
(2005) 03 MAD CK 0134
In the Madras High Court
Case No : Writ Petition No. 14368 of 2002

Dr. T. Azizuddin

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 4 LW 648

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : M. Jayaraman, for the Appellant; S. Gomathinayagam, Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The wife of the petitioner late Smt. Mahboob Bi purchased agricultural lands of an extent of 2.05 acres comprised in S.F. No. 387/1 in Zamin Pallavam village by sale deed dated 5.2.1962. An extent of 1750 sq. meters of the said land was declared surplus on 28.05.1983 u/s 11 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976. In terms of Section 11(3) of the said Act, the excess land absolutely vested with the State Government free from all encumbrances. The competent authority (ULT) by order dated 12.05.1988, fixed the compensation payable at Rs. 17,500/-. A Writ Petition was filed in W.P. No. 5630 of 1989, questioning the orders passed by the Government in G.O. Ms. No. 1375 Revenue dated 5.6.1980. determining the zonal value. The said Writ Petition came to be allowed on 10.2.1995, with a direction to the respondents to hear the petitioners therein fully regarding the fixation of the amount. Questioning the said order, a Writ Appeal was filed in W.A. No. 613/1995 which was also dismissed on 19.9.2001.

2. In the mean time, after the orders in Writ Petition and before the Writ Appeal was disposed of, the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20/1999) came to be enacted. By virtue of the said Act, the

proceedings that were pending and no possession was taken were deemed abated. On the claim that possession was not taken, not only on the date (16.6.1999) when the Repealing Act came into force but even today, the petitioner has approached this Court by way of present Writ Petition for a direction to the respondents to restore the land in question to the petitioner in accordance with the provisions of Act 20 of 1999.

3. Mr. M. Jayaraman, learned counsel appearing for the petitioner would submit that petitioner was not issued with Notice u/s 11(5) of the Act before possession was taken, that apart factually no physical possession was taken. In the circumstances, the petitioner is entitled to the benefits of the Repealing Act. Hence, the learned counsel submitted that the Writ Petition must be allowed.

4. Mr. S. Gomathinayagam, learned Special Government Pleader appearing on behalf of the respondents, on the other hand, by placing the entire files contended that possession of the land in question was taken after serving notice on the owner. Possession was taken on 15.10.1985 after serving Notice on the owner as contemplated u/s 11(5) of the Act.

5. In view of the rival submissions, the only point now to be considered is as to whether the petitioner is entitled to the benefit of Repealing Act?

6. For the disposal of the Writ Petition, a reference to Section 11 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 must be useful and the same is extracted here under:

"11. Acquisition of vacant land in excess of ceiling limit:- (1) As soon as may be after the service of the final statement u/s 10 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that

(i) such vacant land is to be acquired by the State Government and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interest in such land, to be published for the information of the general public in the Tamil Nadu Government Gazette, and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section(1), the competent authority shall determine the nature and extent of such claims and pass such order as it deems fit.

(3) At any time after the publication of the Notification under sub-section(1) the competent authority may, by notification in the Tamil Nadu Government Gazette declare that the excess vacant land referred to in the notification published under sub-section(1) shall, with effect from such dates as may be specified in the declaration, be deemed to have been acquired by the State Government and

upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section(1) and ending with the date specified in the declaration made under sub-section(3) (i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land(including any part thereof)specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) where any vacant land is vested in the State Government under sub-section(3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section(5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such forces as may be necessary"

7. Section 9 of the Act deals with the preparation of draft statement as regards the vacant land held in excess of ceiling limit. The draft statement so prepared shall be served on the person concerned together with the notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof. If any objections are received, the competent authority shall duly consider those objections and after giving reasonable opportunity of hearing, pass orders as to the final statement in terms of Section 10. The said final statement shall be served on the person concerned. After service of final statement, the competent authority shall cause notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and publish for the information of the general public in the Tamil Nadu Government Gazette. The competent authority shall also after considering the claims of persons shall determine the nature and extent of such claims and pass orders as it deems fit.

8. In terms of sub-section 3 of Section 11, the competent authority thereafter by notification in Tamil Nadu Government Gazette, declare that the excess vacant land referred to in the notification published under sub-section (1), be deemed to have been acquired by the State Government and shall be deemed to have vested absolutely with the State Government free from all encumbrances from the dates specified in the Notification.

9. As per sub-section(5) of Section 11, where any vacant land is vested in the State Government under sub-section(3), the competent authority may by notice

in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government in this behalf within thirty days of the service of the notice.

10. Sub-section(6) of Section 11 contemplates that if any person refuses or fails to comply with the order made under sub-section(5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such forces as may be necessary. Section 12 of the Act relates to payment of amount for vacant land required.

11. There is no dispute upto the stage of sub-section(4) of Section 11. The dispute is only in respect of compliance of sub-section (5) of Section 11. According to the learned counsel appearing for the petitioner, the competent authority did not give notice in writing for surrendering possession as contemplated under sub-section(5) of Section 11. In the absence of the same, the provisions of the Act cannot be held to be valid and more particularly after the Repealing Act.

