

(2009) 01 MAD CK 0257

In the Madras High Court

Case No : Writ Petition No. 6931 of 2000

Prathiba Venkataraman

APPELLANT

Vs

The Assistant Commissioner, (Land Reforms) Alandur
Municipality and The Assistant Commissioner/Competent
Authority (Urban Land Ceiling)

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Constitution of India, 1950 — Article 300A
Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10(1), 11(1),
11(3), 11(5), 11(6)
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2009) 01 MAD CK 0257

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ramesh, for Aiyar and Dolia, for the Appellant; Sneha, G.A., for the Respondent

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner seeks for setting aside an order dated 12.01.1990 issued by the first respondent and for restoration of possession of the

petitioner's property in S. No. 56/81 A1 in plot Nos. 139 and 140 measuring an extent of 4800 Sq. ft. situated at Madipakkam Mathura

Puzhuvakkam village.

3. The writ petition was admitted on 19.04.2000. Even after eight years since the respondents have not filed any counter, the first respondent was

summoned to produce the original records relating to the impugned order. Mrs. Sneha, the learned Government Advocate had circulated the

original file.

4. The case of the petitioner was that she purchased the disputed land from one Lakshmana Naicker under a registered Sale Deed on 21.09.1965

with Document No. 2120/65 in the Sub-Registrar Office, Pallavaram. The vendor of the petitioner purchased the said land from one Janakiammal

with a registered sale deed dated 18.04.1995 bearing Document No. 580/55. The petitioner also was in possession and enjoyment of the said

property and she was given an intimation letter for grant of patta by the District Revenue Officer on 26.11.1987.

5. But subsequently when she went to ask for the original patta she was orally informed that her lands were taken over under the provisions of

Tamil Nadu Urban Land Ceiling Act 1978 (for short Ceiling Act). The petitioner's enquiry revealed that notices for acquisition of the land was

given to one Munusamy Chettiar u/s 9(5) of the Ceiling Act. The petitioner, as she was not aware of these proceedings issued a notice through her

counsel on 14.09.1999 asking them to drop the proceedings. However, the respondent by a reply dated 27.03.2000 stated that appropriate

proceedings have been taken under the Ceiling Act and the land had been acquired on 1.12.1992. Because of these developments, the petitioner

has filed the present writ petition.

6. In the original file circulated, a draft counter statement has been made ready by the first respondent and it has been stated in paragraphs 3 and 4,

which is as follows:

3. It is submitted that the averments in paras 2 to 6 are incorrect. Mr. Munusamy Chetty was the owner of an extent of 4425 sq. mts of urban

vacant land in S. No. 56/8A 1 A of Madipakkam Village as per village accounts. As the urban land owner has not filed returns u/s 7(1) of the Act

notice u/s 7(2) of the T.N.U.C. (Ceiling and regulation) Act 1978 was issued in this office ref. S.R. No. 1117/85 dated 31.08.85 requesting him to

file the returns u/s 7(1) of the Act. It was served on him on 14.10.86. He did not file the return u/s 7(2) of the Act. Notice u/s 9(4) along with

Statement u/s 9(1) of the Act was issued on 30.10.87. As the whereabouts of the Urban land owner was not known, they were served by affixure

on 10.06.89. The competent authority inspected the lands on 29.4.89 and found that the land was urban in nature. So, order u/s 9(5) of the Act

was issued in this office in Ref. S.R. 1119/85. Dated 12.01.90 determining the

family entitlement of 500 sq. mts. The above order was sent by RPAD and it was returned. As the whereabouts of the urban land owner was not known, it was served by affixture on 2.9.91. As per sub-division

records prepared, action was taken to acquire 3750 sq. mts in S. No. 56/8A1A1A1A and 150 sq. mts in S. No. 56/8A1A1A2.

