

(1997) 02 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 3386 of 1993 and W.M.P. No's. 361 and 19409 of 1993

Pichai Ammal

APPELLANT

Vs

The District Revenue Officer and Others

RESPONDENT

Date of Decision : 20-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 10, 4(2), 7

Citation : (1997) 3 CTC 739 : (1998) 1 MLJ 258

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : R. Gandhi for R.G. Narendhiran, M. Baskar and K.K. Senthilvelan, for the Appellant; S. Gopinathan, Government Advocate on behalf of Respondents 1 to 3 and R. Alagariswami for P. Sukumar and Bhagirathi Narayanan for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Jayarama Chouta, J.—In this Writ petition, the petitioner has prayed for issue of Writ of certiorarified mandamus or any other writ order or

direction in the nature of writ calling for the records relating to the order of the 3rd respondent in his T.R.No. 50/90 (A8) dated 14.4.1988

confirming the order of the 1st respondents in his S.R.T.R.No. 4/92, dated 10.1.1993 and to quash the same and to direct the 3rd respondent to

record the petitioner's name as cultivating tenant in respect of lands at S.Nos. 66/A2 and 66/A3 in Ariyamangalam Revenue Village, Trichy

District measuring to an extent of 2.66 acres.

2. Necessary facts for the disposal of the writ petition are these. The fourth respondent, Sri Kanchi Kamakodi Peedathipathi Mutt, Kumbakonam

is the owner of the lands at S.F.Nos. 66/A2 and 66/A3 to an extent of 2.66 acres at Ariyamangalam Revenue Village, Trichy Taluk, the said lands

were originally let out to the father of the 5th respondent one Muthuraja. Subsequently, the petitioner became sub-tenant under the 5th respondent

on executing a deed to the effect on 29.1.1977.

3. The petitioner filed an application before the third respondent Record Officer and Tahsildar, Trichy u/s 4(2) of the Tamil Nadu Agricultural

Lands (Record of Tenancy Rights) Act, 1969 (hereinafter referred to as the Act") to register her name as a cultivating tenant after deleting the

name of the 5th respondent and his father who have no interest in the said lands. The 5th respondent opposed the said application by contending

that there were no sub-lease and he had only allowed the petitioner to exploit the lands for a term of four years and one and half-a-year

respectively as a mode of discharge for adjusting his earlier dues to the petitioner. The petitioner has produced the documents marked as Exhibits

A1 to A4 to prove the sub-lease as well as his possession. He has also marked list receipts and cash receipts issued by the land owners. However,

the third respondent dismissed the application of the petitioner by an order dated 14.4.1988 in T.R. No. 50/80 (A8), dated 14.4.1988.

4. Against the order of the third respondent the petitioner filed an Appeal No. 10 of 1988 on the file of the second respondent and the second

respondent who is the appellate authority, after going into the matter remanded it for fresh disposal by the third respondent after affording

reasonable opportunities for both sides. The appellate authority also observed that the possession is with the petitioner on the strength of the

documents adduced by her. The order of remand was passed on 21.9.1990.

5. Aggrieved by the said order, the 5th respondent filed a revision petition before the first respondent. District Revenue Officer, Trichy in

S.R.T.R.No. 4 of 1992, and the revisional authority allowed the revision and confirmed the order of the 3rd respondent by an order dated

10.1.1993. As against the said order of the first respondent, the present writ petition has been filed by the writ petitioner for the relief which I have

mentioned above.

6. On behalf of the 5th respondent, counter-affidavit has been filed in which he has denied all the allegations made in the affidavit of the petitioner

except those which are specifically admitted by him.

