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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.16095 and 16460 of 2015

and MP. Nos.1, 1 and 2 of 2015

1. S.Ramu
 2. K.Poorani
 3. K.Vijaya ...Petitioner in W.P.No.16095 of 2015
- Rajendran ...Petitioner in W.P.No.16040 of 2015
- Vs.

1. The Commissioner
Hindu Religious and Charitable Endowments
Department, Chennai.
2. Joint Commissioner
Hindu Religious and Charitable Endowments
Department, Villupuram.
3. Executive Officer,
Arulmighu Devanathaswamy Thirukkoil,
Thiruvahindrapuram, Cuddalore Taluk,
Cuddalore District.

... Respondents in both W.Ps

Prayer in W.P. No.16095 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for records and quash the proceedings of the 2nd respondent in his RC.No.419/2014/E2 dated 06.08.2014 as confirmed by the order passed by the 1st respondent on 27.2.2015 passed in R.P.116/2014 D2 and consequently pass orders forbearing respondents from interfering with petitioners' possession of the property bearing new S.No.25/-Hec.2.00.3 = old S.No.112/5 Ac. 4.95 out of Ac.6.27 in Thiruvahindrapuram Village, Cuddalore Taluk, Cuddalore District except by due process of law.

Prayer in W.P. No.16040 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for records and quash the proceedings of the 2nd respondent in his RC.No.419/2014/E2 dated



06.08.2014 as confirmed by the order passed by the 1st respondent on 26.2.2015 passed in R.P.115/2014 D2 and consequently pass orders forbearing respondents from interfering with petitioners' possession of the property bearing new S.No.67/3 Hec.0.33.0 in Thiruvahindrapuram Village, Cuddalore Taluk, Cuddalore District except by due process of law.

For Petitioners
in both W.Ps : Mr.R.Gururaj

For Respondents
in both W.Ps : Mr.N.R.R.Arun Natarajan
Government Advocate - R1 & R2

Mr.T.S.Baskaran - R3

C O M M O N O R D E R

W.P.No.16095 of 2015 has been filed by three petitioners and W.P.No.16460 of 2015 by one, all petitioners challenging order dated 06.08.2014 passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department/JC, HR & CE/R2 as confirmed by the Commissioner, HR & CE Department/R1 dated 27.02.2015 and seeking a directing forbearing the respondents from interfering with their possession of property bearing new S.No.25/-Hec.2.00.3/old S.No.112/5 Ac. 4.95 out of Ac.6.27 in Thiruvahindrapuram Village, Cuddalore Taluk, Cuddalore District (property I/property I in question) and S.No.67/3 Hec.0.33.0 in Thiruvahindrapuram Village, Cuddalore Taluk, Cuddalore District (property II/property II in question).

2. The petitioners claim to be cultivating tenants and barring the difference in the details of the property at issue, the facts as well as the issues that arise for determination in their respective cases, are more or less in synchronisation. Admittedly, properties I and II belong to Arulmigu Devanathaswamy Thirukoil, Thiruvahindrapuram Village, Cuddalore Taluk and District (Temple/Temple in question). Property I, agricultural land was leased originally to three persons, Veerammal, Krishnamoorthy and Appadurai Padayachi under a registered lease deed dated 04.11.1965.

3. The lessees took possession, raised crops and complied with all terms of the lease deed. Despite the initial lease being for a period of five years, they continued uninterrupted in possession. The lease rentals were enhanced over the years and at the time of filing of the Writ Petitions in 2015 was an amount of Rs.3,900/- per annum.



4. The petitioners in W.P.No.16095 of 2015 claim to be successors-in-interest of the original lessees who continued their possession of the property as well as their compliance of all terms of the original lease. They would state that the aforesaid arrangement has been validated by R2, who is well aware of their possession and cultivation of the land and has been receiving the lease rentals from them regularly and issuing receipts for the same. Substantial amounts are stated to have been invested by them in making the property fit for agriculture, such as installing a motor, digging a bore well and obtaining electricity connection.

5. As far as W.P.No.16460 of 2015 is concerned, property II was leased out to the petitioner's father Krishnan Padayachi who was in possession, tilling the land till his demise. Thereafter, the petitioner stepped into his shoes and states that he continues the physical labour upon the land complying with all conditions of the original lease.

6. There was a proposal for development of properties I and II by the Temple for a car park and notices itself came to be issued to the petitioners by the temple terming them encroachers in terms of Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'HR & CE Act') and calling upon them to vacate the lands in question. Despite the contest laid by the petitioners, orders dated 06.08.2014 came to be passed confirming the position that the petitioners were encroachers and calling upon them to vacate the properties within 15 days from date of receipt of the original order.

