

(2009) 09 MAD CK 0188
In the Madras High Court
Case No : Writ Appeal No. 861 of 2006

S. Balasubramaniam and Mrs. Lalitha Balasubramaniam	APPELLANT
Vs	
The Special Commissioner and Commissioner of Land Reforms, Competent Authority, Urban Land Ceiling and The Tahsildar	RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 21, 6, 7, 9
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 11(1), 11(3), 11(5), 11(6)

Citation : (2009) 4 LW 826 : (2009) 8 MLJ 529

Hon'ble Judges : Prabha Sridevan, J; M. Sathyanarayanan, J

Bench : Division Bench

Advocate : V. Ramesh, for the Appellant; M. Dhandapani, Spl. Govt. Pleader and P. Gurunathan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—In the writ petition, the learned single Judge observed that the facts revealed that even prior to the coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 ("Repeal Act" in short) with effect from 16.6.1999, possession had been taken by the Government on 21.2.1997 and therefore, the case of the writ petitioners that that they were still in possession cannot be taken as a legal possession and therefore, the writ petition was dismissed. Against that, this appeal has been filed.

2. Learned Counsel for the appellants submitted that the appellants had bona fide purchased the property in Plot Nos. 19 and 20, subject matter of the writ petition, on 17.4.1989 and on 22.3.1993. There is a small scale industry in the said land and the appellants are in possession of the land; by the proceedings under the Urban Land (Ceiling and Regulation) Act 1978 ("Act" in short), 350 sq. mts. had been declared as excess; the order u/s 9(5) had been passed on 31.10.1995 and the final statement was dated 16.12.1997; it is only the vendor

of the appellants who received the notice in these proceedings; but what had grievously prejudiced the appellants is that, while Section 11(5) of the Act mandatorily requires that notice should be issued not only to the owner, but any person in possession, then regardless of the circumstances under which the person in possession may have come into possession thereof, still he is entitled to the notice. According to the learned Counsel, the notice under Sections 11(5) and 11(6) of the Act were not given. Learned Counsel also submitted that possession of the land could not have been taken from them in a manner known to law since no "Panchnama" was prepared; the recording of the taking of possession was not effected before witnesses; and the respondents cannot create records as if possession had been taken sitting in their office. Learned Counsel submitted that even assuming that the purchase by the appellants was not a valid purchase in the eye of law, in view of the provisions of the Act, yet the appellants were entitled to notice and when there is illegality in the procedure, the Government could not have taken possession of the land and the appellants are entitled to the benefits of the Repeal Act. Learned Counsel referred to the following judgments, reported as well as unreported:

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,

Anurag Virmani Vs. State of M.P. and Another,

Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others,

W.P. No. 1584 of 2009 dated 7.8.2009 [Sree Jayalakshmi Brick Industries v. Special Commissioner and Secretary to Government, Revenue Department]

3. Per contra, Learned Special Government Pleader submitted that the appellants are not bona fide purchasers; they were fully aware of the proceedings initiated under the Act; the vendor of the appellants M/s. Kasaka Engineering had claimed exemption from the Act and the same was granted subject to certain conditions, but since the vendor had not complied with the conditions, proceedings were initiated for withdrawal of the exemption and even then, it was brought to the notice of the appellants that the withdrawal of exemption was pending enquiry and it was open to the appellants to make their submissions; therefore, the operation of the Act and the consequent declaration of excess land had been postponed only because there was a protection of exemption, and once that exemption was withdrawn, it was open to the State to declare how much was excess. Learned Special Government Pleader would point out that it is not as if the entire land belonging to the appellants was declared as excess, but it was only a small portion of 350 sq. mts. He submitted that even assuming that the appellants had a small scale industry, which was admittedly only in Plot Nos. 15 and 16 as seen from the writ affidavit, while the property in question is situated in Plot Nos. 19 and 20, there is enough appurtenant land to the factory in Plot Nos. 19 and 20 itself, excluding the land declared as excess and therefore, none

of the grounds raised is valid. Furthermore, he submitted that the records will show that possession of the land was actually taken even in 1997, whereas the writ petition has been filed only in 2005.

4. Though the learned single Judge had specifically observed that the learned Government Advocate was directed to give particulars regarding the proceedings initiated under the provisions of the Act and that the facts revealed that possession was taken, the learned Counsel for the appellants requested this Court to again go through the records and therefore, we had called for the records.

