

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 28.06.2022

PRONOUNCING ORDERS ON : 01.07.2022

Coram:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.14845 of 2011
and MP.No.1 of 2011

- 1.Purushothaman
- 2.Padmini Devi
- 3.Santhakumari
- 4.Girija Arokia Mari
- 5.Dhanasamy
- 6.Dhilip Kumar
- 7.Deepa Arokiamarie

..Petitioners

.Vs.

- 1.The Collector
Puducherry
Cum Appellate Authority
Puducherry Occupants of Kudiyiruppu
(Conferment of Ownership) Act
Puducherry.
- 2.Director of Survey
Directorate of Survey Cum
Authorised Officer (Kudiyiruppu)
Directorate of Survey and Land Records
Government of Puducherry
Puducherry.
- 3.Meenakshi
- 4.Krishnamoorthy
- 5.Sivagamy

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent dated 23.2.2011 and made in Kudiyiruppu Appeal No.1 of 2008, quash the same.

For Petitioners : Mr.A.Muthukumar

For Respondents : Mrs.V.Usha
Additional Government Pleader
Puducherry
for R1 & R2

Mr.Saikrishnan
for R3 to R 5

O R D E R

The petitioners have challenged the impugned order dated 23.2.2011, passed by the 1st respondent in the Appeal filed under Section 6 of The Puducherry Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1973 (hereinafter referred to as 'the Act'), wherein respondents 3 to 5 were declared to be entitled for the benefit under the Act with respect to the subject property measuring an extent of 1200 sq.ft.

2.The case of the petitioners is that the father of the petitioners 1 to 4 viz. Sanjeevi was the absolute owner of a house site measuring an extent of 1200 sq.ft. One Varadarajalu, who is the father of respondents 3 to 5 was permitted to occupy as a tenant and he was a commission agent involved in the business of selling cattle. Since he did not pay the rents properly, the said Sanjeevi issued a notice on 27.3.1976 terminating the tenancy and calling upon the said Varadarajalu to vacate and handover the premises.

3. The further case of the petitioners is that the said Varadarajalu started making a claim under the Act as if he is an agricultural labourer/agriculturist who was involved in utilising the agricultural land of Sanjeevi and hence, he is entitled for benefit under Kudiyiruppu Act. In view of the same, the above said Sanjeevi approached the Authorised Officer under the Act and filed a petition to declare that Varadarajalu is not entitled for the status of Kudiyiruppu. The Authorised Officer,through an Order dated 18.10.1976,allowed the petition and held that the said Varadarajalu is not entitled for any benefit under the Act. This Order was also confirmed in Appeal by the Appellate Authority through an Order dated 30.5.1979.

4.The above Orders became a subject matter of challenge before this Court in W.P.No.396 of 1980 and this Court dismissed

the Writ Petition. Aggrieved by the same, a Writ Appeal was filed by Varadarajalu in W.A.No.381 of 1980 and the Writ Appeal was allowed by an Order dated 8.1.1986 mainly on the ground that such a declaration cannot be granted without there being a dispute as contemplated under Section 5 of the Act.

5. In the meantime, the above said Sanjeevi filed a suit in O.S.No.867 of 1979 seeking for the relief of eviction against Varadarajalu and for delivery of possession and this suit was decreed through a Judgment and Decree dated 16.2.1981. The Judgment and Decree of the Trial Court was also confirmed in Appeal in A.S.No.64 of 1981 through Judgment and Decree dated 9.11.1982. The above said Varadarajalu filed a Second Appeal before this Court in S.A.No.1971 of 1982 and the Second Appeal was allowed through a Judgment and Decree dated 2.2.1996. During the pendency of the Second Appeal, Sanjeevi died and the petitioners were brought on record.

6. A Review Petition came to be filed by the petitioners herein in Review Application No. 28 of 1996 and this Court by an Order dated 23.8.1996 was pleased to allow the Review Application and the matter was remanded back to the file of the Trial Court, with directions. On remand, the suit was once again decreed in favour of the petitioners through Judgment and Decree dated 24.12.1996. This was further confirmed in the Appeal filed by Varadarajalu in A.S.No.21 of 1997 through Judgment and Decree dated 31.10.1997.

