



W.P.(MD) No.4769 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.12.2022

PRONOUNCED ON : 06.01.2023

CORAM

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.4769 of 2013

and

M.P.(MD) No.2 of 2013

M.Vasudevan

... Petitioner

/vs./

1.The District Revenue Officer,
Thanjavur,
Thanjavur District.

2.K.Raman

3.K.Kumaresan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order dated 10.10.2012 by 1st respondent in See.Tha.Pa.02/2011 H-3, confirming the order dated 13.02.2009 passed by Tenancy Rights Registering Appellate Authority/Special Deputy Collector, Revenue Court, Thanjavur in



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Ku.Vu.P.Me.Mu.02/2009, which was passed confirming the order dated 13.02.2009 passed by Tenancy Rights Registering Officer/Thasildhar, Kumbakonam in Ku.Vu.Pa.Case.No.10/2001 quash the same.

(Cause title has been amended vide order dated 15.12.2022 by this Court in W.M.P.(MD) No.22165 of 2022)

For Petitioner : Mr.S.Anand Chandrasekar for
Sarvabhauman Associates
For R1 : Mrs.D.Farjana Ghoushia
Special Government Pleader
For R2 : M/s.D.Saranya

ORDER

The instant writ petition is filed seeking for a Certiorari to quash the orders passed by the District Revenue Officer, Thanjavur/the first respondent herein in See.Tha.Pa.02/2011 H-3, dated 10.10.2012 confirming the orders passed by the Tenancy Rights Registering Appellate Authority, the Special Deputy Collector, Revenue Court, Thanjavur in Ku.Vu.Pa.Me.Mu.02/2009 dated 13.02.2009 and the Tenancy Rights Registering Officer, the Tahsildar, Kumbakonam in Ku.Vu.Pa.Case No.10/2001 dated 13.02.2009.

2.Heard Mr.S.Anand Chandrasekar for M/S.Sarvabhauman Associates, learned counsel for the petitioner, Mrs.D.Farjana Ghoushia, learned Special



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Government Pleader for the first respondent and M/s.D.Saranya, learned counsel for the second respondent.

3.The learned counsel for the petitioner would submit that the petitioner had purchased an agricultural property in S.No.25/1, measuring an extent of 2.23 acres at Agarathur Village, Kumnakonam Taluk, Thanjavur District from the third respondent through a registered sale deed dated 07.09.2000. The vendor of the petitioner had purchased the property from one Senthilnathan through a registered sale deed dated 25.11.1997. As the land was under the cultivation of the third respondent, at the time of execution of the sale deed, he had requested the petitioner to permit him to harvest the cultivation. Considering his request, the petitioner has permitted him to harvest the crops standing in the land. However, after the harvest, the third respondent was delaying the handing over of the possession of the land to the petitioner. The second respondent, who is the brother of the third respondent, was also instrumental in avoiding to hand over the possession of the land. Therefore, the petitioner was constrained to file a suit for recovery of possession and mesne profit in O.S.No.510 of 2000. In the said suit, the third respondent remained *ex parte*. But however, the second respondent



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contested the same by claiming that he was a cultivating tenant of the property for the past 11 years.

4.The trial Court upon considering the various oral and documentary evidences rejected the claim of the second respondent that the second respondent was the cultivating tenant and decreed the suit as prayed for. The second respondent being aggrieved against the same, had preferred an appeal suit in A.S.No.16 of 2004 before the Sub Court, Kumbakonam, which was also dismissed. Being aggrieved against the same, he had preferred a second appeal in S.A.No.1165 of 2005, which also came to be dismissed by this Court by judgment dated 05.10.2007.

5.The learned counsel for the petitioner would further contend that after filing of the suit, the second respondent to thwart the attempts of the petitioner to recover possession had initiated proceedings before the Tahsildar, who is also the Tenancy Rights Registering Officer to record his tenancy. This Court while dismissing the second appeal confirming the judgment and decree of the first appellate Court as well as the trial Court had held that the findings in the civil suit



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are without prejudice to the findings to be rendered in the proceedings pending before the Tenancy Rights Registering Officer. Thereafter, the Tahsildar had taken up the claim of the second respondent in RTR.No.10/01.

6.He would further contend that when there is a specific finding of the civil Court as to the status of the second respondent that he is not the cultivating tenant, the Tahsildar ought not to have sat on appeal with the aforesaid specific finding and given a contra finding. The exercise that has been taken up by the Tahsildar is like sitting on an appeal of the judgment and decree of this Court passed in the second appeal. Further, the appellant authority, namely, the Revenue Divisional Officer also fell into the same error and the first respondent in revision had also not considered this aspect and has upheld the orders passed by the Tahsildar and the Revenue Divisional Officer.

