
(2011) 02 MAD CK 0011
In the Madras High Court
Case No : Writ Petition No. 27406 of 2006

I. Richardson

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 11(3), 11(5), 11(5), 11(6), 4

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

Citation : (2011) 02 MAD CK 0011

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V. Ramesh, for S. Parthasarathy, for the Appellant; S. Gopinathan, AGP, for the Respondent

Judgement

M. Jaichandren, J.—The Petitioner has stated that he had purchased the land measuring about 1800 sq.ft, together with the building thereon,

in Plot No. 25 , T.S. No. 2 Part, Old Survey No. 82, Block No. 15, Saidapet Village, Mambalam-Guindy Taluk, from one K. Rajavelkumar, by

way of a registered sale deed, dated 15.12.2000, registered as Document No. 1136 of 2001, in the office of the Joint Sub Registrar, Saidapet.

The said K. Rajavelkumar had purchased the said property by way of two sale deeds, dated 27.10.1986, in Document Nos. 1093/86 and

1094/86, from (1) Amirthammal, (2) R. Sivanesan, (3) Arokiadas (4) R. Ramachandran and (5) Balammal. Amirthammal had purchased a larger

extent of 2.78 hectares of property from Padmavathi Ammal, in the year, 1950.

2. It had also been stated that after the purchase of the property in question the Petitioner had applied before the fourth Respondent, for the

transfer of patta in his name. On receipt of the representation of the Petitioner,

the fourth Respondent had directed him to approach the third Respondent, who had informed the Petitioner that the land had been handed over to the first Respondent, on 27.7.1995, as per the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Thereafter, the Petitioner had sent a representation to the first Respondent, on 16.2.2005, stating that his vendor K. Rajavelkumar had obtained a No Objection Certificate from the fourth Respondent, by an order, dated 21.1.1993, while applying for planning permission before the Chennai Metropolitan Development Authority. Further, the Corporation of Chennai had also sanctioned the building plan, by an order, dated 22.11.1996. The Petitioner has been in possession and enjoyment of the property from the date of its purchase. However, the first Respondent had passed an order, dated 27.6.2006, rejecting the request of the Petitioner for the transfer of the patta.

3. It has been further stated that no notice had been issued to the vendor of the property, K. Rajavelkumar. From the communication received by the Petitioner from the third Respondent it is found that Section 11(5) notice, regarding the surrender of the delivery of possession of the excess vacant land, acquired u/s 11(3) of the Act had been addressed to Amirthammal, who had sold the property to the vendor of the Petitioner, K.

Rajavelkumar, in the year, 1986. No notice had been issued to K. Rajavelkumar and his name is not found in the notice, dated 9.5.2004. Further,

Amirthammal was not in possession of the property in question during the proceedings, under the Tamil Nadu Urban Land (Ceiling and Regulation)

Act, 1978. The vendor of the Petitioner K. Rajavelkumar had obtained proper plan sanction from the Chennai Metropolitan Development

Authority and a No Objection Certificate from the fourth Respondent. Thereafter, he had constructed a building in the property in question, during

the year, 1993, and it had been assessed to tax by the Corporation authorities. In fact, the patta, in respect of the said property, had been granted

in favour of the Petitioner's vendor, on 8.5.1992. Since, the Petitioner is a bona fide purchaser, for a proper consideration, the proceedings

initiated, in respect of the said property, under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, is invalid in the eye of law. After

the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been

repealed by the Tamil Nadu Urban Land (Ceiling and Regulation)

Repeal Act, 1999, the entire proceedings initiated against the property of the Petitioner stands abated.

4. The learned Counsel appearing on behalf of the Petitioner had submitted that the Respondents had failed to note that the Petitioner is in

possession and enjoyment of the property in question and it has been assessed to property tax and other taxes. Since, actual physical possession

of the property had not been taken by the Respondents and as no compensation had been paid, the land acquisition proceedings, in respect of the

property in question, would stand abated, due to the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

Even though the vendor of the Petitioner, K. Rajavelkumar, had purchased the property in the year, 1986, no notice had been issued, either in his

name or in the name of the Petitioner. Notice had been issued only to Amirthammal, who had sold away the property in the year, 1986, itself.

5. The learned Counsel appearing on behalf of the Petitioner had also submitted that, on a perusal of the records available with the Respondent, it

is found that even the Section 11(5) notice had been served only on the son of Amirthammal, after the said notice had been returned stating that

she had died. The Respondents had failed to note that, as early as on 8.5.1992, patta had been granted in favour of the Petitioner, in respect of the

property in question. He had also submitted that K. Rajavelkumar had obtained proper plan sanction from the Chennai Metropolitan Development

Authority and had also obtained the necessary No Objection Certificate from the fourth Respondent, before constructing the building in the

property in question.

6. The learned Counsel appearing on behalf of the Petitioner had relied on the following decisions in support of his contentions:

1) In Ritesh Tewari and Another Vs. State of U.P. and Others, it had been held as follows:

We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any

court/authority under the Act, 1976, stood abated automatically on commencement of the Act 1999 in force, provided the possession of the land

involved in a particular case had not been taken by the State. Such a view is in

consonance with the law laid down by this Court in Pt. Madan

Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, ; Ghasitey Lal sahu and Anr. V. Competent Authority (2004) 13 SCC

452; Mukarram Ali Khan Vs. State of U.P. and Others, ; and Smt. Sulochana Chandrakant Galande v. Pune Municipal Transport and Ors. JT

(2010 SC 298 : (AIR 2010 SC 2692 : AIR 2010 SCW 4784).