5. The facts are stated hereunder:

On 9.9.1986, G.O. Ms. No. 1231 was issued by the Revenue Department exempting an extent of 350 sq. mts. of excess urban vacant land for industrial expansion purposes. This was granted to the vendor of the appellants. The conditions subject to which the exemption was granted was that the exempted land must be put to use for the stipulated purpose within two years of the order of exemption; it cannot be sold, gifted, leased, mortgaged or alienated in any other manner and other similar conditions. Paragraph 5 of the Government Order provides that if the company violated any of the aforesaid conditions, the exemption granted u/s 21(2) of the Act will be withdrawn and if such exemption is withdrawn, the land shall be acquired by the Government. The sale deed in favour of the appellants was executed on 17.4.1989 and in 1993. This relates to Plot Nos. 19 and 20 bounded on the west by Plot Nos. 15 and 16 belonging to the appellants. There is no mention of any superstructure in the said land. On 20.4.1990, the Assistant Commissioner (ULT), Tambaram issued a notice to the first appellant (since deceased) that M/s. Kasaka Engineering had sold the land covered by the exemption to the appellants and that there was an enquiry for which the appellants were asked to appear. Another notice was also issued in this behalf on 18.5.1990. On 22.6.1990, the vendor of the appellants wrote a letter not mentioning the sale in favour of the appellants and reporting that they would be able to show utilisation of the exempted land. On 21.3.1991, by G.O. Ms. No. 482, Revenue Department, the Deputy Secretary to Government examined the objection with the necessary documents and since M/s. Kasaka Engineering had not complied with the conditions stipulated, the exemption granted was withdrawn and the request for further extension of time was rejected. The Commissioner of Land Reforms was requested to take action to acquire the excess land. The notice u/s 9(5) of the Act was served on the vendor of the appellants and they had also received it. On 31.10.1994, a Field Sketch Map is enclosed in the file which demarcates the land retained in Survey Nos. 301/1A and 1B and the excess land and also the existing road. His area has been checked and the map is signed by the Inspector of Survey (ULT) and the competent authority. On 16.12.1994, a notice was issued along with the final statement u/s 10(1) of the Act. This was also received by the vendor of the appellants. A notification u/s 11(1) was also made. The officers have visited the

land and they found no one there and since the notice had also been issued to the owner, which has been served on him, possession had been taken on 21.2.1997.

6. It is the case of the learned Counsel for the appellants that when possession was with them, the respondents could not have taken possession in accordance with law and they have referred to various judgments. But the judgments referred to by them will help the appellants only if factually they are identical.

7. In this case, we have already seen that the appellants were informed about the proceedings for withdrawal of exemption. The enquiry was posted on 7.5.1990 and they were asked to appear with all the connected records that since the local enquiry revealed their purchase. But yet, the appellants have waited till 2005 and filed the writ petition. They knew about the proceedings under the Act even in 1990. The submissions made by the learned Counsel for the appellants that there are superstructures in the land in question does not appear to be correct. In the affidavit filed in support of the writ petition, it is seen that they had purchased in 1985, Plot Nos. 15 and 16 in Survey No. 309/1 from one Ramadurai and the affidavit states that the lands in Plot Nos. 15 and 16 were progressively converted. There is no mention of buildings on Plot Nos. 19 and 20. Thereafter, in paragraph 4 of the affidavit, it is stated that for expansion of business, Plot Nos. 19 and 20 were purchased in 1993 and 1989 respectively. Since even as on 20.4.1990 the appellants were put on notice regarding the proceedings, we are unable to understand how they proceeded to purchase the property in 1993, and it is only in Plot No. 19 that this excess land was determined. In paragraph 5 of the affidavit, they have referred to the notices issued to the vendor of the appellants and the objection given by the vendor u/s 9(4) of the Act. The objection given by the vendor was obviously in response to notices issued on 20.4.1990 and 18.5.1990, though very cleverly there is no mention of the show cause notice. There is also no mention of the sale in favour of the appellants, but the tenor of the objection is to the effect that if time is given, they will complete the building and comply with the conditions, subject to which exemption was granted. The appellants have also, in their affidavit, suppressed the receipt of the notice issued by the authorities in April, 1990 and May, 1990. According to them, since no notice was served on them u/s 11(5), the proceedings is bad. Very cleverly, they have stated in Ground 5(e) that they came to know about the acquisition only recently. No date is given regarding when they came to know and nothing is stated as to the steps taken by them after they were put on notice of the enquiry for withdrawal of exemption. Even after 1993, Kasaka Engineering continued to receive the notices issued under Sections 9 and 10 and therefore, the case of appellants that they were in possession of the vacant land itself is in doubt. That is why when the authorities went to the site after giving due notice to the owners, they took possession since the land was vacant. Section 11(5) does not require the authorities to use force if no force is necessary and Section 11(1) also requires the authorities to give notice only to persons in possession. According to the appellants, they are

running an industry in Plot Nos. 15 and 16. Therefore, when the Field Survey Officer came to Plot Nos. 19 and 20 to measure the land and to earmark the portion to be declared as excess, they would have definitely come to know about the proceedings and yet, for eleven years, they kept quiet and waited till they realised that they could take advantage of the Repeal Act. Now, this writ petition has been filed, claiming that they were still in possession.

