

(2010) 08 MAD CK 0482

In the Madras High Court

Case No : Writ Petition No. 8141 of 2004

R. Krishan

APPELLANT

Vs

The Competent Authority (ULC) and the Assistant
Commissioner (ULT)

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 11, 11(5), 15, 3, 7(2)

Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 2, 4

Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 — Rule 8(2)

Citation : (2010) WritLR 890

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.K. Hidayathullah, for the Appellant; M. Dhandapani, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard both sides.

2. This writ petition arises out of a Special Revision (SRP. No. 45 of 2001) filed by the petitioner before the Special Appellate Tribunal u/s 15 of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (for short Act). The petitioner challenged the Order passed by the respondent dated 20.11.1998 in R.C.B. No. 3589/97 in that Special Revision Petition.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as CRP No. 1929 of 2003. However, a learned Judge of this Court opined that no Civil Revision Petition will lie as the officers whose orders under challenge were not a Court but only statutory authorities. Therefore, the CRP was converted into a writ petition and notice was ordered.

4. Before the Tribunal, no counter affidavit was filed by the respondent. However, the original records were circulated for perusal by this Court. It is stated by the

petitioner that the impugned notice was not served on him. After coming to know of the same, he applied for a certified copy and filed the special revision before the Tribunal against the order dated 20.11.1998. Hence, there was a delay in moving the Court.

5. The contentions raised by the counsel for the petitioner were as follows:

a) No notice was given to the petitioner under Sections 7(2), 9(4) and 11(b) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

b) The notice claimed to have been sent is not in accordance with law and more particularly prescribed under Rule 8(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978.

c) In any event, the possession alleged to have been taken was not valid and no notice was ordered as per Section 11(5) of the Act.

d) Without prejudice to these contentions, it was also submitted that inasmuch as the possession of the land continues to be with the petitioner, the benefit of Sections 2 and 4 of the TN Act 20/1999 (w.e.f.16.06.1999) will enure to the benefit of the petitioner.

e) The lands are classified as agricultural lands and continues to be agricultural land and in terms of Section 3(p) of the Act such lands could not have been covered by the Act and hence the proceedings initiated are void ab initio. There is no material under which the respondents have taken action under the Act.

6. It is the case of the petitioner that he had purchased the wet land to an extent of one acre in Survey No. 264/1, Mangadu Village from its previous owners Balasundaram and others by a registered sale deed dated 17.08.1975. The vendors of the petitioner had obtained the property from the original owners one Raniammal and others dated 01.09.1956. The petitioner has been in continuous possession of the land. He has been paying Annual Kist to the Village Administrative Officer. When the Kist was not collected for the last five years, he contacted the Village Administrative Officer, who in turn informed him that the land was coming under the Ceiling Act. It was claimed that no notice u/s 7(2) was served on him. While the name of the petitioner is R. Krishnan, the notices were sent in the name of one C. Krishnan. Since no opportunity was given, he were not aware of the proceedings. In support of his contention, reliance was placed upon the following judgments of this Court:

a) K.R. Kothandaraman v. The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax, Chepauk and Anr. 2005-4-L.W. 299.

b) C.N. Chandran and Ors. v. Government of Tamil Nadu, Rep. By Secretary, Revenue Department, Chennai and Anr. (2006) 3 MLJ 1050.

7. It is contended by the learned Counsel for the petitioner that the land in question is an agricultural land and therefore, the Act will not apply. In this context, he refers to the judgment of this Court in S. Sarangapani Iyengar v. The

Assistant Commissioner, Urban Land Tax, Alandur and Saidapet reported in 1988-1-L.W 152 wherein in considering the definition "urban land" under the Tamil Nadu Urban Land Tax Act, 1966, M.N. Chandurkar, C.J. speaking for this Court in paragraphs 4 and 5 had observed as follows:

4. At the threshold, it is difficult to uphold the finding given by the Tribunal that the lands in question are not agricultural lands. The Tribunal seems to have taken a view that merely because the lands were kept vacant during the Fasli years 1381 85, they ceased to be agricultural lands. For such a proposition, there does not seem to be any support in any statutory provision. The lands are registered as agricultural lands in the revenue records. There are adangal records which undoubtedly show that the lands were uncultivated. They also show that they are dry lands. Whether it is agricultural land or not will depend on the nature of the lands and the purpose to which the lands are normally put. Merely because an agricultural land is not cultivated for some time, the land does not cease to be agricultural land especially when it is not put to any other use. It is difficult to appreciate the reasoning of the Tribunal that since the petitioner has merely stated that the lands in question are dry lands and that they have been reserved for formation of horticultural garden, the lands could be said to have ceased to be agricultural lands.

