

(1994) 10 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 15233 of 1991

Sadayan alias Perumal Gounder

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 2(3), 2(8), 3(6), 4(1)

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2, 4

Citation : (1994) 10 MAD CK 0099

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : T. Murugamanickam, for the Appellant; V.M.G. Varadarajan, Government Advocate for Respondents 1 to 4 and G. Baskaran, for Respondents 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—This Writ petition has been filed for the issue of writ of certiorari to quash the order of the second Respondent in D. Dis. 137916/90 (p. 1) dated 10-9-1991. The Petitioner applied to the Record Officer - Tahsildar, Salem to register his name as a tenant in respect of S. No. 14/3, Palapatti Village, Salem Taluk measuring 03 acre and S. No. 27/5 of D. Perumapalayam Village, Salem Taluk, measuring 1.05 acres u/s 3(6) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (hereinafter referred to as the Act). The Record Officer, Salem, by his order dated 22-11-88 held that though the Petitioner was cultivating the lands in question till he was forcibly evicted by the 5th Respondent, the Petitioner was not in actual possession of the lands and that no useful purpose will be served in registering the Petitioner as a tenant u/s 3(6) of the Act. As against the order of the Record Officer, Salem, the Petitioner filed an appeal before the Special Deputy Collector (Revenue Court), Salem. The Special Deputy Collector (Revenue Court), Salem; Appellate Authority, found that the Record Officer has not dealt with the petition filed u/s

3(6) of the Act properly, that there is no documentary evidence to prove that the Petitioner was actually cultivating the lands and that he was subsequently forcibly evicted from the lands and dismissed the appeal. As against the said order of the Appellate, Authority, the Petitioner filed a revision petition before the District Revenue Officer, Salem. The District Revenue Officer, Salem by his order dated 10-9-91 dismissed the revision holding that there is no documentary evidence to substantiate the case of the Petitioner, that he was cultivating the lands in question till he was forcibly evicted by the 5th Respondent and consequently, the District Revenue Officer, Salem, dismissed the Revision. In the circumstances stated above, the Petitioner has filed the present Writ petition seeking the relief set out in the opening paragraph of this order.

2. Mr. T. Murugamanickam, Learned Counsel for the Petitioner, relying on the finding of the Record Officer, that the Petitioner has been cultivating the lands in question till he was forcibly evicted by the 5th Respondent, contended that inasmuch as the Petitioner was in possession of the lands in question as a tenant till he was forcibly evicted by the 5th Respondent, he is entitled to get his name registered as tenant in the record of tenancy rights, even though he is not in actual possession as a tenant on the date of filing of the petition. The Learned Counsel for the Petitioner further contended that even if, the Petitioner is not a tenant, he must be considered as an intermediary as defined in Section 2(3) of the Act, and that as a person having an interest in the lands in possession, he is entitled to have his name registered as a tenant in the record of tenancy rights in view of Section 4(1) of the Act. On the pleadings in this Writ petition and the contention of the Learned Counsel for the Petitioner, the following points arise for consideration in this writ petition:

(1) Whether the Petitioner was cultivating the lands in question as contended by him as a cultivating tenant?

(2) Whether the Petitioner, who was admittedly dispossessed from the lands in question on 10-8-76 is entitled to get his name recorded as a tenant in the Record of Tenancy Rights u/s 3(6) of the Act by filling a petition seeking the said relief only on 7-1-77?

3. A perusal of the order of the Record Officer, Appellate Authority and the Revisional Authority, shows that there is no written tenancy agreement between the Petitioner on the one side and the 5th Respondent on the other, in respect of the lands in question. The Petitioner has also not produced any documentary evidence to show that he was paying rent to the 5th Respondent. The adangal extract filed by the 5th Respondent for faslis 1382 to 1384, 1385 and 1386 also go to show that only the 5th Respondent is shown as the cultivator of the lands in question and not the Petitioner. In support of his case that he is cultivating the lands in question, the Petitioner produced a certificate issued by the karnam, which is marked as Ex. P5 in the proceedings before the Record Officer. No value can be attached to Ex. P5, because, the Karnam in his evidence before the Record Officer has stated that the Petitioner was not cultivating the lands in

question during the relevant period. In the absence of any documentary evidence, the Appellate Authority and the Revisional Authority rendered finding on the question of fact that the Petitioner was not a cultivating tenant in respect of the lands in question. As the said finding of the Appellate Authority and the Revisional Authority is a finding on a question of fact based on the evidence, I cannot take exception to such a finding that the Petitioner was not a cultivating tenant in respect of the lands in question. Point Number 1 is answered accordingly.

4. POINT No. 2: Even assuming that the Petitioner was in possession of the lands as a tenant and that he was forcibly evicted from the lands on 10-8-76, he is not entitled to get his name registered as a tenant, for the following reasons:

As per Section 2(8) of the Act, "tenant" means in relation to any land to which the Tamil Nadu Cultivating Tenants Protection Act, 1955 (Act 25 of 1955), cultivating tenant as defined in Clause (aa) of Section 2 of the Tamil Nadu Cultivating Tenants Protection Act (sic) Section 2(aa) of the said Act reads thus:

(a) "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 following are the two ingredients of Section 2(a) of the Tamil Nadu Cultivating Tenants Protection Act.

(1) The person must be in possession of the land under a valid tenancy agreement express or implied.

(2) He must contribute his own physical labour or there must be contribution of physical labour by any member of his family in the cultivation of the land taken on lease.

In the present case, even according to the Petitioner, he was evicted from the lands in question on 10-8-1976 and that he filed a petition before the Record Officer to register his name as a tenant in the Record of Tenancy rights only on 7-1-1977. Admittedly, on the date of filing of the petition, the Petitioner was not actually cultivating the lands in question, by contributing his own physical labour or that of any member of his family in the cultivation of the lands in question and thus he does not satisfy the 2nd ingredient of Section 2(aa). Therefore, the Petitioner is not entitled to get his name registered as a tenant in the Record of Tenancy rights. Further, Section 4 of the Tamil Nadu Cultivating Tenants Protection Act deals with Rights of a tenant who is forcibly dispossessed and enables such a tenant to apply for restoration of possession. In the present case, the Learned Counsel for the Petitioner, fairly represented that the Petitioner also filed a petition u/s 4 of the Tamil Nadu Cultivating Tenants Protection Act, before the concerned authority for the restoration of possession of the lands in question on the ground that he was forcibly dispossessed by the 5th Respondent and that ultimately the said petition was dismissed by the concerned authority. On this

ground also the Petitioner is not entitled to get his name registered as a tenant in the Record of Tenancy of rights. It is also represented by the Learned Counsel for the Petitioner that the Petitioner has also filed suit O.S. 323/88 on the file of the District Munsif Court, Salem for recovery of possession of the lands in question and that the said suit is still pending before the Civil Court. For all the reasons stated above, I am of the view that there is no infirmity in the order challenged in this Writ Petition and that there is no merit in this Writ Petition and it is liable to be dismissed. However, it is made clear that it is open to the Petitioner to work out his remedies in the Civil Suit O.S. No. 323/88 on the file of the District Munsif, Salem. It is needless to say that the Civil Court will dispose of the suit O.S. No. 323 of 1988 on the basis of the oral and documentary evidence to be let in, in that suit uninfluenced by any of the findings in the orders challenged in this Writ Petition and also the order passed in the Writ Petition. With these observations, the Writ Petition is dismissed. However, the learned District Munsif, Salem is directed to dispose of the suit O.S. No. 323 of 1988 within four months from the date of receipt of the copy of this order. No costs.