8. The sale in favour of the appellants is null and void as per Section 6 of the Act which provides that no person who is holding vacant land in excess of the ceiling limit immediately before the commencement of the Act shall transfer such land by whatever mode of transfer until he has furnished the statement u/s 7 and a notification u/s 11(1) has been published. In this case, the sales in 1989 and 1993 are clearly in violation of Section 6 and are, therefore, null and void. No right flows from such void transactions. u/s 21, the Government, having regard to the purpose for which the excess land is to be used, may in public interest, exempt such vacant land from the provisions of the Act and u/s 21(c), conditions may be imposed for granting such exemption. Section 21(2) provides for withdrawal of exemption after giving a reasonable opportunity. This enquiry u/s 21(2) was held and as stated in the paragraphs supra, an order was passed withdrawing the exemption. The appellants had notice of this, but neither the appellants nor their vendor has chosen to challenge the order withdrawing the exemption. This order has become final. Section 9 deals with preparation of draft statement as regards vacant land, and the draft statement will be served in the manner prescribed on the person concerned. This has been done in this case. Then, a final statement u/s 10 has also been made after determining the vacant land as provided u/s 10(1). This notice u/s 10(1) was also served on the vendor of the appellants and the notification u/s 11(1) was effected. Section 11(5) deals with taking of possession. The land has already vested with the State Government u/s 11(3) and we have already seen that possession has been taken u/s 11(5).

9(a). 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*, the case of the appellants therein was that they were not informed of the proceedings at any point of time by either the authorities or their vendor and no notice was issued and no opportunity was given to them. This cannot help the appellants herein since the appellants knew about the proceedings under the Act even as early as 1990 and with a little effort, they could have taken steps to ascertain the direction in which the proceedings were taking shape. The writ petition is filed belatedly. The delay is not bona fide. The bald statement that they only recently came to know of the acquisition proceedings is not believable in view of the notice issued by the authorities in 1990.

9(b). In *Anurag Virmani Vs. State of M.P. and Another*, the question was, whether the appellant could be a person aggrieved, but there, the Supreme

Court held that the High Court had erred in proceeding on the assumption that the appellant had purchased the land subsequent to the issuance of the final statement and further, there was no consideration of the fact that the land was outside the ambit of the Act because it was used for agricultural purposes. This does not apply to the present case since the land is admittedly an urban land; that is why the vendor of the appellant prayed for exemption and exemption was granted and subsequently for violation of the conditions, the exemption was withdrawn and in the enquiry regarding the withdrawal of exemption, the appellants were put on notice. In spite of that, they proceeded to purchase the land. So, this decision does not help the appellants.

9(c). In *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, , the Supreme Court held that there can be no question of symbolical possession and there should be actual possession. That was in relation to the Land Acquisition Act. But in the same decision, the Supreme Court had held, "the presence of the owner or the occupier of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time...". The Supreme Court also held in that case that it is not an absolute and inviolable rule that a declaration by beat of drum or otherwise would be sufficient to constitute the taking of possession. They held that it would depend on the facts of the case. Therefore, this decision also does not help the appellants.

9(d). In W.P. No. 1584 of 2009 (supra), which according to the learned Counsel for the appellants was identical to the present case, it was held that in the absence of delivery of possession by the land owner pursuant to the notice u/s 11(5), possession should have been taken as per Section 11(6). But there, the petitioner had purchased the land in the year 1980 itself and the notification u/s 11(1) was dated 6.6.1990. Notice had been issued to the earlier owner and the Division Bench accepted that the words "any person in possession" used in Section 11(5) of the Act would really mean that regardless of the nature of possession, a person in possession ought to be served with notice. This too does not help the appellants. In this case, deliberately and in violation of the law and knowing fully well of the proceedings for withdrawal of the exemption, the land was purchased by the appellants. The notice u/s 11(5) was issued to the owner, as seen from the communication of the Assistant Commissioner (ULT) dated 31.7.1996. It was only thereafter that instructions were given to the Tahsildar to take over possession. We are unable to understand why the appellants waited from 18.5.1990 till February, 2005 to assert their rights. If the appellants really had any right, they would have rushed in to make their objections in the proceedings for withdrawal of objection and they would have challenged the order withdrawing the exemption. They did not do so. The order withdrawing the exemption has now become final and therefore, the 350 sq. mts. of land is clearly excess urban land. They cannot feign ignorance of the proceedings, as we have already stated above. The sale in favour of the appellants is also void as per

Section 6 of the Act.

10. It is true that sometimes, the records do not reveal whether the officers went to the site in question before finalising the proceedings. Here, we find that the Field Survey Officer concerned had gone to the site, earmarked the land and the exact location of the excess land. In addition, the adjacent Plot Nos. 15 and 16 are in the possession of the appellants, according to them, where they are running an industry. Therefore, their statement that they came to know about the proceedings all of a sudden only in 2005 is not true. The records show that possession has been taken. In these circumstances, we are unable to see how we can interfere with the order passed by the learned single Judge. The decisions referred to by the learned Counsel for the appellants are different on facts, as we have explained above.

11. For all these reasons, the writ appeal is dismissed. However, there shall be no order as to costs. Consequently, M.P. No. 2 of 2006 is closed.