

(2001) 09 MAD CK 0028

In the Madras High Court

Case No : W.A. No's. 58 to 61 of 1996

The State of Tamil Nadu and Another

APPELLANT

Vs

S.L. Chitale and Others

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Development Control Rules for Greater Mumbai, 1967 — Rule 14
Tamil Nadu Urban Land Tax Act, 1966 — Section 2(13)

Citation : (2002) 1 LW 268 : (2002) WritLR 28

Hon'ble Judges : S. Jagadeesan, J;P. Thangavel, J

Bench : Division Bench

Advocate : B. Nedunchezhiyan, for the Appellant; V. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

S. Jagadeesan, J.—Since the issue involved in all these appeals is one and the same and the writ petitions were disposed of by the common

order by the learned single Judge, all the writ appeals are taken up for joint disposal.

2. These appeals have been filed by the State of Tamil Nadu, represented by Assistant Commissioner, Urban Land Tax, Alandur. The respondent

in each of the writ appeal is owning 31 grounds and odd in Survey Nos. 15/7, 15/11, 15/13 and 15/15 respectively in Injambakkam Village,

Saidapet Taluk, Chengleput District. They purchased the lands as agricultural lands. The appellants herein under the impugned proceedings in the

writ petitions levied the Urban Land Tax, treating the entire land as urban land within the definition of Section 2(13) of the Urban Land Tax Act.

3. Challenging the action of the appellants, the respondents filed writ petitions W.P.Nos.8756, 8757, 9136 and 9137 of 1984 contending that the

lands are meant for agricultural use and they cannot be treated as "urban land" as defined under the Urban Land Tax Act and hence the impugned demand is illegal.

4. The learned single Judge accepted the contention of the respondents and allowed the writ petitions and consequently set aside the impugned

demand made by the appellants by judgment dated 19.3.1994 reported in 1994 WLR 775. Aggrieved by the said order of the learned single

Judge the State has preferred the present appeals.

5. The only contention of the learned Government pleader (Taxes) is that Sub-section 13 of Section 2 of the said Act defines "urban land" as one

which is used or capable of being used as a building site. The lands under dispute being vacant dry lands are capable of being used as house sites

and as such they would fall squarely within the term "urban land", as defined under the said Act. Hence the land is attracted the tax under the said

Act. The learned single Judge has proceeded on the basis that the entire land cannot be treated as the lands capable of being used as house sites

when they are vacant. Any land which is vacant can always be used as vacant site and the purpose of the Act cannot be with such intention. The

view taken by the learned single Judge is not in consonance with the definition clause under the said Act and as such the order of the learned single

Judge is liable to be set aside.

6. On the contrary, the learned counsel for the respondents contended that the extent of the land in each case is more than 31 grounds and as such

the vast area of the land is being utilised for agricultural purposes, especially when it is admitted that casuarina trees are planted in the said land at

least in a portion. There is no building in existence and hence the disputed land will not fall under the definition of "urban land" as defined under the

said Act and consequently will not attract the levy of tax also.

7. We carefully considered the contentions of both the counsel. Section 2(13) of the said Act defines "urban land" thus:

2(13) "urban land" means any land which is used or is capable of being used as a building-site and includes garden or grounds, if any, appurtenant

to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet

crops.

Explanation: For the purposes of this clause, any site on which any building has been constructed shall be deemed to be urban land.

8. The scope of the said provision was considered by the then Chief Justice of this court in *S. Sarangapani Iyengar Vs. The Asst. Commr. Urban*

Land Tax, and relying upon the said judgment the counsel for the respondents contended that any vacant land capable of being used as house site

and hence the explanation to the Section is by way of guideline. If the Section is construed with the said explanation, the agricultural lands are

excluded from the purview of the Act.

9. The learned counsel for the appellants also cited judgment in *The Asst. Commissioner, ULT v. Chelladurai*, 1988 (1) LW 438 and contended

that the Chief Justice had taken a different view and on the basis of the said principles laid down, the vacant lands have to be treated as the urban

land within the definition of the said Act.

