(2007) 01 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No. 41372 of 2002

S. Seyed Mashook and S. Seyed Ahmed — APPELLANT

Vs

The State of Tamil Nadu — RESPONDENT

Date of Decision : 29-01-2007

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 6(1)
Tamil Nadu Urban Land Tax Act, 1966 — Section 1, 10(1), 11(1), 11(3), 11(5)

Citation : (2007) 3 LW 389

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Jaichandren, J.—The Writ Petition has been filed praying for the issuance of a Writ of Certiorari to call for the records from the second respondent in RC. No. 720/83, dated 21.02.1985, relating to Survey No. 14/2 of Palavakkam Village, Chennai -600 041 and quash the same.

2. Heard the learned Counsel for the petitioners as well as for the respondents.

3. The brief facts of the case, as stated by the petitioners, are as follows:

It is stated that one T.R. Krishnambal purchased one acre of casuarina thope from T.S.Swaminatha Iyer bearing plot No. 1 comprised in R.S. No. 14/A (part) in No. 142, Palavakkam Village, Tambaram Taluk, Kancheepuram District, under a sale deed, dated 11.08.1960, registered as document No. 2036 of 1960 in the office of the Sub-Registrar, Saidapet. The said T.R. Krishnambal sold northern half portion measuring about 50 cents to one S.Anthony Raj under a sale deed, dated 08.09.1964, registered as document No. 2960 of 1964, in the office of the Sub-Registrar, Saidapet. The said T.R. Krishnambal sold the southern half portion measuring about 50 cents of land, to one Mr. S. Dorai Raj under a sale deed, dated 08.09.1964, registered as Document No. 2961 of 1964 in the office of the Sub- Registrar, Saidapet.

4. The first petitioner had purchased 50 cents of land from S. Anthony Raj under a sale deed, dated 10.11.1978, registered as Document No. 2597 of 1978. The second petitioner had purchased 50 cents of land from S.Dorai Raj under a sale deed, dated 10.11.1978, registered as Document No. 2596 of 1978 in the office of the Sub-Registrar, Saidapet. The Deputy Tahsildar, Saidapet Taluk, had issued patta bearing No. 402 in favour of the first petitioner for Survey No. 14/2B measuring 45 1/2 cents, on 12.12.1978, for the faslis 1388 and the Deputy Tashildar, Saidapet Taluk, had issued patta No. 401 in favour of the second petitioner for Survey No. 14/2B measuring 45 1/2 cents, on 12.12.1978, for the faslis 1381. The pattas were renumbered as 451 in favour of the first petitioner and 450 in favour of the second petitioner. Mistakes had crept in the sale deed, while issuing the pattas for the lands as well as in mentioning the Survey numbers. Actually, it should have been Survey No. 14/2A for the first petitioner and Survey No. 14/2B for the second petitioner. Ever since the date of purchase, the petitioners are in possession and enjoyment of the said lands and immediately after purchase the petitioners planted cocoanut saplings, which are full grown and yielding. The entire land is bounded by stone walls on all the four sides. Recently, while paying the land tax for the above mentioned lands in the Revenue Department, the petitioners had come to know that a portion of the land has been acquired by the Urban Land Ceiling Authority. Thereafter, the petitioner had applied and obtained certified copies from the Assistant Commissioner of Urban Land Tax and Competent Authority of Urban Land Ceiling at Alandur, under reference No. CA. No. 69 of 2001, dated 01.03.2001.

5. On a perusal of the said proceedings, dated 21.02.1985, it has been seen,from the recital, that the erstwhile owner, T.R. Krishnambal, has filed a return u/s 6(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1976, declaring that she owns 3595 sq. mtrs,of land in Palavakkam Village. The said land has been described as a vacant land. Further, it has been stated in the said proceedings in that response to the notice issued, on 01.04.1982, the land owner had sent a letter, dated 5.4.1982, expressing her willingness to surrender the land. The members of her family were entitled to hold 3000 sq.mtrs, as on 03.08.1976. The extent owned by the land owner in Survey No. 14/2 works out to 3700 sq.mtrs. Therefore, there was an excess of 700 sq.mtrs. in her possession.

6. The first respondent had issued 9(1) statement and 9(4) notice acquiring 700 sq.mtrs. of land in Survey No. 14/2B of palavakkam village. It has been recited that the land owner had already expressed her willingness to surrender the excess land. However, in order to satisfy the statutory requirements, notices were issued to T.R. Krishnambal, on 07.10.1983 and on 26.12.1983. She had neither sent a representative nor appeared for the enquiry. Therefore, since there was no representation on her behalf and as she had already expressed her willingness to surrender the excess land, the Assistant Commissioner of Urban Land Tax and Competent Authority of Urban Land Ceiling at Alandur had passed an order, u/s 9(5) of the Act, to surrender the extent of 700 sq.mtrs. of vacant

land in Survey No. 14/2B of palavakkam village. The said order has been challenged by the petitioners in the present writ petition.

