



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.02.2019

Pronounced on : 14.06.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.23559 of 2018 & 158 of 2019

and

WMP(MD)Nos.21357 & 21358 of 2018 & 139 of 2019

WP(MD)No.23559 of 2018 :

R.Krithiga

... Petitioner

Vs.

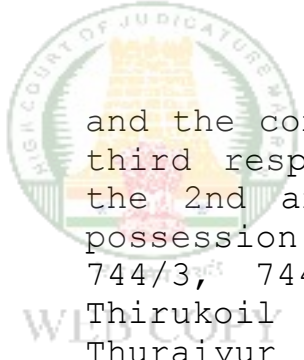
1. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Uthamar Gandhi Salai, Chennai - 34.
2. The Joint Commissioner,
The Hindu Religious and
Charitable Endowment
Department,
Tiruchirappalli District, Tiruchirappalli - 05.
3. The Executive Officer,
Arulmighu Venugopal Thirukoil,
Shobanapuram, Thuraiyur Taluk,
Tiruchirappalli District.
4. The Tahsildar,
O/o.the Tahsildar,
Thuraiyur, Tiruchirappalli District.

5.M.Elangovan

... Respondents

(5th respondent is impleaded vide court
order dated 01.02.2019 in WMP(MD)No.
22811 of 2018 in WP(MD)No.23559 of 2018)

Prayer : This Writ Petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified Mandamus,
<https://hcservices.ecourts.gov.in/hcservices/>
to call for the records pertaining to the impugned order passed by
the 2nd respondent vide Na.Ka.No.8915/2018-1/A3/dated 25/09/2018



and the consequential impugned letter dated 01/10/2018 sent by the third respondent and quash the same and consequently forbearing the 2nd and 3rd respondents from interfering with petitioner's possession of the agricultural land in survey Nos.781/1, 745 , 744/3, 744/4, 744/7 and 559/8 belongs to Arulmigu Venugopal Thirukoil and Poonjoolai Amman Thirukoil of Shobanapuram Village, Thuraiyur Taluk, Trichy District, in the capacity of cultivating tenant, otherwise than in accordance with law.

WP(MD)No.158 of 2019 :

A/M.Venugopal Swamy Thirukoil
& A/M.Poonjoolai Amman Thirukoil,
Rep.by its Executive Officer,
Shobanapuram, Thuraiyur Taluk,
Tiruchirappalli District.

... Petitioner

Vs.

1. The Tahsildar, Thuraiyur Taluk,
Tiruchirappalli District.

2. R.Krithiga

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the order dated 15.10.2018 in NA.K.ANO: A2/3462/2018 passed by the 1st respondent by calling for the records from him consequentially delete the entry made by the 1st respondent pursuant to the order passed by him.

in WP(MD)No.23559 of 2018 :

For Petitioner : Mr.D.Shanmugarajasethupathi

For Respondents : Mr.Aayiram K.Selvakumar
Addl., Government Pleader
for R 1 and R2 & R4
Mr.P.Chandrasekar for R3

Mr.N.Mohan for R5

in WP(MD)No.158 of 2019 :

For Petitioner : Mr.V.Chandrasekar

For Respondents : Mr.D.Shanmugarajasethurapathi
for R2

Mr.Aayiram K.Selvakumar
Additional Government Pleader
for R1

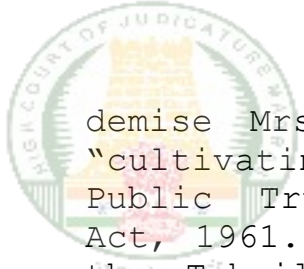
**COMMON ORDER**

R.Krithiga is the wife of the late Rengarajan. According to her, he was cultivating the agricultural punja lands in Survey Nos.781/1, 745, 744/3, 744/4, 744/7 and 559/8 that belong to Arulmigu Venugopal Swamy Thirukoil and Poonjoolai Amman Thirukoil of Shobanapuram, Thuraiyur Taluk as its cultivating tenant. He applied to the Tahsildar, Thuraiyur who is the statutory authority under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969 for recording him as a cultivating tenant. By order dated 07.01.2011, he was recorded as a cultivating tenant in respect of the lands under the said temple. The writ petitioner's husband was regularly remitting the rental amounts to the executive officer of the temple till the year 2016. But, for the subsequent years, the executive officer refused to receive the rent in question. Krithiga's husband passed away on 09.05.2018 and she stepped into his shoes and is cultivating the lands in question. The temple wanted the statutory authority under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969 to set aside its earlier order dated 07.01.2011. The authority by order dated 15.10.2018 dismissed the petition filed by the temple and confirmed the earlier order made on 07.11.2011.

