

(1985) 10 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No's. 2569 of 1979 and 6395 and 6919 of 1980

R.L. Narasimhan (Deceased by Lrs.)

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 29-10-1985

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu Urban Land Tax Act, 1966 — Section 2(13), 5

Citation : (1986) 99 LW 212

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Advocate : M.S. Sundararajan, for the Appellant; K.S. Bakthavatsalam and R. Lokapriya, Addl. Govt. Pleader (Tax), for the Respondent

Judgement

1. In these writ petitions, the Petitioners, though different, have prayed for the issue of writs of certiorari to quash the orders dt. 23-5-1979, 16-

10-1980 and 30-10-1980 passed by the second respondent herein in Cases Nos. 15/1385/Tambaram, 16/1385/ Tambaram and

17/1385/Tambaram respectively. The facts giving rise to these writ petitions may be briefly stated as under :

All the petitioners own lands in No. 166, Tambaram village. The Petitioner in W.P. No. 2569 of 1979 owned a total extent of 42 grounds and

1131 sq. ft. situate in Survey Nos. 330/2C, 331/2C, 274/2 and 274/7 and comprised in Patta No. 778. An extent of 42 grounds and 694 sq. ft.

was owned by the petitioner in W.P. No. 6395 of 1980 in four survey numbers 274/3, 274/6, 330/2D and 331/21) in Patta No. 779.42 grounds

and 1130 sq. ft. comprised in Survey Nos. 274/4,330/2B and 331/2A were owned by the petitioners in W.P. No. 6919 of 1980 in Patta No.

780. All, these lands owned by the petitioners are registered as dry lands in the revenue records. The provisions of the Tamil Nadu Urban Land Tax Act, 1966 (hereinafter referred to as the Act) were made applicable to the area where the lands of the petitioners are situate on and from 1-7-1975 as per S. 1-A of the Act. The petitioners submitted a return as required under S. 7-C of the Act and since the returns so filed were found to be defective in respect of valuation, an enquiry was held under S. 10(2) of the Act. In the course of the enquiry the petitioners claimed that the classification of the lands as dry in the village accounts was incorrect as crops had been grown on these lands and as such, the provisions of the Act will not apply to the lands in question. Thereupon, the petitioners were granted time to produce extracts from the adangal for five faslis prior to 1385 to establish that the lands were under cultivation prior to the application of the Act with effect from 1-7-1975. Certain adangal extracts for faslis 1381 to 1385 issued by the Tahsildar, Saidapet, were also produced by the petitioners to establish that the lands in question were under cultivation and therefore fell outside the scope of the provisions of the Act. Some objections were also raised by, the petitioners to some of the entries found in the adangal extracts. An account book was also relied upon to establish the incurring of expenses in connection with the agricultural operations carried on in the lands in question. An objection was raised that as the municipality had not levied property tax and vacant land tax, the lands had to be treated as having been used for agricultural purposes. The second respondent, while proceeding to consider the aforesaid objections raised by the petitioners, held that (i) the lands in question had not been cultivated for a period of five years before the commencement of the Act and proved to be continued to be so cultivated and entered as such in the Government accounts as per G.O.Ms. No. 3526, Revenue Department, dt. 15th June, 1973 as the adangal entries showed that there was no cultivation during Faslis 1382, 1383 and 1384 and therefore the lands will not qualify for exemption from the levy of Urban Land Tax and (ii) that the value of the Urban land could be justly and reasonably fixed at Rs. 4,000/- per ground for Survey Nos. 330/2c, 330/2D, 331/2D, 330/2B and 331/2A and at Rs. 800/- per ground for Survey Nos. 274/2, 274/3, 274/4, 274/6 and 274/7. On the conclusions arrived at as aforesaid, the first respondent proceeded to levy Urban Land Tax on the

petitioners at the prescribed rates. It is the correctness of these orders of assessment so passed by the second respondent that is questioned in these writ petitions.

2. During the pendency of W.P. Nos. 2569 of 1979 and 6395 of 1980, the petitioners therein died and their legal representatives have been brought on record by orders dt. 7-7-1983 in W.M.P. No. 1962/1982 and 8-3-1984 in W.M.P. No. 1959 of 1983 respectively.

