
(2013) 02 MAD CK 0096

In the Madras High Court

Case No : W.A. No. 222 of 2011 and M.P. No. 1 of 2011

The Competent Authority (ULC) and Assistant Commissioner
(ULT) and The Tahsildar

APPELLANT

Vs

Dr. S. Anandalakshmy

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 1 LW 970

Hon'ble Judges : N. Paul Vasanthakumar, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : M.S. Ramesh, Additional Government Pleader, for the Appellant;
Kuberan for M/s. Rank Associates, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is preferred against the order made in W.P. No. 12103 of 2007 dated 6.8.2009, wherein the

learned single Judge allowed the writ petition filed by the respondent herein. The writ petition was filed with a prayer to issue a writ of mandamus

forbearing the first respondent/first appellant herein from in any manner interfering with the right, possession and enjoyment of the land of an extent

of 6996.60 sq. ft., in S. No. 183, 184 Block No. 62, at No. 12, 3rd Sea Ward Road, Thiruvannamiyur, Saidapet Taluk, Chengalpattu District,

Chennai-600 041, in the light of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999 and consequently direct the second

respondent/second appellant herein to issue patta for the said land in the name of the writ petitioner/respondent herein.

2. The case of the writ petitioner as narrated in the affidavit filed in support of the writ petition are that the writ petitioner was gifted possession and

enjoyment of the land of an extent of 5.05 grounds in Thiruvanmiyur Village, Chennai, by her sister under registered Document No. 2637 of 1969.

The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 came into force from 3.8.1976, pursuant to which, the writ petitioner made a

declaration of her ownership and possession of the lands and requested to grant exemption to hold small extent of excess lands. Proceedings were

initiated and after allowing her entitlement, balance lands were declared as excess lands, for which the writ petitioner submitted her objections.

According to the writ petitioner, before considering the objections, a notification was published in the Tamil Nadu Government Gazette dated

28.3.1990 stating that the land to an extent of 6, 996.60 sq. ft. is excess land and the same is vested with the State Government. The said area is in

actual physical possession of the writ petitioner continuously and no compensation was paid to the writ petitioner till date. The writ petitioner had

put up a compound wall around the entire land and there is no access to the so called excess land. The writ petitioner, due to her employment was

residing outside Chennai. The writ petitioner also submitted a representation seeking exemption, which was rejected by order dated 25.7.1991.

The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 was published in the Tamil Nadu Government Gazette on 16.6.1999 and

as per Section 3, the vesting of any vacant land, possession of which has been taken over by the State Government or by any person duly

authorised by the State Government, the Repeal Act will not have any effect and as per Section 4, all proceedings relating to any order made or

purported to be made under the Principal Act, pending immediately before commencement of the Repeal Act, shall abate. According to the writ

petitioner as she is in physical possession of the land, the Repeal Act is applicable to her as the initiation of proceedings has lapsed. When the writ

petitioner applied seeking patta in her name, the second appellant rejected her request. Thereafter the writ petitioner filed the writ petition with the

above prayer, mainly contending that possession of the land is continuously with her and she having erected the compound wall around the same,

no one can take possession and even if any possession has been taken as per records, the same is only possession taken on paper and not actual

and physical possession. The Repeal Act provides for restoration of land if possession continues with the owner even if compensation was paid

subject to condition that the compensation paid should be refunded. The appellants have not paid compensation to the writ petitioner. Therefore the writ petitioner is entitled to get the benefit of the Repeal Act, 1999.

3. The writ petition was opposed by the appellants herein by filing counter affidavit contending that an excess area of 775 sq. mtrs after allowing

the entitlement area of 500 sq. mtrs out of the total extent of 1275 sq. mtrs was intimated calling for objections, for which the writ petitioner filed

objections stating that there is no excess land as there is a hut-watchman shed has been put up by her. The competent authority inspected the lands

and found that the hut was recently built and overruled the objections. Thereafter an order was passed to acquire the vacant land of 775 sq. mtrs.

The order was sent on 26.4.1993 and acknowledged by the respondent on 30.4.1983, against which the respondent filed an appeal u/s 33 of the

Act, and the appellate authority set aside the order passed u/s 9(5) and remanded the case back for fresh enquiry and disposal. On 2.2.1984 fresh

notice of enquiry was sent, for which on 2.3.1984 the writ petitioner's counsel sent a written statement and after giving opportunity, the order u/s

9(5) was passed on 14.2.1985 after excluding an extent of 299 sq. mtrs as road portion and excess vacant land was arrived at as 476 sq. mtrs.

