

(2016) 07 MAD CK 0051

In the Madras High Court

Case No : Writ Appeal No. 167 of 2013 and M.P. No. 1 of 2013 (Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P. No. 21002 of 2004 dated 23.7.2009)

Assistant Commissioner of Urban Land

APPELLANT

Vs

A. Ganesan

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 31A

Citation : (2016) 4 Civil LJ 308 : (2016) 2 CWC 409 : (2016) 5 MLJ 513 : (2016) 2 RCR Rent 321

Hon'ble Judges : A. Selvam and P. Kalaiyarasan, JJ.

Bench : Division Bench

Advocate : Mr. R. Ravichandran, AGP, for the Appellant; Mr. P.L. Narayanan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—Challenge in this writ appeal is to the order dated 23-07-2009 passed in W.P. No. 21002 of 2004 by the learned Single Judge of this Court.

2. The respondent herein, as petitioner has filed W.P. No. 21002 of 2004 on the file of this Court praying to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus forbearing the respondents from interfering with the peaceful possession and enjoyment of the property situate in Site No. 86 in S.F. Nos. 567, 569 and 570/1A1 at Thudiyalur Revenue Village, Ganesh Nagar, Coimbatore 641 029 by invoking Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 ("the Act" in short) and consequently, directing the respondents to delete wrong entries made in revenue records and restore its status, wherein the present appellants have been shown as respondents.

3. The material averments made in the petition are that S.F.Nos. 567, 569 and 570/1A1 are situate in Thudiyalur Revenue Village, Ganesh Nagar, Coimbatore

641 029 totally admeasuring 9.89 acres. The same has been converted into house plots. The name of the layout is Ganesh Nagar. The petitioner has purchased Site No. 86. The land owners of the house-sites do not come within the purview of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The petitioner has made enquiries from the concerned Village Administrative Officer and subsequently he has come to know that a proceeding has been initiated under the said Act. No notice has been issued to the land owners. Under the said circumstances, the present writ petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the first respondent, it is averred in paragraph Nos. 2, 11 and 12 as follows:

"2. Tvl. Ganesh Nagar Mills Residents Welfare Association has filed a writ petition bearing writ petition No. 2769/2003 against the acquisition of Excess vacant land as per the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978. In Survey Nos. 567, 567 and 570/1A1 in Thudiyalur village an extent of 3.85.5. Hect. of excess vacant lands were acquired under the provisions of the said Act from Thiru Arumuga Gounder. Necessary sub-Division records were prepared as early during August, 1994 in favour of the Government of Tamilnadu for the portion so acquired and soon after the acquisition process is completed necessary changes in the Revenue Records have also been carried out on 28.2.1997, well before the Repeal Act came into force and hence the excess vacant land so acquired have become the Government land absolutely vested with the Government free from all encumbrances. Recently when one member of the Association presented a Document for Registration, it was returned by the Registering Authority stating that the document cannot be accepted for registration since in the Audit report dated 5.6.2002 of the Auditor General, Chennai, it was held that the lands comprised in Survey Nos. 567, 569 and 570/1A1 of Thudiyalur Village were taken over by Government.

11. Regarding the averments made in paras 14 and 15 of the affidavit, it is submitted that it is true that the principal Act was repealed with effect from 16.6.1999. As per the Repeal Act, all cases pending before any authority under the Act shall abate except cases when notification under section 11(3) of the Principal Act has been published and possession of excess vacant land so acquired has been taken. Generally, only after the entire acquisition process is over including the taken over of possession action will be taken to make necessary changes in the revenue accounts. This is a usual practise ever since from the promulgation of the Principal Act. In this case also action have been taken to carry out necessary changes in the Revenue accounts only after taking possession of the acquired land by Government well before the commencement of the Repeal Act as the sub division have been prepared on 9.8.94 and approved by the competent authority on 23.8.94. Accordingly, the corrections in the Revenue accounts were carried on 23.5.1997. hence, it is very clear that the entire acquisition process including the taking over of possession by Government

and carrying out changes in the Revenue accounts have been completed well before the commencement of the Repeal Act.

