

(2013) 04 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 10312 of 2005 and W.P.M.P. No. 11213 of 2005 and W.V.M.P. No. 80 of 2010

Kannan

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) WritLR 865

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : A. Ramu, for the Appellant; S. Gomathinayagam, Additional Advocate General, Assisted by Mr. S.V. Durai Solaimalai, Additional Govt. Pleader, for the Respondent

Judgement

T. Raja, J.—The present petition has been filed by Kannan in the year 2005 for issuance of Writ of Certiorari to call for the records of the

Assistant Commissioner for Urban Land Tax-cum-Competent Authority, Kundrathur, Chennai relating to the order passed in Na.Ka. No. B-

2700/98, dated 21.10.1998 and quash the same. The learned counsel for the petitioner has submitted that the petitioner purchased the agricultural

land in Survey No. 369 to a total extent of 0.71 acres out of which, 0.53 acres is situated at Gerugambakkam Village, Sriperumbudur Taluk,

under the registered sale deed dated 06.05.1996 bearing Document No. 2827 of 1996 at Sub Registrar Office, Pallavaram from one Dayala

Mary, W/o. Salaman David and her daughters. The remaining portion of 9 cents of land was purchased by Mr. Annamalai, S/o. Arumugam from

the son of Late Salaman David under the registered sale deed dated 06.05.1996

bearing Document No. 2826 of 1996.

2. The said land was originally purchased by one Salaman David, S/o. Vizhilan by the registered sale deed dated 28.03.1983 bearing Document

No. 1334 of 1983 from one Mrs. Krishnaveni and Rani for a valuable sale consideration. Thereafter, the said Salaman David was in absolute

possession and enjoyment of the said land and he died on 13.09.1990.

3. While so, the second respondent, without any notice wrongly determined, assessed and passed the impugned order in Na.Ka. No. B/2700/98,

dated 21.10.1998 stating that out of 2850 sq. meters. of land, the Government sought to acquire 2350 sq. meters of land, by leaving 500 sq.

meters to the land owner against Salaman David, the death person. At the time of purchase of the said land, the Tamil Nadu Urban Land (Ceiling

and Regulation) Act, 1978 did not attract the said property. Moreover, the petitioner purchased the above said land prior to the passing of the

impugned order.

4. The learned counsel for the petitioner after narrating the above said facts, has submitted that the second respondent/competent

authority/Assistant Commissioner for urban Land Tax cum Competent Authority, Kundrathur while passing the impugned order dated 21.10.1998

u/s 9(5) of the Act, erroneously ignored the mandatory provisions in assessing the excess vacant land which are calling for explanation from the

petitioner. The second respondent while passing the impugned order determining the excess vacant land as 2,350 sq.mts. by leaving only 500

sq.mts to the petitioner's use has not followed the procedure contemplated under Sections 7(2), 9(4) and 11(5) of the Act.

5. He further pleaded that u/s 7(2) of the Act, if the competent authority is of the opinion that any person holds at the commencement of this Act,

vacant land in excess of the ceiling limit, he must serve a notice upon such person requiring him to file, within such period as may be specified in the

notice, the statement referred to u/s 7(1) of the Act and the person on whom such notice is served shall be bound to comply with such notice.

Since the second respondent failed to give notice u/s 7(2), he wrongly passed the impugned order assessing the excess vacant land as 2350

sq.mts. and thereby, leaving only a small extent of 500 sq.mts to the petitioner.

6. Again, by drawing attention of this Court the notice dated 10.09.1998 issued u/

s 9(4) of the Act, he has pleaded that Section 9(4) envisages that the draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof. When the second respondent is bound to follow Section 7(2) of the Act, he has failed to comply with the requirement of the said Act.

7. He has further pleaded that Section 16 of the Act envisages that the State Government shall, within a period of six months from the date of order of the competent authority determine the amount to be paid u/s 12. But in the present case, till date, although the second respondent issued the impugned order way back on 21.10.1998, they have not even come forward to determine the compensation amount in terms of Section 16 of the Act.