Notification u/s 11(1) was issued on 30.9.1989, which was published in the Tamil Nadu Government Gazette on 20.12.1989 followed by

notification u/s 11(3), which was issued on 27.2.1990 published in the Tamil Nadu Government Gazette on 28.3.1980 and thereafter notice u/s

11(5) of the Act was issued on 30.4.1980 and the land was handed over to the Revenue Department on 20.6.1990 by one Banumathi on behalf

of the writ petitioner, who also signed the delivery receipt for handing over vacant excess land. Compensation was arrived at for the excess vacant

land as Rs. 7,140/- and award was passed on 22.2.1995. The land value with interest of Rs. 6,777/- totalling Rs. 13,917/- was drawn at Pay and

Accounts Office (East), Chennai-5 and kept in Revenue Deposit on 9.11.2006. The said Banumathi being the sister and representative of the land

owner, signed the land delivery receipt for handing over possession and the alleged possession of the writ petitioner as on today has to be treated

as an encroachment in Government land. There is an unreasonable delay in filing the writ petition as the appeal filed by the writ petitioner was

dismissed long ago and the writ petition filed after long gap of 18 years is liable to be dismissed. The possession having been handed over prior to

commencement of Repeal Act, 1999, that was as early as on 20.6.1990, the right of the writ petitioner is not saved u/s 3(1)(a) of the Repeal Act, 1990.

4. The learned single Judge after going through the pleadings, called for the files and perused the same and gave a specific finding that on going

through the files and the statements made by the parties in the affidavit and counter affidavit, the stand of the appellants regarding taking possession

of the property cannot be accepted. The learned Judge found that based on the materials available in the file during the period 1984, the writ

petitioner was working as Director in Lady Irwin College, Delhi and at that point of time she authorised the writ petitioner's sister Kalyanalakshmi

Bhanumurthy and that proceeding was concluded and the authorisation was not extended thereafter. The writ petitioner was corresponding with

the authorities. The notice issued u/s 11(5) of the Act seeking handing over of possession dated 30.5.1990 was replied stating that her residential

address is No. A204, Manasarovar, 19 3rd Sea Ward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. The letter seeking exemption submitted

by the writ petitioner was submitted and rejected on 25.7.1991 and on 20.6.1990 the land was said to be handed over to the sister of the writ

petitioner. Learned Judge clearly held that it is not clear as to why Mrs. Kalyanalakshmi Bhanumurthy should sign the delivery receipt, as the

address of the writ petitioner was clearly indicated in the letter dated 30.5.1990 and the Government also replied to the said address on

25.7.1991. The learned Judge also gave a finding that the respondent's mother was residing in the above address viz., No. A204, Manasarovar,

19 3rd Sea Ward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. The writ petitioner's mother viz. Jayalakshmi Subramanian died only on

30.8.1999 and the legal heirship certificate issued by the Tahsildar shows the above address mentioned, which apparently prove that the property

was in possession and occupation of the writ petitioner and her mother. Learned Judge also noticed that the Corporation of Chennai granted

demolition order for the old building for the purpose of reconstruction of the very same property. The sketch furnished also shows that the excess

land is included within the premises of the writ petitioner's property as it is compounded and except with the permission of the land owner the

access to the property is not feasible. Thus, possession is not taken from the writ petitioner or her mother and it was taken only from the neighbor.

It is also stated in the order that when the writ petitioner and her mother are living in the very same premises, there was no justification on the part

of the appellants to take delivery of the property from another person and admittedly the said Kalyanalakshmi Bhanumurthy alone signed the

receipt who was not in possession of the property at that time. Thus, alleged possession taken from the said Kalyanalakshmi Bhanumurthy by

obtaining her signature cannot justify taking over of possession. Thus, the learned Judge gave a finding based on the records that the plea that

possession was taken over on 20.6.1990 cannot be accepted as valid and the possession continues to be with the writ petitioner. As possession

has not been taken in a manner known to law, the proceedings initiated under Act 24 of 1978 abates as per Section 4 of the Repeal Act 20 of

1999 and allowed the writ petition as prayed for.

5. The learned Additional Government Pleader appearing for the appellants reiterated the arguments raised before the learned single Judge and

emphasised the laches on the part of the respondent in filing the writ petition.

6. We have also heard the learned counsel appearing for the respondent/writ petitioner. For our satisfaction, we also called for the file relating to

the Urban Land Ceiling Proceedings initiated against the writ petitioner and perused the same meticulously.

