

(1991) 09 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No. 2085 of 1983

Natarajan and 6 others

APPELLANT

Vs

The District Revenue Officer and Revision Authority,
Thanjavur and Others

RESPONDENT

Date of Decision : 19-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 09 MAD CK 0073

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : N. Ganapathy, for the Appellant; S.T.S. Murthy for the Respondents 1 and 2 and Mr. N. Vanchinathan for the Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Raju, J.—The above writ petition has been filed for issue of a writ of certiorari to call for and quash the proceedings of the first and second respondents in K.A.P. No. 1/82-J1, dated 6.5.1982 and K.P. No. 232/79-F2, dated 30.9.1980 respectively. After the filing of the writ petition, it appears that the third petitioner died and his legal representatives have been substituted in the place of the third deceased petitioner as petitioner Nos. 4 to 7 by an order of this Court, dated 5.2.1991 in W.M.P. No. 30104 of 1990. The third respondent herein has filed an application under S.4 of the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971, hereinafter referred to as "the Act" before the second respondent for the determination of a dispute said in have arisen as to whether the respondents before that authority are entitled to the benefits of the Act. The case of the third respondent before the said second respondent was that he leased out an extent of 18" into 36" out of 22 Kulies in R.S. No. 176/6 of Sholapuram Village to one Kuppuswamy Padayachi, the father of respondents 1 to 3 before the said authority, who were the writ petitioners as it was originally filed before this Court, on 1.12.1965. The said Kuppuswamy Padayachi is said to

have executed a rent deed on 1.12.1965 for a period of two years and it is claimed that the site was given to him for the purpose of business and that in fact he was carrying on a trade of selling betel leaves and nuts on the same premises. He is alleged to have subleased the same to one Diravidamani and when notice was issued by the third respondent, the said Kuppuswamy Padayachi evicted him and he himself was continuing to do the business in the said premises. He was said to have again subleased the said premises to the respondents 4 to 6 before the second respondent and the respondents 4 and 5 were said to be carrying on tailoring and cycle hire business respectively and the sixth respondent before the second respondent was only said to be residing in that place. The said Kuppuswamy Padayachi also appears to have died leaving behind the writ petitioners only as his heirs and representatives and it is the claim of the third respondent that neither the deceased Kuppuswamy Padayachi nor his legal representatives were agriculturists or agricultural labourers as defined under the provisions of the Tamil Nadu Act 40 of 1971 and that the site was given to him not for dwelling purpose, but specifically for business purpose and that as on the crucial day, they were not in actual possession and enjoyment of the properties and that in spite of notices having been given and the tenancy duly terminated prior to the coming into force of the Tamil Nadu Act 40 of 1971, they have not vacated the place. Claiming that neither the original lessee nor his heirs are the persons subsequently inducted by them to claim any rights under the Tamil Nadu Act 40 of 1971 and also alleging that those respondents before the second respondent were asserting to have rights under the said Act, the third respondent before this Court has moved the second respondent as referred above for determination of the dispute.

2. The deceased third petitioner herein who was the third respondent before the second respondent appears to have filed a counter affidavit contending that the property in question was leased out to his father Kuppuswamy Padayachi, that he was occupying the property till his death and thereafter his sons were occupying the same as Kudiyruppu, that the respondent before this Court filed a suit in O.S. No. 416 of 1980 on the file of the District Munsifs Court, Kumbakonam for the recovery of possession of the petition mentioned property and for other reliefs and in spite of the contest by the defendants, the suit was decreed. Thereupon, Kuppuswamy Padayachi is said to have filed an appeal A.S No. 27 of 1972 to the Sub Court, Kumbakonam, which also did not meet with success. On a second appeal filed before this Court in S.A. No. 1305 of 1974, the appeal has been allowed and this Court finding that the deceased Kuppuswamy Padayachi was an agriculturist within the meaning of S.2 (3) of the Act read with Explanation I to S. 2 (8) of the Act and that he is entitled to the benefits of the Act. After referring to those findings, the third writ petitioner appears to have further contended that Kuppuswamy Padayachi is an agriculturist owning lands and that he was also cultivating the lands under Pannai cultivation, contributing physical labour of himself and that of his sons and after the death of Kuppuswamy Padayachi, the writ petitioners continue in possession and were

cultivating by contributing their physical labour of the lands which were cultivated during the life time of Kuppuswamy Padivachi. The claim that the lease was for business purpose was disputed and that the further claim that the legal heirs of Kuppuswamy Padayachi are not agriculturists was also contested.

