

(1998) 11 MAD CK 0043
In the Madras High Court

V. Ravindran

APPELLANT

Vs

The Special Commissioner and Commissioner of Land
Reforms and Another

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Citation : (1999) 1 LW 133 : (1999) 1 MLJ 109

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Judgement

Shivaraj Patil, J.—Heard the learned Counsel for the parties.

2. The competent authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as "the Act") -- Trichy

agglomeration --held that the petitioner has 2385 sq.mts. of excess vacant land, u/s 9(5) of the Act by its order dated 30.9.1988. The petitioner

filed an appeal before the Special Commissioner and Commissioner of Land Reforms, Madras, u/s 33 of the Act. The said appeal also was

dismissed by the order dated 18.7.1989, however pointing out that the competent authority, the respondent No. 2 in this writ petition, had wrongly

noted the extent as 2450 sq.mts. instead of 2950 sq.metres in respect of S. No. 2456/2, rectified the same. The petitioner has questioned the

validity and correctness of the order dated 18.7.1989 passed by the first respondent-appellate authority and has sought for quashing the same by

issue of a certiorarified mandamus.

3. The facts leading to the filing of this writ petition, to put in brief, are the following: The petitioner purchased an extent of 73 cents and 23 1/2

cents of agricultural wet lands in Survey Numbers 2456/2 part and 2072 part of

Kondayampettai village and Thennur Village respectively, coming within the Tiruchirapalli Urban agglomeration, as per registered sale deeds-documents No. 291/81 dated 27.10.1981 and No. 90/80 dated 20.9.1980; he purchased another land with building measuring an extent of 374 sq.mts. under a registered sale deed-document No. 1667/85 dated 20.9.1985; an extent totalling 96 1/2 cents comprised in item Nos. 1 and 2 mentioned above, were purchased as agricultural lands and they had been put to agricultural use; they were also registered as "wet" in the Revenue records on the date of commencement of the Act; the petitioner did not file return u/s 7(1) of the Act, bona fide thinking that the lands purchased by him were agricultural lands and they continued to be so even after purchase made by him; in 1984, he made a lay out of the land in Survey No. 2456/2 of Kondayampettai Village in Srirangam Municipal limits; the lay out was approved by the Deputy Director of Town and Country Planning, Tiruchirapalli, in L.P. No. 12 of 1984, dated 19.4.1984, before conversion of agricultural lands into lay outs, he applied to the second respondent, who issued no objection in his proceedings L.Dis. No. 284/84 dated 4.2.1984; similarly, the petitioner put up a residential building in Survey No. 2070 of Thennur Village in Tiruchirapalli Municipal Limits after obtaining sanction of Tiruchirapalli Municipality in 1986, the petitioner referring to Sections 3(p) and 5(3) of the Act, claimed that the two agricultural lands mentioned above could not have been taken into consideration in holding that the petitioner has excess vacant land; the second respondent after giving sufficient time and opportunity to the petitioner to put forth his case, disagreeing with the contentions raised by the petitioner held that the petitioner has 2385 sq.mts. of excess vacant land, by his order dated 30.9.1988, stating that no doubt the lands mentioned above were agricultural lands on the date when the petitioner purchased; but they were subsequently and admittedly converted into lay outs, creating house-sites, they did not remain agricultural lands, the exemption claimed by the petitioner could not be granted as the lands were not converted and lay outs were not approved as on the date of commencement of the Act; the appellate authority, the respondent No. 1 herein, having examined the contentions raised in the appeal by the petitioner, dismissed the appeal by the order impugned in this writ petition, except

directing the competent authority to rectify the extent of the land mentioned above as 2450 sq.mts. instead of 2950 sq.mts. in respect of Survey

No. 2456/2 of Srirangam Municipality in the order issued u/s 9(5) of the Act.

4. The respondents have filed a counter affidavit. There appears to be no dispute in relation to facts, such as the lands were agricultural lands when

the petitioner purchased them and they were converted subsequently in 1984 and 1986 and that the petitioner was given fair and sufficient

opportunity before the order by the competent authority as well as by the Appellate Authority. In the counter affidavit, the respondents have

justified the orders passed by them and specifically pointing out that the petitioner could not take benefit of Sections 3(p) and Section 5(3) of the

Act. Thus, the controversy ranged in the writ petition comes to whether the two lands held by the petitioner, though they were agricultural lands

when he purchased, subsequently they having been converted for non-agricultural purposes for using them as house-sites after getting approval for

the layouts, could be exempted as claimed by the petitioner.

5. The learned Counsel for the petitioner in his arguments reiterated the contentions and grounds raised in the writ petition. The learned Additional

Government Pleader, based on the counter affidavit filed by the respondents, made submissions justifying the order impugned in this writ petition.

6. have carefully considered the submissions made by the learned Counsel for the parties. "Vacant land" is defined u/s 3(P) of the Act and to the

extent it is relevant for the immediate purposes, it reads:

(p) ""Vacant land"" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include:

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations

(a) the land occupied by any building constructed before, or under construction on the commencement of this Act with the approval of the

appropriate authority and the land appurtenant to such building.

(b) the land where any building is proposed to be constructed in respect of which the building plan has been approved by the appropriate authority

before the commencement of this Act and the land appurtenant to such building;

(in)...

