

(1992) 01 MAD CK 0066
In the Madras High Court

Abdullah Glue Company

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 10-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 LW 180 : (1992) 2 MLJ 358

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Judgement

K.M. Natarajan, J.—This writ petition is filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus directing the first respondent to grant exemption u/s 21 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in respect of the land in S.No.95/2, Pammal Village, within the Madras Urban Agglomeration Category I in the possession of the petitioner, after calling for the records connected with the letter (Ms) No. 1382, dated 23.8.1989 of the first respondent and quash the same.

2. The brief facts which are necessary for the disposal of the writ petition can be stated as follows: One Sakhibai Khiyaram became the owner of 60 grounds of land in S.No.95/2, Pammal Village by a settlement deed dated 26.5.1969. The petitioner-firm was a tenant in respect of the said 60 grounds of land from 1957 under one A.Mohammed Ghouse. It is stated that there was an ancient shed on the land and all the superstructure housing the tannery, factory unit was constructed by the petitioner. Sakhibai Khiyaram entered into an agreement of sale on 9.2.1975 fixing a price of Rs. 1,12,500. The petitioner purchased the said land of 60 grounds on 22.6.1979 and 11.8.1979 and filed a statement u/s 7(1) and also a separate application before the first respondent u/s 21 for exemption of the excess land of about 35 grounds. Prior to that Sakhibai Khiyaram filed a statement u/s 7(1) of the Act. The Assistant Commissioner (U.L.T.), Tambaram at Saidapet by notice dated 16.8.1979 summoned the quondam owner and the petitioner, for enquiry, into the violation of Section 6 of the Act. By the

Government's letter dated 17.2.1981 the petitioner was informed that the exemption sought for was rejected as the land was purchased in contravention of Section 6 of the Act and a similar order dated 23.2.1981 was sent to the quondam owner. Sakhibai Khiyaram filed a reconsideration application on 13.3.1981 which was rejected by the Government on 25.3.1981. Again on 17.7.1981 the petitioner filed a petition u/s 21 of the Act through his counsel for exempting the land. That was also rejected. He filed a representation before the Honourable Minister for Revenue, Government of Tamil Nadu, on 17.8.1981 invoking the combined benevolence in Section 21(1)(a) and (b) for exempting the land. By the impugned letter, the Government rejected the petitioner's application for exemption. Further, the second respondent passed an order dated 21.9.1989 u/s 9(5) in respect of Sakhibai Khiyaram's returns u/s 7(1) and fixed an extent of 11,469 sq. mt. as excess to be acquired. Only in these circumstances, the writ petition is filed. The main grievance of the writ petitioner is that even though the sale is hit by Section 6 of the Act, yet by virtue of his possession and enjoyment as a tenant for 20 years, he has got every locus standi to seek exemption as a person who is holding the said land and the impugned order which shows that that the petitioner has no locus standi is not sustainable in law and on that ground alone, the same has to be quashed and the matter should be remitted back to the Government to consider the question as to whether the petitioner is eligible for exemption as a lessee of the premises who is running an industry in tannery.

3. In the counter-affidavit filed by the respondents while denying the allegations stated in the affidavit filed in support of the petition, it was inter alia contended as follows; One Sakhibai Khiyaram filed a statement on 3.10.1978 u/s 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978), hereinafter referred to as the Act, in respect of the lands owned by her. According to her statement, she owned two items of land (1) 15114 sq. mts. of land which consists of building and vacant land in S.No.95/2 in Pammal Village, and (2) 1,105 sq.mts. of land with building in T.S.No.91/144,Block No. 9 in Egmore. She also applied to the Government for exemption of the land u/s 21 of the Act alleging that the lands in Pammal Village were given to Sakhibai Khiyaram by her mother-in-law, that it was leased out to one O.S. Abdul Rasheed for a period of 10 years from 1969 and that tannery has been functioning in the said land and the excess vacant land is required for starting an industry of finished leather goods and for the treatment for effluent of the tannery. According to her, there is no excess vacant land in Egmore village and she furnished the details of the family members. While the exemption application was pending, she sold the land at Pammal Village to one Abdullah Glue Company by virtue of document No. 1620, dated 22.6.1979. The said Abdullah Glue Company filed a statement u/s 7(1) of the Act and applied for exemption. The family of Sakhibai Khiyaram was eligible to hold only 2000 sq.mts. of vacant land. After deducting the family eligibility, the excess vacant land works out to 9,969 sq.mts. The Government in their letter dated 23.2.1981 rejected the request of

