



WP(MD)No.6692 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

WP(MD)No.6692 of 2023 &
WMP(MD)No.6324 of 2023

G.Vijaya

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

2.The Executive Officer,
Arulmighu Kalyanasundareshwarar Kamatchiamman Thirukovil,
Melur, Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the impugned order issued by the second respondent dated 02.03.2023 and quash the same.

For Petitioner : Mr.RR.Kannan

For Respondents : Mr.P.Subbaraj,
Special Government Pleader



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ORDER

The petitioner has moved this Court for issue of a writ of certiorari to call for the records and quash the impugned order dated 02.03.2023 issued by the second respondent.

2. The facts are briefly set out below.

2.1. The petitioner would submit that she is a cultivating tenant in respect of the following lands properties.

- (a) S.No.165/2 to an extent of 0.73 acres,
- (b) S.No.165/3 to an extent of 0.48 acres,
- (c) S.No.181/2 to an extent of 0.30 acres,
- (d) S.No.181/4b to an extent of 0.24 acres,
- (e) S.No.185/10 to an extent of 0.27 acres.

The above properties are situated in Melur, Madurai. It is her case that the above properties have been cultivated by them for 50 years. The petitioner's husband V.M.Gandhi had agreed to pay 17 Quintal 10 kgs of paddy or equivalent amount to the Temple Authority and this was being



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regularly paid to the second respondent. On 14.11.2004, the petitioner's husband had passed away. After the demise of her husband, the petitioner had paid the entire arrears to the tune of Rs.1,92,762/- on 01.11.2019 to the second respondent and receipt has also been issued. Thereafter, the petitioner was directed to pay a sum of Rs.27,873/-. The same was paid and receipt has also been issued. The petitioner would submit that in order to pay this amount, she had borrowed money from her children and loan from outsiders.

2.2. The petitioner would submit that initially they had river water passing through the channel, through which, they were cultivating their lands. By passage of time, the channel was slowly encroached up as these lands were converted to housing plots and residential buildings. The river water is therefore, not available for cultivation. In this scenario, the petitioner has made a representation to the second respondent on 28.03.2022 seeking permission to obtain electricity connection to a bore deep well which she proposed to dig in the said lands and to set up a barbed wire fence. The representation was received



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by the respondents on 01.04.2022. However, no step was taken to grant the permission. Therefore, the petitioner was constrained to file W.P. (MD)No.13937 of 2022 before this Court and by order dated 16.08.2022, this Court taking note of the fact that there is no arrears up to the Fasli Year 1427, had directed the second respondent to make an inspection and find out whether the property is still viable for agricultural activities and after giving an opportunity to the petitioner, consider the representation of the petitioner dated 29.03.2022 and dispose of the same. The respondents however did not comply with this order and contempt notice was issued on 01.02.2023, which was received by the respondents on 03.02.2023. However, with a clear intent to circumvent to the order of this Court dated 16.08.2022 in W.P.(MD)No.13937 of 2022, the second respondent has passed the impugned order, against which, the petitioner is before this Court.

3. The learned Special Government Pleader appearing for the respondents would submit that the petitioner is not a cultivating tenant and therefore, she cannot seek to have the impugned order quashed.



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4. Heard the learned counsels on either side.

5. The definition of the cultivating tenant also includes the legal heir of a cultivating tenant, if the heir contributes physical labour in the cultivation of such land. The order passed is one without jurisdiction since the petitioner is a cultivating tenant and the jurisdiction is only with the Revenue Court. The second respondent with an intent to get over the contempt proceedings has passed the impugned order. There appears to be a clear attempt to not to comply with the directions of the Court, wherein, this Court has clearly found that the entire arrears of lease amount up to the Fasil year 1427 has been paid. It is rather unfortunate that respondents who have received the arrears of lease rentals and issued receipt thereto has now passed this impugned order ignoring the fact that the petitioner's husband was recorded as a cultivating tenant and being the heir, the petitioner is entitled to the protection of the Tamil Nadu Cultivating Tenants Protection Act, 1955.



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6. Accordingly, the writ petition is allowed. The order passed by the second respondent dated 02.03.2023 is hereby quashed. This order is without prejudice to the petitioner's right to proceed in contempt against the respondents for not complying with the earlier order of this Court in W.P.(MD)No.13937 of 2022. It is needless to state that this order will not preclude the respondents from initiating proceedings to evict the petitioner in the manner known to law, after affording reasonable opportunity to the petitioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.04.2023

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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To

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P.T.ASHA, J.

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