8. He has finally pleaded that the petitioner being the legal heir of the original land owner Salaman David, as subsequently purchased the land from the said Salaman David under the registered sale deed dated 6.5.1996, from the date of purchase, he has been in possession and enjoyment of the said property without any interference. When the original land owner Salaman David purchased the land under the registered sale deed dated 28.3.1993 (Document No. 1334 of 1983) from one Krishnaveni and another one Rani for valuable sale consideration, it is an admitted fact that the land lord Salaman David was the original land owner. Unfortunately, he also died on 13.9.1990. While so, there is no official record to show what steps have been taken by the second respondent under any of the provision of the Act for serving notice on the original land owner Salaman David or the petitioner and the subsequent purchaser of the property before issuing the impugned order. When the petitioner purchased the property on 6.5.1996, the second respondent should have served notice upon him asking him to explain as to how he has been in possession and enjoyment of the excess land of 2350 sq.mts. In this regard, no document whatsoever has been produced or shown by the respondents before this Court to support the impugned order. Moreover, the second respondent, at any point of time, has not complied with any of the provisions, namely Section 7(2), 9(4), 11(5) and 16(2) of the Act before passing the impugned order, hence, the petitioner need not surrender the physical possession

of the vacant land in question to the respondents under 11(6) of the Act.

9. Finally, he has pleaded that the land in question, being the agricultural land, no proper enquiry has been conducted by the respondents to find

out the nature and character of the land in order to invoke the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

10. Moreover, when the petitioner has been in possession and enjoyment of the agricultural land right from the date of purchase of the property i.e.

6.5.1996 from the original landlord Salaman David bearing Document No. 2827 of 1996, which was registered in the Sub Registrar Office,

Pallavaram, the benefit of Repeal Act will go in favour of the petitioner for two reasons namely, (i) even today, the petitioner has been in physical

possession and enjoyment of the agricultural land and (ii) till date, the respondents have not passed any award or proceedings quantifying the

amount of compensation for the land. On this basis, he prayed for applying the Repeal Act, which shows that if the land owner has been in physical

possession of the land on the date of coming into force of the Repeal Act on 16.6.1999, the land owner is entitled to continue the physical

possession of the land. Hence, he has prayed this Court to set aside the impugned order dated 21.10.1998 passed by the second respondent.

11. A detailed counter affidavit has been filed by the learned Additional Advocate General appearing for the respondents.

12. The learned Additional Advocate General appearing for the respondents has submitted that the present writ petition filed by the petitioner in

the year 2005 by challenging the impugned order passed by the second respondent in his proceedings in Na.Ka. No. B-2700/09, dated

21.10.1998, shall be liable to be dismissed on account of delay in filing the writ petition.

13. It was further pleaded that even though the records show that M.T. Salaman David was the original land owner to an extent of 2850 sq.mts. of

vacant land, which is in Survey No. 369 of Gerugambakkam Village, Sriperumbudur Taluk, the said land owner miserably failed to file the return

as contemplated u/s 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. When Section 7(1) of the Act clearly states that

every person holding vacant land in excess of the ceiling limit at the commencement of the Act, shall within such period as may be prescribed, file a

statement before the competent authority having jurisdiction specifying the location, extent and such other particulars as may be prescribed of all

vacant lands, the land owner has failed to file his statement before the competent authority having jurisdiction specifying the location, extent and

such other particulars as may be prescribed, therefore, the second respondent issued a notice u/s 7(2) of the Act in No. 37/1998, dated

27.2.1998 by way of affixture. Subsequently, a notice u/s 9(4) of the Act was also issued on 10.9.1998 and the same was served by way of

affixture on 16.9.1998.

14. Moreover, it was further pleaded that the then Deputy Tahsildar, who was in the office of the second respondent undertook inspection on

16.10.1998 and thereupon, found that the land in question was a house site plot and converted as urban land. Therefore, the second respondent

by invoking Section 9(5) of the Act, issued notice in B.2700/98, dated 21.10.1998 determining 2350 sq.mts. of land as excess vacant out of the

total extent of 2850 sq.mts. of land in Survey No. 369/2, and allowed only 500 sq.mts. of land for enjoyment of the land owner and that order

was also served by way of affixture on 11.11.1998. Subsequently, the Final statement u/s 10(1) of the Act was issued by the second respondent in

B/2700/98 dated 12.12.1998 and the said final statement was served by affixture on 13.12.1998.

