

(2006) 01 MAD CK 0111

In the Madras High Court

Case No : Writ Petition No. 56 of 2001 and W.M.P. No. 68 of 2001

V. Lakshmiammal

APPELLANT

Vs

Assistant Commissioner of ULT, Special Commissioner and
Commissioner of Land Reforms and The Tahsildar (ULT)

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Tamil Nadu Urban Land Tax Act, 1966 — Section 11(1), 12, 7, 7, 7(D)

Citation : (2006) 01 MAD CK 0111

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : S. Chandrasekaran, for the Appellant; Nedunchezhiyan, Government Advocate, for the Respondent

Judgement

1. This writ petition has been filed by the petitioner against the order of the second respondent in R.P. No. C1/5729 of 2000, dated 26.9.2000 and for a direction forbearing the respondents from assessing, levying or demanding any amount under the provisions of the Tamil Nadu Urban Land Tax Act 1996.

2. The facts-in-brief are as follows:

a. The petitioner is in possession and enjoyment of 3.87 acres and is possessing kist receipts. Subsequent to the introduction of Section 7-D of the Tamil Nadu Urban Land Tax Act, for not submitting the return, the first respondent initiated proceedings against one Varalakshmi, though the real and original owner is the petitioner, who was never served with any notice. Thereafter, as the petitioner came to know that the first respondent made an assessment in case No. 282 to 284 for fasli 1401 dated 22.4.1997, she obtained certified copies on 13.1.2000. Then, the petitioner approached the second respondent for revising the order of assessment in Revision Petition No. C1/5729 of 2000. Meanwhile, the third respondent issued a demand notice to the petitioner on 1.4.2000.

b. The second respondent rejected the revision petition filed by the petitioner by

his order dated 26.9.2000 on the ground that the petition was filed with a delay of more than three years from the date of assessment.

3. As against the order of the second respondent, the petitioner has come forward with this Writ Petition.

4. No counter has been filed by the respondents.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

6. The learned counsel for the petitioner would contend that since the notice was not served on the petitioner, who is the real and true owner of the lands in dispute, but was served on one Varalakshmi, only after the petitioner came to know that assessment order was passed against the petitioner, but the order stood in the name of said Varalakshmi, she obtained copies of the orders of assessment and filed revision on the ground that she was in possession and enjoyment of agricultural lands and not urban lands and therefore, the orders of assessment have to set aside, however, the second respondent dismissed the revision without considering the facts and circumstances of the case and therefore, the order of the second respondent has to be set aside.

7. Further, it is contended by the learned counsel for the petitioner that since the order was not served on the petitioner and also the statutory requirement, as provided u/s 11 of the Act, was not complied with prior to the passing of the assessment order, the entire proceedings of the first respondent are vitiated and therefore, they are liable to be set aside and consequently, the order of the second respondent is also liable to be set aside.

8. Per contra, the learned Additional Government Pleader by producing a file would contend that though the notice was served on the husband of the petitioner, the petitioner did not file any return. However, a revision petition was filed by the petitioner after a lapse of more than three years, the second respondent rejected the revision filed by the petitioner and therefore, interference of this Court in this Writ Petition is unwarranted.

9. The point to be decided in this revision is whether the entire proceedings of the first respondent and also the order of the second respondent rejecting the revision filed by the petitioner are sustainable in law or not.

10. A perusal of para-wise remarks produced by the learned Additional Government Pleader reveals that the notice dated 24.2.1997 stood in the name of one Varalakshmi was served on the husband of the petitioner and subsequent assessment proceedings was also stood in the name of the said Varalakshmi. In the assessment proceedings it is mentioned as follows:

The Urban Land owner Tmt.Varalakshmi, residing at Kunrathur did not file the return u/s 7(D) of the Tamil Nadu Urban Land Tax Act, 1991. Hence 4-C notice was issued to her. She did not appeared for enquiry

11. From the above, it is clear that 4-C notice neither stood in the name of the petitioner nor served on the petitioner, however assessment order, which did not also stand in the name of the petitioner, was passed by the first respondent and in such circumstances, it is not proper to expect that the petitioner should have filed return in response to the 4-C notice and appeared before the enquiry officer.

12. It is also not the case of the respondents that the assessment order was served on the petitioner, though it did not stand in the name of the petitioner.

13. At this juncture, it is pertinent to see Section 12 of the Act, which reads as under:

12. Copy of order to be sent to the assessee, (Director) and Urban Land Tax Officer - A copy of the order passed u/s 10 or 11 shall be served on the owner in such manner as may be prescribed and a copy of the said order shall also be sent to the (Director) and the Urban Land Tax Officer concerned.

14. It is also necessary to see what Section 11 of the Act says:

11. Procedure in case where no return is filed: (1) Where the owner of urban land has failed to furnish the return u/s 7, and the Assistant Commissioner has obtained the necessary information u/s 9 he shall serve a notice on the owner in respect of each urban land specifying therein -

(a) the extent of the urban land ; (b) the amount which, in the opinion of the Assistant Commissioner, is the correct market value of the urban land ; and direct him either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the owner may rely.

15. From the provisions of the above Sections, it is clear that the service of notice u/s 11(1) of the Act and the order passed u/s 12 of the Act, on the owner of the land is mandatory.

16. It is apparent in this case that the statutory requirements of Sections 11 (1) and 12 of the Tamil Nadu Urban Land Tax Act, 1966, have not been complied with by the first respondent and no counter or document has been produced explaining that the order has been served on the petitioner. In law, if service is not done, either notice or order, in a prescribed mode it is no service in law and has no legal effect.

17. Further, though the respondents prepared the para-wise remarks, they do not file any counter refuting the claims of the petitioner for the reasons best known to them.

18. Pursuant to the assessment order, a demand notice was served on the petitioner on 1.4.2000. Thereafter, the petitioner filed a revision petition, which was dismissed by the second respondent by his order dated 26.9.2000 on the ground of delay of more than three years.

19. When the revisional authority dismissed the revision petition filed by the petitioner on the ground of delay, he should have gone into the reasons for causing the delay and thereafter, he should have come to his own conclusion that the delay is on the part of the petitioner or the respondents and also he should have taken into consideration the contention of the petitioner that he was in possession and enjoyment of agricultural lands and not urban lands.

20. Further, when the revisional authority himself has stated in his order that the revision petitioner is not the assessee, he should not have dismissed the revision on the ground of delay rather he should have redressed the grievance of the petitioner.

21. When the proceedings initiated by the first respondent are vitiated for non-fulfilling the statutory requirements of Section 11 and 12 of the Act and the revisional authority also did not consider the revision petition in a proper manner, as discussed above, the entire proceedings of the first respondent and also the order of the second respondent have to be set aside for the reasons stated above. Accordingly, they are set aside.

22. Further, the assessing authority, first respondent is directed to pass an assessment order, if the petitioner is an assessee under the Tamil Nadu Urban Land Tax Act, after complying with the statutory requirements of Section 11 of the Act by affording reasonable and sufficient opportunity to the petitioner, within three months from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is allowed. No costs. Connected W.M.P. is also dismissed.