5. ...When we deal with agricultural land, it must be taken into account that the presumption would be that it is going to be used for the purpose of agriculture. An agricultural land is not normally used for a building site and in any case it is not capable of being used as a building site in the normal course unless of course the owner sets a part of it apart by way of a lay out or intends to construct a building in some part of the property. Normally agricultural lands must be construed as agricultural lands and since agricultural lands are not normally used for building sites, it must be assumed that they are not capable of being used as building sites unless steps have been taken to have it used as building site. Agricultural lands will, therefore, stand excluded from the definition of "urban land" unless they are intended to be converted for building purposes or house sites. In this view of the matter, the orders of assessment in respect of the agricultural lands in question will have to be set aside.

8. Following the said judgment, the same views were adopted in respect of the definition found in Section 3(o) of the present Act in a subsequent Judgment in A. Kasi and Another Vs. Special Commissioner and Commissioner of Land Reforms and Another, . After referring to S. Sarangapani Iyengar's case (cited supra) in paragraph 5 it was observed as follows:

5. In view of the above decision, merely because the lands were kept uncultivated for some time cannot be characterised the said lands as Urban Land. The authorities below have not given any other reason to come to the conclusion that the lands are urban lands. The only reason given is that the petitioners have not cultivated the lands during the relevant period. Such a reasoning cannot be sustained.

9. Additional typed set was also filed by the petitioner enclosing the Kist receipts for the Fasli years from 1388 - 1413 dated 02.08.2003 and payment for the Fasli years from 1414 to 1419. A perusal of the original file shows notice u/s 7(2) was issued in the name of C. Krishnan and not R. Krishnan, the petitioner. It was received by one P. Kishore Kumar s/o Parasmal, 183, Mint Street. No attempt was made to explain as to who that Kishore Kumar was and why the name of the petitioner is indicated as C. Krishnan. However, along with the original file, notice papers were not circulated. Even the notice issued u/s 9(1) contained the signature of Kishore Kumar. Similarly, notice u/s 9(5) in the name of C. Krishnan was received by one N. Usha. In so far as Section 11(5) notice is concerned, it is stated that it was served by affixture by the Village Administrative Officer of Mangadu Village. The file also contains a note dated 18.09.1999 (found at page 69) stating that S. No. 264/A1, as per the records with the CMDA office, a portion is comprised of factory with low tension supply and the other portion is used as an agricultural land. In the proforma report, it was also signed by the competent authority indicating the physical features of the land. Except notification u/s 11(5), there is no delivery receipt found in the records for having taking possession of the said land. Only a report containing the sub-divisional statement for the village containing the transfer of records is found in the file.

10. In the present case, there is no explanation as to why the initial of the land owner was wrongly mentioned. Secondly, there was no attempt to serve either the petitioner being the real owner or his authorised representative. No explanation was forthcoming with reference to the serving of notice to one P. Kishore Kumar.

11. The learned Special Government Pleader sought to explain that the Usha who had received the subsequent notice was an employee in the factory found in the building. This explanation is hardly satisfactory. On the other hand, Section 11(5) notice was served by affixture. If according to the respondent, the factory is functioning with low tension supply in the land on earlier occasion and they had served the employee in the factory, as to why they sought to serve notice u/s 11(5) by affixture. There is no record to show that there was delivery of possession after taking over the land. The report sent by the Assistant Commissioner (ULT) and accepted by the competent authority shows that in the land there is a factory in a portion and the balance was shown as agricultural land. The Kist receipt for having paid kist for the entire period has also been produced by the learned Counsel for the petitioner.

12. Under the circumstances, this Court do not find that the statutory procedure has been followed in taking over the land from the land owner viz., the petitioner. With reference to the law relating to service of notice, this Court in Vasudeva Pillai (Died) and Ors. v. The Competent Authority and Anr. reported in 2010 (3) TNLJ 337 (civil) dealt with the procedure. With reference to service of notice u/s 11(5) and taking possession, this Court has considered the relevant law on the subject and the effect of not taking possession after the TN Act 20/99 was also

considered in the case of G. Saraswathi and Ors. v. The Assistant Commissioner cum Competent Authority (ULC) and Ors. reported in 2010 (3) TNLJ 283 (civil). In the absence of material records produced to the satisfaction of the Court, this Court has no hesitation to reject the contentions raised by the learned Special Government Pleader.

13. In the light of the above, the writ petition stands allowed and the impugned order stands set aside. However, there will be no order as to costs.