12. Regarding the averments made in paras 16 to 18 of the affidavit, it is submitted that as already stated the acquisition of excess vacant land in Survey No. 567, 569 and 570/1A1 of Thudiyalur Village is in accordance with law. The members of Association can very well approached the Government and get their lands allotted in their favour in the category of Innocent Purchasers as per G.O.Ms.No. 649 Revenue dated 29.7.1998 and the petitioners shall have no grievance if their purchases are regularised as per the above G.O. Further it is respectfully submitted that the Association cannot challenge or represent in any court of law on behalf of its members which is not permissible under any law. The High Court has already held this in W.P.No. 12798/1985 dated 25.6.1994 and reiterated subsequently in W.P.No. 15219/2000 and WMP Nos. 22138 and 22139/2000 dated 8.9.2000. On this ground alone, the writ petition has necessarily to be dismissed with costs besides instructing the petitioner to approach the Government under the Innocent Purchasers category to regularise their purchases as per G.O.Ms.No. 649, Revenue dated 29.7.1998."

The first respondent has ultimately prayed to dismiss the writ petition.

5. On the basis of the claims and counter-claims made on the side of the petitioner as well as first respondent, the learned Single Judge has allowed the writ petition by way of passing the impugned order and in order to set aside the same, the present writ appeal has been filed at the instance of the respondents as appellants.

6. The learned Additional Government Pleader appearing for the appellants/respondents has raised the following points:

(i) As per the provisions of the Act, 1978, excess lands comprised in S.F.No. 567, 569 and 570/1A1 have been acquired and necessary order has been passed by way of giving notice to the persons concerned. Under the said circumstances, the writ petition is not maintainable and the learned Single Judge has failed to look into the same.

(ii) For getting the reliefs sought in the writ petition, the petitioner has to approach Civil Court and he erroneously invoked Article 226 of the Constitution of India and on that ground also, the writ petition is liable to be dismissed.

7. Per contra, the learned counsel appearing for the respondent/petitioner has laconically contended that the provisions of the Act are not applicable to the facts and circumstances of the writ petition and further, with regard to maintainability of the writ petition on the basis of the relief sought therein no plea has been raised in the writ petition and therefore, the appellants/respondents are totally precluded from raising its maintainability and altogether, the present writ appeal deserves to be dismissed.

8. Before contemplating the rival submissions made on either side, the Court has

to look into the circumstances under which the writ petition has been filed. It is an admitted fact that on 12-11-1990, the first respondent has passed an order in R.O.C.No. 11706/90(D2) and the same reads as follows:

"An extent of 9.89 Acres or 40023 Sq.Mts of lands in S.F.Nos. 567, 569 and 570/1 of Thudiyalur Village in Coimbatore Urban Agglomeration are owned by one Thiru. Arumugha Gounder S/o. Marudachalagounder residing at Thulasi Thottam, Ganesh Nagar in Maniyakarampalayam Village of Coimbatore North Taluk.

Since the above lands were converted as housing plots and being sold. The urban land owner was asked to submit Form I and documents vide this office Section 7(2) notice dated 3.7.90 which was served on the Urban Land owner on 24.7.1990. Since the urban land owner did not file Form I statement and documents, draft statement u/s 9(1) and 9(4) of the Act were served on the urban land owner on 11.10.1990. Though the urban land owner received the draft statement u/s 9(1) and 9(4) of the Act, the urban land owner did not file any objections till date. Hence, it I decided that there is no objection from the urban land owner and hence out of an extent of 40023 Sq.Mts of land mentioned in para 1 an extent of 1500 Sq.Mts of land are allowed to retain as eligible limit and the balance 38523 Sq.Mts are treated as excess vacant land and I Thiru. K.N. Sheik Dawood, Assistant Commissioner, Urban Land Tax, Coimbatore and competent Authority, Coimbatore order for the acquisition of the above excess vacant land.

