



W.P.(MD) No.14946 of 2014

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 09.01.2023

DELIVERED ON : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.14946 of 2014
and M.P.(MD)No.1 of 2014
and M.P.(MD)No.1 of 2015

Mrs.Regina Jayapaul

... Petitioner

vs.

1.The District Revenue Officer,
Madurai District,
Madurai.

2.S.Kulanthai

3.Sirumani

4.Lourdhu Mary

5.R.Gnanammal

6.R.Maria Kulanthaisamy

7.R.Reeta Jothimani

8.R.Priya

9.Trustee, Sooravali Subbier Trust,
No.19, Tamil Sangam Road,
Madurai.

10.Arulanandam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for



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issuance of a Writ of Certiorari, to call for the records on the file of the 1st respondent District Revenue Officer, Madurai in his order in Revision Petition No.58433/2013/G3 dated 18.06.2014 and quash the same as illegal, ultra virus and unconstitutional and for consequential reliefs.

For Petitioner : Mr.V.Raghavachari, Senior Advocate

For Respondents: Ms.D.Farjana Ghoushia for R1
Special Government Pleader

Mr.M.Ajmal Khan, Senior Advocate for R2 to R8

ORDER

The writ petition has been filed seeking for a Writ of Certiorari to quash the order of the first respondent dated 18.06.2014 made in R.P.No.58433/2013/G3, wherein the Revision Petition filed by the petitioner challenging the order passed by the Tahsildar, North Madurai recording the tenancy of the respondents 2 to 8 is invalid.

2.Heard Mr.V.Ragavachari, learned Senior Advocate appearing for the petitioner, Mr.M.Ajmal Khan, learned Senior Advocate for Mr.M.Natarajan, learned counsel appearing for the respondents 2 to 8 and Ms.D.Farjana Ghoushia, learned Special Government Pleader appearing for the first respondent.



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3.Mr.V.Ragavachari, learned Senior Advocate appearing for the petitioner would submit that the land in S.No.173/1B and S.No.174 of Tallakulam Village, Madurai North Taluk, Madurai District measuring an extent of about 1 acre and 34 cents originally belonging to the ninth respondent Trust. Under the ninth respondent Trust, one R.Santhanam was cultivating the land and his name was recorded as a tenant. On 24.09.1984, the said tenancy right was transferred by the said Santhanam in favour of the writ petitioner and thereafter, the writ petitioner became the cultivating tenant under the ninth respondent. The petitioner had taken out an application in T.R.No.5 of 1985 before the Tenancy Record Officer under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, to modify the entries in the approved record of tenancy arraying the said Santhanam as the first respondent and the ninth respondent Trust as the second respondent. After due enquiry, the name of the petitioner was recorded by the Tenancy Record Officer. Against the said order, no appeal has been preferred by any of the parties. The ninth respondent Trust had filed an application in I.A.No.454 of 1985 in O.S.No.13 of 1932 seeking to sell the lands which is the subject matter of the tenancy. The petitioner along with her family members had made an application before the learned II Additional Sub Judge, Madurai, the



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learned Judge by its order dated 18.02.1986 had granted permission for the Trust to sell the land in favour of the petitioner and her family members. Pursuant to the said order, a registered Sale Deed was also executed by the ninth respondent Trust in favour of the writ petitioner and her family members. From then on, the petitioner along with her family members have been in possession and enjoyment of the property in their own right.

4.While that being so, the respondents 2 to 5, after lapse of 19 years had made an application before the Tenancy Record Officer in T.R.No.39/2004/E1 seeking to reverse the entry made in favour of the petitioner and to record the tenancy in the name of the legal heirs of the deceased Santhanam, who had transferred his tenancy right in favour of the petitioner. The Tenancy Record Officer had dismissed the claim made by the respondents 2 to 5 on a finding of fact that the Deed of Transfer and the Deed of Release executed by the deceased Santhanam had been attested by the respondents 2 and 3, who are the sons of Santhanam and therefore, they cannot claim that there was no such transfer allegedly executed by their father Santhanam.



