

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 25.07.2019

CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.21793 & 25665 of 2017 &
W.M.P.Nos.22806 & 27079 of 2017

W.P.No.21793 of 2017

1.S.Shanmugamurthy
2.S.Dhandapani

...Petitioners

Vs

1.The District Revenue Officer-cum-
Tenancy Registers Revisional Authority,
Coimbatore - 641 018.

2.The Assistant Commissioner,
Revenue Court,
Tiruchirapalli.

3.The Record Officer & Tahsildar,
Coimbatore South,
Coimbatore.

4.V.Easwaramurthy

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the impugned proceedings dated . 06.2017 in Revision Petition No.Na.Ka.26116/2010/E1 (signed on 03.07.2017) on the file of the first respondent herein and confirming the order dated 30.07.2010 passed in A.P.Nos.12 of 2005 and 14 of 2005 on the file of the second respondent herein and quash the same.

For Petitioners : Mr.R.Gandhi
Senior Counsel
For Mr.R.G.Narendhiran

For Respondents : Mr.I.Sathish
Additional Government Pleader for
R1 to R3

Mr.Sathish Parasaran,
Senior Counsel
For Mr.R.Parthasarathy for R4
* * *

W.P.No.25665 of 2017

S.Dhandapani

...Petitioner

Vs

1.The District Revenue Officer,
Coimbatore - 641 018.

2.Mr.Durai Ramachandran,
The District Revenue Officer,
Coimbatore - 641 018.

3.The Tahsildar,
Madukarai Taluk,
Madukarai,
Coimbatore District.

4.Mr.Sundaram,
The Tahsildar,
Madukarai Taluk,
Madukarai, Coimbatore District.

5.The Deputy Tahsildar,
Taluk Office,
Madukarai,
Coimbatore District.

6.Mr.Nagarajan,
The Deputy Tahsildar,
Taluk Office,
Madukarai,
Coimbatore District.

7.The Inspector of Police,
Madukarai Police Station,
Coimbatore District.

8.Mr.Thangapandian,
The Inspector of Police,
Madukarai Police Station,
Coimbatore District.

9.The Inspector of Police,
CBCID,
Coimbatore.

10.Mr.Ramasamy,
The Inspector of Police,
CBCID, Coimbatore.

11.The Sub-Inspector of Police,
Kanthé Koundan Chavadi Police Station,
Coimbatore District.

12.Mr.Prabhakaran,
The Sub-Inspector of Police,
Kanthé Koundan Chavadi Police Station,
Coimbatore District.

13.The Revenue Inspector,
Madukarai Taluk,
Coimbatore District.

14.The Village Administrative Officer,
Pitchanur,
Coimbatore District.

15.V.Eswaramurthy,

16.Shenbagavalli ...Respondents

Prayer in WP 25665 of 2017: Petition filed under Article 226 of the Constitution of India, praying that this court may be pleased to issue a Writ of Mandamus, directing the respondents 1,3,5,7,9,11,13,14 herein to restore the possession of the lands in S.F.No.477/1, 477/2 and 476, situate at Pitchanur Village, Coimbatore District, back to the Petitioner by removing the fence put up illegally, arbitrarily, without powers and jurisdiction, within a stipulated period.

For Petitioner : Mr.R.Gandhi
Senior Counsel
For Mr.R.G.Narendhiran

For Respondents : Mr.I.Sathish
Additional Government Pleader
for R1, R3, R5, R7, R9, R11, R13, R14

Mr.Sathish Parasaran,
Senior Counsel
For Mr.R.Parthasarathy for R15, R16

R2, R4, R6, R8, R10 & R12
(No appearance)

* * *

C O M M O N O R D E R

W.P.No.21793 of 2017 has been filed for issuance of Writ of Certiorari to quash the order of the first respondent passed in Revision Petition No.Na.Ka.26116/2010/E1, dated .06.2017 and the order of the second respondent, dated 30.07.2010 passed in A.P.Nos.12 and 14 of 2005.

