

(2009) 04 MAD CK 0320

In the Madras High Court

Case No : Writ Petition No. 11859 of 2004

G. Rajendran

APPELLANT

Vs

The Special Commissioner and Commissioner for Urban Land
Ceiling and Land Tax and The Assistant Commissioner,
Competent Authority, Urban Land Ceiling

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10(1), 11, 11(1),
11(3), 11(5)

Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2009) 4 CTC 332

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

**Advocate : A. Ramu, for the Appellant; S. Sivashanmugam, Government
Advocate, for the Respondent**

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. The petitioner has stated that he is having landed property in Old Survey Nos. 147/1-A-2, 147/2-A, (New Survey Nos. 147/1-A-1, 147/1-A-2-B) to an extent of 0.11.5, 0.05.5 hectares, respectively, bearing patta No. 520, at Pallikaranai Village, Tambaram Taluk, Kancheepuram District.

3. It had been purchased by the father of the petitioner, Late Gopal Naidu, by way of two sale deeds, dated 12.12.1969 and 15.7.1957, registered as Document Nos. 2776 of 1969 and 1880 of 1957, registered at the Sub Registrar's office, Saidapet, Chennai. The said lands had been purchased by late Gopal Naidu from the sons and grand sons of late Munusamy Naidu. Munusamy Naidu had died, on 3.11.1936, prior to the purchase. From the date of purchase

late Gopal Naidu was in absolute possession and enjoyment of the property, after effecting the mutation entries in his favour, with Patta No. 520. Thereafter, his name had been entered in all the revenue records, including the chitta and adangal extracts issued by the Village Administrative Officer, Pallikaranai Village. The petitioner's father Gopal Naidu had died, on 18.7.1998. Since then the petitioner and his family members are in absolute possession and enjoyment of the property. While so, the second respondent had passed the impugned order, in Na.Ka. No. 976/95-A, dated 13.3.1995, in the name of late Munusamy Naidu, who had died, on 3.11.1936.

4. It has been further stated that the second respondent and his men had served the impugned order on the petitioner, on 30.12.2003, informing him that they would take physical possession of the land, pursuant to the acquisition proceedings. Even though the impugned order, dated 13.3.1995, was in the name of Munusamy Naidu, it was served on the petitioner only on 30.12.2003. The passing of the impugned order in the name of a dead person, namely, Munusamy Naidu, shows the non-application of mind by the respondents, while passing the said order. Even otherwise, on the coming into force of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, with effect from 16.6.1999, the impugned acquisition proceedings would stand abated and the petitioner and the members of his family are entitled to the benefit, u/s 4 of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. In the counter affidavit filed on behalf of the respondents, the allegations made by the petitioner have been denied. It has been stated that Munusamy Naidu was the owner of the land in S. No. 147/A, measuring an extent of 2000 Sq.Mts. As the land owner did not file the return, u/s 7(1) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, notice u/s 7(2) had been issued to him, in SR. No. 345/85, dated 31.7.1988, requesting the urban land owner to file the return in respect of the said land. Section 7(2) notice had been served on the urban land owner, on 1.12.1988, in person. However, the urban land owner had neither filed the return, u/s 7(1) of the Act, nor made any representation, with regard to the notice, u/s 7(2), issued to him. Hence, based on the report of the Deputy Tahsildar concerned, a notice, u/s 9(4) and the draft statement, u/s 9(1) of the Act, had been issued, on 29.12.1994 and it was sent to the urban land owner by registered post, with acknowledgement due. The urban land owner had not appeared for the enquiry. Therefore, the land in question was inspected by the then Assistant Commissioner (ULT), Alandur and it was found that the land was vacant. As there was no representation from the urban land owner, an order, u/s 11 of the Act, had been passed, declaring 1500 Sq.Mts., as the excess vacant land, after allowing 500 Sq.Mts., towards the family entitlement, in Proc. No. 976/95(A), dated 15.3.1995 and it had been sent by registered post, with acknowledgement due. The said proceedings had been received by the urban land owner. The final statement, u/s 10(1) of the Act, had

been issued on 3.10.1997. As the urban land owner's address was not known, it was served by affixture. Thereafter, the notification, u/s 11(1) of the Act had been issued, on 19.1.1998 and the notification, u/s 11(3) of the Act, had been issued, on 8.5.1998. It has also been stated that the final notice, u/s 11(5) of the Act, had been issued in the second respondent's office Ref. No. Rc.976/95(A), dated 19.9.1998, directing the urban land owner to surrender the excess vacant land. The excess vacant land, measuring 1500 Sq.Mts., in S. No. 147/1A1 and 147/1A2B of Pallikaranai Village, had been acquired and the possession was handed over to the Revenue Inspector, on 31.12.1998.

