(2007) 01 MAD CK 0286

In the Madras High Court

Case No : Writ Petition No. 31801 of 2003

V. Gurunathan Iyer, rep. by Power of Attorney, Agent G. Asokan	APPELLANT
Vs	
The Assistant Commissioner of Urban Land Tax and Ceiling, The Principal Commissioner and Commissioner of Land Reforms and The Government of Tamil Nadu	RESPONDENT

Date of Decision : 29-01-2007

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10, 11, 12, 21(1), 33
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3(2), 4

Citation : (2007) 3 CTC 362 : (2007) 5 MLJ 103

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : G. Ravishankar, for the Appellant; C. Thirumaran, G.A., for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the connected records of the first respondent relating to his order u/s 9(5) of the Principal Act, in his proceedings R.C.7794/88-B, dated 12.07.1990, declaring an extent of 1400 Sq.Mts. of land as excess vacant land in S. No. 192 of pozhichalur village, the notice issued by the first respondent in his Ref.R.C.7794/88-B, dated 11.03.1993, in Form VII requiring the land owner to deliver vacant possession to the Tahsildar, Saidapet (Certified copies issued on 16.11.2003) and the notice issued by him in his Ref. B/1779/95.C, in form XIV Under Section. 12(7) of the Act, dated 20.09.2003, directing the land owner to attend the enquiry for claiming compensation and quash the same so far as the petitioner is concerned and declaring that all proceedings taken by the first respondent to acquire the alleged excess vacant land shall abate u/s 4 of the Tamil Nadu Urban Land (Ceiling and Regulation)

Repeal Act, 20 of 1999.

2. Heard the learned Counsel for the petitioner as well as for the respondents.

3. The brief facts of the case, as stated by the petitioner, are as follows:

The land in Survey No. 192 of pozhichalur village measuring to an extent of 72 cents or 2900 Sq. Mts. was owned by the petitioner on the date of the commencement of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, (hereinafter referred to as the ''Act'') and it has been put to use for locating and running a blue metal industry in the name of "Sri Vinayaga Agencies" and registered as a Small Scale Industrial Unit, which was leased out to one Natarajan for running the Unit. Consequent to the commencement of the Act, necessary returns were filed and the petitioner had sought for exemption by applying to the State Government. The application had been processed by the Director of Industries and Commerce. By his letter R.C. No. 2404/GA4/96, dated 08.04.1996. The General Manager District Industries Centre had recommended the firm''s proposal for exemption to hold the excess vacant land u/s 21(1)(a) of the Act. While the matter was under process, the first respondent had issued a notice u/s 9(4) of the Act duly preparing the statement u/s 9(1) of the Act arriving at an excess extent of 900 Sq.Mts., allowing the petitioner to hold 2000 Sq.Mts. of land, as the entitlement area. He had sent the notice to the land owner, on 14.09.1981, calling him to attend the enquiry and to file his objections, if any, with regard to the said notice. Without giving a reasonable opportunity of being heard in person as contemplated u/s 9(5) of the Act, an ex parte order had been passed by the first respondent in his proceedings, dated 19.08.1989. Therefore, the petitioner had preferred an appeal u/s 33 of the Act and the appellate authority had set aside the ex parte order and remanded the case for fresh disposal as stated in the Special Commissioner''s Order Letter No. J2/52948/89, dated 09.10.1990. Accordingly, the revised orders had been passed in the first respondent''s proceedings R.C.7794/88/B, dated 12.07.1990. Further, in pursuance of the said order, notice u/s 11(5) of the Act, dated 11.03.1993, is said to have been sent to the petitioner with the wrong address. However, no notice u/s 11(6) of the Act was issued to the person in occupation of the land and actual possession of the land had not been taken from the land owner.

