**(2009) 01 MAD CK 0240**

**In the Madras High Court**

**Case No :** Writ Petition No. 1863 of 2003

T.V. Antony APPELLANT

Vs

State of Tamil Nadu RESPONDENT

**Date of Decision :** 23-01-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226
Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10, 11, 11(1), 11(3), 11(5)
Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 — Rule 8

**Citation :** (2009) 5 MLJ 339

**Hon'ble Judges :** M. Jaichandren, J

**Bench :** Single Bench

**Advocate :** M. Venkatachalapathy, for M. Sriram, for the Appellant; P. Muthukumar, Government Advocate (R1-R3), for the Respondent

**Final Decision :** Allowed

# Judgement

M. Jaichandren, J.—Heard the learned Senior Advocate appearing for the petitioner and the learned Government Advocate appearing for

the respondents.

2. It has been stated that the lands in Survey No. 43/2B-1A of Pulikoradu Village of Tambaram had been purchased by A. Heera, the vendor of

the petitioner, on 17.1.62, under Document No. 92/1962, on the file of the Sub-Registrar, Tambaram. The lands are agricultural lands. The

petitioner had purchased 1 acre and 2 cents of punja lands from a larger extent of the agricultural lands belonging to A. Heera, by a registered sale

deed, dated 13.12.80, registered as Document No. 6010 of 1980, on the file of the Sub-Registrar, Tambaram.

3. It has been further stated that the petitioner''s vendor, A. Heera, had filed a

return, under the provisions of the Tamilnadu Urban Land (Ceiling

and Regulation) Act, 1978, in respect of her urban lands. The authorities concerned, while considering her claims, had also included the agricultural

lands belonging to her, as if they were forming a part of her urban lands. The petitioner''s vendor, while filing the return, had prayed for exemption

of the entire properties. It is learnt that orders had been passed by the erstwhile Board of Revenue, on 30.3.80, recommending to the Government

to reject the request for exemption and to determine the ownership, as on 3.8.76, and to proceed further, under Sections 9 to 11 of the Tamil

Nadu Urban Land (Ceiling and Regulation) Act, 1978.

4. It has been further stated that the petitioner''s vendor by a letter, dated 8.1.81, had reported that she had sold the property to the petitioner, on

13.12.80. In spite of such intimation the authorities concerned were treating the petitioner''s vendor as the land owner and had proceeded with the

acquisition proceedings, in spite of her objections. After the proceedings, u/s 9(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act,

1978, had been taken, orders had been passed, on 12.10.81, and it had been served on the petitioner''s vendor, on 20.10.81. The petitioner''s

vendor had filed an appeal stating that she had parted with her interest in favour of the petitioner, in the year, 1980, itself. However, the authorities

concerned had published the notification and had made a declaration, u/s 11(3), on 10.10.84, alleging that the excess vacant lands had vested with

the Government, with effect from 8.10.84.

5. It has been further stated that the notice, u/s 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been served on the

vendor of the petitioner, on 8.2.85, and paper transfers seem to have been made, as if possession of the land in question had been handed over,

on 28.5.87, in spite of the fact that the petitioner has been in effective possession and enjoyment of the said property, from the date of its purchase,

by constructing tenaments and by installing a crusher unit in the said land. Further, a Church has also been located in the land for the use of the

members of the Christian community of the area. Further, the revenue records relating to the property for the fasli 1399, relating to the year 1990,

shows that the land in question had been treated as agricultural lands and it had continued to be so till the date of the filing of the writ petition.