7. He has stated that the fourth respondent is the owner of lands S.f. Nos. 66/A2 and 66/A3 to the extent of 1.20 acres and 1.45 acres,

respectively at Ariyamangalam Revenue Village, Trichy Taluk and the said lands were let out to his father to continue to cultivate the said lands as a

cultivating tenant and he acquired from his paternal grand father. After the death of his father, the 5th respondent continued as a cultivating tenant

under the 4th respondent. He has denied the allegations that the petitioner became sub-tenant under him on executing the deed to the effect on

29.1.1997. He further submitted that the petitioner has concocted a document as if the fifth respondent had empowered the petitioner, in the year

1978 to take the yield from the land in S.No. 56/A2 for a restricted period of 4 years and the land in S.No. 66/A3 for IV years, respectively,

Even though planting was done by the respondent No. 5, as a mode of discharge for adjusting his earlier dues payable to the petitioner in respect

of the transaction of purchase of plantain crops from the petitioner's land at Mullakkudi Village using certain blank papers on which the 5th

respondent's signature was obtained. He has further submitted that the third respondent, after conducting an elaborate enquiry, and after

appreciating the oral and documentary evidence, in correct perspective has rightly dismissed the petitioner's application.

8. The counter-affidavit further reads that the petitioner eventually relied on this document purporting to be a lease agreement dated 29.1.1977.

But the said Ex.A-1 termed as ""Varthaman Pathram" proved to be a fabricated one obviously on perusal of its contents and appreciation of oral

evidence of the petitioner and one of its attestors, the petitioner has been making vexatious attempts against this respondent with various

proceedings only to harass him. The petitioner had already filed suit O.S.No. 908 of 1979 before the District Munsif, Trichirapalli for an injunction

restraining this respondent from interfering with his possession and the interim injunction granted was vacated. Subsequently for the same relief the

petitioner has filed two suits before the District Munsif, Trichy in O.S.Nos. 1179 of 1991 and 1616 of 1991 and the suits are pending disposal. On

this ground the respondent herein submitted that there is no merits in this writ petition and the same is liable to be dismissed.

9. I heard learned Senior Counsel Mr. R. Gandhi on behalf of M/s. R.G. Narendhran and Ors. for the petitioner and Mr. Alagirisamy, learned

Senior Counsel for Mrs. Bagirathinarayanan on behalf 5th respondent and the learned Government Advocate for respondents 1 to 3.

10. Learned Senior Counsel Mr. R. Gandhi has submitted that the first respondent had exceeded in his jurisdiction while allowing the revision

petition by confirming the order of the third respondent. According to him if the remand of the matter by the second respondent was erroneous or

bad in law, the first respondent could have set aside the said order and could have directed the second respondent dispose of the said appeal on

merits. Without doing so, the first respondent gone into the merits of the case by taking decision on the materials placed before the authorities

which are not permissible. Learned Senior Counsel further submitted that the first respondent was not justified in discarding Exhibit A-I,

Varthamana Pathram dated 29.1.1977 executed by the fifth respondent, the petitioner. By virtue of the said document the petitioner is cultivating

the lands as a sub-lessee. He further pointed out that the entire approach by the first respondent is erroneous which has caused miscarriage of

justice to the petitioner. Learned Senior Counsel invited my attention to a decision of the Division Bench reported in P. Ayyanar Vs. Mrs.

Rathinam and Others, and placed reliance on the following passage. The court, after referring to Section 7 of the Land Acquisition Act, has

observed as follows:

Thus the aforesaid provision of revision cannot be considered to be the one giving powers to reappreciate the evidence on record. The said

provision only says that the revisional authority may pass such orders as he may think fit.

11. On the other hand learned Senior Counsel, Mr. Alagirisamy submitted that the view taken by the first respondent in allowing the revision and

confirming the order of the third respondent, the first respondent has not committed any error, either jurisdictional or legal. He also pointed out that

the 1st respondent has got jurisdiction to consider the case on merits and decide it in one way or the other. The first respondent has taken sufficient

care in analysing and appreciating the materials placed before him and came to the correct conclusion. He also has submitted that the reasons given

by the first respondent to discard Exhibit A-I, the so-called lease deed, and other evidence on behalf of the petitioner are sound. In this connection

he invited my attention to the definition of "tenant" u/s 2(S)(i) of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969:

tenant"" in respect of any area in the State (other than the Kanyakumar District) - (a) means in relation to any land to which the Tamil Nadu

Cultivating Tenants Protection Act. 1955 (Tamil Nadu Act XXV of 1955) applies to a cultivating tenant as defined in clause (aa) of Section 2 of

that Act.