2. The brief facts necessary for disposal of the Writ Petition would run thus:-

One Valliammal, wife of Vadamalai Gounder became absolute owner of the agricultural land in Survey Nos.275, 276, 278, 473, 475 and 476 measuring a total extent of 63.53 acres situated at Pitchanur Village in Coimbatore South Taluk, by virtue of a registered sale deed dated 07.12.1936. Her son, the fourth respondent herein became absolute owner of the lands in S.Nos.477/1 and 477/2, to an extent of 4.69 acres. The petitioners are grandchildren of the said Valliammal, born through her daughter Chellammal. The fourth respondent is none other than the petitioner's maternal uncle (mother's brother).

3. The petitioners' father Subbiah Gounder claimed to be a cultivating tenant in respect of the lands in Survey Nos.473, 475, 476, 477/1 and 477/2, measuring an extent of 13.30 acres from the year 1962. The said Subbiah Gounder passed away on 09.01.1993. Subsequently, the fourth respondent submitted an application in Form No.5 before the third respondent on 18.02.1993 to delete the name of Subbiah Gounder as a cultivating tenant for the lands in Survey Nos.476, 477/1, 477/2 and 473. Another application was filed by the petitioners to record them as cultivating tenants in the place of his father Subbiah Gounder. The application filed by the fourth respondent was taken on file as T.R.No.5 of 1993 and the petitioners application was assigned as T.R.No.7 of 1993.

4. It seems that the fourth respondent failed to prosecute his application in T.R.No.5 of 1993 and hence, it was dismissed for non prosecution on 17.09.2002 and he did not contest the case in T.R.No.7 of 1993. Hence, the third respondent based on the oral evidence of the petitioners and the statement of the Village Administrative Officer, allowed their application on 06.04.2005. The matters were taken up on appeal by the fourth respondent before the second respondent contending that the petitioners were not cultivating tenants and their suit filed along with their father Subbiah Gounder, claiming 1/5th share as owner of the property was pending consideration and for the same land, they cannot seek to register themselves as cultivating tenants. The Appellate Authority accepting the case of the fourth respondent, allowed both the Appeal Nos.12 and 14 of 2005, thereby the names of the petitioners were directed to

be deleted from the tenancy register. The Revisional Authority, the first respondent herein, confirmed the order of the Appellate Authority. Assailing the orders of the respondents 1 and 2, the present Writ Petition has been filed.

5. W.P.No.25665 of 2017 has been filed directing the respondents 1, 3, 5, 7, 9, 11, 13, 14 to restore possession of the land in Survey Nos.477/1, 477/2 and 476 situated at Pitchanur Village, Coimbatore District by removing the fence put up illegally by the respondents.

6. It is the case of the petitioners that when the Writ Petition No.21793 of 2017 was admitted and a notice was issued in the stay petition in W.M.P.No.22806 of 2017, the respondents came to the land in dispute and taken possession by force along with henchmen on 16.09.2017 and erected wire fence surrounding the land.

7. Mr.R.Gandhi, learned Senior Counsel appearing for the petitioners would urge that the petitioners' father Subbiah Gounder was inducted as a cultivating tenant of the lands in Survey Nos.473, 475, 476, 477/1 and 477/2 in all together measuring an extent of 13.30 acres in the year 1962 and he died in the year 1993. During the life time of the said Subbiah Gounder, the petitioners were contributing their physical labour for cultivating the lands and hence, after his demise, the petitioners are entitled to be recorded as cultivating tenants. The learned Senior Counsel by referring Section 7 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights, Act, 1969 [for brevity "the Act"] would argue that the petitioners are entitled to be given a reasonable opportunity of being heard, but in the case on hand, revision petitions were heard initially by one Ms.Karpagam and orders were reserved. Her successor in Office Mr.Christ Das issued summons for hearing, but the revision petitions were heard by his Personal Assistant during 2015, but no order was passed. The impugned order came to be passed by his successor without providing a personal hearing and hence, it is in violation of principles of natural justice and the proviso to Section 7 of the Act.