15. It was further contended that the Notification dated 13.1.1999 u/s 11(1) of the Act was issued by the second respondent and the same was

published on 17.2.1999. Thereafter, the second respondent issued Notification u/s 11(3) of the Act and he also issued notice u/s 11(5) of the Act

in B/2700/98, dated 23.4.1999 by way of affixture since the urban land owner was not available. On the above said basis, the learned Additional

Advocate General has further contended that when the second respondent having initiated the proceedings under the Tamil Nadu Urban Land

(Ceiling and Regulation) Act, 1978 by issuing notices u/s 7(2) followed by Sections 9(1), 9(4), 9(5), 10(1), 11(1) and 11(3) and finally u/s 11(5)

asking the petitioner to hand over the physical possession of the land in question and at last, the land in question, after being determined as the

excess vacant land of 2350 sq.mts. in Survey No. 369/2, which is in Gerugambakkam village was handed over to the Revenue Department on

3.6.1999. Hence, the petitioner has not been in physical possession and enjoyment of the land in question. Therefore, the arguments advanced by the learned counsel for the petitioner that when the Repeal Act came into force on 16.6.1999, the land, which has not been taken over by the Government or any person duly authorised by the State Government, should be given effect in favour of the petitioner for the reason that the petitioner has been in physical possession and enjoyment of the land should not be accepted, in view of the fact that the physical possession of the petitioner of the land in question had already been taken over by the respondents after the land was vested u/s 11(3) of the Act. Hence, the Writ Petition is liable to be set aside by confirming the impugned order passed by the second respondent.

16. Heard Mr. A. Ramu, learned counsel appearing for the petitioner and Mr. S. Gomathinayagam, learned Additional Advocate General appearing for the respondents.

17. The learned Additional Advocate General appearing for the respondents, while arguing in support of the impugned order passed by the second respondent has submitted that when the Act contemplates to determine the excess vacant land and take possession after giving proper notice to the land owner, in the present case, the second respondent has given the impugned notice to the petitioner. Admittedly, right from the beginning, notices have been issued under Sections 7(2) followed by 9(1), 9(4), 9(5), 10(1), 10(5), 11(1), 11(3) and 11(5) of the Act and served only by way of affixture. Though the second respondent is legally resorted to serve by way of affixture, as a last chance, he has not served any notice upon the land owner by a registered post or by physical mode. No records whatsoever has been produced before this Court to establish their case that the land owner has been served with any notices under Sections 9(1), 9(4), 9(5), 10(1), 10(5), 11(1), 11(3) and 11(5) except the notice u/s 7(2). Unfortunately, the second respondent did not know the fact whether the original land owner is alive or not. When the second respondent has failed to choose the mode of issuance of notice either by the registered post or by physical mode of service, the learned counsel for the petitioner has taken a stand that before passing the impugned order dated 21.10.1998 till date, the petitioner has been in physical possession and enjoyment of

the said agricultural land, while so, it is improper and inappropriate on the part of the respondent to pass the impugned order for the reason that the

concerned Tahsildar, who comes under the jurisdiction of the second respondent, has not even decided the nature and character of the land

whether it is agricultural land or urban land.

18. When the second respondent served notice u/s 7(2) of the Act by way of affixture on 27.2.1998, unfortunately, the original land owner

Salaman David passed away on 13.9.1990 about eight years ago. Even if the Court accepts that the second respondent is entitled to serve notice

under Sections 7(2), 9(1), 9(4), 9(5), 10(1), 11(1) 11(1) and 11(5) of the Act only by way of affixture, it is not known why the second

respondent has not taken at least a single attempt to effect service by way of registered post or in person on the original land owner Salaman David

while alive.

