

(2010) 06 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 13863 of 2001

K. Lakshmanan and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

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

Citation : (2010) 4 LW 124

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : A. Jenasenan, for the Appellant; S. Sivashanmugam, G.A., for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—One Mr. Murugesu Naicker and his wife were the owners of the land measuring 37,150 sq.m. comprised in S. No. 174

at Madipakkam Village. Mr. Murugesu Naicker formed un-approved lay out and started selling the plots. Plot Nos. 1 to 36 were sold prior to

17.05.1978 and the remaining plots were sold prior to 24.05.1986. The petitioners are the respective purchasers of the said plots. While so, the

Tamil Nadu Urban Land Ceiling and Regulation Act of 1978 came into force on 17.05.1978. As per Section 6 of the said Act, the sale of the

plots made subsequent to the coming into force of the said Act namely on or after 17.05.1978 shall be void. But, in case on hand, the plots sold

before 17.05.1978 and so, they do not fall within the purview of Section 6 of the Act. Therefore, these sales cannot be held to be void, it is

contended.

2. While so, the third respondent initiated proceedings by issuing notice u/s 11(1) of the Act declaring that Mr. Murugesha Naicker had land in excess of the ceiling limit prescribed in the said Act. It appears that Mr. Murugesha Naicker died even prior to the issuance of the notice. Therefore, his legal representatives appeared before the authority and raised objections. All their objections were negated and final orders were passed taking over the said lands. Thereafter, proceedings for taking possession were taken as per Section 11(5) of the Act. According to the third respondent, notice u/s 11(5) of the Act was issued to the legal representatives of Mr. Murugesha Naicker. It is also stated by the respondents that the legal representatives appeared and raised objections during enquiry. But, since the legal representatives of Mr. Murugesha Naicker did not hand over possession, the possession was taken by the third respondent on 08.10.1996. It is further stated by the third respondent that possession was taken and handed over by him to the Revenue Inspector concerned on 08.10.1996 and from that date onwards, it is stated that possession was at the hands of the Government.

3. While so, the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force with effect from 14.06.1999, by which the Tamil Nadu Urban Land (Ceiling & Regulation) Act 1978 was repealed. But u/s 3(1) of the Act, the said repeal of the principal Act has not affected the vesting of any vacant land under Sub-section 3 of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. It also says that the repeal of the principal act shall not save the proceedings where any land is deemed to have been vested in the State Government u/s 3 of Section 11 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. Section 4 of the Act states that all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or any authority shall abate. Provided that this section shall not apply to the proceedings relating to Sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable

to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

4. In view of the above said repealing Act, the petitioners would contend that the so called possession of the land in favour of the Government

under Sub-Section 3 of Section 10 of the Act is not valid in view of the fact that the possession of the land was never taken by the third

respondent. It is on this ground, the petitioners have come up with this writ petition seeking to quash the proceedings of the third respondent in SR.

No. 9/85-A dated 31.10.1986 to quash the same and to forbear the respondent from taking any action under the repealed under Land Ceiling Act

in respect of the lands in question.

5. In the counter filed by the first respondent, it is stated that notice u/s 11(5) of the Act was sent to the legal representatives of Mr. Muruges

Naicker. Though in the counter it is not specifically stated that such notice sent to the legal representatives of Mr. Muruges

Naicker were actually served upon them. Referring to the original records available in his hands, the learned Government Advocate would submit that those notices were

really served on the legal representatives of Mr. Muruges

Naicker. Despite such issuance of notices, according to the counter, the legal representatives of Mr. Muruges

Naicker did not hand over possession as required u/s 11(5) of the Act. Therefore, possession was later on taken by the third respondent on 08.10.1996. It is contended that since possession had already been taken i.e., prior to coming into force of the

repealing Act, according to the counter, the vestiture of the land in favour of the Government and the possession taken by the Government are not

affected and therefore, the petitioners are not entitled for any relief in this writ petition.

6. But the learned Counsel for the petitioners would submit that possession was not taken on 08.10.1996 as it is claimed by the respondents. It is

further contended that notice u/s 11(5) of the Act was not really served on the legal representatives of Mr. Muruges

Naicker. It is mainly contended that assuming that such notices were served upon the legal representatives of Mr. Muruges

Naicker, who are the erstwhile owners of the land, they would not satisfy Section 11(1) of the Act. As per law, such

notices should have been served on the petitioners who were in occupation of their lands as on the date when the proceedings were initiated on 24.05.1986. Since such notices were not served upon the petitioners, the so-called possession taken over by the Government on 08.10.1996 in the eye of law is non est, the learned Counsel contended.

Since there was no actual possession taken in the eye of law as it is contended, the learned Counsel would submit that as per the repealing act, the forfeiture and all the other consequential proceedings shall stand abated. Thus the purchases made by these petitioners though initially found void, in view of Section 6 of the Act, have been now validated as per the repealing proceedings. Therefore, the petitioners are the owners of the properties and they are in possession and so, the impugned order is liable to be set aside and the respondents are liable to be restrained from proceeding further in any manner in respect of these lands under the Act, he contended. In this regard, the learned Counsel would rely on two division Bench judgments of this Court in V. Somasundaram, Nityakalyani and V. Sugandhi Vs. The Secretary to Government Revenue Department, The Assistant Commissioner (Land Reforms and Urban Land Ceiling) and S. Pitchai, and in Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to Government and 3 Ors. 2009 (4) LW 819 to substantiate his contention that the so-called possession taken over by the Government is non est in the eye of law for want of notice to these petitioners.