2.At this stage, the executive officer of the temple by communication dated 01.10.2018 informed Mrs.Krithiga that since her husband has passed away, the possession of the lands in question has been restored to the temple. The executive officer has issued the said communication based on the proceedings dated 25.09.2018 issued by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy. Mrs.Krithiga filed WP (MD)No.23559 of 2018 questioning the stand of the HR&CE authorities and seeks to restrain them from interfering with her possession of the lands in question. The temple on the other hand challenges the order dated 15.10.2018 passed by the Tahsildar, Thuraiyur refusing to recall his earlier order dated 07.01.2011 recording Thiru.Rengarajan as the cultivating tenant. In the meanwhile, the temple claims to have auctioned the leasehold rights in respect of the lands in favour of a third party by name Elango. The said Elango has also made a rival claim that he had already taken possession of the lands in question and sown maize seeds in the lands. He makes an allegation that Mrs.Krithiga was not actually cultivating the lands in question and that she has leased the said lands in favour of third parties.

3.Heard the learned counsel on either side.

4.The primary contention urged by the learned counsel for Mrs.Krithiga is that the land in question is governed by Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961. Thiru.Rengarajan and following his



demise Mrs.Krithiga in his place, would fall within the term "cultivating tenant" as defined in Section 2(5) of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961. As on date, recording of their cultivating tenancy by the Tahsildar, Thuraiyur by order dated 07.01.2011 is holding good. It is true that by virtue of Section 62 of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961, the application of Tamil Nadu Cultivating Tenants Protection Act, 1955 stands repealed.

5.But then, such a repeal is irrelevant in this case because she is claiming her rights not under Tamil Nadu Cultivating Tenants Protection Act, 1955 but under Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969. Section 3 of Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 will have an overriding effect over all other statutes that are inconsistent with it. Therefore, the provisions of The Tamil Nadu Act 22 of 1959 Act will have to give way.

6.In this regard, the learned counsel appearing for Mrs.Krithiga placed reliance on the decision of the Hon'ble Division Bench reported in **2016 (6) MLJ 206 (V.Angu vs. Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam High Road, Chennai)**. The Hon'ble Division Bench in the aforesaid decision held that to evict a tenant under the 1961 Act, Section 19 of the said Act alone has to be invoked. Procedure alien to Section 19 of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 is not available. It was specifically held that the 1961 Act will have a overriding effect. The learned counsel also filed a detailed written arguments.

7.Per contra, the learned counsel appearing for the Temple contended that Late.Rengarajan had surreptitiously filed an application before the Tahsildar, Thuraiyur and got himself recorded as a cultivating tenant. The temple also contests the claim of Mrs.Krithiga that she is in enjoyment and possession of the property in question. The learned counsel also submitted that Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 forbids creation of long term leases. If the contention of Mrs.Krithiga is to be accepted, the said provision will be rendered nugatory. He pleaded that this Court is vested with *parens patriae* jurisdiction and that therefore this Court has to protect temple properties.

8.The learned counsel for the temple contended that the authority under HR&CE Act has only acted to protect and safeguard the interest of the temple. In this case, the temple periodically conducts auctions and the successful bidder is given possession of the property for a given period. His rights get extinguished on



the expiry of the license period. There is no transfer of interest. What is given is only a licence and not any lease hold right. He wanted this Court to set aside the order dated 07.01.2011 passed by the Tahsildar, Thuraiyur recording Thiru.Rengarajan as the cultivating tenant and he also wanted this Court to dismiss the writ petition filed by Mrs.Krithiga.

9.In my view, the entire issue turns on a factual aspect i.e, whether Rengarajan or Kritiga can be considered as cultivating tenant within the meaning of Section 2(5) of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961. The said provision reads as under :

"2.Definitions : -

1...

2...

3...

4...

5."cultivating tenant"-

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii) includes- (a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; but

(iii) does not include a mere intermediary or his heir."

10.A mere reading of this definitional clause clearly indicates that the existence of a tenancy agreement whether express or implied is a *sine qua non*. In other words, the claimant must demonstrate and convincingly establish the existence of such a tenancy agreement. That again leads to another question as to who can enter into such a tenancy agreement. The person claiming to be a cultivating tenant ought to have entered into a tenancy agreement only with a person who is competent to execute a tenancy agreement. In other words, if the applicant is claiming under an interloper or a trespasser or somebody who is a usurper or an incompetent person, he obviously cannot claim the benefit under the aforesaid definitional clause. It is true that Tamil Nadu Act 57 of 1961 will clearly override the Tamil Nadu Act 22 of

1959. But then, the provisions of Tamil Nadu Act 57 of 1961 will have overriding effect only over those provisions of the Tamil Nadu Act 22 of 1959 which are inconsistent with it. There is absolutely no inconsistency between the operation of Section 34 of the Tamil Nadu Act 22 of 1959 Act and the statutory scheme set out in the Tamil Nadu Act 57 of 1961. Section 34 of the HR&CE Act, 1959 reads as follows :

"34. Alienation of immovable trust property : -

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes of, any religious institution shall be *null and void* unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by [the Commissioner] :

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

Explanation. "Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, [the Commissioner] may impose such conditions and give such direction, as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order appeal to the Court to modify the order or set it aside.