(iv) ...

Section 4 of the Act states that no person shall be entitled to hold any vacant land in excess of the ceiling limit. Ceiling limit is fixed in Section 5 of

the Act. Section 5(3) of the Act reads,

5(3) Notwithstanding anything contained in Sub-section (1), where any person with the object of development of vacant land for sale by allotment

of plots of land to others, has by himself, or through any other person, obtained before the commencement of this Act, the sanction of the

appropriate authority for the lay-out of such vacant land held by such person, then the person so holding the land shall be entitled to continue to

hold such vacant land:

Provided that such person shall not transfer any such vacant land or part thereof by way of sale, mortgage, gift, lease or otherwise to any person

who already owns a dwelling unit or any vacant land which together with the land to be transferred by that person would in the aggregate exceed

the ceiling limit of such transferee.

[Italics supplied]

7. As can be seen from the definition of "vacant land" as per Section 3(p) of the Act, a land mainly used for the purpose of agriculture, in an urban

agglomeration, is not "vacant land". The land where building is proposed to be constructed, in respect of which the building plan has been

approved by the appropriate authority before the commencement of the Act and the land appurtenant to such building, is also not included in the

"vacant land". In the opening part of the definition in Section 3(p) of the Act, it is not stated that the land mainly used for the purpose of agriculture

on the date of the commencement of the Act or before that only is not a vacant land. But, in Section 3(p)(iii)(b) of the Act, it is specifically stated

that the land where any building is proposed to be constructed in respect of which the building plan has been approved by the appropriate

authority before the commencement of the Act. In other words, the agricultural land, so long as it remains as such, it will not be a "vacant land",

Even from Section 5(3) of the Act extracted above, it is clear that notwithstanding anything contained in Sub-section (1), where any person with

the object of development of vacant land for sale by allotment of plots of land to others, obtained before the commencement of the Act, the

sanction of the appropriate authority for the lay-out of such vacant land, shall be entitled to continue to hold such vacant land. A plain reading of

Section 5(3) of the Act shows that a holder of any vacant land is entitled to continue to hold, provided he has obtained the sanction for the layout

before the commencement of the Act, converting the vacant land into plots for allotment to others for sale. The essential condition to claim benefit

of Section 5(3) of the Act is that such lay-out must have been approved, before the commencement of the Act.

8. In the case on hand, as already noticed above, the facts are not in dispute. The petitioner purchased the first two items of the lands under

registered sale deeds dated 27.10.1981 and 20.9.1980 respectively. The lay-out was approved in respect of the first item of the lands on

19.4.1984 and in respect of the second item of the lands in 1986. Thus, there was conversion of these agricultural lands in 1984 and 1986,

admittedly long after the commencement of the Act. This being the position, the contention of the petitioner cannot be accepted so as to claim

exemption of the applicability of the provisions of the Act, in holding that he has excess vacant land. In this view, the respondents 1 and 2 were

right in rejecting the contention of the petitioner and holding that there is excess vacant land. If one has to accept the contention of the petitioner,

then it will lead to anomalous position, in that all those persons who held agricultural lands on the date of the commencement of the Act,

subsequently could convert and use them for non-agricultural purpose and can afford to possess the vacant land beyond the ceiling limit

prescribed, whereas all those persons who had vacant land on the date of commencement of the Act in excess of the ceiling limit were required to

surrender the land, This apart, the language of Sections 3(p) and 5(3) of the Act is plain and unambiguous that so long the land remains as

agricultural land and it is used for that purpose, it is not included in the "vacant land" and the moment it is converted for non-agricultural purpose, it

becomes a "vacant land" for the purpose of the Act.

9. Section 3(p) of the Act defines "vacant land". Section 4 of the Act speaks as to the persons not entitled to hold vacant land in excess of the

ceiling limit. "Ceiling limit" is prescribed in Section 5 of the Act. Section 17 of the Act takes care of ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees, etc. u/s 17(1) of the Act, if, on or after the commencement of the Act, any person acquires by inheritance, settlement or bequest from any other person or by sale in execution of a decree or order of a civil court or of an award or order of any other authority or by purchase or otherwise any vacant land, the extent of which together with the extent of vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then, he shall within the prescribed time, file a statement before the competent authority. Sub-section (2) of Section 17 of the Act declares that "the provisions of Sections 7 to 16 (both inclusive) shall, so far as may be, apply to the statement filed under this section and to the vacant land held by such person in excess of the ceiling limit." The combined and harmonious reading of Sections 3(p), 4, 5(3), 7 and 17 of the Act, keeping in view the scheme of the Act, the object sought to be achieved, the purpose intended to be served, and the mischief sought to be eliminated, makes the position clear that any person acquiring vacant land subsequent to the commencement of the Act, which exceeds the ceiling limit together with the vacant land, if any, already held, is required to file statement u/s 7 of the Act. Admittedly, after the commencement of the Act, the petitioner acquired vacant land in excess of the ceiling limit, when the lands were converted for non-agricultural purpose, lay-outs were formed and approved. In the light of what is stated above, the contention raised by the petitioner is unacceptable.

10. In the result, for the reasons stated, the writ petition has no merits, Therefore, it is dismissed. There will be no order as to costs.