(2008) 10 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 1173 of 2001

Mr. Nandagopal and Mrs. N. Gandhimathi — APPELLANT

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 — RESPONDENT

Date of Decision : 30-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10(1), 11(1), 11(3), 11(5), 12

Citation : (2009) 2 MLJ 994

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Krishnasamy, for the Appellant; T. Seenivasan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsels appearing for the parties concerned.

2. It has been stated that the second petitioner is the wife of the first petitioner. The first petitioner is working as a Senior Technical Assistant, Civil

Engineering, Central Leather Research Institute, Adyar, Chennai. He had purchased 0.24 acres of agricultural wet land, under a registered sale

deed, dated 18.5.1983, with document No. 2345/83. The second petitioner had purchased 0.4 acres of agricultural wet land, on 11.8.1986, with

document No. 378/86 registered in the office of the Sub-Registrar, Ambattur. Both the petitioners together had purchased a total extent of 28

cents of agricultural wet land from Thulasi Ammal, wife of late Ekambaram. After the purchase, the petitioners had been cultivating paddy by

drawing water from a lake in Madanakuppam. After the officials of the U.D.R. Scheme had inspected the lands, patta had been issued to the

petitioners, on 24.5.1986, bearing patta No. 282 in S. No. 26/3B. While so, in the year 1993, the Urban Land Tax Officials had classified the

property as ''Manavari'' in the village Accounts and it has been registered in the name of the first petitioner in the Revenue records. Thereafter, the

land had been converted into urban land.

3. It has been further stated that the Assistant Commissioner, Urban Land Tax, Ambattur, had levied the land tax for the lands belonging to the

petitioners. The petitioners were surprised to know that the Urban Land Ceiling Assistant Commissioner, Ambattur, had removed the name of the

petitioners from the village accounts and the land was shown to be in the name of late Ekambaram, even though the petitioners had purchased the

land from his wife, Thulasi Ammal, by a registered sale deed, for valid consideration.

4. It has been further stated that no notice had been served on the petitioners by the Urban Land Ceiling Officer (competent authority), the first

respondent herein, in accordance with the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as ""the Act""). No

proper enquiry had been conducted by the respondents and the petitioners were not given any opportunity to putforth their cases before the final

order was passed. The respondents have not properly verified the revenue records before transferring the title of the land in the name of late

Ekambaram, even though the patta had been issued to the petitioners by the concerned authority, under the U.D.R. Scheme. The transfer of the

title in the land had been done on the mistaken belief that late Ekambaram was the owner of the land in question.

5. It has been further stated that the petitioners had requested the first respondent, on 11.8.2000 and 29.8.2000 to furnish a copy of the order

passed under the Act. The first petitioner had received a copy of the order, dated 28.6.1996, made in Na.Ka.7493/92, only on 7.9.2000.

Thereafter, a request had been made to the second respondent, on 20.9.2000, to challenge the Urban Land Ceiling order, dated 26.7.1999.

However, the second respondent had issued the impugned order in

R.C.C1/15367/2000, dated 21.11.2000, informing the first petitioner that the

possession of the land in question was taken over by the Government and the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act

20 of 1999), would protect only those lands, the possession of which had not been taken over by the Government. In such circumstances, the

petitioners have preferred the present writ petition, under Article 226 of the Constitution of India.

6. In the counter affidavit filed on behalf of the respondents, it has been stated that one Ekambaram, residing at No. 12, Thiruvalluvar Street,

Puthagaram Village of Ambattur Taluk was the owner of an extent of 0.86 acres, equivalent to 3500 sq. mts., in S. No. 26/3 of Puthagaram

village, as per the Revenue records. As the said land was kept as mamool waste for several decades and since it has not been put to use by its

owner, it was treated as urban land. On the failure of the urban land owner, namely, Ekambaram in filing the statement, u/s 7(1) of the Act, a notice

u/s 7(2) of the Act was issued to him. The said notice had been served on his wife, on 3.3.1992. There is no response for this notice. Notice u/s

9(4) of the Act was issued for the proposed acquisition of the excess vacant land measuring 3000 sq. mts., after allowing 500 sq. mts. as his family

entitlement. It was served on his wife, on 17.5.1994. Another notice had been issued, on 11.8.1994, to attend an enquiry, on 26.8.1994.

