

(1987) 08 MAD CK 0053
In the Madras High Court

Rajagopalan and Others

APPELLANT

Vs

Thirugnanasambandam and Others

RESPONDENT

Date of Decision : 17-08-1987

Acts Referred:

Citation : (1988) 1 LW 167 : (1988) 1 MLJ 365

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—The matter arises under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 10 of 1969, hereinafter referred to as the Act. Petitioners 1 and 3 along with the husband of the second petitioner claimed that they are tenants within the meaning of the Act to be recorded as such under the Act. They shall be hereinafter referred to as the claimants. Earlier the claimants had their names recorded as tenants under the Act. The lands in question belonged to respondents 1 and 2 and one Janaki Anni, who is no more and whose legal representatives are respondents 3 and 4. They shall be hereinafter referred to as the owners. The owners sought rectification of the entry in favour of the claimants on the ground they were not at all aware of the proceedings under the Act pursuant to which the entry was made in favour of the claimants and only when a suit was filed for an injunction against them in the civil Court, they became aware of the entry under the Act and further the claimants recorded as tenants under the Act could not have such character on facts also. All the Authorities under the Act, namely. Respondent 5, the Original Authority, Respondent 6, the Appellate Authority and Respondent 7, the Revisional Authority, upheld the case of the owners of the lands. In this writ petition, the orders of respondents 5 to 7 are being put in issue.

2. Mr. S. Sadasharam, learned Counsel for the petitioners, would submit that the provision invoked is Section 5 of the Act and that provision could be invoked only when there is a demise or a transfer of interest or any other subsequent change in circumstances after the approved record of tenancy rights under the Act got

prepared, and in the instant case, no such contingency had arisen to warrant the invocation of that provision. In the instant case, the owners had pleaded that they had no knowledge at all about the proceedings earlier taken pursuant to which the record under the Act was made in favour of the claimants, who claimed the rights of tenants under the Act, and only on the filing of the suit for injunction, they came to know about the order under the Act against them. This has been construed as a "subsequent change in circumstances" within the meaning of Section 5 of the Act by the Appellate Authority, the 6th respondent and the Revisional Authority, the 7th respondent. In my view, even without reference to Section 5 of the Act, it can be stated that the power to rectify an entry wrongly made is available to the Original Authority under the Act because Section 4A inserted by Tamil Nadu Act 34 of 1972 reserves for him such a power. Sub-sec. (I) of Section 5 alone has got to be looked into to find out the scope of the power available under it and it is extracted as follows:

5. Modification of Entries in the Approved Record of Tenancy Rights.-(1) Where any person claims that in respect of any land already included in the approved record of tenancy rights any modification is required in respect of the entries in such record either by reason of the death of any person or by reason of the transfer of interest or by reason of any other subsequent change in circumstances, he shall make an application to the record officer for the modification of the relevant entries in the approved record of tenancy rights.

The above provision contemplates modification of entries in the approved record of tenancy rights if warranted by reason of death of any person or by reason of transfer of the interest or by reason of any other subsequent change in circumstances. Section 4-A reads as follows:

4A. Power of Record Officer to Take Suo Motu Action-Where it appears to the record officer that in respect of any land let for cultivation, the land owner, intermediary or tenant having interest in such land-la) has failed to intimate his interest in such land under Sub-section (3) of Section 5; or

(b) has failed to make an application for rectification or inclusion under Sub-section (6) of Section 3; or

(c) has failed to make an application for inclusion of particulars, relating to such land in the approved record of tenancy rights under Clause (a) or Clause (b) of Sub-section (I) of Section 4, the record officer shall make an enquiry in respect of the landowner, intermediary or tenant having interest in such land, in accordance with such procedure as may be prescribed and if, after making such enquiry, the record officer decides that the particulars of the land should be included in the draft of the approved record of tenancy rights, as the case may be, he shall pass an order accordingly and shall make the necessary entries in the draft or approved record of tenancy rights, as the case may be:

Provided that the record officer shall not pass an order under this section unless the parties concerned have been given a reasonable opportunity to make their

representation either orally or in writing.

3. The Suo Motu power reserved for the original authority u/s 4-A certainly takes in a power of rectification of approved record of tenancy rights. This I am obliged to say because the said provision contemplates different contingencies, including the contingency where there had been an omission to apply for a certification under Sub-s. (6) of Section 3 on which the original authority can do the enquiry and decide about the making of necessary entries either in the draft or approved record of tenancy rights. The particulars of the land referred to in Section 4-A will take in the particular as to whether the land is leased out and under the cultivation of the landowner. There could be cases where there has been an omission on the part of the landowner, who is personally cultivating the land, to apply for rectification of an entry in the draft record of tenancy rights reflecting that the land is under the cultivation of a tenant. Conversely, there could be cases where the land is under the cultivation of a tenant, but he omitted to apply for a rectification of an entry in the draft of tenancy rights, which reflected a contrary position. All these contingencies will have to be dealt with by the original authority by exercising the power u/s 4A. In the instant case, admittedly the owners did not apply for rectification under Sub-section (6) of Section 3, since according to them, they had no knowledge of the proceedings initiated under the Act, in respect of the lands in question. Such a case can certainly come within the purview of Section 4A. It may be that the owners quoted Section 5 of the Act. Their application can as well be taken to be a notice to the original authority of certain factual features, which were not earlier brought to his notice, to prompt him to exercise the Suo Motu power u/s 4A.

4. Though Section 4A speaks about Suo Motu power of rectification, the motivation for taking such an action could certainly come by way of an application by the party for that purpose. The application for modification filed u/s 5 of the Act can be taken to have motivated the original authority to exercise the appropriate power of rectification, which power is available to him u/s 4A of the Act. Once the original authority is invested with the power to rectify the entry notwithstanding the fact that the power is described as a Suo Motu power, it can be exercised, on the original authority being put on notice of the factual mistakes that crept into the record. After all Suo Motu power of rectification is conferred on the original authority to remedy any injustice. It will be certainly open to any interested person to bring to the notice of the original authority any error that has crept into the record. There is nothing wrong in appropriate circumstances for the original authority to exercise the Suo Motu power of rectification even at the request of the aggrieved person. On an overall consideration of the facts and circumstances of the case, I am inclined to uphold the power exercised by the original authority as relatable to Section 4A of the Act. Hence, it is not possible to characterise the action taken by the original authority and the order passed by him, which has been confirmed both by the appellate and the revisional authority, as totally lacking in jurisdiction.

5. Coming to the merits of the case, the categoric finding by all the authorities on facts is that the claimants, who claimed the role of tenants under the Act, could not have that, on facts. This is an assessment of the decision on facts done by the authorities constituted under the Act, and this Court does not sit as a further appellate or a revisional forum to review such findings, exercising writ powers. Accordingly, this writ petition fails and the same is dismissed. No costs.