3. The other respondents before the second respondents appears to have adopted the counter affidavit filed by the third petitioner. After a careful consideration of the entire materials available on record in the form of oral and documentary, the second respondent came to the conclusion that the said Kuppuswamy Padayachi and his sons, the respondents 1 to 3 before the authorised officer and the writ petitioner before this court were not occupying the property in question as Kudiyiruppu on the crucial date and therefore they were not entitled to the benefits of the Kudiyiruppu Act 40 of 1971. Aggrieved, the respondents 1 to 3 before the authorised officer have filed an appeal before the first respondent and that the appellate authority concurred with the finding rendered by the authorised officer and rejected the appeal. Aggrieved, the above writ petition has been filed by the sons of the original lessee, Kuppuswamy Padayachi.

4. Mr. N. Ganapathy, learned counsel appearing for the writ petitioners (have) contended, relying upon a decision of this court in *Ganesa Nadar v. Chellathai Ammal* 100 L.W. 431 : 1987-2-M.L.J. 23 that the Civil Court's findings in the earlier proceedings are binding upon the authorities as well as the third respondent and consequently, the impugned orders are liable to be set aside. Learned counsel further contended that the respondents committed an error in independently going into the issue and deciding the issues and arrived at a finding that the petitioners were not entitled to the benefits of the provisions contained under the Tamil Nadu Act 40 of 1971. On behalf of the petitioner, W.M.P. No. 19478 of 1991 was filed seeking to raise the following two additional grounds :

(a) that the application filed by the third respondent before the authorised officer was barred by limitation in that it was said to have been not filed within a period of two months from the date on which the dispute arose; and

(b) that the be of suit contained in the 1971 Act does not preclude the continuation of the proceedings filed by the third respondent before this Court before the commencement of Tamil Nadu Act 40 of 1971.

It may be pointed out even at this stage that the learned counsel for the third respondent objects to the above application for raising additional grounds and contends that the issues sought to be raised at this belated stage, are not only of mixed question of fact and law but also the writ petitioners having participated in the proceedings before the authorities below without any demur on this account.

5. So far as the other claims made on behalf of the petitioners are concerned, learned counsel for the third respondent contended that the authorities below had a right to consider the matter afresh and that they were not precluded by

the findings in the earlier civil proceedings and that no exception could be taken to the concurrent factual findings rendered by the statutory authorities under the Act that the petitioners were not entitled to the benefits of the Act. Learned counsel further contended that having regard to the bar of suit contained under the provisions of the Act in question as well as in the earlier Act, viz., The Tamil Nadu Occupation of Kudiyiruppu (Protection from Eviction) Act (XXXVIII of 1961), the findings rendered cannot preclude the authorities functioning under the Act from discharging their duties. Argued the learned counsel for the third respondent that this writ petition deserves to be rejected for the above reasons.

6. I have carefully considered the submission of the learned counsel appearing on either side. In my view, the application for raising additional grounds in W.M.P. No. 19478 of 1991 deserves to be rejected for more than one grounds?: The petitioners are guilty of inordinate delay and laches in raising those contentions. Apart from this, as the learned counsel for the third respondent contends the question is a mixed question of fact and law. There is no limitation as such fixed under the Act itself. It is only in R.3 of the Rules framed under the Act which prescribes for the form of applications for rights conferment and for the filing of the same, it is provided that the application shall be made "within a period two months from the date on which the dispute arose". Learned counsel for the petitioners wants to take advantage of the earlier proceedings and contends that this dispute arose even at the point of time when the civil proceedings were initiated and at any rate when the Judgment of this Court in the Second Appeal was pronounced. It is not to be overlooked that the civil proceedings were initiated at the stage when the Tamil Nadu Act 40 of 1971 was not in force. The nature of the rights, disputes or claims under the Tamil Nadu Act 40 of 1971 are distinct and separate from the one concerned under the Tamil Nadu Act 38 of 1961 and till any patta has been issued under the provisions of the Tamil Nadu Act 40 of 1971 in favour of the petitioners, the dispute has got to be considered to be alive. Further, the petitioners without any demur participated in the proceedings before the authorities below and filed an appeal and thereafter filed a writ petition before this Court and till the filing of the above writ miscellaneous petition in 1991 no ground based on the so called limitation has been raised. The petitioners cannot approbate and reprobate and for all the reasons stated above, I see no justification for allowing the petition now filed and permitting them to raise the additional grounds. So far as the second additional ground sought to be raised is concerned, the same is only a facet of the claim already raised before this Court viz., whether the civil courts finding are binding upon the authorities. This aspect being incidental to the said question, the same can be considered, while considering the other issues and there is no need to allow this to be raised as an additional ground.

