

(2006) 06 MAD CK 0257

In the Madras High Court

Case No : Writ Petition No. 8090 of 2003

S. Subramaniam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 1(3), 10(1), 11, 11(1), 11(3)
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 2, 3, 3(1), 4, 5

Citation : (2006) 3 LW 445 : (2006) 3 MLJ 509

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R. Krishnamoorthy, for Rahul Balaji, for the Appellant; M. Mahalingam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—This writ petition has been filed for the issuance of a writ of declaration that all the proceedings initiated under the Tamil

Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the land owned by the petitioner situated at Survey No. 167/1I (Old Survey

No. 167/1) in Karapakkam Village, Saidapet Taluk, admeasuring about 24050 sq. metres are illegal and non-est and that in any event have

abated consequent upon the repeal of the Principal Act by the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999 and

consequently direct that the petitioner is entitled to deal with the above mentioned lands owned and possessed by him as a full and absolute owner.

2. The brief facts for filing of the present writ petition are as follows:

The lands which form the subject matter of the present proceedings are Punja

lands comprised in Survey No. 167/1I, Karapakkam Village, Saidapet Taluk. The said lands had been purchased by the petitioner from one Perumal by sale deeds, dated 29.7.1993, 13.12.1993, 29.12.1993 and 3.1.1994. The said lands were agricultural lands and as such the predecessor in title of the petitioner herein Perumal had acquired the same through a partition deed, dated 21.7.1986.

It is further stated that it would be evident even from the sale deed that the said lands were agricultural lands and another important aspect relevant

for the purposes of this writ petition is the fact that the said Perumal expired, on 1.10.1993, as evidenced from the death certificate filed together

with this writ petition. The lands subject matter of the present proceedings, has been in continuous and uninterrupted possession of the predecessor

in title of the petitioner and all statutory and other dues and charges were being regularly paid, including the payment of Kist, local cess, etc., till

execution of the sale deeds. Immediately on signing of the sale deeds and the petitioner purchasing the lands, the petitioner took physical

possession of the same and has been in continuous and uninterrupted possession of all the lands, subject matter of the present proceedings. The

petitioner is aggrieved by the action of the respondents in seeking to claim that the lands, purchased by the petitioner, are subject to proceedings

initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The very basis of such a claim and exercise of the powers conferred

under the Act is unfounded. In this regard, the Tamil Nadu Urban Land (Ceiling and Regulation) Act was initially not applicable to the lands in

question, which are situated at Karapakkam Village. As would be evident from G.O.Ms. No. 679, dated 17.7.1995, the Act was extended to the

said Karapakkam Village only on the said date. On the date when the notification was extended to the Village, the petitioner was the owner of the

lands having purchased it through registered sale deeds and was also in physical possession and enjoyment of the same. The predecessor in title of

the petitioner, as has been stated earlier, had died in the year 1993 itself. While so, some time in the year 1999, when the petitioner was intending

to alienate the properties, to his shock and surprise, he was informed that the lands were subject matter of the proceedings under the Tamil Nadu

Urban Land (Ceiling and Regulation) Act. Further, The petitioner immediately

applied for certified copies of the order, said to have been passed by the second respondent by proceedings, dated 10.10.1997, in Na.Ka. No. 1896/97, u/s 9(5) of the Act. The said application was made, on 12.11.1999 and thereafter, by a letter, dated 17.11.1999, the petitioner was advised to move before the third respondent, who, despite having received an application, dated 2.12.1999, has till date not furnished certified copies of the proceedings said to have been initiated in respect of the subject matter of the lands. However, the petitioner was furnished with a photocopy of the order, dated 10.10.1997, on 22.11.2001.

The petitioner further states that it is evident even from a bare reading of the order that the proceedings, purported to have been initiated u/s 9(5) of the Act, in respect of only one of the parcels of the land, viz., SF 167/1I and the notices contemplated under the Act have been issued in the name of Perumal, who was not the owner of the property on the date of issuance of the said notices and who was in fact already dead, much before that date. The respondents' very initiation of proceedings under the Act is therefore not proper in law having failed to comply with the mandatory provisions of the Act requiring service of notice on the owner of the property. When admittedly the petitioner is the owner of the property and also in physical possession of the same, any action without notice to him would be non-est and void in law.

It is further stated that the respondents are well aware that the action initiated, if any, as against the petitioner's lands are void and unenforceable.