7. Per contra, the learned Government Advocate would submit that under law, no separate notice is required to be served on the purchasers of the lands who purchased the lands subsequent to the coming into force of the Act and having fully known about the consequences of their purchase on account of the Act. The learned Government Advocate would submit that service of notice on the legal representatives of Mr. Murugesu Naicker who are the erstwhile owners of the land would satisfy the legal requirements as per Section 11(5) of the Act. The learned Government Advocate would submit that since the purchase made by these petitioners are void in view of Section 6 of the Act, they cannot have neither title nor possession nor any other right which includes right to have notice of the proceedings u/s 11(5) of the Act. He would further add that the possession

taken in this case cannot be stated to be non est in the eye of law to substantiate his contention, the learned Counsel would rely on a judgment of this Court in Dr. T. Azhizuddin (died) and Others Vs. Government of Tamil Nadu .

8. I have considered the rival submissions and also perused the records made available to me.

9. The crux of the issue involved in this case is, whether possession was taken u/s 11(5) of the Act r/w Section 11(6) of the Act in the eye of law?

What all that is contended by the learned Government Advocate is that service of notice on the purchasers of the lands subsequent to the coming

into force of the Act is not required in view of the fact that the purchase itself is void and therefore, such purchasers are not entitled for any title,

possession or any other right. The said right, according to him, includes the right of service of notice upon them u/s 11(5) of the Act. In my

considered opinion, this contention cannot be countenanced for the simple reason that such kind of argument was elaborately considered by two

Division Benches and in the judgments cited supra wherein, the Division Benches have held that though such purchases made are void u/s 6 of the

Act, still taking possession u/s 11 of the Act without service of notice on the purchasers is non est in the eye of law. In this regard, it may be useful

to refer to the following passages in the said judgments:

10. In V. Somasundaram, Nityakalyani and V. Sugandhi Vs. The Secretary to Government Revenue Department, The Assistant Commissioner

(Land Reforms and Urban Land Ceiling) and S. Pitchai, , it has been held as follows:

9. From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in

question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent who was not the

real owner. As per Section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession

of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within

thirty days½ time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of

lands on 30.04.1999 by the second respondent is non est. It is to be noted that

due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 with effect from 16.09.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act.

11. Following the said Division Bench Judgment, later on in *Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to Government and 3 Ors.* 2009 (4) LW 819, another Division Bench in paragraph Nos. 12 and 14 has held as follows:

12. In view of such categorical pronouncements of this Court, we are of the view that the notice u/s 11(5) should be served on the petitioner.

Though, his purchase by a sale deed is made invalid by Section 6 of the Act, in view of the word ""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.

14. We therefore, hold that there was no notice served u/s 11(5) of the Act either on the petitioner or on the erstwhile owner, viz., the vendor of the land.

12. In view of the law laid down by the two Division Benches, I have no option but to follow the same to hold that in this case, since no notice was

served on any of these petitioners u/s 11(5) of the Act, the so-called possession said to have been taken by the Government is non est in the eye of

law and therefore, the benefit of repealing Act should surely ensure in favour of the petitioners.

13. Now let me have a glance through the judgments relied on by the learned Government Advocate. In *Dr. T. Azhizuddin (died) and Others Vs.*

Government of Tamil Nadu, the learned Judge had no occasion to consider the question as to whether taking over the possession by the

Government u/s 11(5) of the Act without service of notice on the persons who were in possession of the lands on account of purchases made

under void sale transactions would make such taking over of possession as valid or not. In that case, going by the facts, the Division Bench has

held that the Government had taken possession actually to the knowledge of the persons in occupation. That was a case where exemption granted

by the Government initially in respect of certain lands from the purview of the act was later on withdrawn. Such withdrawal was very well known

by the petitioners therein despite the same they did not chose to challenge such withdrawal. In view of such factual position only the Division Bench

had to hold that possession was, as a matter of fact, taken over by the Government to the knowledge of the petitioners therein and so, non service

of notice u/s 11(5) of the Act on them shall not initiate the proceedings. Therefore, the conclusion arrived at in that case cannot be taken as a

binding precedent on the question of law as the decision was rendered purely on question of fact.

14. Thus, it is crystal clear that the law has been well settled by two Division Benches cited supra, relied on by the learned Counsel for the

petitioner. As I have already held, since no notice u/s 11(5) of the Act was issued to the petitioners prior to coming into force of the Repealing Act

and since possession in the eye of law was not taken before coming into force of the repealing act, the petitioners are entitled to succeed in this writ

petition.

15. In the result, the writ petition is allowed; the impugned order is set aside and the respondents are hereby restrained from proceeding further in

respect of these lands as per the provisions of the Repealed Land Ceiling Act. No costs.