7. The above said Varadarajalu filed a Writ Petition before this Court in W.P.No.14121 of 1999 seeking for the issue of a Writ of Mandamus directing the Authorised Officer to consider the application submitted by him on 7.11.1996 to declare him as a Kudiyiruppudar. He also filed S.A.No.428 of 1998 against the Judgment and Decree passed in A.S.No.21 of 1997 confirming the Judgment and Decree of the Trial Court.

8. The Second Appeal and the Writ Petition were taken up together for hearing and through an Order dated 30.9.1999, the Second Appeal and the Writ Petition filed by Varadarajalu were dismissed.

9. The petitioners have specifically stated that they filed E.P.No.41 of 1997 to execute the decree and for taking delivery of the property and the property was also delivered in their favour.

10.The above said Varadarajalu started prosecuting a petition before the 2nd respondent seeking for the benefit under the Act. He died during the pendency of the proceedings and respondents 3 to 5 came on record and prosecuted the petition. The 2nd respondent through an Order dated 14.12.2000, dismissed the petition after finding that the said Varadarajalu is not an agriculturist as envisaged under the Act.

11. Aggrieved by the Orders passed by the 2nd respondent, respondents 3 to 5 filed an Appeal before the 1st respondent and the 1st respondent, through the impugned order dated 23.2.2011, allowed the Appeal and held that respondents 3 to 5 are entitled for the benefit under the Act. Aggrieved by the same, the present Writ Petition has been filed before this Court.

12.Respondents 3 to 5 have filed a counter affidavit and they have taken a stand that the civil proceedings went against their father since he did not get a declaration as a Kudiyiruppudar. Therefore, the Judgment and Decree passed in the civil proceedings will not have any bearing in the respondents' independently prosecuting a petition before the concerned authority under the Act and establishing that they are entitled for the benefit under the Act and getting themselves declared as Kudiyiruppudars. It is further stated that the respondents clearly established that Varadarajalu came within the category of a marginal farmer and was cultivating in the land taken on lease and that by itself created a presumption in favour of respondents 3 to 5 as per Explanation 1 to Section 3 (7) of the Act. The petitioners were not able to rebut the said presumption and hence, the 1st respondent rightly conferred the benefit under the Act in favour of respondents 3 to 5. The respondents have therefore sought for the dismissal of the Writ Petition.

13.Heard Mr.A.Muthukumar, learned counsel for the petitioners, Mrs.V.Usha, learned Additional Government Pleader for R1 and R2 and Mr.Saikrishnan, learned counsel for R3 to R 5.

14. This Court carefully considered the submissions made on either side and the materials available on record.

15.The elaboration of the facts made supra, clearly shows that there is a chequered history for this case right from the year 1976 onwards.The entire civil proceedings went against the

father of respondents 3 to 5. The learned counsel for respondents 3 to 5 submitted that the civil proceedings went against the father of respondents 3 to 5 since he was not declared as a Kudiyiruppudar under the Act. Hence, a separate petition was prosecuted before the concerned authority and it was found that the respondents have established that they are agriculturists and a presumption enured in their favour which was not able to be dislodged by the petitioners. The learned counsel for the respondent further submitted that Section 25 of the Act clearly bars the jurisdiction of the Civil Court with regard to matters covered under the Act and consequently, once the declaration is made under the Act, the Judgment and Decree of the Civil Court pales into insignificance. The learned counsel in order to substantiate his submissions also relied upon the Judgment of this Court in Sethu Padayachi v. Periaswami Padayachi reported in (1972) 85 LW 259 and Kalyanasundaram Udayar v. Pazhaniayya Udayar reported in (1982) 95 LW 562.

