(2001) 03 MAD CK 0042

In the Madras High Court

Case No : C.R.P.No. 2278 of 1999

Kaliammal APPELLANT

Vs

V. Subramaninan RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2, 7
Tamil Nadu Cultivating Tenants Protection Rules, 1955 — Rule 8

Citation : (2001) 2 LW 154 : (2001) 2 MLJ 56

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : Mr. V. Raghavachari, for the Appellant; Mr. Chitra Sampath, for the Respondent

Judgement

1. This revision petition has been filed against the order of the Revenue Court, Trichi, made in R.P.No.1 of 1997 dated 30.7.1998, dismissing the

restoration application filed u/s 7 of Act 20 of 1997.

2. The crucial questions involved in this revision petition is as to whether the revenue Court was justified in going into the questions as to whether

the petitioner is a cultivating tenant under the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955 and assuming the Revenue

Court was justified in doing that exercise, whether the petitioner was given adequate opportunity to substantiate her claim that she would satisfy the

definitions of cultivating tenant under the provisions of the Act.

3. The facts to be briefly stated are: that the lands on question originally belonged to one Meenakshi Ammal; that the mother of the petitioner Tmt.

Karupayee was a cultivating tenant under the said Tmt. Meenkashi Ammal; that an application for eviction on the ground of nonpayment of arrears of rent from the year 1981-1982 to 1992-1993 was preferred by the respondent who was the successor in interest of the lands in question before

the Revenue Court in O.P.No.139 of 1993; that during the pendency of the said application, the said Karupayee dies on 27.12.1993; that

thereafter the petitioner herein being the daughter of Karupayee. got impleaded in O.P.No.139 of 1993 as respondent; that in the said Original

Petition, the petitioner''s husband and one Pitchai were examined a RW-1 and Rw-2 respectively; that the said petition was allowed and the

petitioner was directed to pay the arrears of Rs.23,919 and since the petitioner failed to pay the arrears within the stipulated time, by an order

dated 7.1.1997, and proceedings dated 24.1.1997, eviction was ordered and possession was taken by the inspector of Revenue on 28.1.1997

and the lands were handed over to the respondent. The respondent filed further applications against the petitioner in O.P.Nos.78/94, 123 of 1995

and 154 of 1996 seeking for eviction on the ground of non payment of rents for the years 1993-1994, 1994-1995, 1995-1996 and that when

those applications were pending, eviction was ordered in O.P.No.139 of 1993 which was also ultimately executed.

4. Be that as it may. By an amendment to the Tamil Nadu Cultivating Tenants (Protection from Eviction) Act, 1997, a provision was brought into

force by which, any cultivating tenant who had been evicted from any land on or after the first day of July 1996, but before the date of publication

of the said Act in the Tamil Nadu Government Gazette, on the ground that such cultivating tenant was in arrears with respect to the rent payable to

the land lord or the public trust as the case may be, on application to the Revenue Divisional Officer, or the authorised Officer as the case may be,

within a period of three months after the date of such publication, was entitled to be restored with possession of such land and to hold it with all

rights subject to the liabilities of the cultivating tenant under the tenant protection Act or under the Public Trust Act as the case may be. The proviso

however, provided that the concerned Authority can received the application after the period of three months of expiry of the Act, if the applicant

satisfy the authority concerned that he had sufficient case for not making the application within the said periods of three months.

5. By virtue of Act 20 of 1997, the petitioner herein preferred an application before the Revenue Authority in R.P.no.1 of 1997 for restoration of

possession u/s 7(1) of the said Act. While so, the respondent herein filed WP.No.12917 of 1997 challenging the vires of the Tamil Nadu Act 20

of 1997 in respect of the land belonging to the respondent and by an order dated 11.9.1997, the said writ petition alongwith certain other writ

petitions were disposed of holding that the various contentions raised by the petitioners in those writ petitions cannot be sustained.

6. As against the order of the learned single Judge, W.A.No.1474 of 1997 was preferred by the respondent herein and the same was also

dismissed on 13.4.1998. Thereafter by the impugned order dated 30.7.1998, the Revenue Court held that the petitioner would note come within

the definition of Cultivating Tenant, as defined under the provisions of Act 25 of 1955 and therefore, she was not entitled for the benefits available

under Act 20 of 1997. The petition for restoration filed by the petitioner was therefore, dismissed.

7. According to the learned counsel for the petitioner, having regard to the various proceedings, commencing from the eviction petition filed in

O.P.No.139 of 1993, ending with the order of this court in W.A.No.1474 of 1997, it was not open to the Revenue Court to dwell into the

question as to whether the petitioner would come within the definitions of cultivating tenant and that in any event, the petitioner ought to have been

govern sufficient opportunity to satisfy the Revenue Court that she was entitled for the Protection of Act 20 of 1997 and that she would come

within the definition of Cultivating Tenant, as defined therein.

