(1998) 07 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No''s. 12847 of 1989 and 84 of 1990

A. Kasi and Another — APPELLANT

Vs

Special Commissioner and Commissioner of Land Reforms and Another — RESPONDENT

Date of Decision : 08-07-1998

Acts Referred:
Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 6

Citation : AIR 1999 Mad 23 : (1998) 3 MLJ 256

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; V. Selvanayagam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The petitioners in the writ petitions are brothers and aggrieved by the order of the first respondent in 13/73766/88 dated 3-8-1989, they have filed these writ petitions.

2. By the impugned order dated 3-8-1989 the petitioners'' lands were declared as Urban Lands and brought into the purview of the provisions of Tamil Nadu Urban Land (Ceiling Regulations) Act, 1978.

3. The second respondent in his order dated 30-9-1988 declared the lands of the petitioners as ''urban vacant lands'' only on the basis that the lands were kept vacant. Even on appeal by the petitioners the first respondent appellate authority concurred with the findings of the second respondent and rejected the appeals on 3-9-1989 which is impugned in these writ petitions.

4. Learned counsel for the petitioners has submitted that the respondents have treated the lands as urban land only because the said lands were kept vacant without cultivation for some time due to disputes between the brothers. Merely because the cultivation was not carried on in the said lands for some time,

according to the learned counsel for the petitioners, it cannot be said that the character of the lands would change and it becomes urban land. In support of his contention learned counsel for the petitioners relied on a judgment reported in Sarangapani Iyengar v. Assistant Commissioner of Urban Land Tax, Alandur, Saidapet (1988) I LW 152 wherein the Hon''ble Mr. Justice Chandurkar, The Chief Justice as he then was, while dealing with the definition of Urban Land in Tamil Nadu Urban Land Tax Act, 1966 has held as follows :--

"At the threshold, it is difficult to uphold the findings given by the Tribunal that the lands in questions are not agricultural lands. The Tribunal seems to have taken a view that merely because the lands were kept vacant during the fasli years 1381-85, they ceased to be agricultural lands. For such a proposition, there does not seem to be any support in any statutory provision. The lands are registered as agricultural lands in the Revenue Records. There are Adangal records which undoubtedly show that the lands were uncultivated. They also show that they are dry lands. Whether it is agricultural land or not will depend on the nature of the lands and the purpose to which the lands are normally put. Merely because an agricultural land is not cultivated for some time, the land does not cease to be agricultural land especially when it is put to any other use. It is difficult to appreciate the reasoning of the Tribunal that since the petitioner has merely stated that the lands in question are dry lands and that they have been reserved for formation of horticultural gardens, the lands could be said to have ceased to be agricultural lands."

5. In view of the above decision, merely because the lands were kept uncultivated for some time cannot be characterised the said lands as Urban Land. The authorities below have not given any other reason to come to the conclusion that the lands are urban lands. The only reason given is that the petitioners have not cultivated the lands during the relevant period. Such a reasoning cannot be sustained. Hence, the orders of the respondents dated 30-9-1988 and 3-8-1989 are set aside and the matter is remitted back to the second respondent with a direction to dispose of the matter in the light of the above said judgment and pass orders in accordance with law. With the above observation, the writ petitions are allowed. No costs.

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