7. The petitioners challenge the orders by way of revisions before R1 in terms of Section 21 of the HR & CE Act and the revision petitions came to be dismissed confirming the orders of eviction. The revisional authority notes that the properties under occupation were required by the temple for provision of basic amenities to the visiting devotees and it is thus that the temple administration terminated the lease vide notices issued as early as in 2010.

8. According to the respondents, the continued occupation of the properties by the petitioners despite the termination of the lease, would result in they having encroached upon the lands and thus there was nothing untoward in the orders passed under Section 78 of the HR & CE Act.

9. The common contention adduced by the petitioners is that they are cultivating tenants entitled to protection under the Tamil Nadu Cultivating Tenants Protection Act, 1955 (in short



'TNCTP Act') and that any dispute in regard to their possession and occupation of the properties must be decided only by the appropriate revenue Courts.

10. However, the orders of the respondents proceed on the basis that the tenancies of the petitioners were not recorded under the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1969 (in short 'TNALRTR Act'). Thus the protection available under the TNCTP Act, to the effect that eviction of a cultivating tenant could only be by the revenue Court/appropriate revenue authority would be unavailable in the present case.

11. Moreover and since the properties had been leased originally in terms of Section 34 of the HR & CE Act, a special enactment, the applicable provisions would be those of the HR & CE Act only, in regard to anything in connection with the aforesaid properties. The initiation of action for eviction under Section 78 was thus perfectly in order, as the provisions of the HR & CE Act would override the application of other enactments.

12. The stand of R1 in rejecting the revision petitions has been reiterated in the course of submissions before me, though no counter has been filed by R1. The temple has filed a counter affidavit setting out the reasons on account of which it had decided to terminate the lease. The properties were proposed to be used as two wheeler parking and since the interests of the temple would override the interests of the lessees, the lease arrangements originally entered into were decided to be terminated.

13. Besides, the petitioners, though claiming to be cultivating tenants, had not tilled the land for several years and both the properties in question were barren, respondents would say. Thus, according to the temple, there was no justification in the claim of the petitioners to be cultivating tenants and they are encroachers, liable to be evicted in terms of Section 78 of the HR & CE Act, in light of the notices for termination of lease issued as early as in 2010.

14. Learned counsel appearing for the petitioners would additionally state that action for eviction has been taken as regards other similarly placed tenants and the temple has, in fact, moved appropriate applications before the revenue Court seeking eviction of those tenants. It is only in the case of the present petitioners that a divergent stand has been taken.



15. The provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (in short 'TNPT(RAAL) Act') defines 'cultivating tenant' under Section 2(5) thereof to mean a person who contributes his 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 includes any such person who continues in possession of the land after the determination of the tenancy agreement or if his heir or sub-tenant contributes his own physical labour or that of any member of his family, in the cultivation of land in question.

16. Section 18 of the TNPT(RAAL) Act protects cultivating tenants from eviction subject to the provisions of Section 7, as per which land in excess of the cultivating tenants ceiling area shall revert back to the public trust, Section 15(2) deals with lands held by a Co-operative Society for a specified lease and as per which the land shall revert to the public trust on the expiry of the period mentioned in that deed, and Section 19 which sets out certain circumstances under which a public trust may evict a cultivating tenant.

17. Section 62 of the aforesaid Act states that on and from the date of commencement of the aforesaid enactment, the Tamil Nadu Cultivating Tenant Protection Act, 1955 i.e., Tamil Nadu Act XXV of 1955 and the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Tamil Nadu Act XXIV of 1956) stand repealed in their application to a cultivating tenant in respect of any land held by him under a public trust.

18. The TNALRTR Act is also relevant since it is the aforesaid enactment which provides for a record to be maintained in respect of the land under the control of a cultivating tenant. As per the statement of objects and reasons of this enactment, it provides for the preparation and maintenance of a record of a tenancy rights in respect of agricultural lands in the State.

19. The jurisdiction of Civil Courts have been barred for the reason that a decision in regard to the rights of a cultivating tenant are to be expeditiously decided and this would best be served by the Record Officer, District Collector or other revenue authority empowered under the Act. Such matters if filed before the regular Civil Courts would, in the normal course of things, expect to be delayed substantially.

