

(2011) 06 MAD CK 0274

In the Madras High Court

Case No : Writ Petition No's. 9541, 9575 and 9576 of 2004 and W.P.M.P. No. 1139 of 2004 in Writ Petition No. 9541 of 2004

R. Murali and Others

APPELLANT

Vs

The Principal Commissioner and Commissioner for Land Reforms and The Competent Authority Assistant Commissioner for Urban Land Ceiling and Urban Land Tax

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Constitution of India, 1950 — Article 300A

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 9(5)

Citation : (2011) 06 MAD CK 0274

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Damodaran, for the Appellant; M. Dhandapani, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—In all the three writ petitions, the Petitioners have sought for calling of the records of the Respondents dated 30.12.1994 made u/s 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act as well as the notification issued u/s 11(1) dated 14.02.1996 and the notification u/s 11(3) dated 12.06.1996 and after setting aside the same seeks to forbear the Respondents from interfering with the peaceful enjoyment of the lands comprised in Old S. No. 49/1 (New S. No. 82/2) and Old S. No. 49/2 (New S. No. 82/2) of various extents belonging to the Petitioners situated in Mathura Velappan Chavadi, Ambattur Taluk, Tiruvallur district and the proceedings should be declared to have been abated in the light of T.N. Act 20 of 1999 where the Urban Land Ceiling Act was repealed.

2. The first writ petition was admitted on 08.04.2004. Pending the writ petition, this Court granted an interim injunction restraining the Respondents from disturbing the possession of the property of the Petitioner, if not already taken

over. Subsequently, the other two writ petitions namely W.P. Nos. 9575 and 9576 of 2004 came to be filed and they were admitted on 08.04.2004. Pending that writ petitions, an interim order restraining the Respondents from taking possession of the property, if not already taken over was granted.

3. Aggrieved by the subsequent interim orders, the Respondents have filed WVMP Nos. 823 of 2006 and 945 of 2006 seeking to vacate the interim order. The said applications were supported by a counter affidavit dated 16.01.2006.

4. On directions from this Court on 01.04.2009, the original records were produced by the Respondents for perusal by this Court.

5. The Petitioners have also filed an additional typed set of papers. It is the stand of the Petitioners that the land in question originally belonged to one A. Dhanammal. She purchased the same from her vendors by way of registered sale deed dated 04.10.1952. From the date of purchase, the said Dhanammal was in possession and enjoyment of the said lands and was carrying out agricultural operations in the land. Dhanammal was married to one Arumugha Naicker and they have a son by name A. Elumalai Naciker. The husband of Dhanammal, Arumugha Naicker died during theyear 1943 and Dhanammal died on 28.11.1990, leaving their only son A. Elumalai Naicker to succeed to her entire estate.

6. The Petitioners jointly purchased the lands in question for consideration by way of registered sale deed during 1996 from the said A. Elumalai Naicker. They were also put in possession and they continue to carry on agricultural operation. The lands were never converted into urban land at any point of time either by the Petitioners or by their predecessors in title. It was only during 2003, when the first Petitioner was carrying on agricultural operations in the said lands, some revenue officials came to the lands and informed them that the land had already been vested with the Government due to the proceedings initiated under the Urban Land Ceiling Act. It was found out that the notice u/s 7(2) of the Act was served upon the son of late Dhanammal, one Krishnan. It was submitted that the said Dhanammal has no such son in the name of Krishnan. Thereafter, the Respondents have assessed the land and declared them as urban vacant land. It was also claimed that a notice u/s 9(1) was served on Krishnan. As there was no objection from the land owner, further proceedings were continued. Neither the Petitioners nor their vendor were aware of these proceedings. Infact the said Dhanammal was staying with her son at Royapuram at Chennai till her death. The agricultural operation was also carrying on in the said land. Therefore, it was claimed that since it is an agricultural land, the question of acquisition under the Urban Land Ceiling Act does not arise. In any event, no attempt was made to serve the real owner and the proceedings as per law was not followed for effecting service. If at all any possession was taken, it was symbolic as the physical possession continued to vest with the present land owners. Even the Adangal, chitta extracts and other revenue records show that there was continuous agricultural operation and therefore, the proceedings should be

declared as illegal.