7. It has been further stated that the proceedings, dated 21.02.1985, issued by the second respondent is void, as T.R. Krishnambal was not the owner and she has already sold the land in the year 1964, to S. Dorai Raj and S. Anthony Raj. They had in turn sold the property to the petitioners herein. The petitioners in the present writ petition have further stated that the lands are not urban lands or vacant lands as they are agricultural lands and they have been entered as agricultural lands in the adangal for fasilis 1381 to 1385. The definition of "urban land" u/s 3(o) of the Urban Land Tax Act, does not include the land used for agriculture. The possession of the land continues to be with the petitioners till date. No part of the land has been surrendered pursuant to the order passed on 21.02.1985. The petitioners had obtained patta ever since the purchase in the year 1978, from the Revenue Department and they have been paying taxes to the said lands. The notices were not properly issued under the provisions of The Tamil Nadu Urban Land Ceiling and Regulation Act, 1978, as the said T.R. Krishnambal was not the owner at the relevant time when the proceedings were issued. She had divested all her rights in the year 1964 itself. Therefore, all the notices sent in her name were without jurisdiction. The Tamil Nadu Urban Land Ceiling and Regulation Act, 1978, had received the required assent, on 14.05.1978, and published in the Tamil Nadu Gazette, on 17.05.1978, on which date T.R. Krishnambal was not the owner of the said lands. Based on the wrong order, dated 21.02.1985, the Revenue Department had bifurcated the Survey numbers 14/2A into two parts in the revenue records as Survey number14/2A1, which has been shown as government lands, measuring 0.09.00 ares and the new Survey No. 14/2A2, the land belonging to the first petitioner,is shown measuring 0.09.50 ares. This bifurcation of 14/2A is also a wrongful one. If bifurcation is done, based on the urban land ceiling order, dated 21.02.1985, the new Survey No. 14/2A1 should measure only 0.07.00 ares and not 0.09.00 ares. Even here the revenue authorities have acquired an excess area of 0.02.00 ares. Likewise the Survey No. 14/2A2 should measure only 0.11.50 ares and not 0.09.50 ares. As the petitioners are continuing to be in possession of the properties in question and since the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, has now been repealed, the order of the second respondent in R.C. No. 720/83, dated 21.02.1985, relating to Survey No. 14/2 of palavakkam village, ought to be quashed as illegal and invalid in law.

7. A counter affidavit has been filed on behalf of the respondents, in which it is stated that T.R. Krishnambal, wife of P.M.Ganapathy, was the owner of the land comprised in Survey No. 14/2 of palavakkam village, measuring about one acre, by virtue of a sale deed executed in her favour as Document No. 2036/60, having purchased the land from T.S. Swaminatha Iyer. She had filed the return u/s 6(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, on 26.04.1978. In the return, the extent of the land was shown as 3595 sq.mtrs. In the 6(1) return, in the Annexure H in the column u/s 2 of the return against the

lands proposed to be surrendered, she had opted to surrender the entire land of 3595 sq.mtrs. including the portion which she was entiled to hold and requested for the payment of compensation. The extent of the land was adopted as 3700 sq.mtrs. as per the revenue records. In the second respondent office Rc.D/720/83, dated 14.02.1985, Section 9(1) draft statement and Section 9(4) notice were issued to the land owner for acquiring an extent of 700 sq.mtrs. of land in Survey No. 14/2B of palavakkam village and it was served on 22.02.1983. No reply or representation has been made in this regard from the owner. As the land owner had already given her willingness to surrender the excess vacant land, orders u/s 9(5) of the Act were issued, on 21.02.1985, duly allowing 3000 sq.mtrs. as entitlement and proposing to acquire 700 sq.mtrs. which was declared as excess vacant land. The said orders were received by T.R. Krishnambal on 18.03.1985, While issuing Section 10(1) statement, it was brought to notice, by the Sub-Inspector of Survey, that a portion of the land was sold out after 3.8.1976. It was also brought to notice that the Survey Nos.14/2 has already been sub-divided as 14/2A & 2B in Taluk accounts and 2A was noted as Tamilaga Arasu and 14/2B was noted as family eligibility as detailed below:

Sl. Excess Retainable land No. sq.mtrs. sq.mtrs 14/2A1 700 - 14/2A2 - 1050 14/2B - 1950

Following further procedures under the Act a notification u/s 11(1) of the Act was published in Tamil Nadu Government Gazette, on 13.06.1990, and the notification u/s 11(3) of the Act was published in the Tamil Nadu Government Gazette in Part-VI, Section 1, dated 15.08.1990. After giving a notice u/s 11(5) of the said act, possession of the excess vacant lands of 700 sq.mtrs. acquired under the Act, was handed over to the Tahsildar, Saidapet, on 29.11.1990. As the land owner''s address could not be traced out, the payment u/s 12(6) of the Act has not been made.

8. The learned Government Advocate had been asked to verify the factual position with regard to possession and as to whether the sale deed alleged to have been executed by T.R. Krishnambal was correct and valid in law. The learned Government Advocate also submitted the files containing the recrods pertaining to the acquisition of the said land. It is seen that the land is said to have been delivered and taken only on 29.11.1990. It is also seen that in the notices sent in the name of the owner it is mentioned as T.R. Krishnambal and even in the receipts it is shown as T.R. Krishnambal. It is also seen that all the notices, as required under law before completion of the acquisition proceedings, have been sent in the name of T.R. Krishnambal.Itisalsonot in dispute, as seen from the counter affidavit, that the compensation had not been given as the address of the land owner could not be traced. The learned Government Advocate appearing on behalf of the respondents is not in a position to show that the lands in question had actually been taken over by the respondents and that the due compensation for the same had been paid. In such circumstances, the writ petition stands allowed. No costs.