However, he had neither attended the enquiry nor furnished any detail. Therefore, the orders, u/s 9(5) of the Act, were issued, on 28.6.1996,

determining an extent of 300 sq. mts. as the excess vacant land. A final statement, u/s 10(1) of the Act, had been issued, on 16.10.1997. The

notification u/s 11(1) of the Act was issued on 5.10.1998 and it was published in the Government Gazette, dated 18.11.1998. The final

notification, u/s 11(3) of the Act, had been issued and published in the Government Gazette, on 17.2.1999. The notice u/s 11(5) of the Act was

issued, on 11.3.1999, directing the urban land owner to hand over the possession of the acquired land, within a period of 30 days. Since the urban

land owner had failed to hand over the excess vacant land, the possession of the land was taken and it was handed over to the Revenue

Department, on 1.6.1999. Order u/s 12(6) of the Act, was issued, on 25.12.1999. fixing Rs. 3,000/- as the amount payable to the urban land owner at the rate of Rs. 1 per sq. meter.

7. It has been further stated that the petitioners had purchased a part of the acquired land from the urban land owner, during the years 1983 and

1986, after the introduction of the Act. Therefore, Section 6 of the said Act would apply to the urban land in question and the sale, said to have

been made in favour of the petitioners, would be null and void. Hence, the petitioners have no locus standi to file the present writ petition. Since the

petitioners had purchased the land in question after the land acquisition proceedings had been initiated in the name of Ekambaram, who was the

urban land owner, as on 3.8.1976, the sale in favour of the petitioners would be void, as it has been made in contravention of the provisions of

Section 6 of the Act. Since the petitioners have no legal right over the land, it is unnecessary for the respondents to issue any notice to them and

there is no provision in the Act for issuing the notice or intimation to subsequent purchasers.

8. It has been further stated that the ownership of the land in question had been decided as per the Revenue Accounts, as on 3.8.1976. The

petitioners had purchased a part of the land, during the years 1983 and 1986 and thereafter, they got it transferred in their names, in the revenue

records. Since the excess vacant land had been acquired from the urban land owner, Ekambaram, who was the owner of the land, as on

3.8.1976, as per the provisions of the Act, the petitioners have no right over the said land and therefore, the present writ petition is liable to fail, as

it has no merit or substance. The possession of the land is with the Government and there is no right vested in the petitioners to request for the

return of the lands from the Government. All the notices issued at the initial stage of the acquisition proceedings were received by Valliammal, the

wife of the urban land owner Ekambaram. Since she did not inform the respondents about the demise of her husband and no records had been

produced relating to his demise and in the absence of any representation or objection, orders had been passed, u/s 9(5) of the Act. The amount

determined, u/s 12 of the Act, would be disbursed to the legal heirs of the urban land owner, if it is found that the original owner of the urban land,

Ekambaram, had died. Even though the notice had been served on the urban land owner and due opportunity was given before the passing of the order, acquiring the excess vacant land, the urban land owner had failed to file his objections. There is no provision in the Act for the issuing of the

notice or to intimate the subsequent purchasers. Therefore, the procedure followed by the respondents in acquiring the land is in accordance with

the provisions of the Act. Since the land had been acquired as per the proceedings of the Act and the possession of the land was taken over by the

State Government well before the the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999) had come into force, the

petitioners have no locus standi to demand the handing over of the possession of the land, which has vested in the State Government. In such

circumstances, the writ petition is liable to be dismissed.

9. The learned Counsel appearing for the petitioner had submitted that the impugned order of the third respondent, dated 21.11.2000, is illegal,

arbitrary and against the principles of natural justice.

10. The learned Counsel appearing for the petitioner has further submitted that the provisions of the Act would not be applicable to the land in

question, since the land was a punja agricultural land upto the year, 1991. The petitioners had purchased the land in the years 1983 and 1986,

much before the land was declared as urban land and subjected to assessment of urban land tax in the name of the petitioners, on 15.12.1993. The

petitioners had not received any notice as provided under the provisions of the Act. On 24.5.1986, the U.D.R. Patta had been issued in the name

of the first petitioner, with patta No. 282.

11. The learned Counsel appearing for the petitioner has further submitted that the first respondent/competent authority had failed to look into the

revenue records including the patta, adangal, chitta and the Thandal register to satisfy himself before passing the impugned order. No opportunity

was given to the petitioners to putforth their cases, with regard to the acquisition of the land, which they have purchased in the years 1983 and