7. In the counter affidavit, it was claimed by the Respondents, that notices were not sent to the local address but was also served at the Royapuram address through special messenger. Therefore, it cannot be said that no notice was given. Even Elumalai Naicker, son of Dhanammal did not get the patta transferred in his name after the death of his mother. There was no proof that there was any agricultural operation carried on. It was accepted that Dhanammal died on 28.11.1990 leaving her son Elumalai Naicker. The Notice u/s 7(2) of the Act was served on one Krishnan and as no objections were received, proceedings have been concluded and possession was also taken over by the Respondents. It was agreed by both sides that the original land owner Dhanammal died during November 1990 at Chennai and even the death certificate showed that she was residing at Chennai.

8. Though the Respondents claimed that notice was served at Chennai address of the said Dhanammal, notice u/s 12(7) sent to the Chennai address had come back with an endorsement "no such person" on the said address. The letter and the postal cover is found at pages 217 to 220 of the original file. It is obvious on the date when the notice was sent, the said Dhanammal was no longer alive. Further the same notice in Form 14 was said to have been served on one Muniyammal on behalf of the said Dhanammal on 29.03.2002. This statement is a false statement. Because it is not clear as to who was the said Muniyammal. Assuming that there was such a person by name Muniyammal, no one could have received in the name of Dhanammal who was no longer alive on the relevant date. In fact, on the notice dated 08.04.2002 issued u/s 12(6), the endorsement showed that since the lands have been sold, the person refused to receive the notice. The various endorsements showed that the Respondents have not cared to serve the real owner. It only shows that attempts have been made to put up records so as to make it appear that there was an effective notice. It is rather unfortunate when a valuable land of the owner is taken away, no attempt was made to serve either the original owner or the subsequent purchasers. The Respondents ought to have taken appropriate steps to serve the owner in the manner known to law. Any deviation in the procedure is certainly repugnant to the provisions of the ULC Act besides resulting in the constitutional infringement of Article 300A of the constitution.

9. Very recently in the matter of Land Acquisition Act (1894), the Supreme Court has laid down the law relating to service of notice and the presumption of proof of service vide judgment in The Special Deputy Collector, Land Acquisition C.M.D.A. Vs. J. Sivaprakasam and Others, . It is necessary to refer the following passage found in paragraph 31:

31. The acquiring authority need not prove actual notice of the proposal to acquire u/s 4(1) of the Act, to the person challenging the acquisition. As the purpose of publication of public notice provided in Section 4(1) of the Act is to give notice of the proposal of acquisition to the persons concerned, such notice

can also be by way of implied notice or constructive notice. For this purpose, we may refer to the difference between actual, implied and constructive notice:

1. When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice.

2. If from the facts it can be inferred that a party knew about the subject-matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfilment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition.

10. In the present case, neither notice was served on the original owner and subsequent to her death, when the Tapal had returned unserved, no effort was taken to serve her son. Even the subsequent purchaser was not served. Therefore, it cannot be said that the Respondents have made any attempt to serve the land owner. Hence, any proceedings initiated by them is clearly illegal. Under such circumstances, the original proceedings itself stands vitiated. Even otherwise, any possession taken pursuant to the vitiated proceedings is also illegal. This Court is satisfied that the attempt made by the Respondents seeking to take over the land without due process is a clear constitutional infringement of the Petitioners' right as well as the right of their predecessor in title.

11. In view of the above, all the three writ petitions will stand allowed. The impugned order stands set aside. No costs. In view of the Repealing Act T.N.20 of 1999, no proceedings can be initiated and the Petitioners are entitled to enjoy the property without any interference from the Respondents.