(2013) 02 MAD CK 0226

In the Madras High Court

Case No : W.P. No. 50411 of 2006

N.P. Ramanujam and Others APPELLANT

Vs

State of Tamilnadu RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) WritLR 1075

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Judgement

N. Kirubakaran, J.—Petitioners, urban land owners, who are aggrieved by the proceedings declaring the lands possessed by them as excess lands and also the proceedings by which the authorities are said to have taken possession, have come before this court. The petitioners are the owners of the property comprised in S.No. 297/1A2 and Sub Division No. 297/1A2D, 297/1A2F, 297/1A2B and 297/1A2E situated at Nanmangalam Village Tambaram Taluk, Kancheepuram District. The first petitioner, who died pending disposal of the writ petition, filed return on 28.3.1978 u/s 6(1) of Tamilnadu Urban Land Ceiling and Regulation Act 1978. Notice under Sections 9(4) of the Act was issued by the third respondent on 22.11.1984. Objection letter dated 4.8.1985 was issued by the petitioners stating that the lands are used for agricultural purpose. u/s 9(5) of the Act, the third respondent determined the petitioners'' entitlement of lands as if 3500 sq. meters and declared surplus land as 6200 square fts. On 31.12.1986.

2. Subsequently a final statement u/s 10(1) of the Act was sent on 31.12.1986 and published in the office of the Tahsildar, Saidapet on 10.11.1987. Thereafter, notification u/s 11(1) of the Act is said to have been published on 2.12.1987. On 12.2.1988, an appeal was filed by the first petitioner which was dismissed by the second respondent on 12.3.1988 as barred by limitation. Meanwhile on 24.2.1988, notification u/s 11(3) of the Act was published.

3. After the dismissal of the appeal, contending that Section 11(5) was not served upon the petitioners and possession was not taken in accordance with

law, the petitioners have approached this court.

4. Mr. J.R.K. Bhavanantham, learned counsel appearing for the petitioners submitted many contentions. However, the main contention is with regard to non service of notice u/s 11(5) of the Act and the alleged possession taken u/s 11(6) of the Act. He submitted that notice u/s 11(5) of the Act was not served upon the petitioners and no possession was taken. Even if possession was recorded, it was only a paper possession. He referred to Section 11 of the Act and also judgments of this Hon''ble Court in G. Krishnamoorthy and Others Vs. The Government of Tamil Nadu, , and in Government of Tamil Nadu Rep. By the Commissioner and Secretary to Government, Revenue Department, Secretariat, Chennai-9 and two others vs. M/s. Mecca Prime Tannery and others reported in 2012-4-L.W. 289.

5. By referring the above judgments, learned counsel appearing for the petitioners would submit that the procedure was not followed, as the actual possession of land remains with the petitioners. He also referred to the pattas subsequently issued by the authorities on 19.5.2003 to the petitioners.

6. Mr. R. Ravichandran, learned Additional Government Pleader would submit that all the procedures have been complied with. He repudiated the contentions of the petitioners that notice u/s 11(5) notice was not served to the petitioners. He reiterated that the notice was sent through post and in fact the land owner was served. As far as taking possession is concerned, when the land owners were served with notice and land delivery receipt was issued, the land owner refused to receive the same stating that he already filed an appeal to the Government. Therefore, possession of the excess land was handed over to the Revenue Department on 22.7.1989. He further submitted that when the possession was taken 22.7.1989, the petitioner is not entitled to the benefits under the repeal Act as the possession remains with the Government. He relied upon a judgment of a Division Bench of this Court in S. Deenadayalan vs. The Secretary to Government, Revenue Department, Govt. of Tamil Nadu, and two others passed in W.A. No. 145 of 2009 dated 17.6.2009 stating that once possession is taken over, the land owner is not entitled to any relief.

7. Heard the parties and perused the records. There is no dispute with regard to the commencement of the proceedings under the Act up to notification u/s 11(3) of the Act. The dispute is only with regard to notice u/s 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978.

Section 11(5) of the Act 1998 reads as follows:

(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.

A perusal of the aforesaid Section would reveal that the Urban Land Owner should be issued notice in writing, order any person who may be in possession of it to surrender or deliver possession within 30 days from the date of the service of the notice. The above Section abundantly makes it very clear that the land owners or person who is in possession is required to be served in writing and on such service only, the urban land owner has to surrender the possession.

8. Whether the service of notice was effected or not, earlier, the respondent violated the procedure of sending the notice through RPAD. It is evident from the file produced that notice u/s 9(4) of the Act dated 22.11.1984 was sent through registered post with acknowledgement due to the urban land owner and the same was acknowledged by him on 12.1.1985. The acknowledgement card received by the urban land owner is found at page 191 of the record. Similarly order dated 31.12.1986 u/s 9(5) of the Act was sent through RPAD and the same was received by the land owner on 31.1.1987. The said acknowledgement is found in page 283 of the records. When such is the procedure followed by the authorities for causing notice under registered post, nothing prevented them from adopting the same method for issuing notice u/s 11(5) also. Inspite of close scrutiny of the records, nothing is available to show that Section 11(5) notice was sent. The contention in this regard by Mr. R. Ravichandran, learned Additional Government Pleader is that the notice was sent by ordinary post and therefore, it is deemed to have been served on the land owner. The said contention is liable to be rejected, because, even if there is any proof for having sent it through post, this court can deem it as service effected as per the provisions under General Clause Act. In the absence of any such proof for having sent notice, it is to be held that no steps have been taken by the authorities to send notice under 11(5) of the Act.