 

6. It has also been stated that the petitioner had transferred the patta in his name, on 25.3.81, in respect of the land in Survey No. 43/2B-1, to an

extent of 1 acre and 2 cents, in Pulikoradu Village, Tambaram. The petitioner has put up constructions on the land and had also planted coconut

trees. A Church is also located in the land. Therefore, the said land would not come under the purview of the provisions of the Tamil Nadu Urban

Land (Ceiling and Regulation) Act, 1978. In such circumstances, the petitioner had filed an application for exemption, as a precautionary measure,

in the year, 1986. Even though the application had been acknowledged, on 23.10.86, the State Government had not done anything in furtherance

of the said request. Therefore, the petitioner was constrained to file a writ petition before this Court, in W.P. No. 4374 of 1989, praying for a writ

of mandamus to forbear the respondents therein from acquiring and dispossessing the petitioner from his land, comprised in Survey No. 43/2B 1A

of Pulikoradu Village, Saidapet Taluk, Chengalpat District, without following the provisions of the Act. By an order, dated 24.4.98, this Court had

directed the respondents therein to take proceedings, in accordance with the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation)

Act, 1978, after giving adequate opportunity to the petitioner to put forth his claims. It is only after the said order had been passed by this Court,

the third respondent had issued a letter, dated 10.12.99, requesting the petitioner to appear for an enquiry, u/s 21(1)(g) of the Tamil Nadu Urban

Land (Ceiling and Regulation) Act, 1978. The petitioner had appeared for the enquiry, and his statement had been recorded. While so, the Tamil

Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act,

1999, with effect from 16.6.99 and therefore, all the proceedings, which were pending, had abated. Since there was no response from the

respondents the petitioner was under the impression that the entire proceedings had been dropped. However, the third respondent had issued a

letter, dated 2.7.2001, asking the petitioner to appear before him for regularising the sale deed. The petitioner had submitted a detailed reply, on

13.7.2001, which was acknowledged by the third respondent, on 18.7.2001. Instead of considering the reply of the petitioner, the third

respondent had issued a notice, dated 7.8.2001, to appear before him, on 14.9.2001. Meanwhile, the objections raised by the petitioner had reached the third respondent. The third respondent had insisted on the regularisation of the sale of the land, according to which the petitioner

became the owner of the land in the year, 1980. While so, the petitioner was shocked to receive the order issued by the first respondent, in G.O.

No. 513, Revenue Department, dated 28.11.2002, setting aside the sale made in favour of the petitioner by A. Heera, the vendor of the petitioner,

in the year, 1980. In such circumstances, the petitioner has filed the present writ petition before this Court, under Article 226 of the Constitution of

India.

7. In the counter affidavit filed on behalf of the respondents it has been stated that, A. Heera, residing at 20/2, Nellan Ponnappa Mudali Street,

Chennai, had filed return in Form-I, under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, on 21.1.77, with the request for

exemption of the properties, mentioned in the return, from the operation of the Act. During the enquiry by the competent authority, it was found

that the property sought to be exempted was the subject matter of a civil litigation. Therefore, a report had been sent to the Director of Urban

Land Ceiling and Urban Land Tax, on 14.3.80, suggesting that the petitioner may be advised to renew her request after the disposal of the civil

litigation. Accordingly, the erstwhile Board of Revenue (Urban Land Ceiling and Urban Land Tax), in Ref.C3/3987/77, dated 30.3.80, had

recommended to the Government that the request for exemption be rejected and instructions were issued to the competent authority to determine

the ownership, as on 3.8.76, and to proceed with the acquisition proceedings, under Sections 9 to 11 of the Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978. While so, A. Heera, by her letter, dated 6.1.81, had reported that she had sold the property to one T.V. Antony, on

13.12.80. The competent authority had informed the purchaser that the sale, having been done in violation of the provisions of the Act, would be

treated as null and void. Despite the issue of another notice, dated 30.6.81, received by her, on 2.7.81, she had not attended the enquiry. The

competent authority had declared an extent of 3900 Sq.Mts., in S. No. 42/2B-1, of Pulikoradu Village, as surplus vacant land held by A. Heera.

