(2015) 03 MAD CK 0260

In the Madras High Court

Case No : Writ Petition No. 6988 of 2012 and W.P. No. 3400 of 2015 and M.P. Nos. 1 and 2 of 2015

V. Sundararaj and Others — APPELLANT

Vs

The Special Commissioner and Commissioner, Land Reforms and Others — RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 MAD CK 0260

Hon'ble Judges : M. Duraiswamy, J.

Bench : Single Bench

Advocate : V. Ramesh, for the Appellant; V. Subbiah, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

M. Duraiswamy, J.—Since the facts leading to the filing of the above two writ petitions are one and the same, both the writ petitions are disposed of by this common order. The petitioners have filed the writ petitions seeking to issue a writ of Certiorarified mandamus to call for the records of the respondent especially the order of the second respondent dated 17.03.1998 under Section 9(5) and notification under Section 11(3) dated 03.03.1999 of the Tamil Nadu Urban Land Ceiling Regulation Act 1989 in respect of S.Nos.252/1 measuring an extent of 83 cents, S.No.253/4 measuring an extent of 17 cents, S.No.252/2 measuring an extent of 35 cents, S.No.252/3 measuring an extent of 25 cents in S.No.252/part measuring an extent of 50 cents in all extent of 1 acre in Thirumudivakkam Village, Sriperumpudur Taluk and to quash the same and treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 199), so as to enable the third respondent to correct the entries in the revenue records showing the names of the petitioners as owners of the land in the survey numbers referred above.

2. Heard the learned counsel for the petitioners and Mr.V.Subbiah, learned

Special Government Pleader for the respondents.

3. The petitioner in W.P. No.6988 of 2012 purchased an extent of 83 cents in S.No.253/4 measuring an extent of 17 cents in all an extent of 1 acre of Thirumudivakkam Village, Sriperumbudur Taluk, Kancheepuram District on 15.09.2011. Similarly, the petitioner in W.P. No.3400 of 2015 purchased an extent of 35 cents in S.No.252/2, 25 cents in S.No.252/3 and 50 cents in S.No.252/part in Thirumudivakkam Village, Sriperumbudur Taluk, Kancheepuram District on different dates. It is the case of the petitioners that the patta was granted in favour of their vendors. Later when the petitioners approached the second respondent, they were informed that their lands were acquired by order dated 17.03.1998 and 20.04.1999 and it was also informed that one Venkataraman and Mrs. Girija Venkataraman have filed Writ Appeal in W.A. No.40239 of 2006 quashing the very same orders passed by the second respondent dated 17.03.1998.

4. Mr.V.Ramesh, learned counsel for the petitioners submitted that in W.P. No.40239 of 2006 which was filed by the petitioners therein seeking to quash the order dated 17.03.1998 passed by the second respondent, this court by order dated 19.10.2012, allowed the writ petition and held that the notice under Section 12(5) of the Act could not have been served on the predecessor in title and also held that the competent authority could not have taken possession of the property from the land owners and handed over the possession to the Revenue Authority as claimed by them that the possession was taken over on 21.05.1999.

5. On a perusal of the counter filed by the respondents in W.P. No.6988 of 2012, the respondents have stated that the possession was taken on 21.05.1999. A perusal of the order passed by this Court in W.P. No.40239 of 2006 dated 19.10.2012 would show that the learned Judge has categorically found that the contention of the respondents therein that the possession was taken over on 23.05.1999, cannot be a true document and the same is a theory cooked up in the records and cannot be believed since the learned Judge has perused the entire original files produced before this Court at the time of disposal of the writ petition in W.P. No.40239 of 2006. It would be pertinent to extract the relevant portion of the order passed in the said writ petition which reads as follows:

" 9. The respondents have taken a stand that the possession of the land was taken on 21.5.1999. The learned Additional Government Pleader, produced the files which contain a Land Delivery Receipt in Rc.No.1332/97A. The Receipt contains several columns, one of which relates to the date of handing over possession. As against the said column, the date 21.5.1999 has been typed. At the bottom of the Receipt, there is an endorsement on the left side with the words "handed over by" printed therein. On the right hand side, at the bottom of the Receipt, the words "taken over by" are printed. In the space below the words "handed over by", the Special Deputy Tahsildar has signed. In the space below the words "taken over by", the Revenue Inspector, Kundrathur Firka, has signed.

Both the Officers have written by hand, the date 21.5.1999 just below their respective signatures. In other words, the land described in the Land Delivery Receipt was allegedly handed over by the Special Deputy Tahsildar-I, Office of the Competent Authority (ULC) to a Revenue Inspector of the Kundrathur Firka, Sriperumbudur Taluk, on 21.5.1999.

10. But, unfortunately for the respondents, they must first show that the possession of the land was taken by the Special Deputy Tahsildar in the Office of the Competent Authority before they could show that they handed over possession to the Revenue Department. The handing over of the land by the Competent Authority under the Act, to the Revenue Authority, has taken place by exchange of a Delivery Receipt. In other words, it was a paper delivery. For the purpose of Section 3(1)(a) of the Act, what is required to be shown by the respondents is that the respondents, namely, the Competent Authority, under the Urban Land Ceiling Act, had taken possession from the owners. Without first showing that they took possession of the land from the owner or occupier, they cannot show that they handed over the land to the Revenue Department. In the file, there is nothing to indicate that the Competent Authority or anyone from his Office, took possession of the land from the petitioners. Therefore, the Delivery Receipt, by which the Competent Authority claims to have handed over possession to the Revenue Authority, cannot be accepted. If the files do not indicate that the Competent Authority had taken possession before 21.5.1999, then it would not have been possible for the Competent Authority to hand over possession to the Revenue Department.