However, despite the same and despite the petitioner having made representations to the highest authorities, the proceedings do not appear to have yet been dropped. Furthermore, even though even according to the respondents, the proceedings pertain only to S.F. No. 167/1I, they are seeking to interfere with the rights of the petitioner in respect of other lands as would be evident from several communications. According to the petitioner, in the communication, dated 26.10.1999, from the first respondent, after recognizing the fact that the petitioner had been seriously affected by the lack of notice to him, has expressed his inability to consider the appeal in view of the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act and has also wrongly stated as if all the lands are subject matter of the proceedings. However, the

respondent sought to reassure the petitioner that the authorities had been instructed not to take any further proceedings as against the land. The petitioner, being aggrieved by the refusal to drop the proceedings, had also filed a writ petition in W.P. No. 271 of 2000 before this Court wherein interim orders had been granted in favour of the petitioner. However, considering the availability of the remedy before the Tribunal, the said proceedings were withdrawn. The fact remains that the proceedings against the petitioner's lands have still not been dropped despite the fact that admittedly no notice of any proceedings was ever intimated to the petitioner. Moreover, the petitioner being in uninterrupted physical possession of the lands and the Repeal Act coming into force consequent upon the same, all proceedings against the lands would abate and as such the petitioner's rights cannot be interfered with. The respondents are continuing to cite the pendency of proceedings to prevent the petitioner from transacting with the said lands.

It is further submitted by the petitioner that the respondents have failed to take note of the fact that the petitioner had purchased the land from his predecessor in title Perumal, by way of four sale deeds in 1993 and 1994, long prior to the extension of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, to Karapakkam Village, where the land is situated, which was done through G.O.Ms. No. 679, dated 17.7.1995. Since coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act in the month of September 1999, all the proceedings under the Act would abate and as such the petitioner's rights over the lands cannot be interfered with. Therefore, the action of the respondent, which is impugned in the present writ petition, cannot be sustained.

3. It is also clear from the facts of the case that there was no occasion for reaching Section 11 stage and issuing notification for acquisition of the land u/s 11(3) of the Act or Section 11(5), since no notice was issued to the petitioner, who is the real owner of the lands in question. The relevant provisions of the said Repealing Act are as follows:

3 (1) The repeal of the principal Act shall not affect:

(a) the vesting of any vacant land under Sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the

competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 21 or any action taken thereunder.

(2) Where....

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 11 of the Principal Act but possession of which

has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the Competent

Authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if

any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of

this Act, before any Court, Tribunal or any Authority shall abate:

4. It is clearly noted that in Section 2 of the Repeal Act that the 1978 Act has been repealed. Therefore, nothing is saved except for what is

expressly stated above in Section 3. Furthermore, Section 4 of the Repeal Act states that all proceedings relating to any order made or purported

to be made under the Principal Act, pending immediately before the commencement of this Act before any Court, Tribunal or any other Authority,

shall abate and the said provision also contains a proviso which states as follows:

Provided that this Section shall not apply to the proceedings relating to Sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such

proceedings are related to the land, possession of which has been taken over by the State Government or any person duly authorised by the State

Government in this behalf or by the competent authority.

5. On the contrary, the learned Counsel appearing for the respondents submits that the notice, u/s 7(2) of the Tamil Urban Land (Ceiling and

Regulation) Act, 1978, was issued to Perumal, Karapakkam Village, in SR. No. 563/97, dated 25.2.1997, requesting him to file the return u/s

7(1) of the said Act in respect of the land held by him in S. No. 167/111 measuring an extent of 24050 sq.mts. as his holding in the said survey

