



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.04.2021	06.05.2021

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.A. (MD) No.906 of 2021
and
C.M.P. (MD) No.4080 of 2021**

P.Pandi ... Appellant/3rd Respondent
-vs-

1.Kavitha ... 1st Respondent/Petitioner

2.The Special District Revenue Officer
(Land Acquisition National Highways)
Madurai

3.The Project Director
The Department of National Highways
Surya Tower 2nd Floor
K.K.Nagar, Madurai

4.V.Elango ... Respondents 2 to 4
Respondents 1,2 &4

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 23.03.2021, passed in W.P.(MD) No.18081 of 2020, on the file of this Court.

Prayer in WP(MD). 18081/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No. 946/2020/A1 dated 23.09.2020 and quash the same and pay the entire compensation amount for acquisition of land in S.No.47/5A and 47/5B at Thamaraipatti Village, Madurai District to the petitioner



For Appellant : Mr.V.Aboorvan
for Mr.V.Vijayasethupathy

For Respondents : Mr.H.Arumugam for R1
Mr.K.P.Krishnadass
Special Government Pleader for R2
Mr.C.Arul Vadivel @ Sekar for R3

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J U D G M E N T

The third respondent in W.P.(MD) No.18081 of 2020 is the appellant before us.

2. The above said writ petition was filed by the first respondent herein for issuance of a writ of certiorarified mandamus to quash the order dated, 23.09.2020, passed by the second respondent herein and to pay the entire compensation amount for acquisition of land in Survey Nos.46/5A and 47/5B of Thamaraipatti Village, Madurai District.

3. The appellant had also filed a writ petition in W.P.(MD) No.19497 of 2019 claiming that he should be paid separate compensation as he was the cultivating tenant in the land and he was a person "interested" in the property.

4. The writ petition filed by the first respondent was allowed and the relief sought was granted in its entirety. The writ petition filed by the appellant was disposed of with an observation that it is open to the appellant to approach the second respondent for establishing his right as cultivating tenant for the purpose of compensation payable to him in terms of the provisions of the National Highways Act, 1956 (in short, "the Act") and on such representation being made, the same shall be considered by the Authority and orders be passed within a time frame.

5. The appellant has not filed appeal as against the order passed in the writ petition filed by him, but he is aggrieved by the order passed allowing the writ petition filed by the first respondent in its entirety.

6. The subject property was originally owned by one Rajalakshmi Ammal, who had sold the same to Janab.A.Raja Mohammed and his son Ramu by way of a registered sale deed dated 15.12.2015. The said purchasers had sold the property to the first respondent and her son Balakumar under five registered sale deeds all dated 29.12.2015. The revenue records have been mutated in favour of the first respondent.

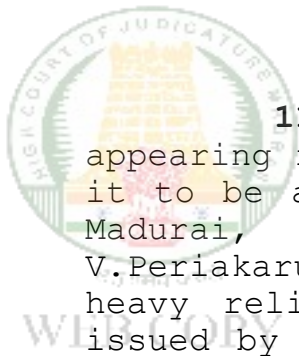


7. When the subject property was owned by Rajalakshmi Ammal, she was cultivating the same and after the first respondent purchased the same, there was no cultivation due to shortage of water and the land stood classified as "Tharisu". Land Acquisition proceedings were initiated under the Act during 2018 and culminated in an Award granting compensation. The appellant herein claimed that he is the cultivating tenant of the land and that he is entitled for 10% of the compensation payable by the Government. The request made by the appellant was not considered as there was no cultivation being done in the subject property. That apart, the appellant and the fourth respondent herein stated to have approached the first respondent stating that the fourth respondent has entered into an agreement for transfer of the so-called rights as a cultivating tenant in his favour by virtue of an unregistered document dated 08.07.2010 for a consideration of Rs.46,00,000/-. The first respondent would state that this unregistered document has been created to make a claim against the Government and to unjustly enrich themselves.

8. The appellant filed W.P.(MD) No.19497 of 2019 praying for issuance of a writ of mandamus directing the official respondents to pass an award and provide compensation to him by recognising him as a cultivating tenant. As observed earlier, the said writ petition stood disposed of by issuing a direction to the appellant to approach the concerned Authority.

9. While so, the second respondent herein, by communication dated 23.09.2020, informed the first respondent that due to the pendency of the writ petition filed by the appellant raising a dispute as to the payment of compensation, the amount so determined towards the compensation would be deposited before the District Court. Challenging the said communication dated 23.09.2020, the first respondent filed the writ petition in W.P.(MD) No.18081 of 2020, which has been allowed by the impugned order.