4. It is submitted that accordingly final statement u/s 10(1) of the Act was issued on 20.1.92. As the whereabouts of the urban land owner was not

known, it was also served by affixture. Notifications u/s 11(1) and 11(3) of the Act were published on 30.9.92 and 9.12.92 respectively. Notice

u/s 11(5) of the Act was sent to the urban land owner on 15.2.93 requesting him to deliver possession of the excess vacant land. It was sent by

RPAD and was returned. The excess vacant land of 3900 sq. mts was taken over and possession handed over to the Revenue Department on

11.8.95 As the purchase made by the Writ petitioner did not reflect in the Village Accounts, Notices were not sent to her.

7. It was also contended that the petitioner wanted to have regularisation of her purchase on the basis of a Government Order in G.O.Ms. No.

649, Revenue, dated 29.7.98 as well as G.O.Ms. No. 565, Revenue 26.09.2008 and since the petitioner had given a letter to that effect she

cannot argue to the contrary.

8. Merely because the petitioner had already availed a subsequent scheme announced by the Government, that will not defeat her legal claim over

her property. Therefore, this contention cannot be accepted by this Court. When the petitioner had purchased the property from her vendor in the

year 1965, well before the advent of the Ceiling Act, and she also got a patta for the said property issued by the Revenue Authorities, there is gain

saying that the respondent has issued notice to the appropriate persons who are the original owners of the land.

9. It must be stated that right from the initiation of the proceedings, the respondents have not adopted the provisions of the Ceiling Act. The notice

u/s 9(4) of the Ceiling Act was issued in the name of one Munusamy Chettiar and others. It is not described as to who are the two others. It is also

seen that the said Minusamy Chettiar was never served with any notice and the office endorsement found in the file shows that since his address

was not available he could not be served. Thereafter, Section 9(5) notice was got

to be served through registered post by indicating the address of Munusamy Chettiar as the resident of Puzhuthivakkam Village. But that registered cover has come back as unserved with an endorsement stating "returned to the sender". The further endorsement dated 12.01.1990 stated that it has been affixed on the last residential address of the said Munusamy Chettiar.

10. It is shocking to know that when the respondents are not aware of the address of the said Munusamy Chettiar how they could have affixed the notice. While acknowledgment contains the date of 12.01.1990, one person by name Kanniappan has signed on 02.09.91. Further, there was also discrepancies in the extent of land alleged to be owned by Munusamy Chettiar. Thereafter in the Section 9(5) notice an endorsement shows that

the said notice was affixed on a pole erected in the land in question. Similarly, there is no proof of serving of Section 10(1) statement. Even Section

11(1) notification was not served on the so called land owner. The notification u/s 11(5) was sent by service post in the name of Munusamy

Chettiar and it has come back with an endorsement stating "insufficient address". Only under these circumstances, it is now claimed that the lands

were taken over with a land delivery receipt given by the Revenue Inspector, Alandur Taluk on 11.08.1995.

11. If this is claimed as a lawful acquisition made by the authorities then it is only a mockery of the implementation of the law. The respondents

have not explained the registered sale deed produced by the petitioner in support of her ownership of the property as well as the patta produced

by her. The respondent could also not justified as to how they arrived at the name of Munusamy Chettiar as the owner of the land in question.

12. The original file produced by the learned government Advocate completely justifies the allegations made in the affidavit filed by the petitioner. If

only the respondents had taken care to serve the real owners of the property, the entire issue would not have come before this Court with these

allegations. In a way, the petitioner is right in saying that the attempt of the respondents was just to take over the property in the name of some

person and make it a fait accompli against the real owner and it is a clear case of deprivation of the property in violation of Article 300-A of the

Constitution of India.

