

(2010) 09 MAD CK 0334

Madras High Court

Case No: A.S. No. 726 of 2005 and C.M.P. No. 11436 of 2005

The Present Trustee

APPELLANT

Vs

P. Sivasamy and
Others

RESPONDENT

Date of Decision: Sept. 3, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Land Acquisition Act, 1894 - Section 54
- Pondicherry Cultivating Tenants Protection Act, 1970 - Section 2
- Pondicherry Hindu Religious Institutions Act, 1972 - Section 25(1)
- Transfer of Property Act, 1882 - Section 117

Citation: (2010) 09 MAD CK 0334

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: T.P. Manoharan, for the Appellant; S. Akila, for G.R. Swaminathan, for RR1 to 7 and D. Srinivasan, (GP), for the Respondent

Final Decision: Dismissed

Judgement

K. Chandru, J.

Heard. The Appellant is the trustee of Thirukanchi Sri Gangaivaraga Natheeswarar Temple, Thirukanchi, Kilinchikuppam Post, Villianur Via, Pondicherry. Thgis appeal is filed u/s 54 of the Land Acquisition Act read with Section 96 of CPC , challenging a judgment and decree made in LAOP No. 1 of 2004, dated 31.3.2005 by the learned Principal District Judge, Pondicherry. The Union of India is represented by the Secretary to Government (Revenue), Government of Pondicherry.

2. The Office of the Land Acquisition Officer-cum-Deputy Collector (Revenue) South, Pondicherry had acquired the land in S. No. 89/4 at Thirukanchi Revenue village

measuring an extent of 1.40.00 hectares by an Award No. 4/2003, dated 15.5.2003. The lands were acquired for the purpose of providing free house sites to landless labourers. A sum of Rs. 15,84,638/- was awarded by the acquiring authority. During the Award enquiry, the claimants did not produce any original documents and encumbrance certificates relating to show their interest in the land. The acquisition officer as he was unable to decide the rightful claimants regarding entrustment of compensation made a reference u/s 30 of the Land Acquisition Officer to the jurisdictional reference court to decide the rightful claimants to receive the compensation amount.

3. The said reference was registered by the Principal District Judge, Puducherry as LAOP No. 1 of 2004. Before the Reference Court, there were eight witnesses examined as R.W.1 to R.W.8 and total 61 documents were filed and marked as Exs.B.1 to B.61. The claimants before the reference court were on one side the Appellant and on the other side is Respondents 1 to 7. Unfortunately, the reference court did not assign any distinct placement for the rival claimants and recorded the evidence treating all of them as Respondents and marking all documents as Respondents" documents. In normal circumstance, the reference u/s 30 ought to have been tried by the reference court and rival claimants should have been assigned different positions.

4. Before the Reference Court, the Appellant temple had filed a counter statement claiming that Respondents 1 to 7 were originally cultivating the land long before. They are not tenants now. The entire property was in possession and enjoyment of the temple. If Respondents 1 to 7 are claiming that they are the cultivating the acquired land, such cultivation would be unlawful. There is no law enabling them to claim 75% of compensation amount. Even if they are lessees of the land on a long lease, their possession will not have the sanction of authorities. Under Pondicherry Hindu Religious Institutions Act, 1972, no lease beyond five years can have the sanction of the Commissioner under the Act. Since the property exclusively belonged to the temple and the lease was limited only for a period of three years by the statute, the contesting Respondents" plea that they are cultivating the land for a long period cannot be accepted. Even the rent receipts provided by them will not have any legal value. Therefore, the entire compensation should be given to them.

5. On the other hand, Respondents 1 to 7 had filed a statement before the reference court that they were in possession of the acquired land as tenants for over 35 years and were cultivating the same. They have an unimpeachable documentary evidence to substantiate their plea. Therefore, substantial portion of compensation up to 75% should be given to them from and out of the Award amount.

6. The reference court had framed two issues, which reads as follows:

5. the points for consideration are:

1. Whether the Respondents 2 to 8 are the tenants under the first Respondent in respect of the property acquired by the Government?

2. Whether the tenants are entitled to apportion the compensation amount? If so, what is the quantum payable to them?

7. The reference court found that admittedly the land belonged to the Appellant temple. The Respondents never claimed any title over the property except tenancy rights. While seven witnesses were examined on the side of Respondents R.W.1 to R.W.7 and documents Exs.B.1 to B.60 were marked through them. The Special Officer of the Appellant temple was examined as R.W.8 and through him one exhibit Ex.B.61 alone was marked. Ex.B.61 is the Pondicherry Government Gazette, dated 4.2.1984. Each of the Respondents 1 to 7 had produced lease deeds and also rental receipts. They had also deposed about the crops cultivated by them. They had also produced the notice issued by the Land Acquisition Officer u/s 10(3) of the Land Acquisition Act informing about the acquisition of the property and asked them to appear for an enquiry. The Special Officer of the Appellant temple had produced Ex.B.61 which the the Gazette notification wherein at page No. 91, the ownership of the temple was shown.