8. The learned Senior Counsel by placing reliance on the decisions of this Court reported in 1996 (2) LW 445 [Govindammal, K. V. Tahsildar & Record Officer] and 2014 (1) MWN (Civil) 294 [Philominal and another vs.M.Shanmugasundaram (died)] would contend that it is not necessary for the legal-heirs to prove that their physical labour was involved during life time of the predecessor cultivating tenant and the legal-heirs have to just prove that they continued with cultivation on the death of predecessor cultivating tenant. It is further contended that if physical possession is taken by force, the cultivating tenant is entitled for restoration of possession.

9. Per contra Mr.Sathish Parasaran, learned Senior Counsel for the fourth respondent submitted that filing of these Writ Petitions is a clear abuse process of law. According to the learned Senior Counsel, the petitioners have taken an inconsistent stand in the suit filed in O.S.No.388 of 1989 in which, they have not claimed any tenancy right, but claimed 1/5th share. It is the submission of the learned Senior Counsel that the Record Tenancy Officer, without any material, ordered the name of the petitioners to be registered as a cultivating tenant, but the Appellate Authority, taking note of the fact that the petitioners have taken an inconsistent stand before the Civil Court and Revenue Authorities and no material was produced to show that they have contributed the physical labour for cultivation of the lands, allowed the Appeal.

10. The learned Senior Counsel further submitted that the petitioners were heard by the Appellate and Revisional Authorities, and a written submission were filed by both parties and hence, there is no violation of principles of natural justice. Further, the petitioners have not shown any prejudice was caused to them.

11. The learned Senior Counsel by citing a decision of this Court reported in 1996 (II) CTC 473 [Ayyanar, P. Mrs.Rathinam and 3 others] submitted that no elaborate order need to be passed by the Revisional Authority, if it is confirming the order of the Appellate Authority. The Revisional Authority can dismiss the Revision, agreeing with the finding of Appellate Authority and the Writ Court will not normally interfere with the factual finding of the Authorities. Further, this Court has to find out to satisfy whether the decision making process has been followed and not the decision itself.

12. Mr.I.Sathish, learned Additional Government Pleader made submissions in support of the orders impugned in this Writ Petition and further contended that the Police Officials have given only bandobast and they did not help the private respondents for taking possession by force, as alleged by the petitioners.

13. Heard Mr.R.Gandhi, learned Senior Counsel, representing Mr.R.G.Narendhiran, learned counsel for the petitioners; Mr.I.Sathish, learned Additional Government Pleader for the respondents 1 to 3; Mr.Sathish Parasaran, learned Senior Counsel, representing Mr.R.Parthasarathy, learned counsel for the fourth respondent and perused the materials placed on record.

14. In the case of Govindammal, K. V. Tahsildar & Record Officer (referred supra), the application filed by the legal-heirs of the deceased cultivating tenant to register their name

as cultivating tenants came to be rejected by the Record Tenancy Tahsildar on the ground that the son of the deceased cultivating tenant was a Government servant. The finding was set-aside by this Court by observing that the Government servant was not prevented from rendering assistance to his father during his spare time and utilize his knowledge as a teacher in the subject of agricultural in the cultivation of land with his father. A similar view was taken in Philominal and another Vs. M.Shanmugasundaram (died).

15. When an issue arose for consideration before the Division Bench of this Court, as to the power of "Judicial Review" in the matter like this, in Ayyanar, P. Mrs.Rathinam and 3 others, it has been 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.

7. The whole object of this jurisdiction is to ensure that the statutory authorities keep themselves within their bounds and decide equity the matters in accordance with law, justice and that being the position, in a case like this, the court, exercising jurisdiction under Article 226 of the Constitution, is required to see whether the statutory authorities have exercised their jurisdiction properly and considered the case in accordance with, governing the subject matter. Looked from that point of view, we find it very difficult to agree with the learned single Judge, because, first of all, the order does not contain any reason. Secondly, the order passed by the first appellate authority and the revisional authority cannot be held to suffer from any illegality or material irregularity, affecting the substantive rights of the parties.