number was in excess of the Ceiling limit allowable u/s 5 of the Act. The said

notice was served by affixture on 20.4.1997, by the Village Administrative Officer, Oggianthuraipakkam, stating that the person mentioned in the notice was not residing in that village. Since no objections were received, the Deputy Tahsildar, attached to the third respondent, inspected the land on 12.6.1997, and submitted proposals to acquire the excess vacant land. Accordingly, a notice u/s 9(4) with draft statement u/s 9(1) of the said Act was issued, on 18.6.1997 and it was also served by affixture by the Village Administrative Officer on 30.7.1997. The above land was inspected by the then Competent Authority (Urban land Ceiling) Alandur, on 27.8.1997. After allowing family entitlement of 500 sq. mts. and excluding the area covered by High Tension Line of 750 sq.mts. the excess vacant land was computed as 22800 sq. mts and orders u/s 9(5) of the said Act was issued, on 10.10.1997, to acquire the excess vacant land and also served by affixture. The final statement u/s 10(1) of the said Act was issued on 30.7.1998 and it was also served by affixture. The Notification u/s 11(1) and 11(3) of the Act were issued, on 22.12.1998 and 9.3.99 respectively. The notice, u/s 11(5) of the said Act was issued on 3.6.1999 and it was served by affixture. The possession of the excess vacant land was taken over on 15.6.1999 and handed over to the Revenue Inspector, Pallikaranai, on 15.9.1999. Necessary changes had been made in the village accounts after the petitioner had given a petition, dated 26.10.1999 to the Principal Commissioner and Commissioner of Land Reforms to drop further proceedings under the Ceiling Act. A reply was given to him in principal Commissioner and Commissioner of Land Reforms Ir. No. 23955/99 (J1), dated 27.10.1999, stating that suitable guidelines are awaited from the Government with regard to disposal of appeals filed u/s 33 of the said Act in view of the Repeal Act and that pending receipt of guidelines, the Principal Commissioner and Commissioner of Land Reforms was unable to entertain and exempted the appeals. At this stage, the urban land owner has filed writ petition in W.P. No. 271 of 2000 stating that he has purchased an extent of 18 cents in S. No. 167/1E, 167/1F as agricultural lands, from the previous owner Perumal Naicker, on 29.7.1993, and he was informed in the year 1999 that the land was acquired under the Urban Land Ceiling Act. This Court in its judgment, dated 3.12.2001 in W.P. No. 271 of 2000 had ordered

dismissing the writ petition as the petitioner wanted to withdraw the writ petition reserving his liberty to move the Land Reforms Tribunal and now the petitioner herein has filed the present writ petition in this Court.

6. It is also stated by the respondents that the petitioner who had purchased the lands from Perumal, during the year 1993, had not transferred the Patta in his name. Further, the petitioner has failed to inform the authority for the sale effected. No objection was raised even after notices were served. The action was initiated against Perumal based on the entry found in the revenue records on the date of the commencement of proceedings under the said Act. The lands in question were treated as urban land and assessed to Urban Land Tax, with effect from 1.7.1991, in the name of Perumal.

7. It is also submitted by the respondents that the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1999, will not affect vesting of any vacant land u/s 11(3), possession of which has already been taken over and that all steps and action had been rightly followed as per the provisions of the Act. Notice u/s 7(2) was issued on 25.2.1997. Notice u/s 9(4) with draft statement u/s 9(1) was issued on 18.6.1997. Order u/s 9(5) was issued on 10.10.1997. Final statement u/s 10(1) was issued on 30.7.1998. Notifications u/s 11(1) and Section 11(3) were issued on 12.12.1998 and 9.3.1999, respectively, and final notice u/s 11(5) was issued on 4.6.1999. The possession of the excess vacant land was taken and was handed over to the revenue authorities on 15.9.1999.

8. It is further submitted by the respondents that Section 3(1)(a) of the Repeal Act states that the Repeal of the Principal Act shall not affect the vesting of any vacant land u/s 11(3), possession of which has already been taken over by the State Government or any person duly authorised by the State Government or by the Competent Authority and that the Act would continue to apply to the cases where the land stands vested with Government u/s 1(3) of the Tamil Nadu Act of 24 of 1978 and the possession of the same has been taken over and therefore, the action taken in the above category will not get abated u/s 4 of the Act.

9. From the facts, it is found that all the proceedings under the Tamil Nadu Urban Land Ceiling Act, 1978, had been proceeded against a dead person, namely, Perumal and only for the purpose of claiming payment for Urban

Land Tax from fasli 1410, the authorities have addressed

proceedings to the petitioner, which is a clear admission on the part of the respondents that physical possession and ownership continued with the petitioner.

10. It is also noted that notice u/s 11(5) was issued calling upon the petitioner for delivery and surrendering of possession within 30 days from the date of notice i.e., 3.6.1999. However, It is seen from the records and as stated by the respondents that even before expiry of 30 days, notice was given u/s 11(5) and proceedings u/s 11(6) were initiated for compulsory taking over of the physical possession of the land. In such an event and in such circumstances, this Court is of the view that such proceedings cannot be sustained in the eye of law. Therefore, it is clear that the possession of the land in question was still with the petitioner at the time of coming into force of the Tamil Nadu urban Land (Ceiling & Regulation) Repeal Act, 1999, on 16.6.1999. In such a case, according to the provisions of the Repeal Act, pending proceedings will stand abated and in view of the earlier decisions of this Court the land Ceiling proceedings initiated against the petitioner stand abated and therefore, the writ petition is accordingly allowed. No costs. Consequently, connected W.P.M.P. Nos. 10355 of 2003 and W.P.M.P. No. 33165 of 2005 are closed.