8. The trial court found that Ex.P.61 will show that 1.40.00 hectares of the temple land were acquired. The documents produced by Respondents 1 to 7 will show that they are cultivating the land by contributing their physical labour. While they were in the witness box, no suggestion was put denying the existence of the lease deeds and the receipts for payment of lease amounts. Therefore, the documents produced by them were genuine and reliable. The lease of agricultural lands were either may be oral or on written agreement. Section 117 of the Transfer of Properties Act especially Chapter v. relating to lease of immovable properties will not apply to the lease property for agricultural purpose unless the Government notifies to that effect. Even assuming that the lease cannot be granted beyond three years, the tenants continued to be in possession and enjoyment of the property. The invocation of Section 25(1) of the Pondicherry Hindu Religious Institutions Act declaring that the grant of lease beyond three years unless it was sanctioned by the Commissioner was invalid.

9. Reliance was placed upon a judgment of this Court in B.S. Nagarajan v. K.B. Sivasankaran reported in 2003 (1) CTC 199 will not have any application, since in the present case, Respondents 1 to 7 are in possession and enjoyment of the property even after expiry of the written lease period and the temple authorities were receiving amounts from them and were issuing receipts without any protest. Respondents 1 to 7 are not trespassers by continuing in possession beyond the original lease period.

10. In fact, the temple authorities themselves have sent a letter asking them to pay the lease amount without default. Therefore, it was recorded that Respondents 1 to 7 were in possession and enjoyment of the property by cultivating the land and by contributing their physical labour. Though it was contended by the Appellant that they are not registered

tenants and their names did not find place in the revenue records, the court below held that rental receipts issued by the temple will show that they are tenants. If they were not actually in possession and enjoyment of the land, there was no necessity for the temple to send a letter asking them to pay the arrears of amount. The Appellant had not produced an iota of evidence like chitta, adangal to show that they are in physical possession. Reliance placed upon Ex.B.61 and the oral evidence of R.W.8 alone is not sufficient to show that they are in possession. The court below also placed reliance upon a judgment of the Supreme Court in [Mangat Ram, etc. Vs. State of Haryana and others, etc.](#), to hold that in the apportionment of compensation amount awarded in the land acquisition proceedings, the tenants were entitled to 3/4th of compensation and the landlord was entitled to 1/4th including the other statutory payments. In the light of these findings, the court below had granted 3/4th amount is payable to Respondents 1 to 7 to be divided among them with proportionate accrued interest if the amount is lying in the fixed deposit and 1/4th of the amount to be withdrawn by the Appellant. With these directions, the reference was disposed of by a judgment and decree, dated 31.3.2005. It is against this, the present appeal is filed.

11. The contention of the Appellant was that Respondents 1 to 7 was not registered tenants. Section 25 of the Pondicherry Hindu Religious Institutions Act prohibits any lease beyond three years. The amounts paid by Respondents 1 to 7 even after the lease period can be only taken as damages and not rents. The original agreement issued by the then President of the Board of Trustee was in non judicial stamp paper having the value of Rs. 5/- and there was lot of suspicion about the said document.

12. Mr. T.P. Manoharan, learned Counsel for the Appellant had referred to a judgment of a division bench of this Court in B.S. Nagarajan v. K.B. Sivasankaran reported in 2003 (1) CTC 199 for contending that the lease in favour of the tenant but not backed by sanction by the endowment board was invalid and that the tenant was not entitled for any relief. He had further referred to the judgment of the Supreme Court in [Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others](#), to contend that an excess of statutory power cannot be invalidated by acquiescence in or by the operation of estoppels. The court will decline the relief for the assistance of persons who seek its aid to relive them against express statutory provision.

13. The learned Counsel further referred to a judgment of the Supreme Court in [Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others](#), and referred to paragraphs 12 and 50 for the purpose of contending that the principle of estoppels was not available against the Government in exercise of legislative, sovereign or executive power. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority.

14. The learned Counsel also referred to a judgment of the Supreme Court in [Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another](#), .

Though that case arose out of the service law, the counsel referred to paragraph 11 and contended that a result flowing from a statutory provision is never an evil. The court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.

15. He also referred to a judgment of the Supreme Court in [Kunwar Pal Singh \(Dead\) by L.Rs. Vs. State of U.P. and Others](#), and referred to paragraph 16 to contend that where any statutory provision provides a particular manner for doing a particular act, then that thing or act must be done in accordance with the manner prescribed there for in the Act. In the present case, the authorities had failed to do the same.

16. The learned Counsel further referred to a judgment of this Court in *Arulmighu Ammachi Ayyanar Mandu Koil, Sennagarampatti village by E.C. having its office at Arulmighu Kalyanasundareswara Temple, Melur v. Alagu Karuppanan Ambalam and Ors.* reported in 1995 TLNJ 78 for contending that after expiry of the period of lease, the tenants have no right to continue in the land and the property belongs to temple. The lease which was expressly prohibited to be executed beyond three years was not valid. Even if tenants are in possession, it is not a lawful possession.