8. We have been taken through the orders of the Tahsildar- Record Officer, Appellate Authority and also the revisional authority. There is no doubt that the revisional authority does not refer to all the facts of the case but it does reappreciate the evidence on record and agrees with the findings recorded by the Appellate Authority.

9. Section 7 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, provides for revision against the order of the Appellate Authority and it reads thus:

"7. Revision: The District Collector or such officer as may be specified by the Government in this behalf may of his own motion or on the application of a party call for and examine the record of any record officer or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit:

Provided that the District Collector or the said officer shall not pass any order prejudicial to any party unless he has been given a reasonable opportunity of being heard."

Thus the aforesaid provision of revision cannot be considered to be the one giving powers to reappreciate the evidence on record. The said provision only says that the revisional authority may pass such orders as he may think fit.

10. There is a distinction and it is well known, between appeal and revision. We do not consider it necessary to deal with it in great detail, as distinction is well established by the catena of decisions of the Supreme Court and of this Court. Normally, when the revisional authority finds that the approach of the Appellate Authority is proper and it has considered all the evidence on record, it is not expected to go into the details and give its own reasons, if it agrees with the findings recorded by the Appellate Authority. This is what that has been done by the revisional authority in the instant case. It is not as if the revisional authority has simply dismissed the revision on the ground that the findings recorded by the Appellate Authority are findings which are based on the evidence on record and as such interference is not warranted. The revisional authority has gone into the entire proceedings of the

first authority and the Appellate Authority has specifically referred to the findings recorded by the first appellate authority. Thereafter, it has concluded that there is no ground to interfere with such findings. What is more, the revisional authority has also adverted to the findings recorded by the civil court in O.S. No. 8 of 1978 and in A.S. No. 206 of 1978, in which it has been held by the civil court that the first respondent herein had failed to prove that he was in possession of the land in question and cultivated the same personally. To the suit and appeal, the appellant herein was a party and had put up his claim that he was cultivating the land in question as a tenant, which had been accepted by the civil court and in that background, the civil court examined the evidence on record and held against the owner of the land. That finding has also been taken into consideration by the revisional authority and the Appellate Authority.

11. One more clinching circumstance that has been referred to by the Appellate Authority is that the predecessor in title of the first respondent therein the owner of the land, addressed a letter to the appellant to execute a lease deed, which had been marked as Ex.A.1 in the case. Unless there was an agreement of lease, or unless the land owner had agreed to lease out the land and put the appellant in possession of the land to cultivate it as a tenant, there was no need for the land owner to address a letter to the appellant to execute a lease deed. Thus, the entire evidence both oral and documentary have been considered by the appellate authority in the proper perspective. Therefore, we are of the view, that the findings recorded by the Appellate Authority cannot be considered to be perverse and opposed to reason and logic and the law governing the subject, It is not a case of non-consideration of material evidence on record. Hence, this is a case in which interference under Article 226 of the Constitution is not warranted."

16. In the instant case, it is not disputed that the fourth respondent is the absolute owner of the properties in S.No.477/1 and 477/2 in Pitchanur Village by virtue of sale deed dated 29.09.1965. It is the case of the petitioners that in the year 1961, the original owner Valliammal granted lands in S.Nos.476 and 473 to the fourth respondent to carry out agricultural operations independently.

17. From a perusal of the plaint in O.S.No.388 of 1989 annexed with the typed set of papers, it is evident that the

petitioners along with their father Subbiah Gunder and sister-Rajeswari and brother-Mahalingam instituted the suit for partition, claiming 1/5 share in the properties. It is further seen that the petitioners' father stated to be in possession of larger extent of properties for the last several years, but there is not even a whisper that he was a cultivating tenant in respect of the properties in dispute.