1986. The respondents had also failed to consider the fact that Ekambaram had died prior to 1980 and the petitioners had purchased the land in

question from his wife, Thulasi Ammal, by way of a registered sale deed. The possession of the land in question is still with the petitioners. The

respondents have not taken physical possession of the land as claimed by the respondents. The respondents have been issuing the various notices, as provided under the Act, in the name of a dead person and therefore, it is clear that there was no proper compliance of the procedures laid

down for the acquisition of the excess urban land. Since the land in question was an agricultural land, the Act would not be applicable. When the

urban land was assessed for urban land tax from the year 1991, the provisions of Act 33 of 1976 could have also been made applicable from the

year 1991. However, only on 28.6.1996, the orders had been passed, u/s 9(5) of the Act. Even though all the required notices had been sent in

the name of Ekambaram, no notice was sent to the petitioners. In the notice, dated 11.3.1999, issued u/s 11(3) of the Act, the land in question is

said to have vested in the Government from 1.3.1999. However, Ekambaram, the original owner of the land was called upon to surrender the

vacant possession of the land to the Tahsildar, Ambattur, within 30 days from the date of service of the notice. It was also stated that if the vacant

possession of the land was not surrendered, the possession would be taken over by the Government, by force. However, no such possession was

taken and the land is still in the possession and enjoyment of the petitioners. The impugned order does not state as to how and when the

possession of the land was taken over by the respondents. When the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of

1999) came into force on 16.6.1999, all the proceedings in respect of the land in question had abated. Since the respondents had not taken

physical possession of the land in question and since no compensation has been paid to the petitioners, the acquisition proceedings in respect of the

said land had abated in view of the the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999).

12. Even though the learned Additional Government Pleader appearing for the respondents had reiterated the averments made in the counter

affidavit filed on behalf of the respondents, he has not been in a position to show as to how and when the physical possession of the land in

question has been taken by the respondents following the procedures prescribed under the Act.

13. The learned Counsel appearing for the petitioner had relied on the following decisions in support of his contentions:

13.1 In Kishun @ Ram Kishun (Dead) through LRs. Vs. Bihari (D) by LRs., , the Supreme Court had held that the decree passed by the High

Court in a Second Appeal, in favour of a party who is dead and against a party who is dead, is a nullity as the Second Appeal stood abated.

13.2. In Commissioner of Land Reforms and Anr. v. Libra Electrical Meters (P) Ltd. 1997 W.L.R. 504, a Division Bench of this Court had held

that it is only when a land is used mainly, for a purpose other than agriculture, after the commencement of the Act, the said land is to be deemed to

be a vacant land, on and from such date. The fact that, in a few of the faslis, the lands were kept fallow is no ground to draw an inference that the

lands had ceased to be agricultural lands.

13.3. In Allind Metal Fabricators Pvt. Ltd., 37 Vellachery Road, Madras-42 Rep. by its Managing Director v. The Secretary to Government,

Revenue Department, Government of Tamil Nadu, Fort St. George, Madras 2002 2 CTC 716, this Court had held as follows:

1. The Tamil Nadu Urban Land (Ceiling and Regulation) Act has been repealed by the repealing Act (Act 20 of 1999) and all pending

proceedings also having been declared to have abated. As held by the Supreme Court in the case of Angoori Devi v. State of U.P. JT 2000 Supp

1(SC) 295, a decision by a Constitution Bench, if the possession of the land had not been taken prior to the repeal, such possession cannot be

taken thereafter and no proceedings can be thereafter initiated under the repealed enactment. During the pendency of this writ petition the

petitioner had the benefit of an interim order protecting his possession. It is also not the case of the respondents that they have taken possession.

2. The writ petition is therefore allowed. The W.M.P. is closed.

14. From the records available before this Court, it is seen that the notices required to be issued under the Act had been sent in the name of

Ekambaram, who had died even before the acquisition proceedings had been initiated by the respondents. The petitioners, who are said to be the

purchasers of the land in question, having purchased the land in the year 1983 and 1986 by way of a registered sale deeds, for valid consideration,

have not been given any opportunity to putforth their cases. No notice had been issued to them by the respondents, with regard to the acquisition

of the land in question, as provided under the Act.

15. The learned Additional Government Pleader appearing for the respondents has not been in a position to show that the land in question could

be said to be urban land which would be governed under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. On

the other hand, when the petitioners had claimed that the land in question continued to be an agricultural land till it was assessed for tax, under the

Urban Land Tax Act, in the name of the petitioners, from the years 1991, mere taking over of possession of the land, on record, would not be

sufficient. Actual physical possession should have been taken by the competent authority, as provided under the Act and the rules framed

thereunder, for completion of the acquisition proceedings. If the respondents had not taken physical possession of the land in question and if the full

compensation had not been paid, the land acquisition proceedings would stand abated, in view of the coming into force of the Tamil Nadu Urban

Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999).

16. Since the respondents have not shown that all the necessary formalities, as prescribed under the Act, had been completed, the acquisition

proceedings in respect of the land in question would stand abated, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act

(Act 20 of 1999).

17. In such circumstances, in view of the reasons stated above and in view of the decided cases cited before this Court, the writ petition stands

allowed. No costs.