10. In our anxious consideration, we are of the view that the definition of urban land will not include any vacant land which is capable of use as

house site irrespective of the extent. When admittedly the area is larger one, there is more than one acre, then the entire land cannot be treated as

house site. Major portion of the land may be kept vacant and only in a small portion the house can be constructed. That is why the explanation to

the said Section-clearly refers that any site on which any building has been constructed shall be deemed to be urban land. If any larger area of

more than one acre lies vacant, either for want of water facility for irrigation or otherwise, then it cannot be said that the whole area has to be

treated as urban land. That is why in *S. Sarangapani Iyengar Vs. The Asst. Commr. Urban Land Tax*, it has been held as follows:

The taxing authority must satisfy itself that a dry land is an urban land, which means that it is either used as a building site or is capable of being

used as a building site. There is of course the inclusive part which would become applicable only if the land is appurtenant to an existing building in

respect of vacant land, the only part of the definition which becomes material is that part which refers to the land which is capable of being used as

a building site. Every land which is vacant may not necessarily be capable of being used as a building site muchless agricultural land. When we deal

with agricultural land it must be taken into account that the presumption would

be that it is going to be used for the purpose of agriculture. An agricultural land is not normally used for a building site and in any case it is not capable of being used as a building site in the normal course unless of course the owner sets a part of it apart by way of a lay out or intends to construct a building in some part of the property. Normally agricultural lands must be construed as agricultural lands and since agricultural lands are not normally used for building sites, it must be assumed that they are not capable of being used as building sites unless steps have been taken to have them used as building sites. Agricultural lands will, therefore, stand excluded from the definition of "urban land" unless they are intended to be converted for building purposes or house sites. In this view of the matter, the order of assessment in respect of the agricultural lands in question will have to be set aside.

From the above principle laid down by the then Chief Justice, it is clear that the use of the land has a role to play to categorise the land as urban land or agricultural land.

11. In fact in yet another judgment Commissioner of Land Reforms, Urban Land Tax, *Chepauk v. Ranganathan*, 1990 WLR Supp 73, a Division

Bench of this Court has held that the land which is used as a brick kiln cannot be treated as an urban land as per the definition of the Act in the

following terms:

The learned single Judge has found that the lands in question are being used for agricultural purposes as well as for the manufacture of bricks, and

accordingly cannot be brought within the purview of the definition of "urban Land" in Section 2(13) of the Tamil Nadu Urban Land Tax Act, 1966.

Learned Government pleader has drawn our attention to the statement in paragraph 9 of the return filed on behalf of the appellants before the

learned single Judge, in which it is stated that:

According to Revenue records except Survey No. 39/4 measuring about 1 acre 56 cents, all the other assessed lands are dry, manavari lands

which were vacant and used for brick works." He contended that exception may be made to Survey No. 39/4 measuring 1 acre 56 cents, as the

records show that the land is being used for agricultural purposes, but the rest, which is described as manavari land and is vacant, even though

used for brick works, may be subjected to tax. It is not possible, however, to

accept this contention. The learned single Judge has referred to an earlier judgment of this Court in *Sakthivel Brick Works by Partner and Ors. v. Assistant Commissioner of Urban Land Tax, Poonamallee, W.P. Nos. 5448 and 5449 of 1982* order dated 27.7.88 in which it has been held that the lands in which brick kilns are situated and if the clay therein is used for manufacture of bricks, cannot be brought within the purview of the definition of "Urban Land" in Section 2(13) of the Tamil Nadu Urban Land Tax Act, 1966. In view of the above and the finding of fact recorded by the learned single Judge that the land is used for brick works as reflected in the counter affidavit filed on behalf of the applicants themselves, we find no error of law committed by the learned single Judge. The appeal is accordingly dismissed.

12. Here again the principle is the definition of "urban land" can be construed in respect of the particular land only in relation to the purpose for which the land is being used. Hence when once the larger area of land is lying fallow without agricultural operations are being carried on, the same cannot be considered as "urban land" for the purpose of the said Act.

13. The judgment relied upon by the learned pleader Assistant Commissioner of ULT v. A. Chelladurai, 1983 L.W 438 is a case where the land had been used as an appurtenant to the existing building. When the building is in existence, then there cannot be any dispute that the area of the land is used as the garden or appurtenant to the building will fall within the definition of Sub-section (13) of Section 2 of the said Act. Hence that judgment is of no assistance for the purpose of considering the claim of the appellant in these cases.

14. Apart from this, it is also submitted that the entire area had been notified in the master plan as recreational zone. Rule 14 of the Development Control Rules of the Madras Metropolitan Area prohibits any construction in the recreational zone. When that be the case, the disputed land cannot be said to be the land capable of being used as house site. On this ground also the disputed land will not fall within the definition of Section 2(13) of the said Act.

15. Hence we do not find any reason to differ from the view taken by the learned single Judge and the same is confirmed and the writ appeals are dismissed. However, there will be no order as to costs.