(2005) 09 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 26920 of 2004

K.R. Kothandaraman 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 : 02-09-2005

Acts Referred:
Urban Land (Ceiling and Regulation) Act, 1976 — Section 7(1), 7(2), 9(1), 9(4), 9(5)

Citation : (2005) 09 MAD CK 0004

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A. Ramu, for the Appellant; S. Gomathynayagam, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties.

2. The prayer in this writ petition is for issuing a writ of mandamus coupled with declaration to the effect that the disputed land which was standing

in the name of the petitioner''s father is the property of the petitioner.

3. The facts leading to the present writ petition are as follows:

The disputed property purchased by the father of the petitioner was partitioned among the family members as per the Registered deed of partition

dated 31.7.1981. The ''A'' schedule property in such partition deed was allotted to the parents of the petitioner; ''B'' schedule was allotted to the

petitioner and ''C'' schedule was allotted to the younger brother of the petitioner. The father of the petitioner expired on 17.2.1982, leaving behind

his widow and the two sons as the only legal heirs. Without taking into account the factum of death of the father of the petitioner, the second

respondent (Competent Authority under the Urban Land Ceiling Act) passed an order dated 10.1.1992 as per proceedings No. C-2/5800/90.

Such proceedings was in the name of the dead person namely Ramakrishnan, the deceased father of the petitioner. While passing such an order u/s

9(5) of the Act, the authority had not taken into account the Registered Deed of Partition. The petitioner claims that he continues to be in physical

possession of the land in Survey No. 529/2 to an extent of 0.93 acres which stands in the name of the petitioner in patta No. 393, the land in

Survey No. 530/1 to an extent of 1.01 acres and Survey No. 529/1 to an extent of 1.13 acres are standing in the name of the petitioner''s father in

Patta No. 559. The petitioner''s father claims that he has paid Urban Land Tax in respect of the aforesaid land as demanded by the Special

Tahsildar, Urban Land Tax on 22.11.2003. The contention of the petitioner is that on the repeal of the Urban Land Ceiling Act (Act 24 of 1978),

proceedings under such act are deemed to have abated and the petitioner is entitled to continue in possession of such land. It is further contended

that the State Government is bound to publish in the official gazettee regarding such abatement. The main contention of the petitioner is to the effect

that proceedings under the Urban Land Ceiling Act, had been initiated against the dead person and the order passed in such proceedings without

serving notice on the legal representative must be taken to be non-est, null and void and therefore, on the repeal of such Act, the petitioner who

was in possession of such land by virtue of the deed of partition, must be allowed to continue as such without any hindrance from the State

Government.

4. A counter affidavit has been filed on behalf of the second respondent. In such counter affidavit, it has been contended that the Tamilnadu Urban

Land (Ceiling and Regulation) Act 1978 came into force with effect from 3.8.1976. Ramakrishnan was the owner of the disputed land. Since the

land owner had failed to file return u/s 7(1) of the Act, competent authority issued notice u/s 7(2) of the Act on 20.3.1990. Such Notice was

served on R. Manivannan, son of Ramakrishnan on 16.6.1990. However, no return was filed. Subsequently, the Special Tahsildar recorded the

statement of Manivannan to the effect that the properties was in the name of several members of the family as per registered documents.

Eventhough he had stated that Ramakrishnan had expired in the year 1982, he had not furnished any documentary evidence. The Special Deputy

Tahsildar therefore submitted his proposal for acquisition of the excess vacant land from the Urban Land Owners namely the wife and the two sons

of Ramakrishnan. On the basis of his proposal, notice u/s 9(4) and Statement u/s 9(1) of the act were prepared in the name of the three persons

and excess vacant land had been acquired from the concerned person. It is further claimed that possession of excess land had been taken over on

14.7.1997. A contention is raised in the counter to the effect that even if constructive possession is taken, on repeal of the Act, such land vested

with the Government could not be affected. On the basis of such averments, respondent has prayed for the writ petition to be dismissed.

5. The basic contention of the petitioner is to the effect that the proceedings had been initiated against a dead person and notices were not served

on the petitioner, has not been specifically denied in the counter affidavit. Since the father of the petitioner had died in the year 1982 and the

proceedings were initiated only in the year 1990 against a dead person, it must be taken that the orders passed in such proceedings are null and

void. It is not disputed that when the notice in respect of the proceedings which had been started in the name of Ramakrishnan had been served on

one of the sons who had been brought to the notice that such original land holder had died long back and there was a registered deed of partition

whereunder the lands had been allotted to the share of different persons, it was the duty of the Urban Land Ceiling authorities to continue/initiate

the proceedings against the legal heirs by serving a notice on such persons. Any action purported to be taken under the Act without serving notice

on the persons likely to be affected, must be taken as null and void particularly when the proceedings had been initiated against a dead person.

Eventhough it is claimed by the respondent that possession had been taken, the very fact that the Urban Land Tax Authorities had demanded

payment of tax and received such payment from the various occupants, clearly militates against the case of the respondents that possession had

been taken in a manner known to law. The fact that the petitioner is continuing in physical possession is also not challenged in any manner in the counter. The contention of the respondent to the effect that even symbolical delivery of possession must be taken as the possession of the

respondent, can have be of no assistance in the peculiar facts and circumstances of the present case.

6. The proceedings had been initiated against a dead person and the persons in possession of the land are obviously not bound by the so called

symbolical delivery of possession, particularly when notice had not been served on them. Nothing has been produced in this Court to indicate that

possession had been taken from the present petitioner who apparently was in possession of the disputed land from the date of the registered deed

of partition. In such view of the matter, it must be taken that the possession continued with the petitioner and since the urban land ceiling

proceedings were void having been initiated and continued against a dead person, the proceedings must be taken to have abated in view of the

repeal of the Act.

7. In such view of the matter, the writ petition is allowed and it is declared that the petitioner is the owner in possession of the land and the

respondents are not entitled to interfere with his right over the land. There will be no order as to costs.