3. In support of these writ petitions, the learned counsel for the petitioners first contended, drawing attention to the definition of "Urban Land

under S. 2(13) of the Act, that both wet lands and dry lands would be agricultural lands and that the exclusion of wet lands only from the scope of

the definition of "Urban Land" would be discriminatory. The learned counsel also submitted that the same class of property viz., agricultural land

similarly situate is subjected to a differential treatment for purposes of the Act, in that, the wet lands alone are excluded from the purview of the

Act, while dry lands are taken in. Reliance was placed in this connection by the learned counsel upon certain observations in the decision of the

Supreme Court in *Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another*, . Attention in this connection was also drawn to the

decision in *T. Sarojini Devi Vs. T. Sri Kristna*, and *Commissioner of Wealth-tax Vs. P. Sankaran Nair*, . On the other hand, the learned Additional

Government Pleader submitted that though wet and dry lands may both fall under the head "agricultural lands", yet, there is a well marked

distinction between the two types of lands and that would justify the exclusion of one kind of agricultural land from the operation of the provisions

of the Act and not the other. It was also further submitted that the Act being a taxation law, the State has a wide discretion in selecting the persons

or objects and such a statute is not open to attack on the ground that it taxes dry lands and not wet lands. Reliance in this connection was placed

on the decisions of the Supreme Court in *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, , *East India Tobacco Co. Vs.*

State of Andhra Pradesh, , *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.*, and

Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others, . It was also contended that a taxing enactment is not open to

challenge merely on the ground that the tax is harsh or excessive and reference was made in this connection to Hari Krishna Bhargav Vs. union of india (UOI) and Another, .

4. Under S. 2(13) of the Act, ""Urban Land"" includes any land used or capable of being used as a building-site and includes garden or grounds, if any, appurtenant to a building, but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops. Ordinarily, the expression ""Agricultural land"" would include both wet as well as dry lands; but it cannot be disputed that they are different and distinct, even as lands. Wet lands have ordinarily a source of irrigation which is a registered source, while dry lands do not have such a source. It is common knowledge that dry lands remain uncultivated, except when there are rains. There being no registered source for the irrigation of dry lands; this is but natural. Again, there is also a difference in the rate of assessment for wet and dry lands. Normally the assessment for wet lands is higher than that for dry lands. The -uses to which wet lands and dry lands can be put are also different. Wet cultivation takes in the growing of crops like paddy etc. There is no paddy cultivation on a dry land; but occasionally some crops are raised depending upon the rains. Plantations are grown on dry lands. It is therefore evident that though wet lands and dry lands can be brought under the broad classification of agricultural lands, they are distinct and separate. Bearing this in mind and the nature of the measure viz. taxing measure, it is seen that the Legislature has got the widest amplitude in subjecting certain kinds of agricultural land for purposes of urban land tax levy and not others. That is the justification for one class of agricultural lands being taken outside the purview of the Act, while another. class of lands is brought within it. The exclusion of wet lands from urban land and the inclusion of dry lands within urban land under S. 2(13) of the Act is thus based upon a rational classification with reference to the nature and incidence of the particular type of land. There can, therefore, be no valid objection to the exclusion of the wet lands from the definition of ""Urban Land"" under S. 2(13), of the Act.

5. This is also justifiable with reference to the well established principles relating to taxing statutes. Considering the question whether it is open to

the Legislature to decide on what to levy tax and at what rate, it has been pointed out by the Supreme Court in *Raja Jagannath Baksh Singh Vs.*

The State of Uttar Pradesh and Another, that it is not for the Court to consider whether some other objects should have been taxed or whether a

different rate should have been prescribed for the tax; but that it is for the Legislature to classify persons or properties into different categories and

tax them differently and if the classification made is rational, the statute cannot be challenged merely because different rates of taxation have been

prescribed for different categories of persons or objects. Similarly, in *East India Tobacco Co. Vs. State of Andhra Pradesh*, it was again

reiterated that in deciding whether a taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in

selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not

others. It has also been laid down that it is only when within the range of its selection, the law operates unequally, and that cannot be justified on

the basis of any valid classification that it would be violative of Art. 14. It would be relevant in this connection to refer to the observations of the

Supreme Court in *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.*, wherein the

validity of the Act was challenged and upheld. At P. 618 of ITR : (at P.178 of AIR), the Supreme Court observed thus:

.....The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies

which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the Legislature and not to the

Courts. In applying the test of reasonableness it is also essential attribute of sovereignty and constitutional provisions relating to the power of

taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.