Section 2 (aa) of Act XXV of 1955 is as follows:

Cultivating tenant"" -(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land

belonging to another, under a tenancy agreement, express or implied;"" The other portion of the definition are not necessary.

12. Then learned Senior Counsel took me to Section 7 of the said Act which is as follows:

Revision: The District Collector such officer as may be specified by the Government in this behalf may of his own motion or on the application of a

party call for and examine the record of any record officer or appellate authority within his jurisdiction in respect of any proceeding under this Act

and pass such orders as he may think fit:

Provided that the District Collector or the said Officer shall not pass any order prejudicial to any party unless he has been given a reasonable

opportunity of being heard.

13. Further, learned Senior Counsel invited my attention to Section 10 of the said Act.

10. Power to take evidence on path, etc - The record Officer or the appellate authority or the District Collector or the Officer referred to in

Section 7 shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Central Act

V of 1908) when trying a suit in respect of the following matters, namely -

(1) enforcing the attendance of any person and examining him on path,

(2) requiring the discovery and production of documents;

(3) receiving evidence on affidavit;

(4) issuing commissions for the examination of witnesses;

and any proceeding before the record officer or the appellate authority of the District Collector shall be deemed to be a judicial proceeding within

the meaning of Sections 193 and 228, and for the purposes of Section 195 of the Indian Penal Code (Central Act XLV of 1860)

14. Placing reliance on these provisions, learned Senior counsel submitted that the power of revisional jurisdiction under Sections 7 of the Act is

quite wide. According to him what the first respondent has done in allowing the revision and conforming the order of the third respondent is Valid

within its power u/s 7 of the Act. In this connection, he placed reliance on the decision of this Court reported in V. Sellappan Vs. The District

Revenue Officer and Others, and pointed out the following portion found in paragraph 6 at page 282.

Petitioner would then contend that no party can confer jurisdiction on an authority, and therefore, the plea of acquiescence is without any

substance. The finding given in the impugned case is not on the basis of parties conferring jurisdiction on an authority, but on the basis that the

Revisional Authority has jurisdiction to set aside an inchoate order and that participation in such a proceeding would deprive the participant from

later on challenging the jurisdiction of the authority. Section 7 of the Act enables the Revisional Authority to examine the records and pass such

orders as he may think fit. He is also conferred with "suo motu" powers. u/s 10 of the Act, even the Revisional Authority has the jurisdiction to

entertain fresh evidence both oral and documentary. Hence, in Section 7 of the Act, it has been made more or less a second appellate Authority.

Hence, though in Section 7 of the Act, it is characterised as a revision in every sense, it has been made more or less a second Appellate Authority.

The power being exercised is not akin to the usual revisional powers, wherein the Authority will be conferred only with the right to go into the

legality or propriety of the decision arrived at in order to find out as to whether there has been a proper exercise of jurisdiction vested and whether

there has been any material irregularity in the order. Such restrictive qualifications not being found, necessarily the power u/s 7 of the Act has to be

treated as a very wide power, which could be invoked for rendering justice, as the Revisional Authority "may think fit". Hence, it would not be

correct to contend that the power of the Revisional Authority under this Act is circumscribed, so as to preclude him from granting such relief, as he may think fit.

15. Learned Senior Counsel further cited yet another decision reported in Muthukumar and Anr. v. Arasan and 3 others 99 LW 1056 and relied

upon the following portion of the Judgment:

I am called upon to find out the scope of the revisional powers u/s 7 of the Act. Section 7 of the Act, as we could see from the extract, is

generously couched and it confers on the revisional authority a wide amplitude "to pass such orders as he may think fit.

Ismail, J. (as be then was) in Ramamurthi v. Rangachari 1975 (I) MLJ, 407 had occasion to deal with the scope of the appellate power of the

Commissioner u/s 69(1) of the Tamil Nadu Religious and Charitable Endowments Act, (22 of 1959).

