

(2013) 07 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 36796 of 2004, W.P.M.P. No"s. 44164 and 44165 of 2004 and W.V.M.P. No. 5 of 2012

M/s. Technolab Instruments (Madras)

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0053

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Satish Parasaran, for the Appellant; R. Rajeswran, Spl. G.P., for the Respondent

Final Decision : Disposed Off

Judgement

S. Nagamuthu, J.—The dispute in this writ petition is in respect of 0.49 acres of land comprised in S. No. 18/1A2 at Maduravoyal Village,

Ambattur Taluk. The land was originally owned by one Mr. P.V.K. Swamy. The petitioner is a company governed by the Companies Act. The

petitioner entered into a sale agreement with the erstwhile owner in the year 1975 and according to the petitioner, the possession was also handed

over to the petitioner in the year 1975 itself. While so, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as

the Act) was introduced on 17.05.1978. But, the petitioner went ahead and purchased the said property by means of registered sale deed dated

26.12.1981 and continued to be in possession of the same. While so, a draft statement u/s 9(4) of the Act was issued on 07.11.1985 against Mr.

P.V.K. Swamy calling upon him to submit his objections for the proposed acquisition of 10,950 sq.mtrs after allowing 2500 sq.mtrs towards

entitlement and 400 sq.mtrs for road usage. The said notice was served on Mr. P.V.K. Swamy on 07.11.1985. Thereafter, the respondents issued

an erratum to the said statement by revising the excess vacant land to 10,050 sq.mtrs and accordingly, an order was issued on 12.12.1985 u/s

9(5) of the Act.

2. On knowing the said proceedings, the petitioner submitted an application to the respondents on 23.01.1986 seeking exemption of the said land

from acquisition as per Section 21 of the said Act. However, final statement u/s 10(1) of the Act was issued by the respondents on 23.01.1986

and notification was accordingly issued u/s 11(1) of the Act on 24.04.1987. The said notification was published in the Tamil Nadu Government

Gazette on 20.05.1987.

3. Subsequently, under G.O.Ms. No. 30 dated 07.01.1988, the request of the petitioner dated 23.01.1986 seeking exemption was rejected. A

notification u/s 11(3) of the Act was issued on 19.08.1988 vesting the land in favour of the Government with effect from 15.10.1988. The said

notification u/s 11(3) of the Act was published in the Government Gazette on 12.10.1988.

4. Subsequently, a notice u/s 11(5) of the Act was issued to Mr. P.V.K. Swamy calling upon him to hand over vacant possession of the land

which stood vested with the Government. But, Mr. P.V.K. Swamy submitted a letter stating that he was not in possession of the property as he

had sold the properties to various persons including the petitioner (vide letter of Mr. P.V.K. Swamy dated 08.01.1993). In the said letter, Mr.

P.V.K. Swamy, had stated that on several occasions, he had sent letters stating that he had sold away all the properties and he was not in

possession of the same so as to hand over possession of the said lands to the Government. Thus, according to the petitioner, he has been in

possession and enjoyment of the property all through and physical possession was not at all taken by the Government in accordance with Section

11(6) of the Act.

5. In the mean while, the petitioner had requested the Government to allot the land in question to him since by that time, the land stood vested with

the Government. The Allotment Committee, in its meeting held on 29.11.2004 had also recommended for allotment of the said land to the

petitioner. The Government examined the said proposal u/s 24 of the Act and accordingly, decided to allot the said land to the petitioner on certain

conditions and thus, issued G.O.Ms. No. 549, Revenue Department dated 15.05.1992. One of the conditions is that the petitioner shall pay 1 =

times the market value of the land, as the land value and for the value of trees, wells and structures if any. The petitioner felt aggrieved by the above

condition and some other conditions imposed by the Government. Therefore, challenging the said Government Order, the petitioner has filed the

present writ petition. That is how the same is before this Court for disposal.

6. After the issuance of G.O.Ms. No. 549 dated 15.05.1992, the Tamil Nadu Urban Land (Ceiling and Regulation) Act of 1978 was repealed by

the Tamil Nadu Land (Ceiling & Regulation) Repeal Act, 1999 (Tamil Nadu Act 20 of 1999) (hereinafter referred to as the Repeal Act:). As per

Section 4 of the Repeal Act, all proceedings pending as on the date of coming into force of the said Repeal Act namely, 16.06.1999, stood

abated. Section 3 of the Repeal Act saves certain proceedings and orders alone. Section 3 of the said Act states as follows:-

3. Savings.-(1) the repeal of the Principal Act shall not affect-

(a) 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 competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the Principal Act by 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; and

(b) amount has been paid by the State Government with a respect to such land, then, such land shall not be restored unless the amount paid, if any,

has been refunded to the State Government.

7. According to the petitioner, since, possession was not at all taken either from Mr. P.V.K. Swamy or from him, either u/s 11(5) of the Act or u/s

11(6) of the Act, on account of repealing, vestiture of the land in favour of the Government u/s 6 of the Act stands repealed and accordingly, the title of the petitioner has been restored.

8. I have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and I have also perused the records carefully.

9. In my considered opinion, this writ petition has become infructuous because, after coming into force of the Repeal Act of 1999, the question of ordering allotment of the land in question to the petitioner does not arise at all as the same is non-est in the eye of law. As I have already pointed out, as per the Repeal Act, if possession had not been taken either u/s 11(5) of the Act or u/s 11(6) of the Act prior into the coming into force of the Repeal Act, then, the title for the property shall stand restored in favour of its original owner. Here, in this case, the original owner was Mr.