20. The TNALRTR Act provides for the procedure to be followed if a cultivating tenant were to be dispossessed of land



under cultivation by him. Section 3 of the Act provides for the preparation of a record of tenancy rights after the Record Officer duly intimates the public in the village that a record of tenancy rights was under preparation. Upon such Notification, a land owner, tenant or intermediary in respect of a property must supply the information sought for, which would include the survey number/sub-division number, extent and the local name, if any, of the land, name and address of the land owner, including that of the intermediary, if any, name and address of the tenant cultivating the land and all other particulars as may be required.

21. Upon receipt of the information from the residents, a draft record is published and any person aggrieved by such draft, must make himself heard in regard to any errors in the draft record by way of application. The Record Officer is to thereafter follow due procedure, afford reasonable opportunity to the parties concerned and then rectify or reject the request for rectification of the draft record. The draft record for the particular village in which the properties in question are situated do not contain any particulars of the persons cultivating the same.

22. In Sivaprakasam and 18 others V. Tahsildar, (Jr.) Ariyalur and 3 others (2009 (5) CTC 907), a Division Bench of this Court considered the scope of a Writ Appeal filed against a dismissal of a Writ Petition by person who claimed to be a cultivating tenant. The appellants therein claimed to be cultivating tenant in the lands belonging to the Dandeewaran and Varadaraja Perumal Temples for several years. The claim of the individuals was denied by the temple on the ground that the property was not being cultivated and that the petitioners were not permitting the temple to exploit the land properly simply on account of their names finding a place in the tenancy rights. The Temple thus preferred a petition under Section 5(2) of the TNALRTR Act seeking sanction for initiation of legal action against them for eviction that came to be granted.

23. Challenging the grant of sanction, the individuals filed a Writ Petition that came to be dismissed. In Writ Appeal, the Division Bench reversed the order, upholding the claim of the individuals, noting that the names of the appellants found place in the tenancy rights register that had been published vide gazette Notification in terms of Section 3(5) of the TNALRTR Act.

24. The Bench also observed that even if the land were sold, the rights of the cultivating tenant would stand protected and



flow simultaneous with such sale. The status of the appellants as cultivating tenants will remain undisturbed and if at all the cultivating tenants were to be evicted, it will only be in the manner provided under the TNCTP Act.

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25. Useful reference may be made to the judgment of the Hon'ble Supreme Court in the case of Thimmappa Rai V. Ramanna Rai (2007 (5) CTC 287), particularly paragraph 4 which states as follows:

14. Thus, inter alia a person, who thus, carries on personal cultivation of said land under a tenancy agreement expressed or implied, including one who continues in land after determination of the tenancy agreement in terms of the provisions of the Act, would be a cultivating tenant under the said Act and a landlord is prohibited from evicting him whether in execution of a decree or an order of a Court or otherwise.

26. Prior to the above judgment, three Judges of the Hon'ble Supreme Court in the case of G. Ponniah Thevar v. Nalleyamperumal Pillai and others (AIR 1974 SC 244) had unambiguously settled the position in regard to the statutory protection from eviction afforded to a cultivating tenant under the TNCTP Act except if the comprehensive procedure set out under the TNCTP Act was set in motion and exhausted. At paragraph 6, they state as follows:

6. There is no doubt whatsoever that the appellant was the lessee whose right to cultivate as a tenant had not been determined by anything in the lease or under any statutory provision. The learned counsel for the appellant pointed out that even if there had been a determination of the tenancy under a lease, the appellant would still be a cultivating tenant as defined in the Act, because of the provision of Section 2(aa)(1)(2)(i) of the Act. Apparently, such a statutory definition of a cultivating tenant and an exhaustive procedure for his eviction in certain cases only and in no other case, are mere so as to carry out the purpose stated in the preamble as follows:

Where it is necessary to protect cultivating tenant in certain areas in the State of Madras from unjust eviction.

27. The overarching position is to the effect that a cultivating tenant has to be protected at all costs until such



time the appropriate authorities have been approached and have adjudicated upon rival claims to the property in question.

28. In Avudaithangammal V. Subramania Thevar and Murugaiah Thevar and 8 others (1994-I-L.W.82), the provisions of the TNCTP Act and the TNALRTR Act came up for consideration, specifically the rights that would enure to the parties based upon the entries made in the Record of Tenancy Rights Register. The Court refers to the judgment of the Hon'ble Supreme Court in the case of Vishwa Vijay Bharati vs. Fakhrul Hassan (AIR 1976 SC 1485) to the effect that that while normally and generally entries in the revenue records must be taken to be true and Courts should not embark upon an enquiry into their correctness as an appellate or revisional authority, such presumption of correctness can only apply to genuine and not fraudulent entries.

