



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.7437 of 2019

and

WMP(MD) No.5952 of 2019

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Jeyaraman

... Petitioner

/vs./

1.The Joint Commissioner,
Department of Hindu Religious and Charitable
Endowment Department,
Trichy District.

2.The Executive Officer,
Arulmigu Veetrirundaperumal Kovil.
Kanadu Village,
Officer at Arulmighu Kalyana Ramasamy Temple,
Meemuisal post,
Aavudayarkovil Taluk,
Pudukkottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari call for the records of the orders passed by the 1st respondent in M.P.No.44/2017 dated 04.03.2019 and quash the same.

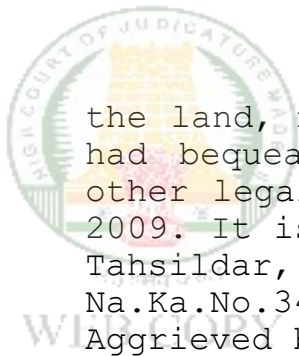
For Petitioner	: M/s.G.Yazhini
For R1	: Mr.P.T.Thiraviam, Government Advocate
For R2	: Mr.G.Mathavan

ORDER

The petitioner has challenged the impugned order passed under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (*herein after referred to as Act*) by the 1st respondent dated 04.03.2019 on the ground that the petitioner has converted the agricultural land, which was leased to the petitioner's aunt, namely, Chellammal, for residential purpose. The writ petition has been filed, though the petitioner has an alternate remedy under Section 114 of the said Act.

2.The main case of the petitioner before this Court is that the impugned order is without jurisdiction inasmuch as the petitioner has perfected the rights over the land in terms of the order of the Special Deputy Collector, Revenue Courts, Trichy dated 23.01.2017 under the provisions of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 r/w the relevant Rules made thereunder.

3.The learned counsel for the petitioner submits that the petitioner's aunt, namely, Chellammal was the original allottee to



the land, measuring an extent of 75 cents. It is submitted that she had bequeathed the land to the petitioner, as Chellammal had no other legal heirs, vide Will dated 22.06.2006, who died in the year 2009. It is submitted that the petitioner had earlier approached the Tahsildar, who by an order dated 18.11.2016 bearing Na.Ka.No.3495/2014/A6, had rejected the rights of the petitioner. Aggrieved by the same, the petitioner had preferred an appeal before the Special Deputy Collector, Revenue Courts, Trichy under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and the Rules made therein, which came to be disposed of by an order dated 23.01.2017, wherein the Revenue Divisional Officer recognized the right of the petitioner as a cultivating tenant in place of his deceased aunt, who was the original allottee.

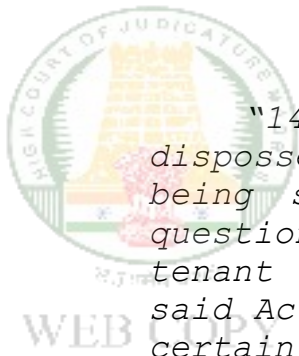
4.The learned counsel for the petitioner further submits that the said order has attained finality and no further appeal has been filed under Section 7 of the aforesaid Act before the appropriate authority and therefore, the impugned proceeding initiated to evict the petitioner under Section 78 of the Act was without jurisdiction.

5.The learned counsel for the petitioner submits that the impugned order of the 1st respondent asking the petitioner to vacate 75 cents of land, which was earlier leased to the petitioner's aunt, Chellammal and was used for paddy cultivation, in respect of which the rights of the petitioner as a cultivating tenant has been recognized under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 was therefore without jurisdiction.

6.It is the case of the petitioner that the impugned proceeding under the Tamil Nadu HR & CE Act, 1959 is without jurisdiction inasmuch as the petitioner enjoys the protection under the provisions of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961.