P.V.K. Swamy and since he transferred title in favour of the petitioner, the petitioner is the owner. Therefore, for all practical purposes, the title for the property shall stand restored in favour of the petitioner, provided, possession had not been taken either u/s 11(5) of the Act or u/s 11(6) of the Act by the Government prior to 16.06.1999.

10. The contention of the learned Special Government Pleader is that as a matter of fact, possession was taken by the Government before 16.06.1999 from Mr. P.V.K. Swamy. But, after having gone through the entire original file, I am satisfied that possession was not taken by the Government prior to 16.06.1999.

11. Admittedly, as early as on 23.01.1986, the petitioner raised objection stating that he had purchased the property and he was in possession and enjoyment of the same. Therefore, it is not as though the respondents were not aware of the fact that the petitioner was in possession of the property. On his part, Mr. P.V.K. Swamy also sent several letters and petitions to the respondents stating that he had parted away with the possession of the property on account of the sale effected in the year 1981 itself. Despite the same, notice u/s 11(5) of the Act was issued to Mr.

P.V.K. Swamy.

12. The learned Special Government Pleader would submit that notice was issued to Mr. P.V.K. Swamy because, the sale effected on

12.06.1981 subsequent to the coming into force of the principal act is void. It is his further contention that since, Mr. P.V.K. Swamy continued to

be the owner of the land in question holding title over the property, the title for the property stood vested with the Government only from Mr.

P.V.K. Swamy u/s 6 of the Act. In view of the same, according to the learned Special Government Pleader, notice was issued only to Mr. P.V.K.

Swamy u/s 11(5) of the Act. Since, Mr. P.V.K. Swamy did not hand over possession to the Government in pursuance of the notice u/s 11(5) of

the Act, according to the learned Special Government Pleader, possession was taken subsequently u/s 11(6) of the Act from Mr. P.V.K. Swamy.

13. In my considered opinion, the said argument of the learned Special Government Pleader deserves only to be rejected for the following

reasons:-

(i) As I have already pointed out, Mr. P.V.K. Swamy had no possession to hand over the same to the Government and that is why, he wrote

several letters to the respondents stating that he was not in possession of the property.

(ii) The petitioner also wrote letters to the effect that he was in possession of the land in question from the year 1981 onwards, on account of the

purchase made. But still, no notice was issued to the petitioner. Stopping here for a moment let us have a look into sub sections (5) and (6) of

Section 11 of the Act which read as follows:-

11(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any

person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the

State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant

land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that

purpose use such forces as may be necessary. (See Tamil Nadu Acts THE CIVIL COURT MANUAL, Eighth Edition)

(iii) In this regard, the learned counsel for the petitioner would rely on a judgment of a Division Bench of this Court in Sree Jayalakshmi Brick

Industries Vs. The Special Commissioner and Secretary to Government, Government of Tamil Nadu Revenue Department, The Special

Commissioner and Commissioner of Land Reforms, The Assistant Commissioner Competent Authority (Urban Land Ceiling) and The Tahsildar,

In the said judgment, the Division Bench in paragraph No. 12 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.

(iv) This has been followed by a learned Single Judge of this Court in N. Sundarababu Vs. The State of Tamil Nadu and Santhosh Devi Sarang).

Applying the principles stated in the said judgments, if we look into the facts of the present case, admittedly, there was no notice served on the

petitioner u/s 11(5) of the Act. Though the purchase made by the petitioner in the year 1981, is invalid in view of Section 6 of the Act, still, the

Government should have issued notice u/s 11(5) of the Act to the petitioner.

(v) As has been held by the Division Bench of this Court in M/s. Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to

Government & 3 others case (cited supra), though, the purchase made by the petitioner by a sale deed is invalid as per Section 6 of the Act, in

view of the term any person who may be in possession employed in Section 11(5) of the Act, notice ought to have been served on the petitioner to

surrender or deliver possession to the Government. If any such person in possession fails to hand over possession to the Government, then the

procedure to take possession u/s 11(6) of the Act can be resorted. Here, in this case, no notice was issued to the petitioner u/s 11(5) of the Act

and therefore, the question of resorting to Section 11(6) of the Act did not arise at all. Assuming for a moment that notice u/s 11(5) of the Act, was

served on Mr. P.V.K. Swamy and he failed to hand over possession, it cannot give a ground for the respondents to take possession u/s 11(6) of

the Act. Above all, I am at loss to find even a piece of paper in the entire file to show that the physical possession was taken by the Government at

any point of time either from Mr. P.V.K. Swamy or from the petitioner who has been in physical possession actually from the year 1981 onwards.

Further, compensation amount was not received either by Mr. P.V.K. Swamy or the petitioner.

14. Thus, the contention of the learned Special Government Pleader that prior to 16.06.1999, possession of the land was taken over by the

Government and therefore, the land still stands vested with the Government deserves only to be rejected. I hold that as on today, on account of the

Repeal Act, the title for the property stands restored to the petitioner and therefore, the impugned order under G.O.Ms. No. 549, allotting the land

to the petitioner u/s 24 of the Act stands lapsed as the same is non-est in the eye of law after 16.06.1999. Therefore, in my considered opinion, the

writ petition has become infructuous as there is no further adjudication is required in respect of the impugned Government Order. To keep things

beyond doubt, I want to clarify that the Government Order which is under challenge in this writ petition cannot have any legal force as the same is

non-est in the eye of law after 16.06.1999. I further hold that the title for the property in question stands restored to the petitioner and therefore, as

on the date, the petitioner has got title over the property in question. In the result, the writ petition stands disposed of as infructuous as no further

order is required in respect of the impugned Government Order. No costs. Consequently, connected miscellaneous petitions are closed.