the applicant for grant of exemption of the land applied by Srimathi Sakhibai Khiyaram on the ground that the sale of the land in Pammal Village in favour of Abdullah Glue Company was in contravention of Section 6 of the Act. The Government also rejected the exemption applied for by Abdullah Glue Company, in their letter dated 17.2.1981 for the same reason. Accordingly draft statement u/s 9(1) of the Act, with notice u/s 9(4) of the Act, was issued to Sakhibai Khiyaram on 7.7.1981 and was served on 3.8.1981. She filed an objection on 10.8.1981 to the effect that though the sale deed was registered on 22.6.1979, it was in pursuance of an agreement for sale made by her on 9.2.1975 and she has received a token advance of Rs. 500 and the purchaser was a lessee for decades under an unregistered agreement dated 9.2.1975 M/s. Abdullah Glue Company filed a re-consideration petition before the second respondent on 7.8.1981. Since the Government did not accept any of the representations made by the land-owner Sakhibai Khiyaram and it rejected the reconsideration petition dated 13.3.1981. It ordered to take action to acquire the excess vacant land. The Government considered the various reasons in detail and came to the conclusion that the different reasons adduced by the urban land owner are far from truth and those reasons were adduced just to invoke the sympathy of the Government and it was deliberate action of violating the provisions of the Act. The alleged written agreement is held to be a faked up one, it was also contended that the tannery was done only by the lessee and the owner was not at any time running any tannery or any other industry. A notice to show cause against action u/s 39(4) of the Act was issued on 19.11.1981 and it was acknowledged by the owner on 24.11.1981. The reply for the said notice was filed by her on 2.12.1981. It was at this juncture M/s. Abdullah Glue Company again represented to the Government by letter dated 7.8.1981 for grant of exemption. The Government in their letter Ms. No. 1382, Revenue, dated 23.8.1989 rejected the request. A copy of the order was served on the company on 29.9.1989. The Competent Authority in its proceedings dated 21.9.1989 passed orders u/s 9(5) of the Act determining the net excess vacant land as 11,469 sq.mts. and proposing its acquisition to the Government and the said order was served on the owner. The owner has not filed any appeal against the said order as on this date and hence further course of action under Sections 10 and 11 of the Act are to be proceeded with. It is further stated that since the petitioner company is not the owner of the property on the date when the Act came into force, namely, 3.8.1976, the company has no locus standi to file the writ petition. It is further submitted that the petitioner has not produced any documentary evidence to show that he is the owner or even the lessee of the land as on 3.8.1976 and only relied on the unregistered sale agreement dated 9.2.1975 which is clearly silent on the period of past occupation by the proposed purchaser as lessee. There was no error of law when the Government held that the writ petitioner as a firm has no locus standi to claim exemption as on the date of coming into force of the said Act. It is again reiterated that the alleged sale agreement is not genuine and believable. It is further submitted that the benefit of Section 21 can be availed only by the land owner who owns the land as on the date when the Act came into

force and not to the subsequent purchaser. Since possession of the land as a lessee for 20 years was never established by the petitioner by documentary evidence before the competent authority, the petitioner is a person who has no locus standi to claim exemption with reference to the agreement of sale dated 9.2.1975. The petitioner has not sought for any right under the Tamil Nadu City Tenants Protection Act, 1955. Hence the respondents prayed for dismissal of the petition.

4. The learned Counsel for the petitioner submitted that the impugned order rejecting the petition for exemption u/s 21(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, on the sole ground that the purchase is hit by Section 6 of the Act and that the petitioner company has no locus standi to claim exemption, is not tenable. The learned Counsel submits that even though the petitioner is not entitled to claim exemption on the ground that he is the owner of the property in view of the fact that his sale is hit by Section 6 and it is contrary to the provisions of the Act, yet the petitioner is entitled to claim exemption on the ground that the petitioner is a lessee for a sufficiently long period. Further in the counter it is only submitted that the petitioner has not produced relevant documents to establish the tenancy. Hence, according to him, the matter should be remitted back to the Government to consider the claim for exemption sought for by the petitioner on the basis of his lease. He would submit that the impugned order does not show that his claim as lessee was considered, and the exemption application was rejected only on the ground that the sale is contrary to the provisions of Section 6 of the Act and as such he has no right to claim exemption. In this connection, the learned Counsel for the petitioner drew the attention of this Court to the relevant provisions of Section 21, Sub-clauses (1)(a) to (c) and also the definition of the word "to hold" in Section 3 of the Act. Per contra the learned Additional Government Pleader for Writs would submit that the right to decide exemption is prerogative of the Government and the Government has rightly exercised the discretion and rejected the exemption u/s 21(1)(a). The petitioner sought exemption only u/s 21(1)(a) in view of the fact that he is a purchaser in pursuance of an alleged agreement of sale and the said agreement has rightly been held to be not a genuine and true one and the subsequent sale after 3.8.1976 is hit by Section 6 of the Act and as such the Government has got every justification to hold that the petitioner has no locus standi to file the petition. The learned Additional Government Pleader drew the attention of the court to various proceedings instituted by the owner of the land as well as by the petitioner and submitted that the petitioner has not produced necessary document with reference to leasehold right and as such he is not entitled to ask for considering his claim for exemption on the ground that the petitioner is a lessee. He would submit that except proceeding with the final statement u/s 10(1), all other proceedings were already completed and as such the request should not be granted.

