

(2005) 09 MAD CK 0112

Madras High Court (Madurai Bench)

Case No: Civil Revision Petition No. 1223 of 1999

The President, Tenants Farming
Cooperative Society

APPELLANT

Vs

V.T.S. Sivapragasha Thevar @
Durairaj Kumar, Hereditary
Trustee Duirairaj Kumar, Sri
Nachadai Thivirtharulia Swami
Devasthanam

RESPONDENT

Date of Decision: Sept. 27, 2005

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: S. Mahimai Raj, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.

This revision is directed against the order of the Principal District Court, Ramnad at Madurai made in C.R.P. No. 1 of 1984 dated 13.12.1984, confirming the Judgment and Decree of the Special Deputy Collector, Revenue Court, Thirunelveli made in P.T.145/81/RJM, dated 4.3.1983.

2. Facts which lead to the present revision could briefly be stated thus :-

The properties in Koviloor Village, belonging to Sri Nachadai Thavitharulia Swami Devasthanam, Srivilliputhur to an extent of 135.4 acres in S.Nos.109, 61, 156, 21, 26, 27, 211/1 were leased to the Revision Petitioner/Tenants Farming Cooperative Society, Devadanam. The rate of lease rent is 247 Kottahs and 5 marakkals of Paddy, 136 bundles of straw and Rs.250/- cash per fasli year payable on or before 31st of March.

3. P.T.145/81/RJM was filed by Devasthanam for the arrears of lease rent for faslis from 1382 to 1390. The Respondent has contested the Petition stating that the arrears for faslis 1382 and 1383 are not admitted and rent for fasli 1383 has been fully discharged as waived off. For the faslis 1384 and 1385, there was no rain and water and hence, the Respondent/Tenant Society has not raised any crop. Since the Respondent has not raised any crop, lease rent is not payable for faslis 1384 and 1385. Respondent has also stated that the rent was subsequently paid for faslis 1386 to 1390, which was adjusted towards the previous arrears.

4. The learned Special Deputy Collector (Revenue Court), Tirunelveli, found that the lease rent is payable only for the faslis 1382 and 1383. The Special Deputy Collector has inter-alia found that ::

(i) for faslis 1382 and 1383, the Petition for lease rent ought to have been filed within three years from 30.06.1978. But the Petition was filed only on 27.08.1981 beyond the period of three years and hence barred by limitation;

(ii) the claim for fasli 1388 is not proved;

(iii) the Respondent Tenants' contention that there was no rain for faslis 1389 and 1390 is not acceptable. If really there was drought Respondent/Tenant ought to have filed a separate application for remission.

5. The Appellate Court/Principal District Judge has confirmed the finding of the Special Deputy Collector that the lease rent is payable for faslis 1389 and 1390 and the same was due to be paid. The learned District Judge found that the contention of the Tenant Society that it is not in arrears of lease rent was not proved. Aggrieved over the concurrent findings of the Special Deputy Collector and the Principal District Court, the Revision Petitioner/Tenant has preferred this revision.

6. It is stated that the Petitioner/landlord Sivapragasa Thevar is dead and steps have been taken to implead his Legal Representatives. The revision is of the year 1999, involving the question of payment of lease rent amount. Hence to avoid any further delay, the applications to implead the Legal Representatives of the deceased/ Petitioner Landlord Devasthanam were not taken up. The main revision itself has been taken up for final hearing. Heard the counsel for the Revision Petitioner, Mr. S. Mahimai Raj.

7. Assailing the impugned Order, the learned counsel for the Revision Petitioner has submitted that no notice was issued to the Tenant/Society claiming arrears. It is further submitted that for the faslis 1389 and 1390 there was no rent and even then the Special Deputy Collector has erred in directing the Tenant Society to pay lease rent for the faslis 1389 and 1390. It is further submitted that prior to the filing of the Petition and after the filing of the Petition, arrears of lease rent for faslis 1389 and 1390 were paid and the same was not properly adjusted towards the arrears.