18. It is contended by the learned Senior Counsel appearing for the petitioners that the lands in S.No.477/1 and 477/2 are not the subject matter of the properties in the suit. But, admittedly, the lands in S.No.473 measuring an extent of 5.38 acres and S.No.476 measuring an extent of 12.52 acres are the properties included in the schedule of properties in the partition suit.

19. The relationship of the parties and the institution of suit are not in dispute. It is pertinent to note that after the death of the petitioners' father Subbiah Gunder, two applications have been filed before the third respondent. One to delete his name as a cultivating tenant and another to register the name of the petitioners as cultivating tenants. Due to non-appearance of the fourth respondent before the third respondent, his application was dismissed and on the basis of the statement of the petitioners and the Village Administrative Officer, the name of the petitioners were registered as cultivating tenants.

20. In the appeal filed before the second respondent, the factum of pendency of the suit in O.S.No.388 of 1989 and the stand of the petitioners, was brought to the knowledge of the Appellate Authority, who after perusing the statement of the Village Administrative Officer and the averments made in the plaint, came to the conclusion that the petitioners have taken an inconsistent plea and hence, issued directions to delete the name of the petitioners from the register maintained by the third respondent. The Revisional Authority, after analyzing the entire materials concurred with the finding reached by the Appellate Authority.

21. It is to be noted that the petitioners relied on only oral statement, but no documentary evidence was produced before the Authorities below to substantiate their case. It is an admitted fact that the Appellate and Revisional Authorities passed the orders impugned in this Writ Petition, after affording ample opportunity to the parties. It is not in dispute that the parties have filed their written submissions. In the decision relied on by the learned Senior Counsel for the fourth respondent, the Division Bench of this Court has observed that the Revisional Authority, if he confirms the order of the Appellate Authority, need not give elaborate reasons.

22. The only grievance of the petitioners is that the Revisional Authority, who passed the impugned order did not hear the petitioners in person. The Division Bench, in the above judgment, has held that if the finding has been recorded by the Appellate Authority after considering both the oral and documentary evidence in a proper perspective, the finding cannot be considered to be perverse and opposed to reason and logic and the law governing the subject and hence, no interference under Article 226 of the Constitution of India, is warranted. As rightly pointed out by the learned Senior Counsel for the respondents, the petitioners have not shown any prejudice as written argument was taken note of by the Revisional Authority.

23. In the matter on hand, the Appellate Authority and the Revisional Authority passed the orders on the basis of evidence on record. Hence, in my considered opinion, the principle laid down in the decision of the Division Bench would squarely apply to the case on hand and the judgments relied on by the learned Senior Counsel for the petitioners do not help the case of the petitioners. I find no substance in the grievance expressed by the petitioners. Since the petitioners failed to establish that they are cultivating tenants and have been in possession of the lands, they are not entitled for the reliefs sought for in these Writ Petitions. This Court does not find any merit in these Writ Petitions. In that view, both the Writ Petitions fail and they are accordingly dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Revenue Officer-cum-Tenancy Registers Revisional Authority, Coimbatore - 641 018.
- 2.The Assistant Commissioner, Revenue Court, Tiruchirapalli.
- 3.The Record Officer & Tahsildar, Coimbatore South, Coimbatore.

4.The District Revenue Officer,
Coimbatore - 641 018.

5.The Tahsildar,
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10.The Revenue Inspector,
Madukarai Taluk,
Coimbatore District.

11.The Village Administrative Officer,
Pitchanur,
Coimbatore District.

+1ccs to the Government Pleader, S.R.Nos. 65025,64694,64207,
64206,62797,62798

+2ccs to Mr.R.G.Narendhiran, Advocate, S.R.No.63730& 63731
+2ccs to Mr.R.Parthasarathy, Advocate, S.R.No.64017 & 64016
+1cc to Mr.S.Gopi Krishnan, Advocate, S.R.No.64509

W.P.Nos.21793 & 25665 of 2017 &
W.M.P.Nos.22806 & 27079 of 2017

PPS (CO)

RRS (31/07/2019)