(2008) 11 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 8606 of 2004

Renuka Devi, Sampath, Rama and Senthilnathan APPELLANT

Vs

The Assistant Commissioner, Urban Land Tax RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 11(5), 11(6), 7(2), 9(5)
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4
Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 — Rule 8(2)

Citation : (2008) 11 MAD CK 0053

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V.K. Vijayaraghavan, for the Appellant; A. Arumugam, Spl.G.P., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The writ petition which was originally numbered as CRP. No. 1947 of 2003, was transferred from the file of the Tamil

Nadu Land Reforms Special Appellate Tribunal in SRP. No. 20 of 2001 on its abolition.

2. The petitioner challenges the order of the Assistant Commissioner of Urban Land Tax, Alandur, dated 16.2.1998. The said order was issued

u/s 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. It is stated in the order that since the land owner was not residing in

the village and his present address was not known to them, Section 7(2) Notice was given by affixing a notice stuck on a pole in the land and

therefore, subsequent proceedings could not be sent to him and the same was done only by way of affixture. But, such a procedure is not contemplated neither under the Act, nor under the Rules made thereunder.

3. Under Rule 10 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the Notice will have to be sent under Rule 8(2) (a) by

sending the same by Registered Post addressed to the person concerned. This aspect has been considered by me in the decision in Tessy John Vs.

The Principal Commissioner and Commissioner of Land Reforms, The Assistant Commissioner/Competent Authority, Urban Land Ceiling

(Alandur) and The Tahsildar, . Following the two earlier Division Bench judgements of this Court, I have held as follows:

12. 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) reported 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:

Para 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 as stated supra, taking possession of

lands on 30.4.1999 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 16.9.1999, 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]

13. 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 paragraphs 8 and 9

is extracted below:

Para 9: There is nothing on the record 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 and on failure the possession of the lands 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 possession was taken on 10th Feb., 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 10: 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 proceeding shall stand abated.

[Emphasis added]

4. In the light of the above settled position of law, the entire exercise by the respondent 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. Accordingly, the Writ Petition is

allowed and the impugned order of the respondent dated 16.2.1998, passed u/s 9(5) of the Act 24 of 1978 will stand set aside. The petitioner is

entitled to have the benefit of Section 4 of the Tamil Nadu Act 20 of 1999 and be in absolute enjoyment and possession of the property in

question. There is no order as to costs.