To similar effect is the decision of the Supreme Court in *Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others*, . There also it

has been pointed out that although a taxing statute can be challenged on the ground of infringement of Art. 14 of the Constitution, in deciding

whether the law challenged is discriminatory, it has to be borne in mind that in matters of taxation the Legislature possesses the largest freedom in

the matter of classification and wide discretion can be exercised in selecting person or objects which will be taxed and the statute is not open to attack on the mere ground that it taxes some persons or objects and not others. The Supreme Court has also further pointed out that when within the range of the selection the law operates unequally and cannot be justified on the basis of a valid classification, then, there would be a violation of Art. 14. Thus, on a consideration of the well marked distinction between the wet lands and dry lands justifying their classification as two distinct or different entities and applying the aforesaid principles laid down by the Supreme Court in the decisions referred to above, it follows that no objection can be taken to the exclusion of wet lands alone from the scope of urban land as opposed to dry lands, though both kinds of land would fall under the description of agricultural lands. The reliance placed by the learned counsel for the petitioner upon the observations in the decision of the Supreme Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, does not in any manner advance the case of the petitioners. It is seen there from that inequality resulting from the properties of the same class similarly situated being subjected to an incidence of taxation is objectionable as creating an inequality amongst the holders of the same kind of property. Wet and dry lands, though comprised in agricultural lands, cannot be stated to be the same class of property. Besides, there is no question of any inequality arising from the incidence of taxation with reference to the same class of property similarly situated, being held by different persons in this case. As noticed earlier, those who held the wet lands are treated alike by excluding such holdings from the definition of "Urban Land" under the Act. But all dry lands are included. There is no differential treatment meted out to owners of wet lands in that all of them alike are taken out of the provisions of the Act and all dry lands are covered by the Act without exception. In the decision in *T. Sarojini Devi Vs. T. Sri Kristna*, the question that arose for decision was whether a mango grove is agricultural land in Lists 11 and III of Schedule 7, Government of India Act, and it was held that agricultural lands must be taken to include lands used or capable of being used for raising valuable plants or trees and the Mango grove would be agricultural land. This decision would not in any manner help the petitioners, for the Court there was concerned with the question of a Mango grove falling within the

general description of agricultural lands with reference to the entries mentioned above. That case therefore does not support the contention of the

learned counsel for the petitioners that wet lands and dry lands have been discriminatorily treated under S. 2(13) of the Act. The decision in

Commissioner of Wealth-tax Vs. P. Sankaran Nair, also cannot lend any support, for, there the question that arose was whether the lands were

agricultural lands or not and, not whether a distinction between wet lands and dry lands could be utilised for subjecting one category to tax leaving

out the other. This decision also does not support the contention of the learned counsel for the petitioners. For the aforesaid reasons, the first

contention of the learned counsel for the petitioners cannot be accepted.

6. The learned counsel for the petitioners next contented that there is indication even in the provisions of the Act to show that what is contemplated

by its provisions is only building sites whose area is also referred to in terms of grounds and not dry lands in connection with which the expression

acre"" is ordinarily used. This, according to the learned counsel, would also indicate that the Act did not contemplate dry lands, but only building

sites. On the other hand, the learned Additional Government Pleader submitted that the use of the expression ""ground"" in some of the provisions of

the Act is only to refer to a specified area but that is not indicative that even dry lands, which can fall under ""building sites"" are! not within the

contemplation of the provisions of the Act. Under S. 2(8-A) of the Act, ""ground"" has been defined as meaning an area comprising of 223 square

metres (2400 square feet). Obviously, therefore, that word refers to an area and not the character of the land, either as building, site or as dry

land. There is therefore, no substance in this contention of the learned counsel for the petitioners.

7. The learned counsel for the petitioners next contended that realising the unjust inclusion of dry lands within the definition of ""Urban Land"" in the

Act, in the exercise of powers under S. 27 of the Act, the Government had directed the grant of exemption in respect of dry lands but subject to

establishing continuous cultivation of such dry lands for a period of five years prior to. 1-7-1975 to be made out by revenue records only and his,

according to the learned counsel enacts a role of evidence contrary to the provisions of the Evidence Act. On the other hand the learned Additional

Government Pleader invited attention to G. O. Ms. No. 3526, Revenue Department, dt. 13-2-1976, and G. O. Ms. No. 1525, Revenue

Department, dt. 17-7-1979 and contended that being in the nature of an exemption, any person claiming the benefit of such exemption, has to

establish for the grant of such exemption and he, therefore, cannot be heard to say that he would not fulfil the conditions, but should nevertheless

be given the benefit of such exemption.