8. As against the said submission, the learned Counsel for the respondent would submit that the Revenue Court was justified in going into the

question as to whether the petitioner would fall within the definition of cultivating tenant before ever considering her request for restoration and that

it was also justified in holding that the petitioner did not satisfy the definition of cultivating tenant under the provisions of the Act.

9. The learned counsel for the petitioner would contend that having regard to the various factors, namely that the petitioner was impleaded as

respondent in O.P.No.39 of 1993 after the demise of her mother Karupayee on 27.12.1993, the subsequent applications filed by the respondent

in O.P.Nos.78 of 1994, 123 of 1995 and 154 of 1996, seeking eviction as against the petitioner herein thereby, treating the petitioner as cultivating tenant, the order of the Revenue Court dated 30.7.98 in directing the deposit of arrears of rent to the tune of Rs.23,919 for the years

1981-1982 to 1992-1993 in respect of the very land in question, the subsequent orders of eviction dated 7.1.1997 and taking delivery of

possession from the petitioner by proceeding dated 24.1.1997 and handing over the same to the respondent by proceeding dated 28.1.1997, it

was beyond the jurisdiction of the Revenue Court, in having attempted to find out whether the petitioner would come within the definitions of

cultivating tenant. The learned counsel also contended that the various above said admitted facts as well as the other evidence placed before the

Revenue Court did establish that the petitioner was a cultivating tenant and therefore, entitled for the benefits provided under Act 20 of 1997.

10. On the other hand, the learned counsel or the respondent pointed out the various other proceeding prior to the filing of the present application

for restoration by the petitioner cannot be stated to have settled the question about the status of the petitioner as a cultivating tenant; that in none of

those proceedings the said question was even considered or tested; that in all those prior proceedings the petitioner''s participation was only as a

legal heir of the late Karupayee; that there is a clear distinction between a person representing a cultivating tenant as a legal heir and claiming the

status of a cultivating tenant, by virtue of the original status retained by his or her predecessor and when under the case on hand, having regard to

certain stated circumstances, it could be shown that the petitioner always claimed that she was not a cultivating tenant and that no proceedings

could be launched against the petitioner on the basis of the provisions contained under the Tamil Nadu Cultivating Tenants Protection Act, it cannot

be held that on the basis of these prior proceedings, the status of the petitioner as a cultivating tenant in the present proceedings cannot be gone

into. The learned counsel therefore contended that the Revenue Court was fully justified in examining the said question and the conclusion of the

Revenue Court that the petitioner did not satisfy the definition of cultivating tenant was based on relevant materials and therefore, the same cannot

be interfered with.

11. Having regard to the various proceedings, dealt with by the Revenue Court prior to the passing of the impugned order, some of the relevant

factors in those proceedings can be usefully referred to.

a) O.P.No.134 of 1993 was filed by the respondent against one Karupayee, wife of Ramasami.

b) On 27.12.1993, when the said Karupayee expired, her daughter the present petitioner was impleaded as the second respondent in the said

O.P.

c) On 4.5.1995, the petitioner filed an additional counter in O.P.No.139 of 1993 contending that the respondents claimed that the petitioner is

holding over the lands on the same terms as a statutory tenant was not admitted. It is also claimed in the additional counter that the petitioner

stepped into the shoes of Karupayee as a legal representatives and that the respondent was not entitled to an order of eviction under the provisions

of the Tamil Nadu Cultivating tenant Protection Act 25 of 1955.

d) In the written arguments filed and marked as per Ex.R-4 in O.P.No.139 of 1993 on 21.5.1996 by the petitioner, the petitioner contended that

she being the daughter of Karupayee, was impleaded as her legal representative in the petition.

e) In O.P.No.78 of 1994, filed by the respondent against the petitioner for eviction on the ground of non payment of rent, it was contented that the

lease chit between the mother of the petitioner, Karupayee and the original owner, Meenakshi Animal, came to be executed on 12.10.1995 which

was attested by the present petitioner and her husband Ayyanar; that after the death of Karupayee, the original tenant, the present petitioner was

holding over the land as statutory tenant on the same terms, that the petitioner is residing 30 Km. away from the land, that her husband is a Tamil

Nadu Government Employee.

f) In O.P.No.123 of 1995, which was also an application for eviction on the ground of non payment of rent for the year 1994 to 1995, filed

against the petitioner, it was contended the she is liable to the evicted.

