**(2014) 10 MAD CK 0030**

**In the Madras High Court**

**Case No :** W.P. No. 35624 of 2007 and M.P. Nos. 1 of 2007 and 1 of 2011

K.R. Muthayee Ammal APPELLANT

Vs

Government of Tamil Nadu RESPONDENT

**Date of Decision :** 15-10-2014

**Acts Referred:**

**Citation :** (2015) 1 MLJ 151

**Hon'ble Judges :** S. Rajeswaran, J

**Bench :** Single Bench

**Advocate :** S. Sunderasan, Advocates for the Appellant; V.M. Velumani, Special Government Pleader, Advocates for the Respondent

## Judgement

S. Rajeswaran, J.—This writ petition has been filed for issuance of writ of Certiorari, calling for the records relating to the proceeding under the notice dated 02.07.1990 issued by the second respondent purporting to be under Section 7(2) of Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 in SR. No. 478/87 and all proceedings pursuant thereto and to quash all such proceedings. The case of the petitioner as given in the affidavit filed in support of the writ petition is as follows:

"The petitioner purchased agricultural lands comprised in S. No. 53/5, Soorapattu Village for an extent of 88 cents along with other contiguous lands under a registered sale deed dated 18.03.1960, document No. 1161/1960 on the file of the SRO, Madras-Chengalpet. Since the date of purchase, she has been in continuous possession and enjoyment of the same by raising crops. She has also been paying the kist for the lands. While so, an extent of 66 cents of land was acquired by the Highways Department, Government of Tamil Nadu for Ambattur Byepass Road in the year 1986 and the said land was re-numbered as S. No. 53/5B and the remaining extent of land was retained by the petitioner and re-numbered as 53/5A measuring an extent of 22 cents. For the acquired lands in S. No. 53/5B, compensation was paid to the petitioner. In the rest of the land the petitioner has been raising crops."

 

2. When the petitioner made arrangements for the re-classification of the said lands purchased by her for constructing godown she was given to understand that proceedings were initiated in the year 1990 under Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 treating the lands comprised in S. No. 53/5A and 53/5B as urban land, which is wholly without jurisdiction and the same is non-est in law. The petitioner made enquiries with the second respondent and requested him to furnish all the documents relating to the said proceedings. The second respondent furnished her with a authenticated copy of draft statement in Form III dated Nil and relating to land belonging to Tmt. Karumuthazhagi residing at No. 5, Park Street, Kilpauk Garden Colony, Chennai-10; the order dated 14.05.1992 purporting to be under Section 9(5) of the Act in respect of the land held by Tmt. Karumuthazhagi; Notice in Form VII calling upon Tmt. Karumuthazhagi of No. 23, Pachiappas College Road, Chennai-31 was issued.

3. The further enquiry has revealed that in the order dated 14.05.1992 there is a reference to the initial proceedings which is a notice said to have been issued under Section 7(2) of Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 in SR. No. 478/87 dated 02.07.1990 which is a vital document for these proceedings. According to the petitioner she never received any notice from the second respondent under this Act. In fact they vacated the rental premises at No. 5, Park Street, Kilpauk Garden Colony in the year 1987 and shifted to No. 2, Harrington Road, Chetpet, Chennai-31. Thereafter they again moved to Rutland Gate, Chennai. Thereafter in the year 2005 they moved to Sterling Road. Therefore, there is no question of refusal to receive the alleged notice under Section 7(2) of the Act and therefore the affixture said to have been made is a false story. Further the second respondent has fabricated the records as if the petitioner was in Malaysia from 10.08.1989 to 29.08.1993. Therefore, the alleged statement under Section 9(1) and notice under Section 9(4) of the Act was served on Subramanian on 05.02.1992 is also wrong as the petitioner does not know any person by name Subramanian. Further during 10.03.1989 to 29.08.1993 the petitioner was living in Malaysia. Further the alleged notice under Form VIII dated 12.03.1999 was addressed to Tmt. Karumuthazhagi, No. 23, Pachiappas College Road, Chennai-31 calling upon her to surrender or deliver possession of the land comprised in S. No. 53/5A1 and 53/5B of Soorapattu Village within 30 days. No such notice was served on her and the physical possession of the land in S. No. 53/5A was continuously with her since its purchase in 1960 and she never dispossessed at all. The revenue records, more particularly, the adangal extract clearly prove that the petitioner has been cultivating the same. Even in the Master Plan, the said land is shown as agricultural one. The Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 was repealed by Tamil Nadu Act 20 of 1999 which came into force on 16.06.1999. Thus the second respondent has no jurisdiction to initiate any proceedings in the said Act, as the lands comprised in S. No. 53 of Soorapattu Village is an agricultural land and in any event such proceedings are initiated against the wrong person, namely, Karumthazhagi even though the revenue

 

records including Patta clearly show the petitioner''s name as Kara. Muthayee in Tamil and Kr. Muthayee in English.