8. By reason of the exclusion of wet lands alone from the scope of "Urban Land" as defined under S. 2(13) of the Act, dry lands held by the

petitioners would ordinarily fall within the scope of the Act. Realising that there may be cases where lands, though classified as dry lands, might be

under wet cultivation, the Government, in the exercise of powers under S. 27 of the Act, granted the benefit of exemption to certain lands, from the

payment of Urban Land Tax. In G.O. Ms. No. 3526, Revenue Department, dt. 15-6-1973, such exemption was granted to registered dry lands

cultivated with wet or dry crops for five fasli years prior to the date of coming into force of the Act in the City of Madras, Madurai and Municipal

towns of Coimbatore, Salem and Tiruchirapalli and which continued to be under cultivation as per the revenue accounts. This exemption would not

apply to the area where the dry lands of the petitioners are situated. G. O. Ms. No. 288, Revenue Department, dt. 13-2-1976 exempted urban

lands registered as house sites, but under cultivation with wet or dry crops for not less than five years prior to the date of coming into force of the

Act (1-7-75) in the city of Madras and belt area, city of Madurai and the Municipal towns of Coimbatore, Salem and Tiruchirapalli and which

continues to be under cultivation as per revenue accounts. If at all, the petitioners can have the benefit of exemption under G. O. Ms. No. 288,

Revenue Department, dt. 13-2-1976, treating the dry lands as house sites. But even for securing the benefit of such exemption, the petitioners have

to satisfy the authorities under the Act that the dry lands or house sites were under cultivation with wet or dry crops for not less than five years

prior to 1-7-1975 and continue to be under cultivation as per revenue accounts. It was subsequently brought to the notice of the Government that

it may not always be possible to satisfy the condition of continuous cultivation for five faslis prior to 1-7-1975 as non-cultivation during that period

might have been owing to circumstances beyond control of the owner of the land such as fire, flood, drought etc. With a view to give the benefit of exemption from the provisions of the Act even in a case where the area of urban land had remained uncultivated, owing to drought, fire, flood and other similar causes, a proviso was inserted to G. O. Ms. No. 288, Revenue dt. 13-2-1976 to that effect and if any of those circumstances, which prevented the owner from cultivating the lands was established, then, that will not be construed as break in cultivation. Being in the nature of an exemption, it is for the person claiming that benefit to make out that he has satisfied the conditions upon which the exemption could be granted and therefore, he is entitled to it. If the exemption can be made available only upon proof of cultivation for five faslies prior to 1-7-1975 with reference to the revenue records, then, the petitioners have to establish that as a fact, as otherwise, they would not have fulfilled one of the conditions upon which they can claim the benefit of the exemption. That is not the same thing as prescribing a rule of evidence with reference to the grant of exemption only by the production of revenue records. However, in this case, the petitioners did rely upon not only the entries in the adangal, but also some other evidence in the shape of account book showing the incurring of expenditure in connection with the agricultural operations. The second respondent had proceeded to reject the adangal entries on the only ground that it shows cessation of cultivation for three faslis during the period of five fasli years prior to 1-7-1975. At that time, G. O. Ms. No. 1525, Revenue Department, dt. 17-7-1979 had not been issued. Thereunder, it would be open to owners of land to establish that on account of one of the circumstances mentioned in the proviso, there had been cessation of cultivation and that would not make any difference to the grant of exemption. In my view, there is no justification whatever for denying the petitioners an opportunity to establish whether there was a cessation of cultivation on any of the grounds mentioned in the proviso in G. O. Ms. No. 1525, Revenue Department, dt. 17-7-1979, especially when the returns filed by the petitioners had also adverted to the drought conditions prevailing. In any event, since the adangals produced also showed that there was no cultivation for some years, that might have been due to one of the circumstances mentioned in the proviso introduced by G. O. Ms. No. 1525, Revenue Department, dt. 17-7-1979. The claim being one for

exemption, if the petitioners are able to sustain their case for exemption on the basis of the proviso inserted in G. O. Ms. No. 1525, Revenue

Department, dt. 17-7-1979, they cannot be deprived of the same. It is true that G. O. Ms. No. 1525, Revenue Department, dt. 17-7-1979 came

to be issued only after the orders were passed by the second respondent; but the orders had not attained the finality in the sense that the writ

petitions have been preferred to this Court and they have been pending and G. O. Ms. No. 1525, Revenue Department, dt. 17-7-1979 had been

issued during the pendency of the writ petitions, the benefit of which can certainly be availed of by the petitioners. On that ground, this Court is

inclined to grant an opportunity to the petitioners for establishing that they are entitled to the benefit of the proviso introduced by G.O.Ms. No.

1525, Revenue Department, dt. 17-7-1979.