The said provision was couched in the following terms:

Any person aggrieved by any order passed by the Deputy commissioner under any of the foregoing sections of this Chapter may, within sixty days

from the date of the publication of the order of the receipt thereof by him, as the case may be, appeal to the Commissioner and the Commissioner

may pass such order thereon as he thinks fit.

The learned Judge opined as follows:

From this language two facts are clear. One is, the Commissioner is constituted as the appellate authority and the second, is, there is no restriction

whatever on the power of the appellate Authority as in the manner of disposal of the appeal or the nature of the order which he can pass on the

appeal. On the other hand, the power that has been conferred on the Appellate Authority is of the widest applitude, when the section says that the

Commissioner may pass such order as he thinks fit.

The learned Judge referred to profuse citations in this behalf and ultimately summed up his decision on this point as follows:

Consequently the decisions referred to above make it absolutely clear that the appellate power of the Commissioner which is not restricted by the

statute either expressly or by necessary implication and which has been conferred in the widest possible terms includes a power to remand the

matter to the Deputy Commissioner, namely, the original authority for reconsideration, which is incidental and necessary to effectuate the main appellate power conferred upon him and therefore I hold that there is no substance in the contention of the petitioners in all these writ petitions on this particular point".

The 4th respondent has not assigned any reason for making the order of remittal. u/s 7 of the Act the revisional Authority when exercises the power of revision must examine the record subject matter of revision, and there must be an indication that it did examine such records and if the revisional authority chooses to pronounce any order, it must have the support of reasons therefor. The present order is a held one, the 4th respondent seemed to have indicted his function as revisional authority and has, without assigning any reason, relegated the matter to the first authority, namely, the second respondent. This is not permissible in law. This feature obliges me to show the indulgence of interference in writ powers. Accordingly, this writ petition is allowed and the matter will stand remitted to the file of the 4th respondent for him to examine the matter afresh in the light of all the materials and records in the case; adjudicate the questions raised by the parties in the light of such records and materials, make up his mind one way or the other and then make his pronouncement in accordance with law.

16. Placing reliance on the above decisions learned Senior Counsel submitted that the first respondent had not committed any illegality in confirming the order of the third respondent by allowing the revision, exercising his power u/s 7 of the Act. Learned Government Advocate adopted the argument of the learned Senior Counsel appearing on behalf the fifth respondent and supported the order of the first respondent.

17. Let me consider their case in the light of the arguments addressed by both the Senior Counsel. The petitioner eventually relied upon the document purporting to be a lease agreement dated 29.1.1977. But the said Exhibit A1 termed as "Varthamana Pathram", proved to be a fabricated one by the third respondent as well as the first respondent, obviously on perusal of the contents and appreciation of oral evidence of the petitioner and one of its attestors. The stamp papers of the said agreement bears the date of issue and sale as 19.1.1978, whereas the alleged sub

leased relates to period from 29.1.1977 and during the course of examination the petitioner stated that she has not signed any stamp paper. But the attestors who was examined as P.W. 3 deposed that the alleged lease-agreement was written in ink whereas the document produced before the authority was in typed letters. Further, the petitioner who is admittedly aged more than 80 years during the alleged period could not have contributed any physical labour of cultivation- The registered tenant Nataraj an, the father of the 5th respondent died in the year 1972 itself leaving behind him his wife, two sons and a daughter as legal heirs. The tenancy right is a heritable right and it devolves on the legal heirs of the deceased on his claim. That being so, the petitioner legally cannot claim for transfer of the tenancy from the 5th respondent alone who is one of the legal heirs of the original tenant Natarajan. In fact, in the proceedings before the 3rd respondent, the petitioner could not able to advice the extent of the lands alleged to have been subleased to her.

18. When the statutory authorities that is, the first and third respondents have approached the matter properly by appreciating evidence both oral as well as documentary and considered the issue before it in the proper perspective, interference by this Court, under Article 226 of Constitution of India would not be called for. Accordingly, for the reasons stated above, I see no merit in this writ petition and the same is dismissed. However, there will be no order as to costs. Consequently, W.M.P. Nos. 5361 of 1993 and 19409 of 1993 are also dismissed.