(2008) 12 MAD CK 0326

In the Madras High Court

Case No : Writ Petition No. 2189 of 2003

R. Sundaramurthy and Ms. S. Priya APPELLANT

Vs

The Assistant Commissioner, (Urban Land Tax) RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 21(1), 21(2), 9(1), 9(4), 9(5)
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3(1), 4

Citation : (2008) 12 MAD CK 0326

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A. Muthuraman, for the Appellant; P. Muthukumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent.

2. It has been stated that the second petitioner is the daughter of the first petitioner. The first petitioner had purchased the property measuring 3645 Sq.ft comprised in Survey Nos. 163 (Part), 164 (Part), 165/2 (part 2) in Athipattu Village, Chengalpattu Taluk from M. Shanmugam, under a registered sale deed, dated 7.3.97, as Document No. 976/97, in the office of the Sub Registrar, Konnur. The first petitioner and his daughter S. Priya, the second petitioner herein had started an industry in the said property in the name and style of `Sivakami Engineering Works'' in the year 1999. The first petitioner had obtained electricity service connection for running the said industry and he has also been paying the property tax. Thus, it is clear that the petitioners are in possession and enjoyment of the said property. While so, the first petitioner had received an order from the respondent, on 12.12.2002, stating that 35,355 Sq.Mts in Athipattu Village, comprised in Survey Nos. 162, 163, 164, 165/2, 168/1 & 2,

169, 170/3, 174/1 & 2 and 175 are excess vacant lands and therefore, they were to be acquired u/s 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. From the said communication, it was gathered that the Government had granted exemption to M/s. Friends Brick Industries under Sub-section (1) of Section 21 of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, for retaining 35,355 Sq.Mts. of excess vacant land in Athipattu Village. As per the said communication, a show cause notice is alleged to have been issued to the said Brick Industries, on 30.8.2000, and it had been served, on 4.1.2001. Since the said Brick Industries did not respondent the Government had passed an order in G.O.Ms. No. 466, Revenue (ULC) Department, dated 5.11.2001, withdrawing the exemption already granted and to acquire the excess vacant land, as per Section 3(1)(b) of the Tamil Nadu Urban Land (Celing and Regulation) Repeal Act, 1999.

3. It has been further stated that from the said communication it was noted that a notice u/s 9(4) and a draft statement under 9(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been issued to one Vasudevan of Sivagami Engineering Company. Even though the first petitioner is owner of the land and the second petitioner is the proprietrix of the Sivagami Engineering Works established in the said land, no notice had been served on the petitioners either u/s (4) or u/s 9(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. However, the impugned order, dated 12.12.2002, had been passed without affording an opportunity to the petitioners to put forth their case. Further, as per Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, all proceedings pending on the date of the commencement of the said Act would stand abated. In the present case, since the petitioners were in possession and enjoyment of the property in question, the benefit of Section 4 of the the Repeal Act, 1999, would be applicable to the petitioners and therefore, the impugned order of the respondent, dated 12.12.2002, would be without jurisdiction and contrary to the law applicable to the case. It would also be arbitrary, as it is in violation of the principles of natural justice.

4. At this stage of the hearing of the writ petition, a copy of G.O.Ms. No. 111 Revenue (ULC I(1) Department, dated 3.3.2007, has been placed before this Court by the learned Counsel appearing on behalf of the respondent. The said Government Order, dated 3.3.2007, reads as follows:

ORDER

The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, was enacted with a view to imposing ceiling on vacant land in urban agglomerations and to prevent the concentration of urban land in the hands of a few persons. The said Act was implemented in Chennai, Coimbatore, Madurai, Salem, Tiruchirappalli and Tirunelveli Urban Agglomerations. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, (Tamil Nadu At 24 of 1978) was repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Tamil Nadu Act 20/1999).

2. Section 3(1)(b) of the Repeal Act, which reads, "the validity of any order granting exemption under Sub-section (1) of Section 21 of the Principal Act or any action taken there under" shall not be affected. It has been originally interpreted the wording "any action taken thereunder" as though Section 21(2) also has been saved and accordingly action has been initiated against all violations of exemption conditions. The Tamil Nadu Land Reforms Special Appellate Tribunal and the Hon''ble High Court, Chennai, have however viewed that Section 3(1)(b) of the Repeal Act carries a specific reference only to exemption orders passed u/s 21(1) and that it does not cover cases where orders have been passed withdrawing exemptions issued u/s 21(2) for violation of conditions or any order refusing grant of exemption. Holding that Section 21(2) of the Principal Act has not been saved and quoting the decision of the Apex Court wherever applicable, the Tribunal and the High court, Chennai, have set aside, without exception, all the exemption withdrawal orders and further proceedings by the competent authority in several places disposed till now. It was proposed to examine an amendment to the said Repeal Act so as to overcome the legal constraints and enable the Government to proceed against the cases of violation and withdrawal of exemption, based on the suggestions made by the special Commissioner and Commissioner of Land Reforms and Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax in the references fist and second read above.

3. The Government have examined the issue in consultation with the Advocate General in detail.

4. The Government after careful consideration have come to the conclusion that Tamil Nadu Act 20 of 1999 is very clear and categorical, besides being comprehensive and hence, the question of bringing out any amendment with retrospective effect is neither necessary nor feasible and any such amendment with retrospective effect will not stand judicial scrutiny.

5. Accordingly, the Government pass the order that all actions taken under Sub-section (2) of Section 21 of the Tamil Nadu Urban Land (Ceiling and Regulation) At, 1978 (Tamil Nadu Act 24 of 1978) shall abate and further actions be dropped.

6. The Principal Commissioner and Commissioner of Land Reforms is requested to take necessary follow up action in the matter.

5. The learned Counsel for the petitioner had submitted that in view of the Government Order in G.O.Ms. No. 111 Revenue (ULC I(1) Department, dated 3.3.2007, the impugned order of the respondent, dated 12.12.2002, in Ref. No. Rc.651/2000/B, is to be quashed.

6. The learned Counsel appearing on behalf of the respondent has not refuted the said submission of the learned Counsel for the petitioner.

7. Therefore, the impugned order of the respondent, dated 12.12.2002, is quashed and the writ petition stands allowed. No costs.