10. Mr.V.Aboorvan, learned counsel appearing for Mr.V.Vijayasethupathy, learned counsel on record for the appellant, submitted that the order impugned is contrary to the provisions of Section 3-H(4) of the Act and the learned Writ Court ought to have considered that the appellant's forefathers were cultivating the land as cultivating tenants and the dispute with regard to the apportionment can be decided only by a competent Civil Court in terms of the provisions of the Act and no direction could have been issued to pay the entire compensation to the first respondent. Further, the appellant is in possession of the certificate issued by the Revenue Authorities confirming that he is cultivating the lands in question.



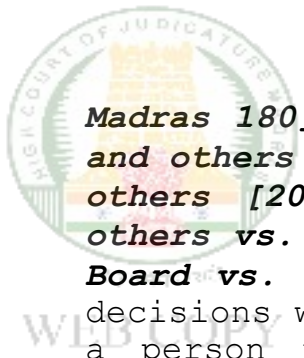
11. The sheet anchor of the argument of the learned counsel appearing for the appellant is a document, which the appellant terms it to be a Patta issued by the Special Tahsildar, Tenancy Record, Madurai, wherein the name of the appellant's grandfather V.Periakaruppan, son of Vellaisamy, has been mentioned. Placing heavy reliance on the said document as well as the certificate issued by the Village Administrative Officer, Thamaraipatti II Bit Village, dated 07.08.2001, stating that the appellant is cultivating the land, it is submitted that the appellant is entitled to claim apportionment of the compensation payable for the land, which has been acquired.

12. Further, the learned counsel for the appellant submitted that the appellant gave a representation, dated 27.07.2018, to the District Revenue Officer, Madurai District, mentioning about the fact that his family had been cultivating the land in question for over 90 years and without considering all these aspects, the learned Writ Court had allowed the writ petition filed by the first respondent.

13. Further, by referring to the proceedings of the competent Authority, dated 23.09.2020, it is submitted that the appellant has been described as "cHtiljhuh;" and therefore, the appellant is entitled for payment of compensation. On the above grounds, the learned counsel appearing for the appellant sought for setting aside the order passed in the writ petition.

14. Mr.H.Arumugam, learned counsel appearing for the first respondent / writ petitioner, submitted that the learned Writ Court had rightly allowed the writ petition filed by the first respondent and the claim made by the appellant is absolutely unsubstantiated and there is no document to show that the appellant is registered as a cultivating tenant. Added to that, the appellant has entered into an unregistered agreement, dated 08.07.2010 with the fourth respondent agreeing to transfer the alleged rights of Uzhavadai in favour of the fourth respondent for a very huge sum of Rs.46,00,000/- and these factors were rightly noted by the learned Writ Court and the communication sent by the second respondent was quashed and the writ petition was allowed.

15. Further, it is submitted by the learned counsel appearing for the first respondent that there is no document produced by the appellant to establish that he is a cultivating tenant and the mere claim of the appellant that his forefathers were cultivating the subject land for over 90 years without supportive documents has to be outrightly rejected. In support of his contentions, the learned counsel placed reliance on the decision of the Honourable Full Bench of this Court in the cases of **Periathambi Goundan vs. The District Revenue Officer, Coimbatore [AIR 1980**



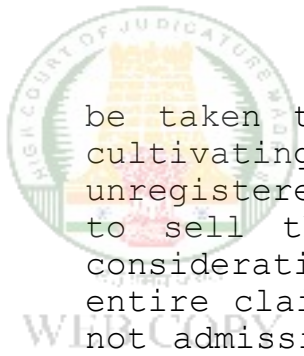
Madras 180]; S.R.Kaliappan vs. District Revenue Officer, Coimbatore and others [(2013) 4 MLJ 502]; E.K.M.G.Bakir Ali vs. G.Sundarraaj and others [2011-3-L.W.659]; Balu Pillai @ Balasubramania Pillai and others vs. Mahadevan and others [(2010) 3 MLJ 198] and Haryana Wakf Board vs. State of Haryana and others [(2019) 13 SCC 382]. These decisions were relied on to support the contention that the claim of a person to be a cultivating tenant has to be decided by the competent Authority under the provisions of the Act and such issue cannot be decided by the District Court as it is not a dispute with regard to the apportionment of compensation.

16. Further, it is submitted by the learned counsel appearing for the first respondent that the claim made by appellant is to be brought under Section 3-G(2) of the Act for which the appellant has to first establish that he had a lawful right of enjoyment as a cultivating tenant in the land in question and in the absence of any document produced by the appellant, the claim made by him was rightly negatived and the writ petition filed by the first respondent was allowed.

