.No.4 of 2010, it has been stated that the petitioner is a cultivating for more than 40 years on a rent of Rs.500/- per annum.

8. It is true that the Village Administrative Officers gave evidence in favour of the petitioner and by accepting their oral evidence, the third respondent allowed the application. Indisputably, except examining the Village Administrative Officers as PWS2 and 3, no documentary evidence was produced by the petitioner to establish that he is the cultivating tenant and on the other hand, the private respondents have produced adangal receipts showing that they are in possession of the land in dispute.

9. This Court in the case of G.Selvamani and four others vs. the District Revenue Officers-cum-Revisional Authority reported in 1998 1 L.W. 101 has held that the best evidence to establish the cultivating tenant is the adangal extract and in the absence of adangal extract, the certificate issued by the Village Administrative Officers cannot be accepted. The relevant paragraph is extracted hereunder:

"7. I have perused the records of the Revenue Court. The receipts produced by the second respondent are all half size papers of the same size and same quality. When two different persons had issued the receipts for the lease amount for different years, it is not known as to how the receipts can be of the same size. The second respondent has stated in the written statement filed in the civil suit that he has to give 22 kalams of kuruvai paddy and 20 kalams of samba paddy as the lease amount. But all the receipts produced by the second respondent reveal the measuring of only 20 kalams of paddy. This also created a doubt to the effect that all the receipts have been prepared on one day. There is no explanation as to why the balance of 22 kalams was not measured all along. Further when the

second respondent is a tenant since 1978 or 1979 he has not filed any application before the Record of Tenancy Officer till 1990. The application has been filed only after the petitioner had issued notice for redemption. This conduct would clearly establish that the assignee of the mortgagee is trying to enjoy the mortgaged property as much as possible or in the alternative is trying to deprive the legal representatives of the mortgagor from recovery of possession by way of redemption. The best evidence to establish the cultivation is the adangal extract. When the second respondent had been cultivating the land for nearly 12 years prior to the filing of the application before the Record of Tenancy Officer, he has failed to produce any adangal extract to establish his cultivation. In the absence of any adangal extract, the certificate issued by the Village Administrative Officer cannot be accepted, since it can be procured at any time."

10. The scope of Judicial Review came up for consideration before the Division Bench of this Court in the case of P.Ayyanar vs. Mrs. Rathinam and 3 others reported in 1996 (II) CTC 473 and in almost similar facts, it has held as follows:

"6. The jurisdiction of the Court under Article 226 of the Constitution cannot be equated to that of the appellate jurisdiction. In a petition under Article 226 of the Constitution, the court is required to find out whether the statutory authorities have considered the matter and the evidence on record, in accordance with the provisions of law and whether they have applied their mind to the material evidence that has been produced by the parties, having a bearing on the points involved in the case. Of course in an extraordinary case, where this Court finds that the approach itself is perverse and opposed to all notions of reason and logic, this court can interfere with the findings of fact. But ordinarily, when the statutory authorities have approached the matter properly appreciated the evidence on record, and have considered the issues before them in the proper perspective interference by this Court under Article 226 of the Constitution is not called for. "

11. In the matter on hand, admittedly, no documentary evidence has been produced by the petitioner to show that he is the cultivating tenant. The appellate and the revisional authority taking note of the fact that the petitioner had taken inconsistent stand and also failed to produce revenue records, rejected the application to record him as cultivating tenant. The petitioner has not shown any perversity in the conclusion

reached by the respondents 1 and 2. Therefore, in my considered opinion, the principles laid down in the decisions referred supra would squarely apply to the case on hand.

12. In such view of the matter, the Writ Petition is dismissed as devoid of merits. However, no order as to cost. Consequently, connected miscellaneous petitions are closed.

pvs

Sd/-
Assistant Registrar(CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

1. The District Revenue Officer /
Additional District Magistrate,
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Erode 638 011, Erode District.
2. The Special Deputy Collector/
Revenue Court,
Tiruchirapalli, Trichy District.
3. The Tahsildar,
Erode Taluk, Erode District.

+1cc to Mr.N.Manokaran, Advocate, SR.No.67396/19
+1cc to Mr.M.Guruprasad, Advocate, SR.No.67770/19
+1cc to the Govt.Pleader, Vide Sr.No.68107/19

W.P.No.2209 of 2015

Kak(24/10/2019)