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(2010) 09 MAD CK 0402

In the Madras High Court

Case No : Writ Petition No. 8610 of 2003

Suri Industries APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 11(3), 21, 21(1), 21(2)
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3

Citation : (2010) WritLR 894

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : Satish Prasaran, for the Appellant; Mani Bharathy, G.A., for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents.

2. This Writ Petition is filed for a declaration that all proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the lands to an extent of 3541 Sq.Meters belong to the petitioner concerned situated at T.S. No. 15/28 BK 2 of Alandur Village, Saidapet Taluk, corresponding to plot No. 7(NP) Development plots, Guindy, Ekkaduthangal, Chennai 91 as illegal and non-est in law, since the same stands abated consequent to the repeal of the Principal Act by the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999 and also for a direction that the petitioner is entitled to deal with the said lands as their owner.

3. The ownership of the said lands by the petitioner concerned is not in dispute. As per the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, Section 21 enables the authority to grant exemption from the purview of the Land Ceiling Act from acquiring the excess lands, thereby taking possession by the

Government. Admittedly by virtue of the powers conferred on the Government, the Government has granted exemptions to the petitioner during the time when the Land Ceiling Act was in operation.

4. It is seen from the counter affidavit that such exemption has been granted by the Government exempting 3541 Sq.Meters of land belong to the petitioner under G.O.Ms. No. 122, Revenue (LR.IV.1) Department dated 21.2.1994 and the exemption was of course subject to the following conditions:

i) The land exempted should be utilised for the specified industrial purposes within a period of two years from the date of grant of exemption.

ii) The land exempted should not be transferred to others by way of sale, gift, mortgage, lease or otherwise.

Iii) The exemptee company should intimate to the Government through the Commissioner of Land Reforms about the progress of the works once in three months without fail.

5. It is not in dispute that under the original Act, Section 21(2) enabled the Government to withdraw the exemption granted for violation of the said conditions. Admittedly during the time when the Act was in force, the Government has not taken any steps for withdrawing the exemption granted in favour of the petitioner for any alleged violation. It is relevant because in the counter affidavit filed by the respondent, it is stated that the petitioner has not complied with the conditions with which the exemption came to be granted on 21.2.1994 in the sense that the petitioner has not submitted the periodical progress report as required as per the terms of the exemption, namely once in three months. The said Act came to be repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. Section 3 of the said Repeal Act reads 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

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refunded to the State Government.

6. The Repeal Act does not affect first type of cases where the possession of excess land has been taken over by the State Government. The second type in the Repeal Act does not affect the validity of the exemption granted by the State Government u/s 21(1) of the Act. The defense by the respondents in this case is that by virtue of Section 3 of the Repeal Act, 1999, it enables the validity of granting exemption to continue to be in operation and therefore even after the Repeal Act has come into effect, it is open to the Government to take action for the violation of the condition, on which the exemption came to be granted u/s 21(1) of the Principal Act.

7. In effect, the stand of the Government is that even after the Repeal Act, the Government retains the right u/s 21(2) of the original Act in cases where there is violation of the condition based on which the exemptions were granted. If such construction is accepted, that would result an anomalous situation of making the original Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 to continue to be in operation inspite of the Repeal Act, 1999 came into effect. Section 3 of the Repeal Act is not for the purpose of enabling the Government to proceed under the old Act, 1978 but only to validate the exemptions granted under the old Act, which means that under the old Act before the repeal, if exemption was granted, by virtue of repeal, no one can question the validity of such exemption. This cannot be construed to mean that even after the principal Act came to be repealed, for violation of such conditions of exemptions, the Act can be made applicable. That cannot be the purport of the Repeal Act. Unless the Government has taken any action for alleged violation of conditions of exemption at the time when the Act was in the statute book, it is not open to the Government to take any action for violation of such exemption after the repeal. Permitting such action by the Government would mean that the Act, which has been repealed by the legislature is to be perpetuated in the statute book and that cannot be permitted. In such view of the matter, the stand taken by the Government in the counter affidavit that u/s 3 of the Repeal Act, the Government is entitled to proceed with the said lands of the petitioner on the basis that there is violation of the condition of the exemption granted u/s 21(1) of the Act is not tenable.

8. Hence, the Writ Petition stands allowed holding that the respondents Government has no jurisdiction to deal with the said land belong to the petitioner company as per the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. No costs.

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