After due service of the statement, u/s 9(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, dated 23.5.81, on the Urban Land owner, on 1.6.81, an order, u/s 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been passed, on 12.10.81. The

order, dated 12.10.81, had been served on T.V. Antony, on 20.10.81. The urban land owner, A. Heera, had appealed against the said order to

the Commissioner of Land Reforms, by a letter, dated 16.2.83. The said appeal had been dismissed by the Commissioner of Land Reforms, in

reference D.Dis.J2/6745/83, dated 11.7.83. Thereafter, a notification, u/s 11(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act,

1978, had been approved by the Commissioner of Land Reforms, in D.Dis. 31442/83, dated 10.1.83, and it had been published in the Tamilnadu

Gazette, dated 25.11.83. The final notification, u/s 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been published,

on 10.10.84. Thereafter, the excess vacant land had vested with the Government, with effect from 8.10.84. The notice, u/s 11(5) of the Tamil

Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been acknowledged by the urban land owner, on 8.2.85. The possession of the

acquired excess vacant land, measuring 3900 Sq.Mts. in S. No. 43/2B-1 of Pulikoradu Village, had been handed over, on 28.5.87. The notice,

u/s 12(7) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been issued and it had been acknowledged by the land owner,

on 9.6.87. In her reply, dated 30.6.87, A. Heera, had declared that she had no interest over the said property, as she had already sold the land to

T.V. Antony and therefore, she had prayed for exemption of the land from the acquisition proceedings. The competent authority had issued an

order, dated 7.11.87, in Rc.D.120/87, specifying the amount calculated, u/s 12(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act,

1978. The initial payment had been sent to the urban land owner, A. Heera. However, A. Heera had reiterated her stand stating that the property

in question had been sold to T.V. Antony, in the year, 1980. On enquiry, T.V. Antony had admitted that he had purchased the land measuring 1

acre and 2 cents, in S. No. 43/2B-1, from the urban land owner, A. Heera, vide Document No. 6810, dated 13.12.80, and that he had

constructed a terrace building for his residence and he had installed a crusher unit in the said land. He had also stated that a Church had been

constructed by the members of the Christian community of the area. He had further stated that 38 coconut trees were existing in the land.

However, he had declared that at the time of the purchase it was a vacant site and that the structures were put up only in the year, 1982. Thus, it

was clear that the property had been deliberately sold by its erstwhile owner, A. Heera, in violation of the provisions of the Act and therefore, the

said transaction is null and void.

8. It has been further stated that T.V. Antony had filed a writ petition before this Court, in W.P. No. 4374 of 1989, challenging the acquisition of

the excess vacant land, stating that he had purchased the land from A. Heera, as per Document No. 6010/80, dated 13.12.80 and that an

exemption may be granted as he had installed a stone crushing unit in the said land. By an order, dated 24.4.98, this Court had allowed the writ

petition with a direction to give adequate opportunity to put forth his claim. In letter W.P.R.32/95, dated 20.2.2000, a detailed report had been

sent, narrating the history of the case, since there is no provision in the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, to

grant exemption. The Government, in its letter No. 4385/ULC-II(2)99-8, Revenue, dated 8.3.2001, had requested the case to be examined in the

light of the orders of the Government, in G.O.Ms. No. 353, Revenue, dated 30.6.2000 and to send a report thereon. In Letter Rc. No.

B/738/2001, dated 3.10.2001, a report had been sent to the Government stating that, in G.O.Ms. No. 353, Revenue, dated 30.6.2000, the

Government had issued instructions that the encroachments on the acquired lands, used for commercial purposes, may be regularised, on the

collection of double the guide-line value. Hence, T.V. Antony had been requested to appear for an enquiry in the matter. He had filed a written

statement, dated 9.7.2001, stating that the land in question had been in his possession from the date of its purchase in the year, 1980 and that, by

an order of injunction granted by this Court, his possession of the land had been protected. Further, the Special Appellate Tribunal for land

reforms had categorically stated that wherever possession had not been taken, the entire proceedings would stand abated. Since T.V. Antony had

taken such a stand, a report had been sent stating that he was not interested in regularising the land in the light of the orders passed by the

Government, in G.O.Ms. No. 353, Revenue, dated 30.1.2000. The Government, in G.O.Ms. No. 513, Revenue, ULC2(1) Department, dated

28.11.2002, had informed the petitioner that the purchase of the land by the petitioner, on 13.12.80, is after the commencement of the

proceedings, under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, and therefore, it is null and void, as per Section 6 of the said

Act. Hence, there is no provision to consider the request for exemption.