9. There is no justification for the respondents to deviate from the earlier procedure adopted by them while sending notice under Sections 9(4) and 9(5) of the Act also. It only denotes the failure of the authorities to follow the procedure contemplated u/s 11(5) of the Act. It is the basic principle of law if the power is given to do certain thing in a certain way, the thing must be done in that way or not at all. The following judgments which laid down the above dictum

1) In Taylor-vs.-Tailor reported in 1876 1 Ch.D 426,

2) In AIR 1936 253 (Privy Council) ,

3) In State of Uttar Pradesh Vs. Singhara Singh and Others,

4) In Babu Verghese and Others Vs. Bar Council of Kerala and Others, ,

5) In Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others,

6) In Indian Banks'' Association, Bombay and Others Vs. Devkala Consultancy Service and Others, ,

7) In Chandra Kishore Jha Vs. Mahavir Prasad and Others, In Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Ltd., .

10. Law is settled in respect of service of notice u/s 11(5) of the Act by a Division Bench of this court in G. Krishnamoorthy and Others Vs. The Government of Tamil Nadu, , wherein it has been categorically declared that for lack of notice u/s 11(5) of the Act, the entire proceedings is vitiated.

11. Though, Mr. R. Ravichandran very strenuously argued stating that possession was taken from the urban land owner, as he refused to affix the signature in the land delivery receipt, there is nothing on record to show that the possession was taken from urban land owner as per the procedure. The Division Bench of this court in the aforesaid judgment has categorically given the details as to how the possession is required to be taken.

Paragraphs 26 and 27 of the judgment are usefully extracted.:

26. The letter dated 13.11.1990 of the Competent Authority states that four Land Delivery Receipts were enclosed with the 11(5) notice in Form VII and those receipts are found at page 191-195 of the Notes File. The letter directed the Deputy Tahsildar-II has to serve two notices to the land owner. The Land Delivery Receipts states as follows:

The above extent has been delivered by me and taken possession of by Firka Revenue Department. (Land Owner) (Revenue Inspector) Handed Over by Taken Over by

Therefore, it is very clear that the take over of possession is complete only when it is signed by the land owner while delivering the excess land pursuant to u/s 11(5) of the Act in Form VII prescribed under the Rule 10(3) of the Rules. As stated above, if no such delivery of possession took place, the third respondent has to resort to 11(6) of the Act. Admittedly, in this case, the petitioners did not sign in the Land Delivery Receipt.

27. The learned counsel for the petitioners argued that there should be actual take over of possession and the take over of possession in paper is not the physical possession of the surplus lands. If the land owner is not a party to the Land Delivery Receipt, the take over possession should be established by getting signature from independent witnesses, preparing Panchanama, etc. But records reveal that it is only paper possession.

12. It is categorically stated, taking over possession completes only when it has been signed by the land owner while delivering the excess land pursuant to notice u/s 11(5) of the Act. In this case, as already found, no service of notice u/s 11(5) of the Act was effected. Even as per the procedure u/s 11(6), the petitioner did not sign the land delivery receipt. When the land owner is not a party to the land delivery receipt, the alleged possession is not an actual possession. It is only a paper possession.

13. The respondent contends that the possession was taken by land delivery receipt. A perusal of the land delivery receipt would show that there is no independence witness. It merely states that Revenue Inspector, delivered possession to the Revenue Department. It is not mentioned as to how the Revenue Inspector Urban Land Ceiling Department took possession from the land owners especially when the land owner refused to deliver possession as stated in paragraph 7 of the counter affidavit. When there was a refusal by the land owner, the respondent necessarily has to resort Section 11(6) to take possession by force. Section 11(6) of the Act reads as follows:

(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 force as may be necessary.

There is nothing on record to prove that proceeding u/s 11(6) of the Act was taken. It is unbelievable that the possession of the land was taken from the hands of the urban land owner, when he refused to hand over, by the authorities on its own, who in turn handed over the possession to the revenue department.

14. As stated in the judgment of the Division Bench of this Court, in the absence of any independent witness in the panchanama or in the delivery receipt, the alleged possession is only a paper possession and it is not actual possession. In this case the possession remains with the owners only. That apart, the actual possession and enjoyment of the property by the petitioners is proved by the issuance of patta by the very same respondent of the revenue department even as on 19.5.2003. After the alleged possession taken over by the department, the issuance of patta in the name of the petitioners would falsify the claim of the respondents.

15. Therefore, this court holds that:

1) There is no service of notice u/s 11(5) of the Act, which vitiates the entire proceedings;

2) There is no acceptable, valid legal proof for having taken actual possession on 15.3.1988 in the absence of signatures of the witnesses and also the signatures of the land owners;

3) The possession of the property remains with the petitioners;

4) The alleged possession is only a paper possession that will not deprive the land owners from getting the benefits u/s 4 of the Repeal Act.

5) When the possession remains with the land owners, the entire proceedings abates for the reasons stated above.

The writ petition is allowed. No costs. Consequently the connected M.P. No. 2 of 2006 is closed.