12. I have perused the files. At page 151 Form VII Notice was despatched to the petitioner on 19.9.1983. The said notice was sent by Registered Post with acknowledgement due and the same has been acknowledged on 24.9.1983 by one J. Nazirunnissa at address No. 14, West Mada Church Street, Royapuram, Madras-13. The said address belongs to the wife of the petitioner as well the petitioner as could be seen from the cause title in the affidavit filed in support of the Writ Petition.

13. The learned counsel appearing for the petitioner would however submit that the notice was not served in person to the petitioner. Whether the petitioner had knowledge of Notice u/s 11(5) of the Act, the subsequent conduct of the petitioner has some relevance. The Government determined the zonal value for the land in G.O. Ms. No. 1375 Revenue dated 5.6.1983. Questioning the same, the petitioner filed W.P. No. 5630/1989 in the year 1989. By proceedings dated 3.9.1984 the details as to the taking over possession was called from the Deputy Tahsildar No. I, by the Assistant Commissioner. In response to the same, the Deputy Tahsildar No. II in his proceedings dated 28.3.1985 has called for certain clarification from the Assistant Commissioner. In response to that, such details were furnished to the Deputy Tahsildar vide letter dated 11.5.1985.

14. From the Communication of the Assistant Commissioner (ULT) dated 21.5.1985 at page 189 of the file, it is seen that Notice u/s 11(5) of the Act was already issued and inspite of acknowledgement by the petitioner on 24.8.1983, she has not handed over possession. Even after one year and six months lapsed, she did not hand over possession and hence, the Deputy Tahsildar No. II was requested to hand over possession to the Tahsildar, Saidapet to carry out the change in the village and taluk records. At page 193 it is seen that there is an endorsement stating that "the above extent of vacant land declared by me and

taken possession of the above land by the Revenue Inspector". The said land delivery receipt contains the name of Tmt. Mahaboob Bee. From this it is clear that though notice was served in the address belonging to the petitioner and the same was acknowledged by one Naazirunissa, the wife of the petitioner did not deliver vacant possession for almost all the period of one year and six months and thereafter only possession was taken in terms of sub-section 6 of Section 11.

15. In *Gunwantlal Vs. The State of Madhya Pradesh*, , the Supreme Court while considering expression "Possession" has observed that "possession need not be a physical possession but can be constructive". In this case, as the competent authority is empowered to take possession even by use of force, in the event, possession was not handed over by the owner after receipt of notice. The possession in this case means the legal right to possession as evident from the records. While considering Section 35 of Narcotic Drugs and Psychotropic Substances Act, 1985 in *Madan Lal and Another Vs. State of Himachal Pradesh*, the Supreme Court has observed as follows:

"26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.

16. While the Writ Petition W.P. No. 5630/1989) was disposed of, this Court in para 2 of the the order has observed as follows:

" It is not necessary to refer to the various contentions raised in the Writ Petition. This writ Petition can be disposed of on a very short ground. It is not in dispute that the amount due to the petitioner has been fixed only on the basis of the rates specified in G.O. Ms. No. 1375 Revenue Dated 5.6.1980. The original petitioner's lands were acquired in 1983. As stated earlier possession was actually taken in 1985. The question is Whether with respect to such lands, the amount can be fixed as per G.O. Ms. No. 1375 at the rates specified therein"

17. The Division Bench in Writ Appeal No. 613/1995 has also observed that an extent of 1750 Sq. meters belonging to the respondents being the excess of ceiling limit was taken over by the Government under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The Division Bench also did not set aside the order of the learned single Judge insofar as the observation as to the taking over possession of the land.

18. Mr. M. Jayaraman, learned counsel appearing for the petitioner would submit

that the issue both in the Writ Petition and the Writ Appeal was not as to possession but was only determining as to the zonal value. Hence, the observation cannot be put against the petitioner. This contention must also fail as in the said Writ Petition the petitioners have sought for payment of the amount for the vacant land already acquired but they were not aggrieved over the determination of zonal value. The payment of the amount is contemplated only after completion of the formalities u/s 11 of the Act. In that view of the matter, the petitioner was well aware of the fact that possession was taken over by the Government and after knowing fully well he has approached this Court questioning the determination of zonal value.

19. For the above reasons, I am unable to agree with the submissions made by the learned counsel for the petitioner that petitioner was not served with notice u/s 11(5) of the Act and in the absence of possession was taken, Repealing Act would be applicable to the facts of the case.

20. Considering the overall circumstances, I am of the view that inasmuch as possession was taken as early as on 15.10.1985, the provisions of Section 3(2) (a) of Repealing Act (Act 20/1999) is not applicable to the facts of this case and the proceedings are not abated. Consequently, the petitioner is not entitled to a direction for restoration of the land in question as the land is already vested in the Government under sub-section(6) of Section 11 of the Act.

21. In view of the above, the Writ Petition is dismissed. No costs.