17. We have heard the learned counsel appearing for the parties and perused the materials placed on record.

18. As noticed above, the document based on which the appellant claims that he is a cultivating tenant of a property is a Patta stated to have been issued by the Special Tahsildar, Tenancy Record, Madurai, in Form-I, which contains the name of Thiru.V.Periakaruppan, who is stated to be the grandfather of the appellant. The proceedings initiated under the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955 (in short, "1955 Act") have not been produced by the appellant, except for the Form-I, which the appellant claims to be a Patta issued to his grandfather. In the absence of any document to show that adjudicatory process was adopted under the provisions of the 1955 Act, which culminated in the issuance of Patta to Thiru.V.Periakaruppan, mere reliance upon the said document cannot confer any right on the appellant. Even assuming that Patta was granted recognising his forefathers as cultivating tenants, the same will not automatically enure in favour of the appellant, because the claim of the appellant should have been independently adjudicated by the competent Authority under the 1955 Act and his name should have been recorded in the revenue records as the cultivating tenant. Therefore, the claim made by the appellant based on the so-called Patta deserves to be outrightly rejected.

19. The reliance placed on the Certificate issued by the Village Administrative Officer, Thamaraipatti II Bit Village, dated 07.08.2001, is thoroughly misconceived. This document can in noway



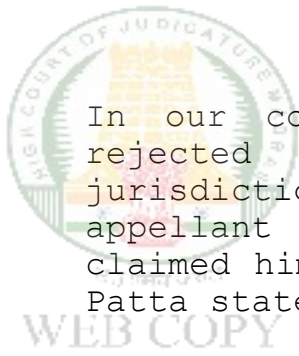
be taken to recognise the alleged right of the appellant as the cultivating tenant. Added to that the appellant had entered into an unregistered agreement, dated 08.07.2010 with the fourth respondent to sell the so-called right, which he never possessed and the consideration agreed to be paid is Rs.46,00,000/-. Therefore, the entire claim made by the appellant is based on documents, which are not admissible and the fact that he entered into an agreement with the fourth respondent to transfer the alleged right itself is sufficient to reject the case of the appellant in its entirety. In fact, no useful purpose would be served by considering the appellant's representation, which has been directed to be considered in the writ petition filed by him. However, since the respondents have not preferred any appeal against the said order, it is for the Authority concerned to take a decision in the matter.

20. That apart, the status of a person as to whether he is a cultivating tenant or not cannot be decided by a Civil Court and it has to be decided only by the competent Authority under the 1955 Act. Furthermore, the recorded cultivating tenant has no right to alienate the leasehold right to a third party. It has been so-held in the case of **Balu Pillai** (supra).

21. In **Haryana Wakf Board** (supra), the lands were acquired under the Land Acquisition Act, 1894. The property was owned by the Wakf Board. A person claimed that he is entitled to the compensation being apportioned and a portion be paid to him on the ground that he is in settled possession. While considering the said matter, it was observed that disbursing of some compensation amount, on account of displacement and deprivation of possession by virtue of acquisition of land, quantum of compensation to be apportioned between such person and owner of land would depend upon nature of rights existing with person in possession under prevalent laws and arrangement under which he is holding land. Therefore, the issue with regard to entitlement of payment of compensation amount has to be decided on the facts of each case and the burden of proof is on the appellant, who claims the so-called right and it cannot be shifted to the Department or on the first respondent.

22. As held by the Honourable Full Bench in the case of **Periathambi Goundan** (supra), the Civil Court's jurisdiction is expressly excluded in respect of the question whether a particular person is a cultivating tenant or not. Admittedly, the appellant does not possess any record to show that he is a cultivating tenant and the claim is absolutely vexatious and unsustainable in law.

23. That apart, by referring to the proceedings of the competent Authority, dated 23.09.2020, it was submitted by the learned counsel appearing for the appellant that the competent Authority itself has referred to the appellant as "Uzhavadaitharar".



In our considered view such an argument has to be outrightly rejected as the competent Authority under the Act has no jurisdiction to term a person as a cultivating tenant. The appellant has been referred so probably because the appellant claimed himself to be an "Uzhavadaitharar" by referring to a Form-I Patta stated to have been issued in favour of his grandfather.

24. Thus, for the above reasons, we find that the learned Writ Court has rightly allowed the writ petition filed by the first respondent and we find no ground to interfere with the said order.

25. In the result, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Krk

To:

The Special District Revenue Officer,
(Land Acquisition National Highways),
Madurai.

JUDGMENT

IN

W.A. (MD) No.906 of 2021

and

C.M.P. (MD) No.4080 of 2021

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