7. Learned counsel for the writ petitioners mainly placed reliance upon the decision of this Court reported in *Ganesa Nadar v. Chellathai Ammal* 100 L.W. 431 : 1987 (II) M.L.J. 23. That was a case arising under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. The question

before the Court was whether the findings rendered by the civil court in a suit for injunction otherwise held to be maintainable required to be considered by the competent authorities under the Act in determining the claims made by the respective parties under the Act. Since the authorities in the said case omitted to consider the implication of the decision of the civil court produced before them. Nainar Sundaram, J. set aside the orders of the authorities below and remitted the matter back for fresh consideration, after assessing the implications and relevancy of the findings rendered in the decision of the civil Court produced before the authorities. This is not in my view an authority for the proposition that the authorities functioning under the Act are debarred and precluded from considering the issues raised by the parties before it for adjudication in exercise of their specific jurisdiction vested in them under the Act having regard to certain finding of the civil court in ordinary civil proceedings. In the decision in *Ganesan v. Madurai Achari* 92 L.W. 91 : 1979 (I) M.L.J. 29 N.S. Ramaswami, J. while dealing with a similar situation arising under the provisions of the Tamil Nadu Act 38 of 1961 expressed the view that the Civil Courts if at all could only decision as to whether the site occupied by a person is a Kudiruppu and once it is found to be so, the Civil Court would have no jurisdiction thereafter to proceed to consider as to whether a particular claimant is entitled to the benefits of the Act, or not. As such the learned Judge also held that notwithstanding the finding of a civil Court in determining the claim as to whether a claimant will be entitled to the benefits of the Act, the authorities under the Act are obliged to go into the question as to whether the property or the occupation of the claimant is a Kudiyiruppu and that any decision rendered by the Civil Court would be binding. In *Varadarajulu v. Jean Louis Sanjeevi* 1968 (II) M.L.J. 197, a Division Bench of this Court, while considering the provisions of Pondicherry Kudiyiruppu Act expressed the view that when a statute confers a power on an authority to exercise the same, the power should be exercised only in the contingency laid down thereof and strictly within the ambit prescribed for the exercise of such power. In *Mohamed Noordeen v. Ameena Ammal and another* 1983 (I) M.L.J. 436, Balasubrahraanyan, J. noticed the difference between the provisions of the Tamil Nadu Act 38 of 1961 and 40 of 1971 and expressed the view that the conditions precedent for the conferment of rights under one Act is different from the conditions in the other and that the claims under each of those Acts have to be considered with reference to the scope and purport of the relevant provisions of the respective Act.

8. Considering in the light of the above principles decision of law, it has to be seen whether the grievance sought to be made out by the writ petitioners is substantial and deserves to be sustained. The proceedings of the Authorised Officer would go to show that the said authority has considered the decision of the Civil Court as well as the other materials made available before it and it is only thereafter, he came to the conclusion that the lease of the property in question was for the purpose of carrying on business and not for the purpose of having it as a dwelling house. The said finding has been confirmed by the

appellate authority also and the materials referred to by the appellate authority would go to show that the civil courts findings were taken to be prima facie one and considering the materials produced in the present proceedings, the appellate authority came to the conclusion that the site in question was being used only as a business place and not as a dwelling house. It is in this context, it requires to be noticed also that the findings in the second appeal merely stated that the site was in the possession of Kuppuswamy Padayachi, without any reference to the further question as to the actual user of the property in question. All along as has been bound by the Authorities below in the present proceedings the property was being used for business purposes is legally correct. In the peculiar circumstances of this case, the claim made on behalf of the writ petitioner that the authorities below ought not to have decided the issue independently has no merit. Since the fact of the findings of the Civil Court as well as the other materials have been fully considered by the authorities below in the present case unlike the decision relied upon on behalf of the writ petitioners by their learned counsel, no support could be derived from the said decision in support of the case of the writ petitioner before me. The conclusions and the findings of the authorities below appear to be well merited and it is based only on the relevant materials and they do not suffer any infirmity so as to warrant my interference in these proceedings under Article 226 of the Constitution of India. This writ petition therefore fails and the same shall therefore stand dismissed. No costs.