7.He would further submit that the second respondent had relied upon the very same documents before the revenue authorities, which were relied upon before the civil Court to contend that he is the cultivating tenant. When the civil Court had arrived at a conclusion based on the very same documents and



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pleadings that the second respondent is not a cultivating tenant, the Revenue Authorities ought not to have given a contra finding as to the status of the second respondent. On that ground, he would seek interference of this Court to set aside the order passed by the first respondent confirming the orders passed by the Revenue Divisional Officer and Tahsildar.

8.Countering his arguments, M/s.D.Saranya, learned counsel for the second respondent would contend that there is no error in the orders passed by the authorities, since this Court while disposing of the second appeal had specifically held that the authorities shall not be prejudiced by the findings of the civil Court. She would further contend that the second respondent was the cultivating tenant under the vendor of the petitioner's vendor, namely Senthilnathan. His mother had purchased the property in the name of his brother, namely the third respondent and even under the third respondent, he continued to cultivate the lands. She would further contend that at no point of time, the third respondent had cultivated the land, even though the land stood in his name.



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9. She would further contend that Senthilnathan, the vendor of the petitioner's vendor, had deposed before the Tenancy Rights Registering Officer, namely, the Tahsildar to the effect that the petitioner is a cultivating tenant under him. Based on the said submission made by the said Senthilnathan, the Tahsildar had recorded the tenancy. In such event, she would plead that there is no error in the order passed by the Tahsildar much less as confirmed by the Revenue Divisional Officer and by the first respondent.

10. She would also contend that the Revenue Officials, namely the Village Assistant and the Village Administrative Officer had also deposed to contend that the second respondent was alone in cultivation of the lands in question. Only on consideration of the oral evidence given by the said Senthilnathan and the Revenue Officials, the Tahsildar had come to a finding that the second respondent is a cultivating tenant of the property. Therefore, she would contend that only based on such oral evidences, the Tahsildar had come to a conclusion, which has been rightly affirmed by the Revenue Divisional Officer as well as by the first respondent. Hence, she would plead that there is no necessity to interfere with the well considered order passed by the statutory authorities under the Tamil Nadu



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Agricultural Land Record of Tenancy Rights Act, 1960 (Tamil Nadu Act 10 of 1960).

11.I have considered the rival submissions made by the learned counsel appearing on either side.

12.It is an admitted case that the petitioner is the owner of the property. The case of the second respondent is that he has been a cultivating tenant for a very long time much before the petitioner had purchased the property. He had also made a cloud claim that it was his mother, who had purchased the property, in the name of his brother, namely the third respondent. Neither before the civil Court nor before the Tahsildar, he had substantiated that the purchase was made by his mother. That apart, he had not taken any steps to register himself as a tenant under the relevant statute. Only after the filing of the suit by the petitioner for recovery of possession in the year 2000, the second respondent had taken steps to record his tenancy. This in my view is an after thought to thwart the attempts of the petitioner to recover possession.



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13.An analysis of the judgment and decree in O.S.No.510 of 2000 dated 05.12.2003, it is seen that the second respondent herein had examined one Ramakrishnan, the Village Administrative Officer and one Shanmugam, the Village Assistant in support of his case. The trial Court has disbelieved the statements and has recorded reasonings as to why their chief examination could not be accepted.

14.The trial Court had recorded in its judgment that D.W2, namely the Village Administrative Officer during his cross-examination has clearly admitted that he had issued Chitta and Adangal in respect of the land and that the name of the second respondent has not been recorded in the same. When the Chitta and Adangal extracts do not reflect the name of a person, who claims to be in cultivation, it only leads to the inconclusive presumption that he was not in possession of the property as he had not cultivated the same. That apart, D.W3 in his cross-examination had specifically admitted that he is not aware as to how the second respondent was enjoying the said property.



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15. Having analyzed the various documents and the oral evidences, the trial Court has specifically given a finding that the second respondent is not in possession of the property as a cultivating tenant, thereby giving a specific finding that the second respondent is not a cultivating tenant. This finding of fact has not been disturbed by the first appellate Court as well as this Court in the second appeal. However, the Tahsildar relying upon the same evidences and the same witnesses, namely the Village Administrative Officer and the Village Assistant, whose evidences were disregarded by the Court, had given a finding that the second respondent was a cultivating tenant. The Tahsildar does not refer to any cross-examination.

16. That apart, the second respondent had not produced any documentary evidences prior to 2000 to sustain his claim that he was a tenant for more than a decade prior to 2000. He had neither produced any receipt evidencing payment of the lease, the mode of payment or any revenue records evidencing his cultivation of the land. Even though the Tahsildar has examined the Village Administrative Officer and the Village Assistant, even through them he had not marked any



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revenue records, such as Chitta and Adangal to show that the second respondent was in possession and was cultivating the lands.