17. Alternatively, the learned Counsel had submitted that the court below awarded 75% of compensation to Respondents 1 to 7 and limited the compensation to the Appellant as 25%, which was grossly unjust. For this purpose, he had relied upon a judgment of the Supreme Court in [Kiran Tandon Vs. Allahabad Development Authority and Another](#). In that case, the Supreme Court had granted 20% of compensation to the lessees and 80% to the State Government. Therefore, he pleaded that the judgment under appeal be set aside and the appeal be allowed.

18. Per contra, Ms. S. Akila, learned Counsel representing Mr. G.R. Swami Nathan, learned Counsel for the Respondents contended that the findings of fact recorded by the trial court cannot be removed on the plea made by the Appellant. Since Respondents 1 to 7 were in long possession, they should not be denied their rightful compensation.

19. In the light of the rival pleadings, it has to be seen whether the Appellant has made out any case? The finding of fact that Respondents 1 to 7 were in possession and were cultivating the land belonging to the Appellant temple is an admitted fact. Even otherwise, that fact recorded by the trial court cannot be disturbed in the light of the overwhelming evidence let in by the Respondents. The Pondicherry Cultivating Tenants Protection Act, 1970 defines u/s 2 as to the term "cultivating tenant", which reads as follows:

2(a)"cultivating tenant" 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 an agreement express or implied on condition of paying rent there for in cash or in kind or delivering or receiving a share of the produce and includes (i) any such person who

continues in possession of the land after the determination of the agreement;

20. Section 2A of the said Act do not exclude the temple land from applying the Act, which reads as follows:

2A. Nothing in this Act shall apply, to (i) leases or tenancies of lands belonging to or vested in the Government of the Union territory of Pondicherry, the Central Government, a State Government, a local authority, or a corporation owned or controlled by any of the said Governments, or authority; or

21. Section 3(1) provides a non obstante clause prohibiting the land owners from evicting the cultivating tenants, which reads as follows:

3(1) Notwithstanding anything to the contrary in any law, custom, usage or contract or any decree or order of court, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord except as provided in this section.

22. The Act also provides that it is only in case where the land owner wants the land for personal cultivation; he can seek for restoration of possession. But on the other hand, in the present case, the Appellant was sending reminders demanding arrears. It is too late for them to contend that what were received were only damages and not rent. If that was the case, there was no necessity for the Appellant to have demanded for payment of rental from the tenants. In fact, the Special Office of the Temple examined as R.W.8, in his cross examination had stated that Ex.B.44 was the demand notice issued by him. It contained that the land was given on lease and was in enjoyment of persons who had produced receipts. It was also stated that no steps were taken for revocation of lease and no notice was issued to tenants.

23. Since the Pondicherry Cultivating Tenants Protection Act, 1970 is a special law relating to tenancy in agricultural land, the Appellant cannot press into service Section 25(1) of the Pondicherry Hindu Religious Institutions Act. In any event, those provisions will be relevant only for determining the relationship between the parties. But with reference to law relating to compensation, it is for the authorities to apportion the land on account of acquisition of land. Certainly, the person who is in possession of land cannot be deprived of compensation. In the present case, even the acquiring authority had given notice to tenants to appear for an enquiry. Therefore, the contention raised by the Appellant that Respondents 1 to 7 does not have any right to claim compensation cannot be accepted. The decisions cited by the Appellant will have no directly application to the case on hand.

24. This leaves out the last question on the quantum of compensation awarded. Regarding the quantum of compensation to be apportioned between a tenant and the land owner, there is no uniform rule. It is not as if in Kiran Tandon's case (cited supra), the Supreme Court had laid down a universal law relating to compensation. On the other hand, as already held by the Supreme Court in [Mangat Ram, etc. Vs. State of Haryana](#)

[and others, etc.](#), the tenants are entitled to 3/4th of compensation amount. Similarly, the Supreme Court in [Inder Parshad Vs. Union of India \(UOI\) and Others](#), had ordered 75% of compensation to the lessee. In [Ratan Kumar Tandon and others Vs. State of Uttar Pradesh](#), where the acquisition was made before expiry of lease, the Supreme Court had awarded compensation at the ratio of 50: 50 between the parties.

25. In the present case, it was tenants who were cultivating the land by putting their physical labour. By taking over of the land for some other purpose, there will be loss of their livelihood. Hence the award of compensation at the rate of 75% cannot be said to be either unreasonable or illegal. In view of the above, this Court is not inclined to interfere with the judgment and decree passed by the court below. Hence the Appeal suit will stand dismissed. Under the peculiar facts and circumstances of the case, the parties are allowed to bear their own costs. Consequently, connected miscellaneous petition stands closed.