29. The distinction made was fine, but real, the Bench said, in that, while one cannot challenge the correctness of the entry in the records, the entry itself may be attacked as fraudulent or surreptitious. In the latter case, the claim of the person who relies on the entry would be bereft of any merit.

30. This proposition has been echoed thereafter in Balasubramanian V. Shamsu Thalreez (98 L.W.536), where the nature of entries in the revenue records were stated to be conclusive, generally debarring the Court from embarking upon an investigation.

31. However, a contra aspect of the matter would be that the nature of an entry made in the revenue record is not declaratory by itself as held by this Court in Natesa Nainar V. SriKarikudinathaswamy Devastanam, Marudhanallur (97 L.W.390). It is not the entry itself that confers rights on a cultivating tenant, since the purpose of the enactment was only to codify and maintain a record of tenancy right, in the State of Tamil Nadu.

32. Thus the provisions are not declaratory of rights as a cultivating tenant and there may well be mention of those persons in the record who do not fulfil the definition of the term 'cultivating tenant', but nevertheless managed to secure an entry into the title and conversely, there may be those who, being fully entitled to the claim of cultivating tenant have not followed the proper procedure for inclusion of their names in the record. In the latter case, it would then become necessary for them to establish by means of other contemporaneous evidence



that they were, in fact, cultivating tenants as defined under the Act.

33. Now coming to the aspect of which would be the appropriate enactment to apply in the matter, one may refer to the decision of a Division Bench of this Court in V.Angu V. The Commissioner, HR & CE Department and another (W.A.No.1174 of 2012 Judgment dated 20.07.2016). In that case, the temple was listed under the HR & CE Act, and the Court dealt with a challenge to the invocation of the provisions of the HR & CE Act and notice of auction under the Religious Institutions (Lease of Immovable Property) Rules, 1963.

34. The Court concluded that the lands in question was not amenable to the provisions of the TNHR&CE Act and would fall only within the scope of the TNPT(RAAL) Act. The Religious Institutions (Lease of Immovable Property) Rules, 1963 has been prohibited to apply to those lands that would come under the purview of the TNPT(RAAL) Act and as such, the auction of the temple land was set aside. There is no dispute on the position that the temple in question is administered by a public trust and in the light of the discussion as above, action, if all, as against the petitioners is liable to be taken only under the TNPT(RAAL) Act, subject to the determination that the petitioners are in fact, cultivating tenants.

35. It is now relevant to decide the issue as to whether the petitioners could be termed as 'cultivating tenants' as, admittedly, their names did not figure in the revenue records. However, the order of eviction dated 06.08.2014 clearly mentions that the petitioners were 'cultivating the land' (see paragraph no.1) and had continued to 'raise crop' (see paragraph no.2) even after determination of the lease.

36. This recording of fact by the Joint Commissioner, HR & CE would suffice to establish that the petitioners have been in actual cultivation of the lands. To state that only if the name of a tenant featured in the revenue record that one can be held to be a cultivating tenant, would be harsh upon those who have not taken necessary steps and procedures. Though the failure of the individuals to have their name included in the tenancy records is admitted, it must not, in my view, be fatal to their claim as 'cultivating tenant'. In any event, the balance in such cases must tip in favour of the person who claims to be a cultivating tenant, if he produces other and contemporaneous evidences to establish this claim.



37. The nature of such evidences must be such that the factum of cultivation of the land by the person concerned should be established beyond doubt. In the present case, the findings of fact by the respondent authorities as noticed in the above paragraph stand testimony to this fact. The impugned proceedings initiated by the HR & CE Authorities is thus bereft of jurisdiction. Liberty is granted to the respondents to initiate appropriate action before the authorities under the revenue enactments.

38. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner
Hindu Religious and Charitable Endowments
Department, Chennai.
2. Joint Commissioner
Hindu Religious and Charitable Endowments
Department, Villupuram.
3. The Executive Officer,
Arulmighu Devanathaswamy Thirukkoil,
Thiruvahindrapuram, Cuddalore Taluk,
Cuddalore District.

+1CC to Mr.D.Baskar, Advocate, Sr.No.49884

+2CCs to Mr.T.S.Baskaran, Advocate, Sr.Nos.50296, 50295

W.P.Nos.16095 and 16460 of 2015
and MP. Nos.1, 1 and 2 of 2015

AJS (CO)

K.RK. (29.11.2021)