4. Thus many grounds have been raised by the writ petitioner including the nature of the land, not serving the notice to true owner and who is in possession, initiation of proceedings in the name of wrong person, improper service of notice, actual and physical possession not taken as per the Act, repealment of the Act itself, etc in challenging the proceedings initiated under Section 7(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978.

5. Counter affidavit along with the vacate stay petition has been filed by the respondents, wherein it is stated as follows:

"Tmt. Kara. Muthayee was the owner of the lands in S. No. 53/5A measuring 14 grounds 1248 sq.ft. and 53/5B measuring 3 grounds totally measuring 17 grounds 1248 sq.ft. of Soorpattu Village as on 03.08.1976 as per revenue records. Since the statement was not filed under Section 7(1) of the Act, 24/1978, notice was issued under Section 7(2) by the second respondent to the land owner directing her to file necessary statement under Section 7(1) of the Act. Since she had refused to receive the notice, it was served by ''affixure''. But since she failed to produce necessary records, it was presumed that she was the real owner of the land in question as per the revenue records. Draft statement under Section 9(1) and notice under Section 9(4) of the Act was issued on 08.11.1991 allowing 500 sq.metres as her entitlement area as per Section 5(1)(i) of the Act and arriving at the excess vacant land as 3050 sq.metres. Objections, if any, were invited within 30 days from the date of receipt of the draft statement under Section 9(1) of the Act. Draft statement was served on Thira G. Subramaniyan, relative of Muthayee Ammal on 24.02.1992. But no objection was filed by the Urban Land Owner. Hence order was passed under Section 9(5) of the act by the second respondent on 14.05.1992 determining the excess vacant land of 400 sq.metres in S. No. 53/5A Part and an extent of 2650 sq.metres in S. No. 53/5B totally measuring 3050 sq.metres, after allowing 500 sq.metres as entitlement area in S. No. 53/5A Part. The orders were sent by the registered post with acknowledgment due on 13.07.1992. But it was returned undelivered with an endorsement ''no such addressee''. Final statement under Section 10(1) of the Act was issued on 23.05.1998 and it was also served by affixture on 15.08.1998. No objection was received from the Urban Land Owner. Hence notification under Section 11(1) of the Principal Act was issued on 05.10.1998 and it was published in the Tamil Nadu Government Gazette Part VI Section I on 18.11.1998 which amount to public notice. Notification under Section 11(3) of the Act vesting the land with Government with effect from 01.03.1999 was also issued on 18.01.1999 and the same was published in the Gazette on 17.02.1999. Notice under Section 11(5) of the Act directing the land owner to surrender possession of the excess vacant land within 30 days was issued to Tmt. Karamuthayee Ammal on 12.03.1999 and the same was served on 19.04.1999 by registered post. But the land owner failed to hand over possession of the excess land. Hence the possession of the excess vacant land measuring an extent of 400 sq.metres in S. No. 53/5A and an extent of 2650 sq.metres in S. No. 53/5B totally measuring 3050 sq.metres of Soorapattu Village was taken and handed over to Firka Revenue Inspector, Ambattur on 01.06.1999. Notice under Section 12(7) of the Act was issued to the Urban Land Owner on 09.11.1999 and the same was served by affixture on 18.12.1999. Order under Section 12(6) of the Act determining the amount payable for the owner for having taken over the land was fixed at Rs. 3050/- by order dated 19.12.2000. These proceedings have been challenged by the petitioner in the above writ petition."

6. Heard the learned counsel appearing for the petitioner and V.M. Velumani, the then learned Special Government Pleader appearing for the respondents. I have also perused the documents made available on record.

7. Though this matter was already argued, for want of certain clarifications, it has been posted again before me on 25.09.2014 and I once again permitted both the parties to argue on all aspects.

8. In support of his submission, the learned counsel appearing for the petitioner relied on the following judgments:

"1. Vijay Foundation (P) Ltd. Vs. The Principal Commissioner and Commissioner of Land Reforms, The Assistant Commissioner of Urban Land Tax and Competent Authority of Urban Land Ceiling and The Tahsildar,

2. Saraswathi and Nagabooshanammal Vs. The Principal Commissioner and Commissioner of Land Reforms and The Assistant Commissioner of Urban Land (Tax and Ceiling) and Competent Authority,

3. 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,

4. Mr. Nandagopal and Mrs. N. Gandhimathi Vs. The Competent Authority Urban Land Ceiling and the Assistant Commissioner Urban Land Tax, The Commissioner and Director Urban Land Ceiling and Urban Land Tax and The State of Tamil Nadu,