6. It has been further stated that the land acquisition proceedings had been initiated in the name of Munusamy Naidu, as per the records available in the office of the respondents. Since the land owner did not file his return, u/s 7(1) of the Act, a notice u/s 7(2) of the Act had been issued, on 31.7.1988, in the name of Munusamy Naidu and it was served on his relative, on 1.12.1988. Since the urban land owner had neither filed the return nor made any representation on the notice issued u/s 7(2) of the Act, the notice, u/s 9(4) and 9(1) of the Act, had been sent to the urban land owner by Registered post, with acknowledgement due. However, the land owner had not appeared for the enquiry. Therefore, orders had been passed by the competent authority, u/s 9(5) of the Act, on 10.3.1995 and it had been sent to the land owner, by registered post, with acknowledgement due and he had filed an appeal, dated 16.4.1995, before the first respondent. Thereafter, the excess vacant land had been acquired and possession had been handed over to the Revenue Inspector, on 3.12.1998. Since the entire acquisition proceedings, as per the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been completed before the coming into force of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, with effect from 16.6.1999, the land acquisition proceedings cannot be said to have abated. Hence, the writ petition is liable to be dismissed, as it is devoid of merits.

7. In view of the contentions raised by the learned Counsel appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available before this Court, it is seen that the entire land acquisition proceedings had been initiated and proceeded with in the name of late Munusamy Naidu, who is said to have died, on 3.11.1936.

8. The claim of the petitioner that the land in question had been purchased by one late Gopal Naidu, the father of the petitioner from the sons and grand sons of late Munusamy Naidu, has not been refuted by the respondents. Further, the respondents have not disputed the fact that the land acquisition proceedings had been proceeded against Munusamy Naidu. However, there is nothing on record to show as to how the notices, under the relevant provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, had been served on a dead person, and as to whether such service could be taken to be proper service on the urban land owner, whose land had been acquired, by invoking the provisions

of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978. The contention of the learned Counsel appearing on behalf of the respondents that, since the land owner had not filed his return, u/s 7(1) of the Act, inspite of Section 7(2) notice having been issued to him and since no representation had been made thereafter, the respondents had proceeded with the land acquisition proceedings, cannot be a valid ground to sustain the said proceedings, which had been proceeded with against a dead person. Further, there is nothing on record to show that actual physical possession had been taken over by the respondents, pursuant to the said acquisition proceedings. The amount of compensation for the land, said to have been acquired by the respondents, had not been paid to the urban land owner.

9. In the counter affidavit filed on behalf of the respondents it has been stated that an order, u/s 9(5) of the Act, had been passed declaring 1500 Sq.Mts. as excess vacant land, after allowing 500 Sq.Mts towards family entitlement, in accordance with the proceedings, dated 15.3.1995. It has been further stated that the said order had been received by the urban land owner, as it had been sent by registered post, with acknowledgement due. Further, it has also been stated that a final statement, u/s 10(1) of the Act, had been issued, on 3.10.1997. Since the urban land owner's address was not known it had been served by affixture. Thereafter, the notification, u/s 11(1) of the Act, had been issued, on 19.1.1998, and the notification, u/s 11(3) of the Act, had been issued, on 8.5.1998. However, the claim of the respondents that the urban land owner's address was not known and therefore, the order, u/s 9(5) of the Act and the final statement, u/s 10(1) of the Act, had to be served by affixture, has not been substantiated with necessary records.

10. In such circumstances, this Court is of the considered view that the impugned land acquisition proceedings cannot be sustained in the eye of law. Therefore, the land acquisition proceedings, culminating in the impugned order of the second respondent, dated 30.12.2003, is quashed. The prayer of the petitioner, relating to the re-notification of the land in question, is denied. However, it is open to the petitioner to work out his rights, flowing from this order, in the manner known to law. Accordingly, the writ petition stands allowed, to the extent noted above. No costs.