7.The learned counsel for the petitioner has drawn attention to Section 19 of the Act, as per which a public trust can evict the cultivating tenant only under specified circumstances. It is submitted that none of the circumstances specified therein are attracted and in view of Section 3 of the aforesaid Act, the provisions of the Tamil Nadu HR & CE Act, 1959 have to be read in derogation as the provisions of the 1969 Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of the Court or any authority. It is therefore submitted that the impugned order passed by the 1st respondent is liable to be quashed.

8.In support of his arguments, the learned counsel for the petitioner has drawn attention to a decision of the Division Bench of this Court in the case of **V.Angu Vs. the Commissioner of HR & CE and another** reported in **(2016) 6 MLJ 266**, wherein, it has been held



"14. It is well settled that even a trespasser cannot be dispossessed, except under due process of law. The appellant being statutory tenant has been cultivating the lands in question for the past 25 years. There is provision to evict a tenant under Tamil Nadu Public Trusts Act. Section 19 of the said Act provides the procedure to evict cultivating tenant in certain cases. Without resorting to any procedure known to law, to evict the appellant from the land, issuance of the notification for public auction to lease out the land is a gross violation and is liable to be quashed."

9. Opposing the prayer, the learned Government Advocate for the 1st respondent submits that the petitioner has converted about 10 cents of agricultural land for residential purpose and therefore, proceeding under Section 78 of the Act has been initiated. Thus, the learned Government Advocate submits that there is no error in the impugned order. It is therefore submitted that the writ petition filed by the petitioner is liable to be dismissed. That apart, it is submitted that the petitioner has an alternate remedy by way of an appeal under Section 114 of the Act and therefore, on this ground, the writ petition has no merits.

10. The learned counsel for the 2nd respondent further submits that the land in question being an agricultural land belonging to the 2nd respondent was outside the purview of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and the Rules made therein. It is submitted that since the land belongs to the 2nd respondent and is administered under the supervision of the HR & CE Department and therefore, the order passed by the Revenue Divisional Officer dated 23.01.2017 under the provisions of the aforesaid Act was without jurisdiction. It is therefore submitted that the petitioner has no right to claim title or interest over the temple land of the 2nd respondent. In any event it is submitted that the petitioner is no longer cultivating tenant and therefore, the writ petition filed by the petitioner is liable to be dismissed.

11. The learned Government Advocate for the 2nd respondent on the other hand has referred to two following decisions of this Court.

"i) In W.P. (MD) No.16833 of 2017 (V.Muthusamy Vs. The Joint Commissioner, HR & CE Department, Tirunelveli District and another) dated 12.02.2018.

ii) In W.P. (MD) Nos.23559 of 2018 and 158 of 2019 (R.Karthiga Vs. The Commissioner, HR & CE, Chennai and another and A/M.Venugopal Swamy Thirukoil and A/M.Poonjolai Amman Thirukoil, Tiruchirappalli District Vs. The Tahsildar, Thuraiyur Taluk, Tiruchirappalli District and other) dated 14.06.2019."

12. The learned counsel for the 2nd respondent therefore submits that the petitioner cannot seek any immunity of attention under the Act and therefore, it governed by the provisions of the HR & CE Act, 1959. The learned counsel for the 2nd respondent has placed reliance on paragraph No.11 from the said decision in W.P.(MD) No.16833 of

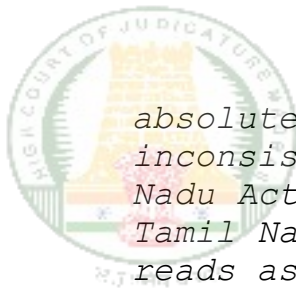


2017 (**V.Muthusamy Vs. The Joint Commissioner, HR & CE Department, Tirunelveli District and another**) dated 12.02.2018, which reads as under:-