4. The petitioner had submitted a representation in his letter, dated 26.04.1994, requesting the State Government to grant exemption to hold the alleged excess vacant land and to use the same for industrial purposes, after taking into consideration the total number of his family members and the extent of entitlement of area. The State Government, in their letter No. 70872/ Na.Nee.03(i) 94-4-Revenue, dated 16.10.1998, had rejected the request of the land owner. Thereafter, the petitioner land owner had made another representation to the State Government in his letter, dated 20.04.1999. However, no orders have been passed on the representation made by the petitioner and the matter relating to the land in question has been pending. While so, the Tamil

Nadu Urban Land (Ceiling and Regulation), Act, 1978, was repealed, with effect from 16.06.1999, by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act,20 of 1999. According to Section 4 of the said act, all proceedings with regard to the acquisition of excess vacant land would stand abated. Further, it has been stated that the first respondent has issued a notice, in Form XII u/s 12(7) of the Act, dated 20.09.2003, directing the petitioner to furnish the details with regard to the payment of compensation. Therefore, it is evident from the said notice that no amount had been paid as compensation till the date of the said notice. Further, it is evident from the orders of the Government in their letter No. 70872/Na.Ni-u 03(1) / 94-4, dated 16.10.1998, that the possession of the land had not been taken over from the land owner. It has been submitted that the proceedings which were pending at the time of coming into force of the Repeal Act, 20 of 1999, will not be saved in accordance with Section 3(2) of the Repeal Act.

5. In the counter affidavit filed on behalf of the respondents, it has been stated as follows:

2. It is submitted that Thiru.V.Gurunathan represented by Thiru.V.Ramamurthy had filed return u/s 7(1) of Tamil Nadu Urban Land (Ceiling and Regulation) (Tamil Nadu Act 24 of 1978) (hereinafter referred to as the said Act) for the land held by him in S. No. 192 of polichalur village on 29.09.1978. It was stated that the land is a self acquired property of Thiru.V.Gurunathan, vide Doct. No. 2652/17.09.1971. Notice u/s 9(4) and Draft statement u/s 9(1) was issued in Rc.4707/80, dated 14.09.1981, for the land in S. No. 192 measuring 2900 Sq.Mts. (72 cents) of Polichalur village. This was served to the Power Agent Thiru.V.Ramamurthy on 18.09.1981, through Registered Post with Acknowledgment Due. Meanwhile the Urban Land Owner had applied for exemption u/s 21(1)(a) of the said Act. After verifying the records the Government in their letter No. 1506/Revenue, dated 12.08.1988, rejected the exemption application of Thiru.V.Gurunathan and Thiru.V.Ramamurthy since the petitioners were not running any Industry in the lands S. No. 191,192 of Polichalur. While the exemption application was under consideration and the petitioners leased out the land by means of the unregistered lease deed. After scrutinizing the records, order u/s 9(5) of the said Act was passed vide proceedings RC.7794/88(B), dated 19.09.1989, declaring that an extent of 900 Sq.Mts. as excess vide proceedings Rc.7794/88(B), dated 19.09.1989, after allowing 2000 Sq.Mts. towards family entitlement. This was served by Registered Post with Acknowledgment Due on 29.09.1989. On receipt of Section 9(5) order, the urban land owner filed an appeal u/s 33 of the Act before the Special Commissioner and Commissioner of Land Reforms. The Special Commissioner and Commissioner of Land Reforms in proceedings J2/52948/89, dated 09.01.1990, had set aside the Section 9(5) order and instructed to pass fresh orders after allowing correct entitlement. This case was re-examined and it was found that as regards family entitlement an extent of 2000 Sq.Mts. was computed wrongly as family eligibility considering that the family of the urban