19. Moreover, the second respondent has not followed Section 16 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, which is

mandatorily required that the State Government shall within a period of six months determine the amount to be paid u/s 12. Even though the

petitioner has pleaded in the affidavit filed in support of the writ petition, alleging violation of Section 16 of the Act, he has specifically taken a stand

that the impugned order is vitiated for non payment of the compensation amount as per Section 16 of the Act. In respect of non payment of

compensation, no answer has been given by the learned Additional Advocate General or in counter affidavit filed by the respondents to support the

impugned order passed by the second respondent. Therefore, when the provision u/s 16 of the Act envisages that the State Government shall pay

the compensation amount within a period of six months from the date of the order of the competent authority determining the amount to be paid u/s

12, it is not open to the respondents to say that the Writ Petition filed belatedly shall not be entertained, when the respondents themselves have not

taken any step to determine the quantum of compensation amount as per Sections 12 and 16 of the Act and even if, today, the respondents are

given an opportunity to pay the compensation as per the market value, the respondents cannot make use of the same since the Act itself was

repealed way back 1999. Moreover, if taking over of possession and payment of

compensation is not shown to have been done, all proceedings

pending with regard to the land in question ought to be taken as abated on coming into force of the Tamil Nadu Urban Land (Ceiling and

Regulation) Repeal Act, 1999 (20 of 1999). That apart, the stand taken by the respondents that they issued the notices in lieu of the registered

post to proceed against the petitioner's land only by way of resorting affixture, cannot be a proper way in complying with the provisions of the

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

20. In that view of the matter, as it has been found on records that the respondents have not even served any notice whatsoever against the original

land owner Salaman David or his legal heirs or the purchaser, namely, the petitioner under Sections 7(2) followed by 9(1), 9(4), 9(5), 10(1), 11(1)

11(3) and 11(5) of the Act, this Court is not inclined to support the impugned order, as a result, it has no hesitation to interfere with the impugned

order passed by the second respondent.

21. Finally, it must be mentioned that when the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, came into force on

16.6.1999, the petitioner has been in physical possession of the excess vacant land on the admitted date and hence, the petitioner is entitled to

continue his possession in his agricultural land.

22. In this context, it is more pertinent to refer to the latest decision of the Apex Court in Vinayak Kashinath Shilkar Vs. Dy. Collector and

Competent Authority and Others, wherein, the Apex Court has categorically held as follows:

Where the possession of the vacant land has not been taken over by the State Government by any person duly authorised by the State

Government in this behalf or by the Competent Authority, the proceedings under the Act would not survive. Mere vesting of the vacant land with

the State Government by operation of law without actual possession is not sufficient for operation of Section 3(1)(a) of the Repeal Act.

23. Yet another decision of this Court in V. Gurunathan Iyer, rep. by Power of Attorney, Agent G. Asokan Vs. The Assistant Commissioner of

Urban Land Tax and Ceiling, The Principal Commissioner and Commissioner of Land Reforms and The Government of Tamil Nadu, needs to be

mentioned herein. Paragraph 8 of the above said decision is extracted hereunder:

The learned Government Advocate appearing on behalf of the respondents could not produce any record to show that actual possession of the land in question had been taken and due compensation paid. From the records placed before this Court, it is seen that the lands in question had been taken and handed over to Firka Revenue Inspector, Alandur on 30.06.1993. According to the provisions of the Repeal Act 20 of 1999 and based on their interpretation, as found in a series of decisions of this Court, it is clear that mere vesting of the land in the Government is not sufficient. It should be shown that actual possession was taken over. Taking of actual possession of the land and the payment of compensation thereafter, are the crucial factors. If such taking over of possession and payment of compensation is not shown to have been done, all proceedings pending with regard to the lands in question, ought to be taken as abated on coming into the force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (20 of 1999). In such view of the matter, the Writ Petition stands allowed. No costs.

24. In the light of above ratio, in the present case, the respondents have not satisfactorily proved before this Court that the actual physical possession of the excess vacant land has been taken over by the respondents on payment of compensation. In fact, it was admitted before this Court that till date no compensation has been paid to the petitioner. In such view of the matter, the Writ Petition stands allowed and the impugned order passed by the second respondent is set aside. There is no order as to costs, and Connected W.P.M.P. No. 11213 of 2005 and W.V.M.P. No. 80 of 2010 are closed.