If there is any objection to this order, an appeal can be made to Special Commissioner and Commissioner of Land Reforms, Chennai under Section 33 of the Act within 30 days from the date of receipt of this order."

9. A bare reading of the order dated 12-11-1990, it is easily discernible that certain proceedings have been taken under the Act. Only on the basis of the order dated 12-11-1990, the writ petition has been filed.

10. It is a settled principle of law that the said Act is not only applicable to a completed transfer but also a proposed transfer, even though the said Act has been repealed.

11. The main contention put-forth on the side of the respondent/petitioner is that the lands mentioned in the petition are not coming within the contour of the Act.

12. For considering the contentions put-forth on the side of the respondent/petitioner it would be appropos to look into the Sale Deeds filed on the side of the respondent/petitioner. The first and foremost sale deed has come into existence on 24-07-1963 in respect of the lands in question in favour of one Venkatachalam and subsequently, he converted the same into house plots in the name of Ganesh Nagar Layout. On 04-11-1963, one M. Jayaseeli has purchased house site No. 86, and subsequently, sold the same on 13-07-1983 in favour of one V. Vincent. The said V. Vincent has sold the same on 22-08-1986 in favour of

one P. Vincent. At last the respondent/petitioner has purchased the same on 24-04-1989. It is an admitted fact that the Act has come into effect in the year 1978. Before passing the concerned Act in the year 1978, the original owner of the lands, in question has sold the same on 24-07-1963. Under the said circumstances, the Court can easily come to a conclusion that the said Act is not at all applicable to the lands mentioned in the petition and therefore, the first and foremost contention put forth on the side of the appellants/respondents is sans merit.

13. Now, the Court has to look into the legal points raised on the side of the appellants/respondents with regard to maintainability of the writ petition.

14. The sum and substance of the contention urged on the side of the appellants/respondents is that the respondent/petitioner can seek the reliefs sought in the petition only by way of approaching Civil forum and since Civil remedies are available he cannot invoke provisions of Article 226 of the Constitution of India.

15. In support of the contentions raised on the side of the appellants/respondents, the following decisions are relied upon:

(i) 2006 (10) SCC 310 (Church of South India Trust Association v. Shyamlal and others) wherein the Honourable Supreme Court has held that Civil matter involving question of title cannot be decided by way of filing a petition under Article 226 of the Constitution of India.

(ii) 2005 (2) MLJ 102 (S. Thamil Arasan, President of Chennai Vyasarpadi Nadar Progressive Association, Chennai v. R. Narayanan) wherein the Division Bench of this Court has held that as per Section 36 of the Tamil Nadu Societies Registration Act (27 of 1975) validity of Election held for the Office bearers of the Society cannot be challenged under Article 226 of the Constitution of India and the only remedy is to approach the Civil forum.

16. For the purpose of controverting the second contention put-forth on the side of the appellants/respondents, the learned counsel appearing for the respondent/petitioner has accited the following decisions:

(i) 1953 SCR 1049 (Thakur Raghubir Singh v. Court of Wards, Ajmer) wherein at Paragraph No.11, the Honourable Supreme Court has observed as follows:

"For the reasons given above, we are of the opinion that the law enacted in section 112 of Act XLII of 1950 is not saved either by clause (5) of article 19 or by Article 31-A of the Constitution. It manifestly infringes the fundamental right of the petitioner guaranteed by Article 19 (1) (f) of the Constitution. That being so, the petitioner is entitled to a direction that possession of his estate be restored to him. We accordingly direct the Court of Wards, Ajmer-Merwara, constituted under the Ajmer Government Wards Regulation, I of 1888, to forbear from carrying on superintendence of the petitioner's istimrari estate and the other properties taken possession of, and to restore their possession to the petitioner. The petitioner will have the costs of this petition."