land owner, consisted of himself, his wife, two minor children. On a detailed verification, it was found that one of minor children was born only on 12.10.76 i.e.,after coming into force of the Act i.e.3.8.76 and that the initial computation of family eligibility as 2000 Sq.Mts. is incorrect and that the family as on 3.8.1976 consisted husband, wife and one minor child only and hence the family entitlement is only 1500 Sq.Mts. and not 2000 Sq.Mts. Accordingly, fresh order u/s 9(5) was passed vide Assistant Commissioner (Urban Land Tax) Tambaram proceedings Rc.B/7794/88, dated 12.7.90, declaring the excess vacant land as 1400 Sq.Mts. after allowing 1500 Sq.Mts. towards family entitlement. This order was served by Registered Post with Acknowledgment Due. Aggrieved by this order, the urban land owner again filed an appeal u/s 33 of the said Act and it was rejected vide Special Commissioner and Commissioner of Land Reforms Procs.12/9654/91, dated 14.10.91. Then final statement u/s 10(1) of the Act was issued on 23.03.1991 and served on 28.11.91. Notification u/s 11(1) of the said Act was got published in the Tamil Nadu Government Gazette No. 453/92 in Par VI Section-1 at page 337, dated 25.03.92. Notification u/s 11(3) of the Act was published in the Tamil Nadu Government Gazette Part VI Section -1/1517/92 at page 1073, dated 09.09.92. Final notice u/s 11(5) of the said Act requesting the urban land owner to surrender possession of the excess vacant land within 30 days from the date of receipt of notice was issued on 11.03.93 and it was served on 16.04.93. As the Urban land owner has not chosen to surrender the possession, it was taken and handed over to Firka Revenue Inspector, Alandur, on 30.06.93. After a long period the urban land owner has now filed a writ petition W.P.31801/2003 in the High Court of Judicature, Madras.

6. Further, the learned Counsel appearing on behalf of the petitioners has relied on the following decisions:

6.1. In Vijay Foundation (P) Ltd. rep. by its Director, R. Thiagarajan v. The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai, reported in 2006-4-L.W,159, a learned Judge of this Court, while dealing with the action initiated by the respondents under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999), has held that the respondents had initiated acquisition proceedings against the person who was not the owner of the lands. As the mandatory conditions mentioned in Sections 7 to 12 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, were not followed by the respondent, the alleged possession taken by the respondents was vitiated. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents. Since the possession of the land is with the petitioner, ever since the date of purchase, and as the the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, was repealed on 16.06.1999, it was not open to the respondents to proceed against the petitioner.

6.2. In Sosamma Thampy Vs. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and The Special Commissioner and Commissioner of Land

Reforms, Government of Tamilnadu, , Anees Leathers Manufacturers rep. by its proprietor Mr. Anees Ahamed v. The Government of Tamil Nadu rep. by its Secretary, Revenue Department, Fort St.George, Chennai and Ors. reported in 2006 3 L.W. 437 and Jayaseelan & Ratnaseelan v. The Government of Tamil Nadu rep. by its Secretary, Revenue Department, Fort St. George, Chennai and Ors. reported in 2006 3 L.W. 440 this Court, while dealing with the effect of the provisions of the Tamil Nadu Urban Land Ceiling Repeal Act (Act 20 of 1999) on the land acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation), Act 1978, has held that all such proceedings initiated under the Act of 1978, would abate on the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, if the possession of the land had not been taken by the authorities concerned prior to the repeal, and if due compensation had not been paid to the petitioners.

7. Based on the above decisions and on the submissions made by the learned Counsels appearing for the petitioners as well as for the respondents and on a perusal of the records available before this Court, it is clear that the land acquisition proceedings initiated by the respondents and challenged before this Court cannot be sustained in view of the subsequent coming into force of the Repeal Act (Act 20 of 1999). From the facts of the present case, it is seen that both the conditions have not been satisfied and therefore, on coming into force of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999, from 16.06.1999, all proceedings pending would abate.

8. The learned Government Advocate appearing on behalf of the respondents could not produce any record to show that actual possession of the land in question had been taken and due compensation paid. From the records placed before this Court, it is seen that the lands in question had been taken and handed over to Firka Revenue Inspector, Alandur, on 30.06.93. According to the provisions of the Repeal Act 20 of 1999 and based on their interpretation, as found in a series of decisions of this Court, it is clear that mere vesting of the land in the Government is not sufficient. It should be shown that actual possession was taken over. Taking of actual possession of the land and the payment of compensation thereafter, are the crucial factors. If such taking over of possession and payment of compensation is not shown to have been done, all proceedings pending with regard to the lands in question, ought to be taken as abated on coming into the force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999. In such view of the matter, the writ petition stands allowed. No costs.