(4-A). The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.



(5) Nothing contained in this section shall apply to the inams referred to in section 41."

11. Courts should always endeavour to harmonize the statutory schemes put in place by the various enactments. They should not readily look for repugnancies. Viewing in this perspective, I hold that only a lessee deriving the rights under a valid lease agreement in terms of Section 34 of the Tamil Nadu Act 22 of 1959 will have the protection and benefit of Chapter III of the the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961. The right to get recorded as a cultivating tenant can arise only under a valid tenancy agreement. From out of a void arrangement, no valid right can be created. There will not be flow of water when the source has turned dry. Even a statutory sleight of hand cannot achieve such a result.

12. It is now time to examine the order passed by the Tahsildar, Thuraiyur on 07.01.2011 recording Late Rengarajan as the cultivating tenant. It can be seen on the very face of it that it is an exparte order. Of course, notice was served on the Executive Officer of the temple in question and he did not choose to contest the proceedings initiated by the tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Act, 1969. But then, by a very cryptic order, the Tahsildar, Thuraiyur has chosen to record Thiru.Rengarajan as the cultivating tenant. He has stated that Rengarajan had deposed that he has been cultivating the lands in question for 10 years as a tenant. He had filed certain receipts. The village administrative officer had also confirmed the stand projected by Thiru.Rengarajan. On this basis, the order dated 07.01.2011 came to be passed. It is this that was sought to be recalled at the instance of the temple by filing a petition. But then, the petition filed by the temple was dismissed by order dated 15.10.2018.

13. As already pointed out an applicant will have to establish the existence of a tenancy agreement. The authority has not anywhere indicated as to how Rengarajan was inducted into the land. The Religious Institutions (Lease of Immovable Property) Rules, 1963, clearly contemplate that lease of immovable property and rights belonging to a religious shall be made by public auction. The auction notice will set out the period for which the lease is given and the terms and conditions of the lease. The lease is to be given to the highest bidder. Rule 10 categorically states that no provision for extension of lease shall be made in the lease deed. The Tahsildar, Thuraiyur did not bother to call upon the applicant to produce these documents. In this case, the Tahsildar has nowhere referred to the existence of the tenancy agreement.



14. Therefore, the order dated 07.01.2011 is vitiated on this ground. In this view of the matter, the order dated 07.01.2011 stands quashed. WP(MD)No.158 of 2019 filed by the temple is allowed. But, WP(MD)No.23559 of 2018 cannot suffer a summary dismissal. Even though I came to the conclusion that neither Rengarajan nor Krithiga are cultivating tenants within the meaning of Section 2(5) of the Tamil Nadu Act 57 of 1961, they also cannot be summarily thrown out. The HR&CE authorities will have to necessarily follow due process of law. Section 78 of the Tamil Nadu Act 22 of 1959 will have to be invoked.

15. The Executive Officer of the Temple cannot make an unilateral declaration that the temple lands have been taken back. The communication impugned in WP(MD) No.23559 of 2018 is too vague. It is not in dispute that Rengarajan was in possession of the lands in question. He has passed away. The temple nowhere states as to when the possession was surrendered. Therefore, the order dated 15.10.2019 impugned in WP(MD)No.159 of 2019 is also quashed. Leaving it open to the temple authorities to take recourse to the remedy set out in the Tamil Nadu Act 22 of 1959, both the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

1. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Uthamar Gandhi Salai,
Chennai - 34.
2. The Joint Commissioner,
The Hindu Religious and Charitable
Endowment Department,
Tiruchirappalli District,
Tiruchirappalli - 05.



3. The Executive Officer,
Arulmighu Venugopal Thirukoil,
Shobanapuram, Thuraiyur Taluk,
Tiruchirappalli District.

4. The Tahsildar,
O/o.the Tahsildar,
Thuraiyur,
Tiruchirappalli District.

+ 2 CC TO Mr.D.Shanmugaraja Sethupathi, ADVOCATE IN SR No.68950 &
68951

+ 2 CC TO Mr.V.Chandrasekar, ADVOCATE IN SR No.68661 & 68663

+ 1 CC TO Mr.N.Mohan, ADVOCATE IN SR No.69580

Pre delivery order made in
WP (MD) Nos.23559 of 2018 & 158 of 2019
and
WMP (MD) Nos.21357 & 21358 of 2018 & 139 of 2019

14.06.2019

KS (01.07.2019) 9 P 10 C