2) In V. Somasundaram v. Secy. To Govt., Revenue Department (2007(I) MLJ 750) it had been held as follows:

I. In view of Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, competent authority is bound to issue notice in

writing to any person, who may be in possession of land, to surrender and delivery possession thereof, to the State Government or to any person

duly authorized by the State Government, within thirty days" time. Proceedings initiated against the erstwhile owner is non est in law. Non

compliance of Section 11(5) of the Act, cannot be rectified at a later stage.

II. When the alternative remedy of Appeal, is lost due to the enactment of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999

from 16.9.1999, the aggrieved party can maintain a writ petition against the proceedings initiated u/s 11(5) of the Tamil Nadu Urban Land (Ceiling

and Regulation) Act, 1978.

3) In M/s. Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to Government and 3 others (2009-4-L.W. 819), it had

been held as follows:

There was no notice served u/s 11(5) of the Act either on the Petitioner or on the erstwhile owner. Though, his purchase by a sale deed is made

invalid by Section 6 of the Act, in view of the words "any person who may be in possession" used in Section 11(5) of the Act, notice ought to have

been served on the Petitioner to surrender or deliver possession to the Government. Once the possession is not taken over by the Government, all

the proceedings under Act must be held to have abated u/s 4 of the Repealing Act.

4) In Raju Rehnius and Anr. v. The State of Tamil Nadu and Ors. (2010 W.L.R. 1007) it had been held as follows:

In effect, the case of the Respondents is that even though the said extent of land stated to have been sold by the said Muthukrishna Devadoss and

died without executing the conveyance is admittedly declared to be an agricultural land and therefore, it does not come within the purview of the above said Act, even after the repeal of the Act, the proceedings are deemed to continue. That stand is taken for the simple reason that the original notification given in 1991, including the entire lands has not been withdrawn even after the subsequent and final order passed by the competent authority in the year 1994. The non consideration of representation made by the Petitioners in spite of the enquiry having been conducted in which admittedly, the representative of the Petitioners has participated as early as on 11.9.2006, cannot be certainly put against the Petitioners. Further, inasmuch as the authority competent under the Act has given categorical finding byway of a final order, on 31.10.1994, holding that the lands in S. No. 287/3 is not covered by the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, any mistake in the revenue record without effecting the consequential changes pursuant to the order, dated 31.10.1994, cannot be again put against the Petitioners. When the said finding given by the third Respondent, competent authority has become final, in my considered opinion, after the repeal of the said Act, it is not open to the Respondents to deem the said lands continued to have been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. In such view of the matter, the writ petition stands allowed, as prayed for.

5. In *S. Antony and two others v. The Special Commissioner, Commissioner Land Reforms, Chepauk, Chennai*, made in W.P. No. 19845 of 2006, it has been held as follows:

In the present case, there are enough records to show that the transfer by the original owner had been made as early as 1982 and it was also brought to the notice of the authorities. The person to whom the authorities had sent notice had intimated to the competent authority that there was no owner and that there were other owners and yet the authorities had issued notice only to Tmt. Rajabai. The issuance of the notice offering reasonable opportunity is not empty formality and the competent authority cannot merely issue notice to some one, who is no longer interested and can go through the motions of having complied with the formalities of the act. Here, the persons who are interested were neither heard, nor even

put on notice. More importantly before the authority takes possession u/s 11(6) of the Act, the provisions u/s 11(5) of the Act have to be complied with. The records do not indicate this.

13. The entire proceedings stand vitiated. Further, I am not satisfied that the possession has been actual taken from the ""persons in possession"", who are the actual owners and who had purchased the properties in the year, 1982. Mere recording of possession by the authorities will not amount to actually taking of possession. Therefore, the Petitioners are entitled to the benefit of Repeal Act.

7. No counter affidavit had been filed on behalf of the Respondents. The learned Counsel appearing on behalf of the Respondents had submitted that the necessary notices, under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been issued to one Amirthammal, the owner of the property in question. Thereafter, the said property had vested with the State Government. Since, the Petitioner, who is a subsequent purchaser, cannot claim any rights, in respect of the said property, as he could only be treated as an encroacher in the property belonging to the State Government. He had relied on the decision of this Court, in *S. Balasubramaniam and Anr. v. The Special Commissioner and Commissioner of Land Reforms and Ors.* reported in (2009(4) L.W. 826) in support of the said contention.

8. In view of the averments made in the affidavit filed in support of the writ petition and in view of the submissions made by the learned Counsel appearing for the Petitioner, as well as the Respondents and on a perusal of the records available, and in view of the decisions cited supra, this Court is of the considered view that the land acquisition proceedings of the Respondents cannot be held to be valid in the eye of law. Nothing has been shown on behalf of the Respondents to sustain their claim that the necessary notices had been served on the real owner of the property in question. Even the Section 11(5) notice, issued to Amirthammal, had been returned stating that she had died. Thereafter, the notice had been served only on her son. No notice had been served, either on the vendor of the Petitioner, K. Rajavelkumar or on the Petitioner, even though the property in question had been purchased by K. Rajavelkumar in the year, 1986. Further, there is nothing on record to show that actual physical

possession of the property had been taken by the Respondents. Further, no compensation had been paid, in respect of the said property. As such,

it cannot be said that the Petitioner is an encroacher, as claimed by the Respondents. It is also well settled that the land acquisition proceedings, if it

had not reached its finality, would stand abated, in view of the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal

Act, 1999.

9. In such circumstances, the land acquisition proceedings initiated by the Respondents, in respect of the property in question, cannot be sustained

in the eye of law. Therefore, the impugned proceedings are set aside. Consequently, it is made clear that it would be open to the Petitioner to

approach the fourth Respondent for the grant of patta in his favour, in respect of the property in question, by producing all the necessary records.

Thereafter, the fourth Respondent shall consider the request made by the Petitioner and pass appropriate orders thereon, on merits and in

accordance with law, as expeditiously as possible. The writ petition is ordered accordingly. No costs.