BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 18.11.2022

ORDER PRONOUNCED ON : 23.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.17545 of 2016
and
W.M.P(MD).No.12669 of 2016

A.Chellappa .....Petitioner

Vs

1.The District Revenue Officer
Office of the Collectorate
Madurai 20

2.The Special Deputy Collector
(Revenue Court)
New National Road
Madurai

3.The Thasildar (East)
Narasingam Road
Othakadai
Madurai

4.S.Thirupathi

5.K.Jeyaraman

6.K.Narayanan

7.K.Rajathi

8.V.P.Ramakrishnan

9.The Executive Officer
Arulmigu Jaya Veera Anjaneyar Thirukovil
Simmakkal
Madurai

10.The Executive Officer
Sri Kalamega Perumal Thirukovil
Thirumohur
Madurai ....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned order passed by the first respondent in his proceedings vide Na.Ka.No.1538/2015/G3 dated 05.08.2016 and quash the same.

For Petitioner : Mr.PT.S.Narendravasan

For R1 to R3 : Mr.B.Saravanan
Additional Government Pleader

For R9 & R10 : Mr.S.Manohar

ORDER

The present writ petition has been filed challenging an order passed by the first respondent, wherein he has rejected the request of the petitioner for recording himself as a cultivating tenant for an extent of 1 acre in Survey No. 154/3 in Narasingham IV Bit, Madurai East Taluk, Madurai.

2.According to the learned counsel for the petitioner, the land in dispute belongs to Sri Paramanantha Sanivarabajanai Madam and the same is being administered by the trustees. The learned counsel had further submitted that one Kannan, Gopal and Mani @ Manivasagam are the original registered cultivating tenants of the above said property. They had executed a registered made over document in favour of the writ petitioner's wife and daughter by way of a registered document dated 17.10.2002 after receiving a sum of Rs.40,000/-. However behind the back of the petitioner and his family members, the vendor under the made over document had unilaterally cancelled the same on 14.05.2007. Thereafter, his wife and daughter have executed a registered made over document in favour of the writ petitioner on 13.03.2009. Hence, the petitioner is a cultivating tenant as on today with regard to the above said property.

3.The learned counsel for the petitioner had further contended that on the basis of the above said made over document, he had approached the third respondent herein for registering himself as a tenant. After hearing all the parties, the third respondent herein had passed an order on 04.09.2012 accepting the case of the writ petitioner and directed to record him as a cultivating tenant.

4.The learned counsel for the petitioner had further contended that the private respondents herein had approached the second respondent and by an order dated 31.10.2014, he passed an order confirming the cultivating tenancy in favour of the writ petitioner. Thereafter, the private respondents have approached the first respondent herein and the first respondent by his order dated 05.08.2016 had reversed the order and arrived at a finding that the petitioner has received a made over document from a person who does not have any right to create such made over document. Based upon the said findings, he reversed the order passed by the Tahsildhar and the Revenue Court and thereafter, cancelled the order passed by the authorities. Challenging the same, the present writ petition has been filed.

5.According to the learned counsel for the petitioner where a made over document has been executed in favour of his wife and daughter, it cannot be unilaterally cancelled on 14.05.2007. Once the cancellation is void in the eye of law, the second made over document executed by the petitioner is valid and hence, he should have been registered as a cultivating tenant.

6.Per contra, the learned counsel appearing for the respondents 9 and 10 had contended that the name of one Karuthapriyan was registered as a cultivating tenant of Saniwara Bajanai Madam. The petitioner has not received any made over document from the said Karuthapriyan. Any made over document, if really available, the wife and daughter of the writ petitioner should have been registered it in the year 2002 itself. Unless, a made over document is received from a person who has already registered himself as a cultivating tenant, the said made over document is not valid. In the present case, the registered cultivating tenant is one Karuthapriyan and from the said

Karuthapriyan, the petitioner has not received any made over document. Though the petitioner, his wife and daughter are alleged to have received a made over document, they have not chosen to register themselves under Tamil Nadu Act 10 of 1969. Hence, according to the learned counsel for the respondents 9 and 10 herein, the order impugned in the writ petition may be sustained.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The petitioner had approached the revenue authorities for registering himself as a cultivating tenant as contemplated under Act 10 of 1969. According to the petitioner, one Kannan, Gopal and Manivasagam who are the sons of one Veeranan had executed a registered made over document in favour of the writ petitioner's wife and daughter on 17.10.2002. Thereafter, they have unilaterally chosen to cancel the document on 14.05.2007 behind the back of the petitioner's wife and daughter. Thereafter, the wife and daughter of the petitioner have executed a second made over document in favour of the writ petitioner on 13.03.2009. Only on the basis of the said document, the petitioner had approached the authorities to register himself as a cultivating tenant. It could be seen from the records that one Karuthapriyan has been registered as a cultivating tenant of Saniwara Bajanai Madam. The name of Kannan, Gopal and Manivasagam, sons of Veeranan are not registered as cultivating tenants. Hence, it is clear that the petitioner's wife and daughter have received a made over document from a person who has not been registered as a cultivating tenant. Hence, any made over document executed by his wife and daughter in favour of the writ petitioner will not confer any right as a cultivating tenant.

9.As per Section 5 of Tamil Nadu Act 10 of 1969, whenever a person seeks modification entries in the record of tenancy rights, he should make an application to the record officer for modification. The said modification can be effected either by reason of death of any person or by reason of interest or by any other subsequent change in circumstances. Hence, it is clear that unless the made over document is executed by a registered cultivating tenant, the same will not confer any right upon the beneficiaries.

10.In the present case, the petitioner's family members have not received any made over document from the registered tenant. Hence, they have not approached the record officer to register their names as cultivating tenants. When the petitioner's wife and daughter have not been registered as cultivating tenants, their made over document in favour of the writ petitioner is also not valid. Hence, the order impugned in the writ petition is perfectly valid and this Court does not find any illegality or infirmity in the said order.

11.In view of the above said discussion, the writ petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23 .11.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.17545 of 2016
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