"11. From the perusal of the records, though the Respondent 3 to 17 have obtained orders from the Revenue Tahsildar/ Record officer under the Tamil Nadu Agricultural Lands Record of Tenancy rights Act, 1969, it appears that no final record of tenancy rights were published in the Tamil Nadu Government Gazette as contemplated under Section 3 of the Tamil Nadu Agricultural Lands Record of Tenancy rights Act, 1969 and only temporary/miscellaneous rent receipts are continued to be issued in the name of erstwhile lessees, who admittedly have lost possession. The petitioner has produced certain photographs which show that there is no cultivation whatsoever by the respondents employing their own physical labour or that of their family members. Therefore, it is clear that the status of the respondents 3 to 17 was never approved and recognized by the 18th respondent. Therefore, this Court is of the view that the respondents 3 to 17 would not come within the definition of "Cultivating Tenants" and hence the protection under the Tamil Nadu Public Trusts (Regulation of and Administration of Agricultural Lands) Act, 1961 will not be applicable to them and the judgment of the Hon'ble Division Bench in V.Angu's case (Supra) will not be of any assistance to them."

13.It is submitted that the petitioner is not a cultivating tenant as per the records maintained under the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 and therefore, the petitioner cannot claim any immunity under the provisions of the aforesaid Act. A reference was made to paragraph No.10 from the 2nd decision, which reads as follows:-

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 :

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"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.""

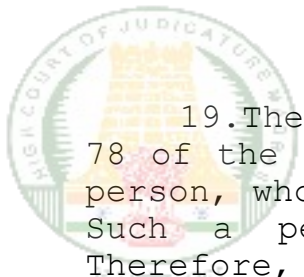
14.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

15.The facts are not in dispute. The petitioner's aunt, Chellammal was a cultivating tenant within the meaning of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. During her life time, she appears to have executed a Will on 22.06.2006 and later died in 2009. Neither the details of the Will nor the actual date of death of the petitioner's aunt have been produced before this Court or before the authority below.

16.The petitioner appears to have approached the Tahsildar under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 for recognizing the petitioner as a cultivating tenant. The application was rejected by the Tahsildar on 18.11.2016 and a copy of the aforesaid order is not available in the typed set of papers.

17.Aggrrieved by the said order, the petitioner had preferred an appeal before the Special Deputy Collector, Revenue Courts, Trichy under Section 10 of the aforesaid Act. The Special Deputy Collector by an order dated 23.01.2017 has recognized the petitioner as a cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 based on a oral agreement. The respondents have not filed any revision against the aforesaid order dated 23.01.2017.

18.The facts on record indicate that though the Special Deputy Collector has passed an order declaring the petitioner as a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, no steps have been taken to set aside the aforesaid order. It is not clear whether the 2nd respondent was a party to the aforesaid proceeding. There are also no documents to substantiate that the petitioner's name was entered as a cultivating tenant under the provisions of the aforesaid Act, so as to give protection to the petitioner under the provisions of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961.



19.The 2nd respondent appears to have ample power under Section 78 of the Tamil Nadu HR & CE Act, to remove the encroachments by a person, who is in possession of a property without authority of law. Such a person can be evicted only in accordance with law. Therefore, while recognizing the rights of the 2nd respondent to evict the petitioner, I am inclined to dispose of this writ petition by giving liberty to the 2nd respondent to take appropriate steps to set aside the order of the Special Deputy Collector, Revenue Courts, Trichy, dated 23.01.2017 passed under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. Such steps may be taken by the 2nd respondent within a period of 30 days from the date of receipt of a copy of this order and thereafter the 2nd respondent may issue a fresh notice to the petitioner under Section 78 of the HR & CE Act, 1959, to evict the petitioner as an encroacher. Till such time, the possession by the petitioner will stand protected under the under the provisions of the Tamil Nadu Public Trust (Regulation of Administration of Agricultural Lands) Act, 1961 as long as providing the petitioner pays the rent due to the 2nd respondent as may be determined under the provisions of the HR & CE Act, 1959.

20.The writ petition stands disposed of, in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

To

- 1.The Joint Commissioner,
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