8A. The learned counsel for the petitioner next contended that entries in the adangal are not made to the knowledge of the pattadars and in

contrast to the procedure laid down under S. 165 of the Estates Land Act, no rules have been laid down regarding the method and manner in

which the entries in adangals should be made and this leads to wrong entries being made in the adangals with no possibility of correction, thus

prejudicing the claim for exemption made. It is true that the entries in the adangal are not made after notice to the pattadars but only after an

inspection by the concerned village officials. The possibility of some mistake creeping in cannot also be totally ruled out. Even so, with reference to

the entries in adangal extracts, it would still be open to the pattadars to make out that any particular entry is an erroneous one by drawing attention

of the authorities and praying to have the same rectified. So long as that has not been done, there cannot be any assumption that any particular

entry is an erroneous entry and that had caused prejudice to person claiming exemption. In this case, it was pointed out that the entries showed that

houses had been built when there were none. However, that an entry is an erroneous one, has also to be established in the course of the enquiry

before the concerned officer functioning under the Act. It was submitted that a request for examining the village officer was made, but that was not

granted. There is nothing in the record to support the same. Even so, when the case of the petitioners is that some wrong entries have been made in

the adangal, in fairness, they should have been given an opportunity to establish whether those entries were wrong entries as claimed by them.

Denial of an Opportunity to the petitioners in that regard has also resulted in the refusal of the claim for exemption made by them.

9. The learned counsel next contended that the non-levy of property tax by the municipality is a clear indication that the lands were used for

agricultural purposes. Likewise, the non-levy of vacant land tax was also pressed into service to claim that the lands belonging to the petitioners

were being used for agricultural purposes. I am of the view that there is no substance in this contention, Municipal property tax is based on the

annual letting value. The charge under the Act is on the market value of the urban land. Thus, the basis of the two taxes are very different. The non-

levy of Municipal tax is therefore not decisive of the user of the lands for agricultural purposes.

10. Lastly, the learned counsel for the Petitioners contended that the second respondent had clubbed large extents in separate survey numbers for

purposes of fixation of the market value of the land without considering the advantages and disadvantages of the extent in each survey number and,

therefore, the fixation of the market value in the manner done had prejudiced the petitioners. Reliance in this connection was also placed. by the

learned counsel for the petitioners upon the decision in *Sarada Binding Works v. Asst. Commr. of Urban Land Tax, North Madras, Madras*

84,1979 TLNJ 253. On the other hand, the learned Additional Government Pleader submitted that with reference to the data lands near about the

lands belonging to the petitioners the market value had been fixed and, therefore, no exception can be taken to it.

11. There is no substance in this objection ,raised by the learned counsel for the petitioners, for, even in the very decision relied, on, it has been

pointed out that the definition under S. 2(6) of the Act of "each urban land" does not mandate the taking of each survey number or sub division as

the basis or unit for the purposes of valuation. It is also further pointed out that the urban land% held by the "owner in each survey number will

have to be taken as a unit for the purposes of valuation and not the entire holding. This is also illustrated with reference to the example of a person

owning urban land situate in ten different survey numbers in which case there would be difficulty in determining the value of the land in each one of

the survey numbers and it is only with a view to avoid this, the definition "each urban land" had been introduced to enable the authorities to treat the land situate in a survey number as a unit for the purposes of valuation. The method adopted in these cases does not appear to be contrary to the principle laid down in the decision referred to above. Therefore, this contention of the learned counsel for the petitioners is also rejected.

12. A faint objection was raised by the learned Additional Government Pleader to the effect that the petitioners have not exhausted their remedies by way of any appeal as well as a revision available under the provisions of the Act and, therefore, this Court ought not to be exercising its jurisdiction under Art. 226 of the Constitution. This argument might have been accepted at the time when the Court was considering the question of entertaining the writ petitions; but after the expiry of a period of nearly six years after the filing of the writ petitions and the statutory remedies, having, in the meanwhile, become totally barred, it would not be just or equitable that the writ petitions should be thrown out on the ground of the availability of an alternative remedy.

13. Since it has been earlier held that the petitioners will be entitled to establish the availability of exemption to them from the provisions of the Act under the proviso inserted by G. O. Ms. No. 1525, Revenue Department dt.17-7-1979, the orders of assessment passed against the petitioners are quashed and the matters are remitted to the second respondent to be dealt with and disposed of in accordance With the observations and directions given in this judgment. Consequently, the rule nisi is made absolute and the writ petitions are allowed to the extent indicated above. There will, however, be no order as to costs.

14. Order accordingly.