5. On a careful consideration of the rival submissions made by both parties and on going through the material documents and the relevant provisions of the Act,

I find that under the impugned order the claim of the petitioner for exemption was rejected on the ground that since the sale in his favour is contrary to Section 6, it is void and that he has no locus standi to file the petition for exemption u/s 21(1)(a) of the Act. There is nothing to show that his claim for exemption as a lessee was considered. It is not in dispute that if he is a lessee, he is entitled to claim exemption as is seen from the relevant provisions of the Act. As per Section 21(1)(a) and (b) of the Act, notwithstanding anything contained in any of the foregoing provisions of Chapter III, any person holds vacant land in excess of the ceiling limit may apply for exemption if it is necessary or in the public interest or if it is satisfied that the application of the provisions of this chapter would cause undue hardship to such person. As Section 3, Sub-clause (1), the word "to hold" is defined as follows:

(1) "to hold" with its grammatical variations, in relation to any vacant land, means-

(i) to own such land, or

(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power-of-attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

Explanation 1 reads as follows:

Explanation 1: For the purpose of this clause, "tenant" means any person who has paid or has agreed to pay rent or other consideration for his being allowed by another to enjoy the land of the latter under a tenure agreement, express or implied, and includes-(i) any such person who continues in possession of the land after the determination of the tenancy agreement;

(ii) the heirs, assignees, legal representative of such person or persons deriving rights through such person.

Thus it is seen that the tenant also is entitled to apply for exemption u/s 21(1) (a) and (b) of the Act. The claim of the petitioner as owner by virtue of the sale has been rejected. Similarly the exemption made by the owner of the land u/s 21 is also rejected on the ground that during the pendency of the application of the original owner, the sale has been effected and that it is in contravention of Section 6. Now the only point that is urged in the writ petition is that the petitioner-company has been in occupation of the premises long prior to the Act coming into force as tenant and has been running a tannery and the petitioner-company is entitled to claim exemption as tenant of the premises of the excess land over which they have put up superstructure and they have been running the tannery business. In the counter affidavit it is only reiterated that the petitioner has not adduced necessary satisfactory evidence to prove the tenancy during the enquiry and as such he is not entitled to contend that he has got locus standi to claim exemption-as tenant. When the petitioner was asked to produce

documents to substantiate his claim that he was a lessee of the premises for a sufficiently long period and that he is entitled to claim exemption as such, the learned Counsel produced a typed set of papers containing the rent agreement as well as rent receipts from the year 1963 besides the professional tax receipts issued by the Panchayat for carrying on business and the electricity payment receipts and also factory licence for carrying on tannery business in the said premises and exchange of notices with regard to payment of rent through counsel in the year 1966 and other documents. The learned Counsel would submit that prima facie the petitioner has got documentary evidence to substantiate his claim for exemption on the basis that he is a lessee and unless an opportunity is given to substantiate the claim as a tenant u/s 21 of the Act, the petitioner company would be put to serious hardship. Further, the impugned order where in his claim was rejected as he has no locus standi is not sustainable in view of the fact that the petitioner can claim exemption as a tenant. I find much force in the contention of the learned Counsel for the petitioner in this regard. The learned Counsel in order to substantiate his claim has produced certain documents to show that the petitioner-company was a lessee prior to 3.8.1976 when the Act came into force and that the petitioner company can claim exemption as a lessee u/s 21(1)(a) and (b) of the Act if he is otherwise able to satisfy the requirements under those provisions. It is submitted by the learned Counsel for the petitioner that the petitioner was not given an opportunity to put forth his contentions that he was a lessee by producing necessary documents before the Government and other competent authorities. There is absolutely nothing to show that the petitioner was given an opportunity to put forth his claim as a lessee. But, his claim seems to have been rejected as he is a person who has no locus standi to claim exemption since his sale is contrary to Section 6 of the Act. The petitioner is not pursuing his claim by virtue of sale deed. But he wants an opportunity to put forth his contention as lessee who is carrying on tannery business by putting up superstructure etc. Having regard to the facts and circumstances of the case, I feel that in the interest of justice, the petitioner should be given an opportunity to substantiate his claim as lessee by adducing necessary documentary evidence before the Government in his application u/s 21 of the Act wherein he claimed exemption. It is only in that view the matter requires re-consideration by the Government and not on the ground that he is the owner of the premises but to consider his claim as a lessee provided he is able to satisfy in the first instance that he is a tenant by producing necessary documents and thereafter to satisfy the requirements of the provisions u/s 21(a) and (b) of the Act.

6. In the result, the writ petition is allowed, the impugned order of rejection in Letter (MS) No. 1382, Revenue Department, dated 23.8.1989 is hereby set aside and the first respondent is directed to give an opportunity to the petitioner to establish that he is a lessee of the premises and that he is entitled to claim exemption and then dispose of the claim according to law as expeditiously as possible. However, in the circumstances of the case, there will be no order as to

costs.