



W.P.No.25495 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.25495 of 2018
and
W.M.P.No.29663 of 2018

M.Rajendran

...Petitioner

-Vs-

- 1.The District Revenue Officer,
Nagapattinam
- 2.The Special Sub Collector (Revenue Court),
Thiruvavur
- 3.The Tahsildar cum Record Officer (Tenancy records),
Nagapattinam
- 4.Arulmigu Agneeswaraswamy
Agriculture Tenants Co-op Sangam,
Represented by its President,
Thirupugaloor,
Nagapattinam
- 5.Poobathy
- 6.Magheswaran



W.P.No.25495 of 2018

7. Vanchalai

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of 1st respondent in Na.Ka.No.10837/2008/U003 dated 15.11.2017 and quash the same and further direct the respondents 1 to 3 to record and retain the name of the petitioner alone as cultivating tenant in respect of the lands in Survey Nos.22, 25, 26, 27/1 and 28/1 in Puthukadai Village, Thirugazhur Post, Nagapattinam Taluk in the records of tenancy rights.

For petitioner : Mr.A.Arun Babu
for
M/s.B.Jawahar

For Respondents 1 to 3 : Mr.S.J.Mohamed Sathik
Government Advocate

For Respondents 5 to 7 : Mr.A.Muthukumar

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 15.11.2017 thereby dismissed the representation filed by the petitioner seeking to retain his name alone as cultivating tenant in respect of the lands comprised in S.No.22, 25, 26, 27/1 and 28/1 in Puthukadai Village, Thirugazhur Post, Nagapattinam Taluk.



W.P.No.25495 of 2018

2. The petitioner and the respondents 5 and 6 are brothers, the 7th respondent is mother of the petitioner and respondents 5 and 6. The husband of the 7th respondent namely Marimuthu was in possession of the said property as a cultivating tenant under the fourth respondent. While being so, their father died in the year 1991. After his demise, the petitioner alone approached 3rd respondent and recorded his name as cultivating tenant in respect of the entire property and leaving the respondents 5 to 7 herein on the ground that they are not cultivating the said land and they are educated and employed as government servants. Aggrieved by the said order, the respondents 5 to 7 submitted application before the 3rd respondent to include their name as cultivating tenants. The said application was dismissed. Aggrieved by the same the respondents 5 to 7 filed an appeal before the second respondent and the 2nd respondent passed an order dated 27.03.2001 allowed the appeal and directed the third respondent to include the names of the respondents 5 to 7.



W.P.No.25495 of 2018

3. Aggrieved by the same, the petitioner preferred revision before the first respondent and the same was dismissed by an order dated 18.10.2002. The petitioner filed an writ petition in W.P.No.14198 of 2003 challenging the order. This Court passed an order dated 29.03.2011 remand back the order of first respondent and pass fresh order after issuance of notice to parties by giving a factual finding as to whether the respondents 5 to 7 have been personally cultivating the lands for which they seek inclusion of their names as cultivating tenants along with the petitioner. Thereafter, the first respondent after giving opportunity of hearing to the parties and after considering the submission made by the said parties the first respondent passed an order dated 15.11.2017 thereby dismissed the revision filed by the petitioner.

4. The learned counsel for the petitioner submitted that they specially directed the first respondent to record the factual finding as to whether respondents 5 to 7 have been personally cultivating the lands. However, the said facts was not found by the first respondent and mechanically dismissed their appeal filed by the petitioner. He further



W.P.No.25495 of 2018

submitted that admittedly the respondents 5 and 6 are the government employees and at any point of time they cultivating the said land. Per contra the respondents 5 to 7 submitted that since their childhood they had been in the subject land and assisting their father for cultivation. After the demise of their father, suppressing other legal heirs the petitioner alone approached the 3rd respondent to record his name as cultivating tenant in respect of the entire property. After knowing the same, the respondents 5 to 7 approached the 3rd respondent to include their name as cultivating tenants in the subject property. However, the said request was rejected and the 2nd respondent is being a appellate authority consider the said claim and accordingly ordered to include the names of respondents 5 to 7 as cultivating tenant of the subject property. In fact, on the strength of the order passed by the 3rd respondent the petitioner filed suit in O.S.No.289 of 1995 on the file of the District Munsif Court, Nannilam as against the respondents 5 to 7 for injunction in respect of the subject property. The said suit was dismissed by judgement and decree dated 26.07.1996 and same was confirmed in A.S.No.80 of 1997 by judgment and decree dated 25.03.1998 both the Court categorically concluded that the petitioners suppressed the fact that



W.P.No.25495 of 2018

the respondents 5 to 7 are also cultivating the subject land and obtained cultivating tenancy rights over the subject property and as such it cannot be considered to recorded the petitioner alone as cultivating tenant in the subject land.

5. On perusal of the counter filed by the first respondent revealed that as directed by this Court, the first respondent after giving opportunity of hearing to the petitioner as well as the respondents 5 to 7 conduct detailed enquiry. Both the parties have submitted their respective written arguments before the first respondent herein. The petitioner's father was recorded as cultivating tenant in respect of the subject property under Form V of TamilNadu Agricultural Lands (Record of Tenancy Rights) Rules, 1969. After his demise, the petitioner approached the 3rd respondent and requested to record his name alone as cultivating tenant. Therefore, appellate authority namely the 2nd respondent rightly included the respondents 5 to 7 as cultivating tenant in respect of the subject property.



W.P.No.25495 of 2018

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6. On perusal of the order passed by the first respondent revealed that after direction issued by this Court in W.P.No.14198 of 2003 dated 29.03.2011 conduct detailed enquiry and passed an order dated 15.11.2017 thereby confirmed the order passed by the appellate authority i.e., the second respondent herein. Admittedly, the petitioner and the respondents 5 and 6 are brothers, the 7th respondent all were lived together as joint family. In the case of joint family one of the member of the joint family contributing his land that would held that the said family member entitle to protection under the Tamilnadu Cultivating Tenants Protection Act, 1956. Therefore, on the demise of their father namely Marimuthu, the legal representatives i.e., the petitioner and the respondents 5 to 7 herein were entitled to claim the protection of tenancy under the said Act. If any one of them satisfied that he had personally not to protect his labour in the cultivation of subject land. Though, the respondents 5 and 6 are government employees it does not mean that they are not participated in the cultivation in the subject land.



W.P.No.25495 of 2018

7. In view of the above, this Court cannot find any infirmity or illegality in the order passed by the first respondent dated 15.11.2017.

Hence, this writ petition is devoid of merits and liable to be dismissed. No costs. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

30.04.2024

Index : Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes/No
gvn



W.P.No.25495 of 2018

WEB COPY To

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G.K.ILANTHIRAIYAN,J.



WEB COPY



W.P.No.25495 of 2018

gvn

W.P.No.25495 of 2018

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