g) O.P.No.154 of 1996 was filed against the petitioner, also for eviction on the ground of non payment of rent for the year 1995- 1996.

h) The order dated 30.7.1996 in O.P.No.139 of 1993 was for the payment of arrears of rent payable for the period 1981-1982 to 1992-93 to an

extent of Rs.22,990 as against the petitioner. The petitioner was also directed to deposit the said amount into the sub Treasury, Lalgudi on or before 29.8.1996 and produce the challan before the Revenue Court on 29.8.1996.

i) On 7.1.1996, the Revenue Court passed further orders in O.P.No.139 of 1993 directing eviction of the petitioner from the land in question for

her failure to deposit the arrears of rent ordered by the Revenue Court on 29.8.1996. In M.P.No.3 of 1997 in O.P.No.139of 1993, proceeding

were recorded by the Revenue Court evidencing eviction of the petitioner from the disputed land and the acknowledgment of the respondent was

obtained for having taken possession through the Inspector of Revenue on 28.1.1997.

j) In the legal notice dated 17.7.1994 issued to the petitioner, on behalf of the respondent herein, it was contended that the petitioner was a tenant

holding over on the lands on the same terms, that if the petitioner allowed others to cultivate the lands, she will cease to be a cultivating tenant and

necessary legal action would be taken for possession.

k)By reply dated 31.9.1994, the counsel for the petitioner took the stand that the petitioner and her family members were contributing physical

labour in the cultivation of the land, that the petitioner was in actual possession and in enjoyment of the said land as a cultivating tenant and that she

had not taken any steps to allow any other party to do cultivation in the said for pecuniary benefits.

12. In the impugned order, the question that was framed for consideration by the Revenue Court was whether the petitioner would come within the

definition of cultivating tenant as defined under Act 20 of 1997. While dealing with the said question, the Revenue Court held that the petitioner

was a resident of Trichy; that she had engaged the services of one Pitchai for cultivating the lands that she failed to establish her contribution of

physical labour in the cultivation of the lands in question; that she also failed to establish that her name was recorded as a cultivating tenant in the

revenue records and therefore, her present claim for restoration of possession under Act 20 of 1997 cannot be granted. While the learned counsel

for the petitioner contended that the revenue court ought not to have ventured to find out whether the petitioner is a cultivating tenant or not, so as

to maintain the application for restoration, the learned counsel for the respondent contended that irrespective of the past history of the case, the

Revenue Court was fully justified in going into that question.

13. The learned counsel for the respondent referred to the definitions clause in Section 2 (aa) of the Tamil Nadu cultivating Tenant Protection Act,

1955, Rule 8(ii) and (e) of the Tamil Nadu Cultivating Tenants Protection Rules and submitted that the impleading of the petitioner in the earlier

proceedings was only for the sake of conclusion of those proceedings which were initiated against the original tenant Karupayee, who is the mother

of the petitioner and that, that by itself would not create a right in favour of the petitioner to claim the benefits of the provisions of the Tamil Nadu

City Tenants Protection Act of the amended Tamil Nadu Act 20 of 1997.

14. The learned counsel for the respondent relied upon Sri Annamalainathasamiu Devasthnam Anthanpaettai by its Executive Officer v. Nagammal

(died) and others, 1978 TLNJ 531, where the provisions of Act 21 of 1972 came up for considerations, which provided certain relief to a

cultivating tenant in the payment of arrear of rent by which, if the rent payable for the current falsi year had been paid that would amount to total

discharge of any decree for payment of arrears passed in the earlier years against a cultivating tenant. In the said case, originally, the father of the

respondent was the cultivating tenant. There was a decree against the father of the respondent therein, in respect of certain arrears payable for

earlier faslis. Subsequently, after the death of the father, who died without satisfying the said decree amount when an execution petition was moved

by the land lord, the respondents therein, who were the heirs of the original cultivating tenant wanted to take advantage of the provisions of Act 21

of 1972 and claimed title and discharge of earlier decree amount on the ground that whole of the current rent had been paid. While dealing with the

said situation, the Division Bench of this Court, while holding that the Cultivating Tenant as defined under the Tamil Nadu Cultivation Tenant

Protection Act, 1955, would also take within its fold, a heir who contributed his physical labour, was of the view that having regard to the specific

expression used in the subsequent Act 21 of 1972 to the effect that "" if such cultivating tenant has before the date of Act, paid to the land lord or

deposited the arrears in Court, the current rent. ""held that the expression such used in that provision would only relate to the original cultivating

tenant in respect of whom alone, the said benefit would accrue and not to the heirs. The Division Bench ultimately held that the heirs of the original

cultivating tenant though would continue to be entitled to claim their status as cultivating tenant by virtue the definition clause under the main act,

were not entitled to the benefits available under Act 21 of 1972.