16. In reply to the said submissions, the learned counsel for the petitioners submitted that the bar under Section 25 of the Act is not an absolute bar and it is always open to the Civil Court to decide the incidental questions. To substantiate his submissions, the learned counsel for the petitioners relied upon the Judgment of this Court in V. Dharmaraj (Died) and Others V. Jaffar Sadiq and Another reported in (2011) 3 MLJ 277. The relevant portions in the judgment relied upon by the learned counsel for the petitioners are extracted hereunder:

"22. The Division Bench of this court in an unreported judgement rendered in the case of Kasinathan Asari v. Vaithyalinga Mudaliar (died) in S.A. No. 912/1987 held that the Civil Court has got a jurisdiction to decide the incidental questions. Further, it held that when the Defendant who is not a Rural Artisan and not being an occupant of Kudiyiruppu, the question of Civil Court's jurisdiction also will not arise for consideration. It is relevant to note that the provisions of Tamil Nadu Rural Artisans (Conferment of Ownership) Act Kudiyiruppu Act, 1976 is parimateria the same as that of the present Act 8 of 1974.

23. Another significant factor in this case is that proviso to Section 4 of the Act 8 of 1974 states that the extent which shall so vest in such agriculturist or agricultural labourer shall not exceed three ares in rural areas and two ares in urban areas. But, admittedly in the

instant case the Appellant is in occupation of more than 3 ares and therefore, his occupation cannot at all be considered as Kudiyiruppu as stated in Section 4 of the Act 8 of 1974.

24. In view of the reasons stated above, I am of the considered view that the Civil Court can incidentally go into the question as to whether the 1st Appellant/Defendant is an agriculturist within the definition of Section 3 (3) of Act 8 of 1974 and entitled to the benefit under the Act.

25. The first appellate court after discussing the evidence both oral and documentary came to the conclusion that the Defendant is neither an agriculturist nor an agricultural labourer and therefore, not entitled to any protection under the Act 8 of 1974. I do not find any illegality or perversity in the said findings of the first appellate court. The substantial questions of law are answered against the Appellant."

17. For proper appreciation of the submissions made by the learned counsel appearing on either side, it will be relevant to extract the definitions of agricultural labourer, agricultural land, agriculturist and Kudiyiruppu, hereunder:

(1) "agricultural labourer" means a person whose principal means of livelihood is the income he gets as wages for his manual labour on agricultural land;

(2) "agricultural land" means any land used for any of the following purposes, namely:-

- (a) horticulture;
- (b) the raising of crops, grass or garden produce;
- (c) grazing;
- (d) the raising of manure crops;
- (e) dairy farming;
- (f) poultry farming;
- (g) livestock breeding;
- (h) growing of trees; and
- (i) includes any land used for any purposes subservient to the above purposes, any forest land, pasture land, plantation, orchard and tope, but

(ii) does not include house-site or land used exclusively for non- agricultural purposes;

(3) "agriculturist" means a person who cultivates agricultural land by the contribution of his own manual labour or of the manual labour of any member of his family;

(7) "kudiyiruppu" means the site of any dwelling house or hut occupied, either as tenant or as licensee, by any agriculturist or agricultural labourer and includes such other area adjacent to the dwelling house or hut as may be necessary for the convenient enjoyment of such dwelling house or hut.

+ [Explanation-I.-- It shall be presumed that any person occupying the kudiyiruppu is an agricultural labourer or an agriculturist, until the contrary is proved.

18. It will also be relevant to extract Section 25 of the Act which deals with bar of jurisdiction of Civil Courts, hereunder:

"25. Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government or the authorised officer is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

19. A careful reading of Section 5 (1) shows that an Authorised Officer can decide a dispute where the question arises as to whether any person is an agriculturist or an agricultural labourer. While deciding this dispute, the Authorised Officer has to necessarily satisfy himself that the person seeking for the benefit satisfies the requirements of an agriculturist or an agricultural labourer, as provided under the Act.