(ii) In 1974 (2) SCC 706 (Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and others) wherein the Honourable Supreme Court has held that where the ordinary remedy of a civil suit is neither adequate nor efficacious, Article 226 of the Constitution of India can be invoked.

(iii) In 2004 (13) SCC 665 (Durga Enterprises (P) Ltd., v. Principal Secretary, Government of U.P.) wherein the Honourable Supreme Court has observed that,

"By the impugned order, the writ petition which was pending for a long period of thirteen years, has been summarily dismissed on the ground that there is remedy of civil suit. The dispute between the parties was concerning exercise of the respondents' alleged right of re-entry on the disputed property in accordance with sub-rules (2) and (3) of Rule 5 of the Land Acquisition (Companies) Rules, 1963. The aforesaid Rules contain a mechanism for adjudication of a dispute relating to the alleged breach of terms of the agreement and the manner in which it is to be resolved."

17. For better adjudication, with regard to the said legal point, the Court has to look into the decision reported in 2014 (1) SCC 603 (Commissioner of Income Tax and others v. Chhabil Dass Agarwal), wherein the Honourable Supreme Court has held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. However, the Honourable Supreme Court has culled out the following circumstances under which Article 226 of the Constitution of India can be invoked, even though alternative remedies are available.

"(i) Where remedy available under statute is not effective but only mere formality with no substantial relief,

(ii) where statutory authority not acted in accordance with provisions of enactment in question, or

(iii) where statutory authority acted in defiance of fundamental principles of judicial procedure, or

(iv) where statutory authority resorted to invoke provisions which are repealed, or

(v) where statutory authority passed an order in total violation of principles of natural justice."

18. On the basis of the guidelines enumerated by the Honourable Supreme Court it has become shunless to analyse as to whether the writ petition is maintainable under Article 226 of the Constitution of India.

19. It is true that by way of conjoint reading of the reliefs sought in the writ petition, the Court can easily deduce that the respondent/petitioner has filed the writ petition for getting the reliefs of perpetual and mandatory injunctions.

20. It is a settled principle of law that for getting the reliefs mentioned supra one

has to invoke Sections 37 to 39 of the Specific Relief Act, 1963.

21. The short legal point that involves in the present lis is as to whether writ jurisdiction under Article 226 of the Constitution of India can be invoked, even though efficacious reliefs are available in Specific Relief Act, 1963.

22. It has already been marshalled to the effect that even prior to passing of the Act, the original owner has sold away the entire survey numbers mentioned in the petition in the year 1963 and subsequently, various sale deeds have come into existence and finally, the respondent/petitioner has purchased house site No. 86 and since even prior to 1978, the properties in question have been sold away by its original owner to third parties, it is pellucid that none of the provisions of the said Act is applicable to the properties, in question. However, the first respondent has passed the order dated 12-11-1990 in R.O.C.No. 11706/90 (D2) by way of invoking the said Act. Therefore, it is quite clear that the entire proceeding taken by the first respondent is ab initio void.

23. It has already been pointed out that the Honourable Supreme Court has categorically held that where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, Article 226 of the Constitution of India can be invoked, even though alternative remedies are available. In the instant case, as mentioned supra, even though the provisions of the said Act are not at all applicable, the first respondent has passed the order dated 12-11-1990. Under such circumstances, for getting the reliefs sought in the writ petition, as per the guidelines given by the Honourable Supreme Court, the same is legally maintainable under Article 226 of the Constitution of India. Therefore, the second contention urged from the side of the appellants/respondents is not legally acceptable and the same is rejected.

24. The learned Single Judge after considering the order passed by the first respondent and also after considering the applicability of the Act, has rightly granted the reliefs sought in the writ petition.

25. In view of the foregoing elucidation of both the factual and legal aspects, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/respondents and therefore, the present writ appeal deserves to be dismissed.

26. In fine, this writ appeal is dismissed without costs. The order dated 23-07-2009 passed in Writ Petition No. 21002 of 2004 is confirmed. The connected miscellaneous petition is dismissed.