15. Applying the ratio of the above said decision to the facts of this case, the learned counsel for the respondent contended that having regard to

the expression used u/s 7 of Act 20 of 1997 to the effect. "" Any cultivating tenant who had been evicted from any land on or after the first day of

July 1996, but before the date of publication of this Act in the Tamil Nadu Government Gazette, on the ground that such Cultivating Tenant was in

arrear with respect to the rent payable to the land lord to the public trust as the case may be, shall on application to the Revenue Divisional Officer

or the authorised Officer as the case may be, within a period of three months after the date of such publication, be entitled to be restored to

possession of such land and to hold to that all the rights and subject to all the liabilities of a cultivating tenant under the Tenant Protection Act or

under the public trust as the case may be."" It would only mean that the expression ""Such Cultivating tenant"" used in Section 7(1) of the Act 20 of

1997 is referable only to the cultivating tenant who was evicted for non payment of rent and that the heirs of that cultivating tenant would not be

entitled to claim protection under the Act 20 of 1997. The learned counsel would therefore contend that the benefits conferred under the Act 20 of

1997 would not enure to the petitioner herein, as the petitioner would not satisfy the test of ""such cultivating tenant"" as contemplated u/s 7(1) of

Act 20 of 1997.

16. In the Division Bench judgment, the questions for consideration was about the relief granted in Act 20/72 which was to wipe off the past

arrears in the vent of the cultivating tenant clearing the entire current arrears, The expression used in Section 3(I)(a) of Act 21 of 1972 is identical

to the expression used in section 7(1) of Act 20 of 1997 namely ""such cultivating tenant"". Therefore whatever interpretation given to those

expressions in respect of the definition clause under Act 21 of 1972 will apply in all force to the expression used in the present Section 7(1) of Act

20 of 1997. If that be so, the conclusion is inescapable that the petitioner would not be entitled to claim the benefits of section 7(1) of Act 20 of

1997, inasmuch as, the petitioner would not come within the expression used therein, namely, such cultivating tenant which would be referable only

to the original cultivating tenant, namely, Karupayee, the mother of the petitioner. Sound as I am, by the Division Bench Judgment of this court,

proprietary demands that the ratio decidendi of the said Division Bench Judgment will have to be followed. That net result would be that the

possession of the disputed lands was taken by respondent by virtue of the eviction proceedings against the original tenant, namely, Karupayee for

arrears of rent relating to the period 1981-1982 to 1992-1993. Therefore, it will have to be held that if at all any benefits could be claimed under

Act 20 of 1997, u/s 7(1) of the Said Act, it could be only by such cultivating tenant, namely, Karupayee who unfortunately passed away on

27.12.1993. It is also not in dispute that though subsequent proceedings were taken by the respondent as against the petitioner for claiming arrears

of rent for the period subsequent to 1993-1994. The eviction ordered and the taking over of possession of the land in question had nothing to do

with those proceedings. The question whether by virtue of launching of those subsequent proceedings, if the petitioner was to be recognised as a

Cultivating Tenant would be a different question altogether which cannot be related to or brought within the provisions of Act 20 of 1997. It by

virtue of those proceedings of any right is said to be accrued, recongising the status of the petitioner as a cultivating tenant and based on such

alleged accrued right, if the petitioner is entitled for any relief under the provisions of Act 25 of 1955 that would be totally alien to any relief that

could be granted by virtue of operation of section 7(1) of Act 20 of 1997. For the purpose of claiming any relief u/s 7(1) of Act 20 of 1997, as

held by the Division Bench of this Court in the judgment reported in Sri Annamalai Nathasami Devasthanam Anthanapettai by its Executive Officer

v. Nagamal (died) and others, 1978 TLNJ 531, the petitioner should come within the expression used ""such cultivating tenant"" which has been

interpreted to mean only that cultivating tenant who was in arrears in respect of the period with reference to which a claim was made by the land

lord and a decree was granted in his favour. Therefore, on that short ground, the petitioner''s entitlement to claim relief u/s 7(1) of Act 20 of 1997

not being available to net, the very application of the petitioner under provision of Act 20 of 1997 is not maintainable.

17. Such being the position, there is no scope for granting any relief to the petitioner and consequently the revision will have to fall. Inasmuch as I

have not suited the petitioner by applying the ratio of the Division Bench Judgment reported in Sri Annamalainathasami Devasthnam Anthapettia by

its Executive Officer v. Nagammal (died) and others, 1978 TLNJ 531, there is no scope for considering any other submission made at the instance

of either of the parties. The Civil Revision Petition fails and the same is dismissed. No costs.