9. The learned Counsel appearing for the petitioners had relied on the decisions of this Court in V. Somasundaram and Ors. v. The Secretary to

Government, Revenue Department and Ors. 2007(2) L.W. 109 and the decision of this Court in Om Prakash, Mohan Kumar Patil and G.M. Patil

Vs. The Government of Tamil Nadu , wherein it has been held that the land acquisition proceedings would stand abated, since the notice, u/s 11(5)

of the Act, had been issued to the erstwhile owner of the property and not to those who were the real owners at the time of the taking over of the

possession.

10. The learned Counsel had also relied on the decision of this Court, reported in Saraswathi and Anr. v. The Principal Commissioner and

Commissioner of Land Reforms 2007(4) CTC 714, wherein it had been held that the land acquisition proceedings would stand abated, if the

respondents are not in a position to show that actual physical possession of the land in question had been taken over by the respondents and due

compensation had been paid to the urban land owner concerned.

11. In view of the averments made on behalf of the petitioner, as well as the respondents and on a perusal of the records available before this

Court, it is seen that the respondents had initiated the land acquisition proceedings, under the provisions of the Tamil Nadu Urban Land Ceiling and

Regulation Act, 1978, in respect of the land in Survey No. 43/2B-1 of Pulikoradu Village, Saidapet Taluk, Tambaram District, to an extent of

3900 Sq.Mts. However, it is clear that the respondents had proceeded with the acquisition proceedings against the erstwhile owner of the said

land, A. Heera, in spite of the fact that the petitioner had purchased the said land from her, by a registered sale deed, dated 13.12.80. It is also

seen that the petitioner had filed a writ petition before this Court, in W.P. No. 4374 of 1989. By an order, dated 24.4.98, this Court had allowed

the writ petition, with a direction to the respondents, to give adequate opportunity to the petitioner to put forth his claims. Thereafter, the petitioner had been requested to appear for an enquiry, during which he had filed a written statement, dated 9.7.2001, stating that the land has been in his

possession and enjoyment since the date of its purchase in the year, 1980 and that there is no need for examining the matter in the light of the

orders issued by the Government, in G.O.Ms. No. 353, Revenue, dated 30.6.2000, by which the Government had issued instructions that the

encroachments on acquired lands, used for commercial purposes, may be regularised, on collection of double the guide line value. It is not in

dispute that the entire land acquisition proceedings had been taken by the respondents only against the erstwhile owner of the land, namely, A.

Heera, the vendor of the petitioner. No notice had been issued to the petitioner, with regard to the land acquisition proceedings, as contemplated

by the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Further, actual physical possession of the land in question

had not been taken by the respondents, as seen from the records placed before this Court. Further, the compensation for the land, alleged to have

been acquired, had not been paid to the petitioner, as contemplated under the Act.

12. Further, the learned Counsel appearing on behalf of the respondents had not been in a position to show that the provisions of Rule 8 of the

Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978, had been followed by the respondents before the final order had been passed,

acquiring the land, said to have been purchased by the petitioner, in the year, 1980, by way of a registered sale deed, dated 13.12.1980.

13. In such circumstances, the land acquisition proceedings, initiated by the respondents, in respect of the land in the possession of the petitioner,

would stand abated, in view of the coming into force of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. Accordingly, the

writ petition stands allowed. No costs.

 