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5. Being aggrieved against the same, the respondents 2 to 5 had filed an appeal before the Special Deputy Collector, Madurai, challenging the order of the Tenancy Record Officer. He would contend that the said Appellate Authority on erroneous consideration of fact had allowed the claim of the respondents 2 to 5 and directed the record of tenancy in favour of the respondents 2 to 8 on the premise that the petitioner and her family members cannot be a tenant as they had purchased a property in the year 1987 pursuant to the permission accorded by the learned II Additional Sub Judge, Madurai and therefore, the record of tenancy by the Tenancy Record Officer as early as in the year 1985 is bad. Being aggrieved against the same, the petitioner had filed a revision before the first respondent who also fell into the same error and had rejected the Revision Petition filed by the petitioner.

6. Learned Senior Advocate would submit that the first respondent failed to note that originally the tenancy was transferred in the year 1985 pursuant to the Deed of Transfer and the Deed of Release executed by the deceased Santhanam attested by his sons. The said order had not been challenged by any of the parties and had become final between them. When the petitioner was in enjoyment and



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possession of the land, the ninth respondent Trust sought to sell the land and had applied for permission before the Competent Court. The petitioner having come to know the intention, had made an application before the said Court seeking permission to purchase the property. The learned Judge after considering various facts permitted sale of the property in favour of the petitioner and her family members which mean that their right as tenant has culminated in to that of the ownership. Their purchase of a property would not wipe away the record of tenancy made by the Tenancy Record Officer in the year 1985 based upon the Deed of Transfer and the Deed of Release executed by the then cultivating tenant viz., Santhanam through whom the respondents 2 to 8 claim interest.

7.He would further submit that the legal heirs of the said Santhanam had not raised their little finger for almost nearly two decades and only in the year 2004 to make unjust enrichment as the property fell within the Urban Agglomeration of Madurai City had risen in value multifold. As the petitioner did not yield to the request of the respondents 2 to 5, they had initiated proceedings before the Tenancy Record Officer which has been rightly rejected. However, the Special Deputy Collector, Madurai as well as the first respondent



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herein has without considering any of the materials on erroneous appreciation of fact had held that the tenancy of the petitioner had seized from the date of purchase and therefore, the record of tenancy by the Tenancy Record Officer in the year 1985 is wholly erroneous and will have to be set aside.

8.Countering his arguments, Mr.M.Ajmal Khan, learned Senior Advocate appearing on behalf of the respondents 2 to 8 would submit that the father of the respondents 2 to 8 was a cultivating tenant under the ninth respondent from the year 1969 till his date of death. He would further submit that the petitioner is a citizen of Singapore and a correspondent of a School, therefore, she would not endeavour any physical labour as claimed by the petitioner. When the petitioner had not put any physical labour, she cannot claim to be a cultivating tenant and therefore, the record of tenancy in favour of the petitioner by the then Tenancy Record Officer is wholly non-est. He would submit that the petitioner being the legal heirs of the said cultivating tenant are entitled to be recorded as a cultivating tenant.

9.Learned Senior Advocate would submit that the Court exercising Article



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226 of the Constitution of India cannot reappreciate the evidence based upon which the Statutory Authorities had come to a conclusion. He would submit that the scope of judicial review is limited to the extent to find out whether there has been a procedural infirmity while making the decision and the decision by itself would not be interfered with by this Court on the ground that they could have come to a different conclusion.

10.He would further submit that when the petitioner had become the owner of the property, the record of tenancy right in her favour would automatically get extinguished and therefore, there was no error on the part of the first respondent are that of the Special Deputy Collector, Madurai, in holding that the record of tenancy in favour of the petitioner as early as in the year 1985 is non-est. He would further submit that only after the death of the father of the respondents 2 to 8, the petitioner had come to know about such transfers and therefore, they had immediately taken action and their claim cannot be foreclosed on the grounds of latches. Hence, he would seek this Court to dismiss the Writ Petition with cost.