7. The contention of the appellants is mainly on the footing that possession of the excess land having been taken u/s 11(5) of the Act from the

authorised representative viz, the sister of the writ petitioner, the provisions contained in the Repeal Act, 1999 will not in any way help the writ

petitioner to maintain the writ petition. The authorisation letter issued in favour of the writ petitioner's sister viz., Kalyanalakshmi Bhanumurthy was

only to appear on behalf of the respondent on 18.2.1984 at 11.00 a.m. to present the case of the writ petitioner in support of the objections raised

by the writ petitioner in her letter dated 12.2.1982, which reads as follows:

Lady Irwin College

Sikandra Road, New Delhi-110001

S. Anandalakshmy, Ph. D., Director

To

The Assistant Commissioner of ULT,

Alandur, Madras- 88.

Sir,

I hereby authorise my sister Mrs. Kalyanalakshmi Bhanumurthy, Teacher ""The School"", Krishnamurthi Foundation of India, Madras-20, to appear

on my behalf at your office on 18.2.84 at 11.00 a.m. to present my case in support of the objections raised by me in my letter dated 12.2.82.

Yours faithfully,

Sd/- xxx

12.2.84 A. Anandalakshmy, Ph.D.

After the order was passed in the said proceedings, the writ petitioner herself filed an appeal before the Secretary and Commissioner of Land

Revenue by herself on 21.3.1984 and a copy of which is available at page No. 321 of the file. The writ petitioner's sister was directed to state as

to whether she has made appeal to the Government seeking exemption by letter dated 23.11.1984, which was acknowledged by the writ

petitioner's sister viz., Kalyanalakshmi Bhanumurthy. An order was passed on 19.2.1985 and the same was forwarded to the writ petitioner, who

was serving at New Delhi and not to the writ petitioner's sister, which is found at page No. 395 and 396 of the file. Final statement was called for

from the writ petitioner at New Delhi address by notice dated 19.2.1985. Section 11(5) notice dated 13.5.1990 was replied by the writ petitioner

on 26.5.1990 stating that Section 11(5) notice was received by her only on 18.5.1990 as it was sent to wrong address and the respondent has

requested not to proceed in the matter until a decision is taken by the Government of Tamil Nadu. The said letter is found at page No. 487 of the

file, which was received by the first appellant on 29.5.1990. In spite of the objections raised, the appellants have alleged to have taken possession

from the writ petitioner's sister, who was not residing in the premises and also not authorised to sign handing over of possession.

8. From the above narrated facts it is clear that a paper/symbolic possession was taken in respect of the excess land not from the writ petitioner,

who was the owner and also not from the mother of the writ petitioner, who was residing in the very same land and delivery of possession was

recorded from writ petitioner's sister, who was not given any authority to deliver possession. Thus, the possession allegedly taken/recorded in the

file is in contravention of Section 11(5) of the Act. Further Section 11(6) of the Act states that actual possession should be taken. In this case, the

land is in actual possession of the writ petitioner and the Corporation of Chennai also granted demolition permission and excess land is inside the

compound land, which goes to show that actual possession of the land is with the writ petitioner and not with the appellant department.

9. Similar issue was considered by the Division Bench of this Court in the decision reported in *Sree Jayalakshmi Brick Industries Vs. The Special*

Commissioner and Secretary to Government, Government of Tamil Nadu Revenue Department, The Special Commissioner and Commissioner of

Land Reforms, The Assistant Commissioner Competent Authority (Urban Land Ceiling) and The Tahsildar, and in paragraph 23 held thus,

23. Once the possession is not taken over by the Government as held by us, all the proceedings under the Act must be held to have abated u/s 4

of the Repealing Act, in view of the categorical pronouncement of the constitutional Bench of the Honorable Apex Court in *Angoori Devi (Smt)*

Vs. State of U.P. and Others,

Another Division Bench of this Court in a batch of cases in *W.A. Nos. 137 and 587 of 2009, 1975 of 2010 etc.*, Judgment dated 23.7.2012

considered similar issue and dismissed the writ appeals preferred by the State and granted relief to the land owners taking note of the Repeal Act

20 of 1999.

On the facts of this case it is established that possession of the excess land was not taken from the owner, or who is in possession of the land, and

only symbolic possession was taken by getting signature from the writ petitioner's sister, who was not authorised to sign. Thus, we have no

hesitation to hold that the excess land is in continuous possession and enjoyment of the writ petitioner. Compensation towards taking over of the

excess land was also not paid to the writ petitioner and even as per the counter affidavit, the compensation was deposited only on 9.11.2006 i.e.,

after six years of coming into force of Repeal Act 1999 and after 16 years of

taking over alleged possession. The writ petitioner has not received the compensation amount as on date. Thus, we are of the firm view that the order of the learned single Judge is perfectly in order and requires no interference.

The writ appeal is dismissed. No costs.