20. In the instant case, the father of respondents 3 to 5 claimed to be an agriculturist who was contributing his own manual labour and cultivating the agricultural land, which, according to him, was given on lease by the father of the

petitioners 1 to 4. This was the stand taken by him even when the father of petitioners 1 to 4 initiated proceedings in the year 1976 to declare that he is not entitled for the benefit under the Act and cannot be recognised as a Kudiyiruppudar. It is true that the orders that were passed in favour of the father of petitioners 1 to 4, came to be reversed by the Division Bench of this Court mainly on the ground that such a declaration cannot be sought for without there being a dispute as contemplated under Section 5 of the Act. In other words, this Court interfered with the Order passed by the Authorised Officer on the ground of jurisdiction.

21.This Court carefully went through the materials that were collected at the time when the proceedings were held before the Authorised Officer and it can be seen that the deceased Varadarajalu was neither an agriculturist nor an agricultural labourer and he was merely a broker/agent who was selling cows.

22.This Court also carefully went through the evidence that was recorded by the Civil Court. It is seen that the Civil Court has categorically found that the deceased Varadarajalu never made any attempt to declare himself as a Kudiyiruppudar before the Authorised Officer and hence, he was only considered to be a regular tenant and eviction was ordered against him. It was only during the pendency of the Second Appeal in S.A.No.428 of 1998, the deceased Varadarajalu came up with a new story as if he has submitted a petition before the Authorised Officer on 7.11.1996 and sought for a direction to dispose of the said petition. The Second Appeal and the Writ Petition were taken up together by this Court and both were dismissed by an Order dated 30.9.1999. The relevant portions of the Order are extracted hereunder:

"10. After hearing counsel on both sides, I do not think that anything survives in this second appeal. The parties are governed by the order on review. It is for the defendant to prove that he is a Kudiyiruppudar and he is entitled to purchase the occupancy right and only in that contingency he can avoid eviction. Once, he admit that he is a Kudiyiruppudar, his possession is permissive. He is claiming immunity from eviction only on the basis of special enactment. Till date, he has not obtained any favourable orders from the authorities. At this juncture, counsel for the appellant relied on the averments in the writ petition wherein he said that as early as on 7-11-1996, he has moved an application before the competent authority to acquire the ownership

right of his occupancy, by application dated 7-11-1996. I do not think this was brought to the notice of trial judge when the case was posted for trial. The order under review is dated 23-08-1996 and the revised judgement of the trial judge is dated 24-12-1996. The matter was heard by Civil Judge from 21-12-1996. If in fact the petitioner had applied for acquiring ownership right, that would have been brought to the notice of that court. I find from the discussion of the trial judge that he adduced evidence only to show that he is in possession before 1972 and therefore there is a presumption under the act that he is a agricultural labourer when the matter was taken in appeal in [A.S.No.21](#) of 1997 also, this fact was not brought to the notice of learned appellate Judge. The appeal was dismissed on 31-10-1997. It was thereafter, the petitioner by filing the writ petition on 15-08-1999, alleged that he has already filed an application on 7-11-1996 and the authorities have refused to pass an order on the same. No evidence have been produced before the court to show that the authorities have acknowledged the same. The circumstances show that the application dated 7-11-1996 would not have been filed as alleged in the Writ petition. The writ petitioner has also not stated as to whether the respondents therein have received or acknowledged the application dated 7-11-1996. So long as the respondent has not received or as long as there is an averment that they have acknowledged the receipt of such an application, the court cannot issue a writ of Mandamus, directing the respondents to consider the application which is not on their file.

11. In the second appeal, the only argument was that the appellant has moved an application before the authorised officer for getting ownership rights. Once it is found that the said contention cannot be believed and once it is found no direction can be given to the authorities as prayed therein, the writ petition can only be dismissed.

12. In the writ petition, there is also another defect. Even though the relief sought for is only for a direction against the respondents therein, the respondents in the second appeal who are the owners to the property

are also entitled to be heard, they are not made parties to the writ petition. In the application dated 7-11-1996 alleged to have been given to the authorised officer also, the respondents are not made parties and consequently no action also could be taken on the said application. Once the appellant is not in a position to produce any records to show that he is the owner of the building and its occupied by him as a Kudiyiruppudar, is not entitled to immunity from eviction."