17.In such event, even though this Court in the second appeal had permitted the Tahsildar to proceed without prejudice to the findings, in my view, the Tahsildar had exceeded his brief and had given a contra finding without any materials that were available before him and not placed before the Court. In such event, the observation that the authorities will not be prejudiced by the findings would only mean that if the parties produce any independent evidence either oral or documentary before the authorities concerned, then, they could independently take a decision in spite of the finding of fact by the civil Court. In this case, I have already given a finding that the second respondent herein had not produced any other material by way of oral or documentary evidence apart from what has been considered by the civil Court in arriving at a conclusion that the second respondent is not a cultivating tenant.

18.The evidences before the Tahsildar were already available before the civil Court. Hence, there were no new materials available before the Tahsildar to



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come to a different finding, than what has been arrived at by the civil Court.

When that be so, this Court is of the view that the order passed by the Tahsildar is for extraneous considerations. The appellate authority, namely the Revenue Divisional Officer and also the first respondent herein had also fell into the same error and had mechanically upheld the orders passed by the Tahsildar.

19.It would also be relevant to analyze the effect of a civil Court findings on the authorities under the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1960 (Tamil Nadu Act 10 of 1960). The said issue is no longer *res integra*. A Full Bench of this Court in a judgment reported in ***AIR 1980 Mad 180 (Periathambi Goundan Vs. the District Revenue Officer and others)***, after analyzing the various materials placed before it had arrived at a conclusion that the jurisdiction of a civil Court cannot be said to have been barred or ousted under Section 16-A of the said Act. For better appreciation, the relevant paragraph is extracted hereunder:-

“38. With particular reference to the facts of this case, as the Record Officer had jurisdiction to decide the name and address of the tenant cultivating the land, if there are competing claims by two persons that they are cultivating tenants he had necessarily to



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decide that question. In all matters which may arise incidental to the determination may arise incident of the matters mentioned in Sec. 8 (2), the Record Officer or the appellate or revisional authority cannot be said to have exclusive jurisdiction and with reference to those matters, the Jurisdiction of the Civil Court cannot be said to have been barred or ousted under Section 16-A of the Act.”

20. In a further judgment of a Division Bench of this Court in the case of ***Ramalingam Vs. The District Revenue Officer, Thanjavur District and others*** reported in ***AIR 1992 Mad 97***, this Court had also dealt with the said issue and had held that when a competent civil Court had arrived at a conclusion that an individual status as to the cultivating tenant has been put to an end, the authorities under the Act cannot take a contrary view in the absence of any independent material to take a different conclusion. The said Division Bench of this Court had also relied upon various judgments of this Court to arrive at such conclusion. The findings rendered by a civil Court in a civil proceedings between the parties would be prevailing on the authorities.



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21.It would also be useful to refer to a judgment of this Court in the case of ***Avudaithangammal Vs. Subramania Thevar and Murugaiah Thevar and others*** reported in ***1994 1 L.W. 82***. This Court had dealt with in detail the object of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1960 (Tamil Nadu Act 10 of 1960). Relying upon an earlier judgment, the learned Judge had held that mere record of tenancy in the register would not confer a right upon a person to claim that he is the cultivating tenant.

22.In a further unreported judgment of this Court in ***W.P.No.30454 of 2016 dated 15.07.2022, (M.Dhanalakshmi Vs. The Tahsildar, Tiruppur District and others)***, this Court had held, when a civil Court has rendered a finding that a person is not a cultivating tenant has set aside an order of the Record Officer recording a person as a cultivating tenant even though the decree passed was *ex parte*.

23.In view of the specific finding of fact by a competent civil Court that the second respondent is not a cultivating tenant under the petitioner, the Tahsildar



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without any new materials placed before him either by way of oral evidence or documentary evidence cannot unsettle such factual finding of fact, which is binding on the parties.

24.In view of the aforesaid findings and reasonings, I am of the considered view that the order passed by the District Revenue Officer, Thanjavur/the first respondent herein in See.Tha.Pa.02/2011 H-3, dated 10.10.2012 confirming the orders passed by the Tenancy Rights Registering Appellate Authority, the Special Deputy Collector, Revenue Court, Thanjavur in Ku.Vu.Pa.Me.Mu.02/2009 dated 13.02.2009 and the Tenancy Rights Registering Officer, the Tahsildar, Kumbakonam in Ku.Vu.Pa.Case No.10/2001 dated 13.02.2009 is liable to be set aside.

25.In fine, the Writ Petition is allowed setting aside the order passed by the District Revenue Officer, Thanjavur/the first respondent herein in See.Tha.Pa.02/2011 H-3, dated 10.10.2012 confirming the orders passed by the Tenancy Rights Registering Appellate Authority, the Special Deputy Collector, Revenue Court, Thanjavur in Ku.Vu.Pa.Me.Mu.02/2009 dated 13.02.2009 and the Tenancy



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Rights Registering Officer, the Tahsildar, Kumbakonam in Ku.Vu.Pa.Case No. 10/2001 dated 13.02.2009 recording of tenancy in favour of the second respondent. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No

06.01.2023

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To

The District Revenue Officer,
Thanjavur,
Thanjavur District.



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K.KUMARESH BABU, J.

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order made in
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