11. In pages 103 and 105 of the file, notices in Form VII under Section 11(5) of the Act, are found. These notices are dated 20.4.1999. They are addressed only to the predecessor-in-title of the petitioners. Therefore, it is clear that persons in actual physical possession, namely, the petitioners were not issued with any notice under Section 11(5).

12. Let me keep the above point aside for a minute. Let me go by the notices in Form-VII issued under Section 11(5). As I have already stated, these notices are actually dated 20.4.1999. Pages 104 and 106 of the file show that these notices were actually despatched on 24.4.1999. Paragraph-1 of these notices make it clear that the land owner was supposed to hand over possession of the lands, within 30 days of receipt of these notices. Paragraphs 2 and 3 of the notices make it clear that if possession was not handed over within 30 days, the Authority would take possession by using force. Therefore, there is a statutory requirement for the Competent Authority to wait for 30 days.

13. Since the files show that the notices under Section 11(5) dated 20.4.199 were actually despatched only on 24.4.1999, they could not have been served on the petitioners or even their predecessor, on any date before 25.4.1999. The method by which these notices were despatched, is not indicated anywhere in the file. There is also no acknowledgement or proof to show that these notices were served on the addressee. But let me assume that these notices were duly

served on the addressee. However, they could not have been served on any date before 25.4.1999, since they were despatched only on 24.4.1999. Therefore, the 30 days period from the date of service (or deemed service) would expire only on 25.5.1999. It was only after 25.5.1999 that the Competent Authority himself would have become eligible to take possession of the land by using force as per Section 11(5). He was not entitled to take possession by use of force before 25.4.1999. It is not the claim of the respondents that the owner voluntarily handed over possession. Therefore, if the Competent Authority could not have taken possession, on or before 25.5.1999, there is no way the Competent Authority could have handed over possession to the Revenue Authorities even on 21.5.1999. Thus, the claim that possession was taken over on 21.5.1999 is a theory just cooked up in the records and cannot be believed. Once it is found that possession was not taken over on the date claimed by them viz., 21.5.1999, the second limb of Section 3(1)(a) is not satisfied. Hence, Section 4 would go to the rescue of the petitioners.

14. The respondents have taken a plea that after the publication of the notice under Section 11(3), the land vested in the Government and that therefore, if the petitioners had retained possession, after such vesting, it was an unlawful possession. But, unfortunately for the respondents, the very same contention was repelled by a Division Bench of this Court in Government of Tamil Nadu vs. Mecca Prime Tannery {2012 (6) MLJ 273 (paragraph 31 onwards)}.

15. Even in cases where possession had been taken, such possession was held by a Division Bench of this Court in The Government of Tamil Nadu Vs. Nandagopal, Krishnappan, Nagammal and Govindu, , to be unlawful, if the provisions of Section 11(5) not been complied with. In the case on hand, the records speak for themselves, as they disclose that the provisions of Section 11(5) could not have been complied with in view of the date of despatch of the notice in Form- VII and the date of alleged take over of possession.

16. In view of the above, the petitioners are entitled to succeed. Hence, the writ petition is allowed and it is declared that the petitioners are entitled to the benefit of the Repealing Act, in view of the fact that as on the date of the repeal viz., 16.6.1999, possession had not been taken over by the respondents. There will be no order as to costs. Consequently, connected miscellaneous petition is closed."

6. The order passed by the learned Judge was also challenged by the respondents in W.A. No.239 of 2014 and the Division Bench of this Court by its judgment dated 22.07.2014 confirmed the order of the learned Single Judge and dismissed the writ appeal filed by the respondent. When this Court has categorically held that the respondents could not have taken possession as contended by them on 21.05.1999 which was also confirmed by the Division Bench of this Court in Writ Appeal following the judgments of the learned Single Judge and the Division Bench of this Court, I am of the view that the respondents could not have taken possession on or before 21.05.1999 for the

reason that the notice u/s.11[5] itself was dispatched only on 24.04.1999. When the notices were dispatched only on 24.04.1999, the contention raised by the respondents that they took possession before 21.05.1999 cannot be a true statement. Since the issue involved in these writ petitions are squarely covered by the order passed in WP.No.40239/2006 and the Judgment passed in WA.No.239/2014, the petitioners herein are entitled to succeed in these writ petitions and accordingly, the writ petitions are allowed and it is declared that the petitioners are entitled to the benefit of Repeal Act in view of the fact that on the date of repealment, viz., 16.06.1999, the possession of the lands in question were not taken over by the respondents and there will be no costs.

7. Mr.V.Ramesh, learned counsel for the petitioners submitted that the petitioners would give a representation to the 3rd respondent to correct the entries in the revenue records showing the names of the petitioners as owners of their respective lands within a period of one week from the date of receipt of this order and on such representation being made by the petitioners, the 3rd respondent is directed to consider the same and dispose of the same on merits and in accordance with law taking into consideration the order passed in these writ petitions within a period of four weeks thereafter.