8. The arrears due upto faslis 1382-1388 was not accepted. For the faslis 1382 and 1383, lease rent was payable before 30.06.1978. Hence the application ought to have been filed within three years thereafter i.e. on or before 30.06.1981. But the Petition was filed on 27.08.1981 and the same was rightly found to be barred by limitation.

9. The contention of the Tenant/Society is that for faslis 1386 to 1390, the Lease Rent has already been paid and the same was adjusted towards the faslis 1384 to 1385 and 1389. It is the further contention that for the faslis 1384 and 1385, there was no rain and for another tenant society, the lease rent had been waived for faslis 1384 and 1385. Hence it is contended that for faslis 1384 and 1385, there is no arrears. The lease rent already paid is to be adjusted only towards the faslis 1389 and 1390. It is also the contention that for the faslis 1389 and 1390 lease rent was already paid. The contention of the Respondent has not been strengthened by adducing evidence. As rightly held by the Special Deputy Collector, if there was drought during fasli 1389, remedy is to file a separate application for remission. No such application was filed. Further contention of the Tenant Society that they have already paid lease rent is not substantiated by producing the account book or the receipts. Neither the account nor the receipts have been produced showing the payment. Having not filed any application under the Public Trust Act for releasing from payment and having not produced any account showing the payment, the Courts below have rightly held the Tenant Society liable to pay the lease Rent for faslis 1389 and 1390.

10. The Special Deputy Collector has taken into consideration the market rate of Paddy at Srivilliputhur and calculated the rent payable at Rs.68,520.75/-. Such concurrent findings cannot lightly be interfered with unless shown to be manifestly erroneous.

11. Petition was filed on 27.08.1981. It is stated that after the filing of the Petition, for faslis 1388 and 1390 and 1391, lease rent had been paid stating that the Lease Rent had been paid for faslis 1389 and 1390. Receipts had been produced by filing the application CMP No. 10669/1999, praying to receive additional documents in this revision. Nothing prevented the Tenant Society from producing those receipts before the Special Deputy Collector. In fact, even in the counter statement Respondent had raised a plea that part of the lease rent had been paid and the same had been adjusted towards the lease rent payable for the earlier faslis. The adjustment was in dispute between the parties. If the receipts now produced were produced before the Special Deputy Collector, the landlord Devasthanam would have had the opportunity of explaining those receipts or explaining whether those lease rents had been adjusted for the previous arrears or not. Now the receipts produced at this belated stage cannot be received, to accept the contention of the Tenant Society that the arrears of lease rent for faslis 1388, 1389 and 1390 had already been paid.

12. While hearing the revision, the Court cannot go into the factual aspects of the case, more so at this distant point of time. It has to be pointed out that there had been lack of diligence on the part of the Tenant Society. In fact, the revision was filed in the year 1988, with a delay in representing the revision. The revision was numbered nearly after eleven years i.e., in 1999. There is no diligence on the part of the Tenant Society either in payment of lease rent or in pursuing the revision. This revision has no merits and is bound to fail.

13. It is stated that after the disposal of the matter by the Courts below, part of the lease rent, towards the arrears of rent for faslis 1389 ad 1390, has been paid by the Revision Petitioner/ Society to the Devasthanam. If that be so, the same may be adjusted towards the arrears of lease rent payable for faslis 1389 and 1390. This decision is however subject only to the account of the Devasthanam.

14. For the foregoing reasons, confirming the order of the Principal District Court, Ramnad dated 13.12.1984, made in C.R.P. No. 1 of 1984, dated 13.12.1984, [confirming the Judgment and Decree of the Special Deputy Collector, (Revenue Court), Thirunelveli, made in P.T.145/81/RJM dated 4.3.1983], this revision is dismissed. Consequently, C.M.P. No. 10669/1999 is also dismissed. In the circumstances of the case, there is no order as to costs.