IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.11576 OF 2012
AND
MP NO.2 OF 2012

1.K.Ramasamy (Died)

2.R.Thangavel
(P2-substituted as per order dated
29.03.2022 in WMP No.4647/2022
in WP No.11576/2012) ... Petitioner

Vs.

1.Revenue Court
(Special Deputy Collector)
Trichirapalli.

2.Additional District Judge cum
District Revenue Officer
Salem.

3.K.Natesan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his Ni.Mu.59328/2005(P1)(AP1/2003) dated 16.03.2012, quash the said order and to confirm the order of the 1st respondent passed in his Ku.No.1 of 2001, Salem, dated 15.03.2002.

For Petitioner	:	Mr.P.Jagadeesan
For Respondents 1 and 2	:	Mr.M.Rajendran Additional Government Pleader
For Respondent 3	:	Mr.M.Devaraj

O R D E R

The petitioner was originally a cultivating tenant and his status was confirmed by an order passed by the Hon'ble Supreme Court. He filed a petition under Section 3 of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971, for grant of patta. The first respondent/Revenue Court, Tiruchirapalli, in KU-I/2001, Salem, dated 15.03.2002 declared that the cultivating tenant is the owner of the property and granted patta.

2.Aggrieved over the same, the third respondent / land owner filed an appeal before the appellate authority namely the District Revenue Officer, Salem, the second respondent herein. Before the second respondent, records were not produced by the Revenue Divisional Officer and hence vide Proceedings in Nee.Mu.No.59328/2005-P1 dated 16.03.2012, the order of the Revenue Court dated 15.03.2002 was set aside. Challenging the same, the petitioner / cultivating tenant has preferred the above writ petition.

3.During the pendency of the writ petition, the original cultivating tenant, namely K.Ramasamy died and his son came up with a petition to substitute himself in the place of the writ petitioner and this Court ordered the same in WMP No.4647 of 2022 in WP No.11576 of 2012.

4.Heard the submissions made on either side and perused the materials available on record.

5.The First Appellate Authority, namely the second respondent has set aside the order passed by the first respondent / Revenue Court on the ground that records were not received from the original authority and that the appellant was not given opportunity. On the face of it, the order passed by the Appellate Authority is erroneous and illegal. In a circumstance, when records are not received, it is incumbent on the part of the Authority to call for the records or direct the office to reconstruct the records. On the other hand, for non-production of records by the departmental officials, the appeal cannot be allowed and the order passed on merits cannot be set aside on technicalities. Therefore, the order passed by the second respondent vide Proceedings in Nee.Mu.No.59328/2005/D1 dated 16.03.2012 is set aside.

6.At the same time, the order passed by the first respondent / Revenue Court was attacked by the third respondent / landlord on the ground that he was not given opportunity. On a perusal of the order passed by the first respondent / Revenue Court, it is noted that even though it is recorded that the order has been passed after hearing both sides, it appears to be an exparte order. Though it is stated that the petitioner has marked several documents, none of the documents were listed and they were not discussed in the order. Further, it is stated that the third respondent / land owner has filed a written statement raising several objections including that of jurisdiction and applicability of the Act. But the discussions in the body of order reiterates whatever stated in the claim petition and not even a single line discussing the objections raised or the documents marked on the side of the third respondent. Therefore, the contention that he was not given any opportunity before the Revenue Court and his case was not considered by the Revenue Court is well established and borne out by records.

7.Therefore, the order passed by the first respondent / Revenue Court in Ku.No.1 of 2001, Salem, dated 15.03.2002 is also set aside and the matter is remitted back to the first respondent / Revenue Court for fresh consideration. Both the parties are given liberty to let in evidence and mark documents on all the issues. The first respondent / Revenue Court is directed to conduct the case afresh and pass appropriate orders after providing ample opportunity to both the parties.

8.In fine, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

1.Revenue Court
(Special Deputy Collector)
Trichirapalli.

2.Additional District Judge cum
District Revenue Officer
Salem.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.21284
+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.21232

WP NO.11576 OF 2012

VBM(CO)
GN(24/05/2022)