13. In this connection, the learned Counsel appearing for the petitioner relied on a judgment of a Division Bench (Presided over by P. Sathasivam,

J. as he then was) in V. Somasundaram, Nityakalyani and V. Sugandhi Vs. The Secretary to Government Revenue Department, The Assistant

Commissioner (Land Reforms and Urban Land Ceiling) and S. Pitchai, . He particularly relied on paragraph 9 of the judgment, which reads as

follows:

9: From the perusal of the file, it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in

question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the

real owner. As per Section 11(5) of the Act, the competent Authority is bound to issue notice in writing to any person, who may be in possession

of the land, to surrender and deliver possession thereof, to the state Government or to any person duly authorised by the State Government, within

thirty days" time. No notice having been issued against the appellants, who are in possession of the lands on 30.04.1999 by the second respondent

is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from

16.09.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the

Act.

(emphasis added)

14. The learned Counsel also drew the attention of this Court to an un-reported decision of the Division Bench, presided by S.J. Mukhopadhaya,

J. In W.P. Nos. 693 to 695 of 2003 Annie Jacob and Ors. v. State of Tamil Nadu and Anr. and the relevant passage found in paragraphs 8 and 9

is extracted below:

Para 8: There is nothing on the records to suggest that the competent authority issued any notice in writing directing the original land holder or the

appellants to surrender or deliver possession of the lands in question. Nothing has been produced to suggest that the original land holder or the

appellants refused or failed to comply with such order were taken by force. In absence of such notice u/s 11(5) or action taken u/s 11(6), a bald

statement as made by the respondents that possessions was taken on

10.02.1995, cannot be accepted. On the other hand, the appellants have produced documents, such as panchayat tax receipts, reassessment notice, tax acknowledgment and demand notice, pattas chittas, house tax receipt, panchayat payment receipts, electricity bills/cards, etc., to suggest that they are still in possession of the lands in question.

Para 9: In the aforesaid circumstances, the respondents cannot take advantage of Section 3 of the Repealing Act 20 of 1999 and nor deny the advantage u/s 4 to the appellants. Such provisions being in favour of the appellants, we hold that the total proceedings shall stand abated.

(emphasis added)

15. The learned Counsel further brought to the notice of this Court the judgment in W.P. No. 29081 of 2003 Sudandarakkani v. Government of Tamil Nadu and Ors. (rendered by me) and referred to paragraphs 9 and 10, which read as follows:

Para 9: These records can never be believed as neither the petitioner nor the predecessor-in-title have been served with proper notices in terms of the Act and the Rules made thereunder. When valuable lands are sought to be taken over by a statutory enactment, it is incumbent on the part of the authorities to scrupulously follow the rules prescribed thereunder. The mode of affixture cannot be resorted to as a matter of course and attempt should have been made to send the notice by Registered Post as contemplated under the Rules. If this process is resorted to by the respondents, any land can be taken over without even notice to the land owners by not complying with the mandatory provisions of the Rules.

There are also no records to show that physical possession has been taken over from the petitioner, who is the purchaser of the land even as early from 29.8.1986. In any event, there are no records to indicate that physical possession has been taken over from the petitioner and in the absence of the same, the petitioner is entitled to have the benefit of Section 4 of the Repeal Act 20 of 1999.

Para 10: This Court in its judgment reported in Sosomma Thampy v. Assistant Commissioner (ULT)-cum-Competent Authority (ULC), has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC Act and noting in the file that symbolic possession is taken cannot be accepted as taking of physical

possession. This Court is in complete agreement with the ratio laid down in the aforesaid decision which also squarely applies to the facts and circumstances of the case.

16. Therefore, insofar as the proceedings were not initiated against the real land owner as found in the original file, the entire exercise by the respondents is an exercise in futility and it would also amount to depriving the property of the petitioner by misusing the power vested under the Tamil Nadu Act 24 of 1978.

17. In the light of the above, the impugned order of the respondents stands quashed. The respondents are directed to return the land of the petitioner in Survey No. S. No. 56/8 1 A1 in Plot Nos. 139 and 140 measuring an extent of 4800 Sq. ft. situated at Madipakkam Mathura Puzhudivakkam village, within a period of eight weeks from the date of receipt of a copy of this order. However, there will be no order as to costs.