23. It is seen from the above Order that this Court disbelieved the fact that the deceased Varadarajalu had infact submitted a petition before the Authorised Officer. The reasoning given by this Court was that the deceased Varadarajalu did not even whisper about the pendency of the petition either before the Trial Court or the Appellate Court and he came up with such a stand only during the pendency of the Second Appeal. This Court, both on merits and after taking into consideration the conduct of the deceased Varadarajalu dismissed the Second Appeal and the Writ Petition.

24. The deceased Varadarajalu never lost hope and he once again started prosecuting a petition before the authorised officer. The Authorised Officer, while rejecting the petition, held as follows:

"The petitioner ThiruVardarajalu was expired on 10-03-2003 and the legal heirs of the petitioner have been included as parties to this case. Since the petitioner is no more, the question as to whether he is an agriculturist has to be decided only upon the evidence tendered by the petitioner and others before the Authorised Officer during the year 1976 and accordingly it was held from the said evidences that the petitioner was milking milk animals in ten houses, both in the morning and evening and that shows that he was mainly engaged in selling milk and hence he is not an agriculturist by contributing his own manual labour as envisaged under Section 3(3) of the Pondicherry Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1973."

25. The Authorised Officer rightly took into consideration the evidence that was available when Varadarajalu was alive and was taking a stand that he was an agriculturist. On appreciation of evidence, it was found as early as in the year 1976 that the

deceased Varadarajalu was neither an agriculturist nor an agricultural labourer and he was merely an agent who was selling cows. In the light of this finding given by the authorised officer, the presumption that is provided under Explanation 1 to Section 3 (7) of the Act never came into operation.

26. The appellate authority without considering the findings rendered in the earlier proceedings on appreciation of evidence, took into consideration two stray statements made by the Karnam and Village level worker and came to a conclusion that the deceased Varadarajalu was in occupation of the property on the crucial date as an agriculturist and hence, applied the presumption in favour of respondents 3 to 5 and allowed the Appeal filed by them.

27. In the considered view of this Court, the 1st respondent did not properly appreciate the materials that were available on record. The most crucial material that ought to have been considered by the 1st respondent was the evidence that was adduced in the earlier proceedings when Varadarajalu was alive. Respondents 3 to 5 came into the scene much later and they cannot make out a better case than the case that was made out by Varadarajalu. There are absolutely no materials to show that the deceased Varadarajalu had contributed his own manual labour and cultivated the lands. In view of the same, respondents 3 to 5 can never be declared as Kudiyiruppudars and hence the presumption under Explanation 1 to Section 3 (7) of the Act will not enure in their favour. As a consequence, the burden never shifted to the side of the petitioners. Hence, the finding of the 1st respondent to the effect that the petitioners failed to rebut the presumption, suffers from perversity. The order of the 1st respondent has infact reversed all the earlier orders/decrees passed in favour of Sanjeevi and the petitioners herein and set it at nought in one stroke.

28. In view of the above discussion, this Court holds that the Order passed by the 1st respondent in the Appeal requires the interference of this Court and accordingly, the same is quashed and the Order of the 2nd respondent dated 14.12.2007 is restored.

29. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

KP

To

1.The Collector
Puducherry
Cum Appellate Authority
Puducherry Occupants of Kudiyiruppu
(Conferment of Ownership) Act
Puducherry.

2.Director of Survey
Directorate of Survey Cum
Authorised Officer (Kudiyiruppu)
Directorate of Survey and Land Records
Government of Puducherry
Puducherry.

+1cc to Mr.A.Muthukumar, Advocate SR.No.41594

+1cc to Government Pleader, Puducherry, SR.No.43053

W.P.No.14845 of 2011

SSD(CO)
GMY(21/07/2022)