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11. Ms.D.Farjana Ghoushia, learned Special Government Pleader appearing for the first respondent would submit that there is no error committed by the first respondent in passing the impugned order and would adopt the arguments of the learned Senior Advocate appearing on behalf of the respondents 2 to 8 and seek dismissal of the Writ Petition.

12. I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

13. It is an admitted fact by the learned Senior Advocate appearing for the petitioner and learned Senior Advocate appearing for the respondents 2 to 8 that the ninth respondent was the original owner of the property involved in this Writ Petition. It is also an admitted fact that one Santhanam was the original cultivating tenant. What is disputed is with regard to the validity of the transfer of tenancy by the said Santhanam in favour of the petitioner and record of tenancy by the then Tenancy Record Officer as early as in the year 1985. It is seen that the Tenancy Record Officer had recorded the tenancy in favour of the petitioner



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based upon the Deed of Transfer executed by the said Santhanam along with the Deed of Release. The said Santhanam and the land owner viz., the ninth respondent are also the parties in the said application. After the order passed by the Tenancy Record Officer, no appeal has been preferred by the said Santhanam through whom the respondents 2 to 8 claim interest.

14.After the transfer of tenancy since the ninth respondent Trust wanted to dispose of the property in the interest of Trust, they have taken out an application before the learned II Additional Sub Judge, Madurai, seeking permission to sell the same. The petitioner along with her family members had also filed an application before the learned II Additional Sub Judge, Madurai seeking permission to purchase the same to protect their interest. The said application has been allowed and a Sale Deed has been directed to be executed by the learned II Additional Sub Judge, Madurai, in favour of the petitioner and her family members and registered Sale Deeds have been executed accordingly.

15.It is correct that once the Sale Deeds have been executed in favour of the tenant, the relationship of their tenancy gets merged into a right of ownership,



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this by itself cannot nullify the record of tenancy made in the year 1985 as found by the first respondent while confirming the order of the Special Deputy Collector, Madurai. When the respondents 2 to 5 had originally filed an application before the Tenancy Record Officer, to rectify the errors and record the names of the legal heirs of the deceased Santhanam, the originally cultivating tenant, the Tahsildar has categorically given a finding that the sons of the said Santhanam have attested the Deed of Transfer and the Deed of Release executed by the said Santhanam. This factual finding found by the Tenancy Record Officer has not been disturbed by neither the Appellate Authority nor the Revisional Authority viz., the first respondent. Hence, I find that there is perversity in the orders impugned in this Writ Petition in view that I find perversity in the orders passed by the first respondent, I am inclined to reject the contention of the learned Senior Advocate appearing on behalf of the respondents 2 to 8, that this Court is denuded of its power under Article 226 of the Constitution of India to interfere with the factual finding made by the Statutory Authority.

16.The claim of the respondents 2 to 5 had been belatedly made after 19 years, they have not produced any bit of evidence to substantiate that they are



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continuing to cultivate the land till they made their application. On the contrary, the petitioner has substantiated that pursuant to the transfer of tenancy in the year 1984, they had been in possession of the property as cultivating tenant till the year 1987 and after the Sale Deed executed in favour of the petitioner and her family members, they have been in enjoyment and possession of the property as a rightful owner.

17.In view of the aforesaid findings, I am of the view that the order impugned in this Writ Petition is wholly perverse and is therefore liable to be set aside and accordingly, set aside and the order passed by the Tenancy Record Officer dated 20.04.2007 in T.R.No.39/2004/E1 is restored.

18.In fine, the Writ Petition is Allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No
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To

The District Revenue Officer,
Madurai District, Madurai.



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K.KUMARESH BABU, J.

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order in
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