5. Dr. Gulshan Prakash and Others Vs. State of Haryana and Others,

6. G. Krishnamoorthy and Others Vs. The Government of Tamil Nadu,

7. R. Elumalai Vs. The Government of Tamil Nadu,

8. T.V. Antony Vs. State of Tamil Nadu,

9. k. Munusamy Vs. The Principal Commissioner and Commissioner of Land Reforms, The Assistant Commissioner/Competent Authority and The Tahsildar, : k. Munusamy Vs. The Principal Commissioner and Commissioner of Land Reforms, The Assistant Commissioner/Competent Authority and The Tahsildar,

 

10. G.P. Saraswathi and Others v. Assistant Commissioner cum Competent Authority (Urban Land Ceiling), Salem and Another LNIND 2010 MAD 3235 : (2010) 8 MLJ 449

11. Venkatasubramanyan v. Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5 and Others LNIND 2009 MAD 4349 : (2010) 4 MLJ 243"

9. Though a number of grounds have been raised by the learned counsel appearing for the petitioner, I find substance in two grounds, namely, (1) initiating proceedings in the name of wrong persons and (2) failure of the respondents to prove actual physical possession taken in accordance with the Act.

10. In the counter affidavit itself, it is stated by the Deputy Secretary to Government, Revenue Department, that action was taken in the name of Muthayee Ammal as per revenue records at all stages, but, in the notice issued under Section 11(5) of the Act, the name was mentioned as Karumuthazahagi. This glaring mistake was sought to be glossed over and brushed aside simply in the counter by stating that it is a clerical error and therefore, the same is regretted.

11. I am unable to accept this happy-go-lucky attitude of the respondents as it goes to the root of the matter and it therefore makes it very clear that notice is issued to a wrong person as admitted by the respondents and hence as rightly pointed out by the learned counsel appearing for the petitioner the respondents failed miserably in serving the notice under the provisions of the Tamil Nadu Act 24 of 1978.

12. It has been the clear stand of the petitioner that possession is still with her and no physical possession has been taken by the respondents by strictly following the provisions of the Act. When such a plea was specifically raised by the petitioner, the respondents have to meet the same to disprove the same, by producing the actual records to show that physical possession has been taken by strictly following the provisions of the Act. But what has been stated in the counter affidavit in this regard is that possession was taken and handed over to Firka Revenue Inspector, Ambattur on 01.06.1999. This is as bald as it could be and bereft of any particulars as to how the possession has been taken, from when it was taken, whether any problem arose at the time of taking possession and whether any reasonable force was used with the help of the Police Personnel. It is also not stated as to who has signed the document showing that possession has been taken excepting the Revenue Inspector and the Village Administrative Officer.

13. Though a number of judgments are cited by the learned counsel appearing for the petitioner it is not necessary to refer to each one of the same. However, the legal principles which are decided in those judgments could be summarised as follows:

 

"1. Proceedings initiated against a wrong person vitiates the acquisition.

2. When the right to property is affected provisions stated in the Act have to be scrupulously followed.

3. When power is given under the Act to do certain things in a particular way, it should be done in the same way.

4. Mere taking over possession on record is not sufficient and necessary formalities prescribed under the Act and Rules are to be complied with by the Competent authorities for completion of acquisition proceedings.

5. When physical possession is not taken, acquisition proceedings abate."

14. From the above, it is very clear that the authorities have to scrupulously follow the procedures contemplated under the Tamil Nadu Act 24 of 1978. In the present case, even according to the respondents, notice was sent to wrong person and they are not in a position to show any legally acceptable material that they have taken actual physical possession as per the Act and Rules. In the absence of delivery of possession by land owner pursuant to notice issued under Section 11(5), the possession should have been taken through the manner suggested under Section 11(6). It is not the case of the respondents that the petitioner himself came forward and voluntarily surrendered possession. If voluntary surrender of possession is not given, then, necessary force is to be used for that purpose, as per Section 11(6) of the Act. This will clearly establish that symbolic possession or paper possession is not a possession as contemplated under Section 11(5) and 11(6) of the Act. Taking over possession is complete only when it is signed by the land owner while delivering the excess land. But here only the authorities have signed as per the averments contained in the counter-affidavit and therefore the only conclusion that could be arrived at is, no actual physical possession has been taken as per Section 11(5) and 11(6) of the Act and therefore the entire proceedings are vitiated and the petitioner is entitled to the relief as prayed for. Accordingly, all the proceedings are quashed as invalid and the Writ Petition is allowed as prayed for. No costs. Consequently all the miscellaneous petitions are closed.

 