

(1997) 11 MAD CK 0214

In the Madras High Court

Case No : W.A.No. 33 of 1993 and C.M.P.No. 545 of 1993

V.S. Thiagarajan Chettiar (died) and 2 others

APPELLANT

Vs

The Commissioner, Land Reforms, Ezhilagam, Chepauk,
Madras-5 and another

RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 7, 9

Citation : (1998) 1 CTC 29 : (1998) 2 LW 405 : (1997) 2 MLJ 667

Hon'ble Judges : Shivaraj Patil, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Mr. K. Alagiriswami, S.C. For M/s. Sekar and Shanmugavelli Sekar,
for the Appellant; Mr. R. Thirugnanasambandam, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Judgement pronounced by Shivaraj Patil, J.—Originally one V.S. Thiagarajan Chettiar filed W.P.No.1502 of 1983 praying for the issue of a writ of certiorarified mandamus calling for the records relating to the order of the first respondent made in R.Dis.No.42797 of 1980 dated, 25.5.1982 and to quash the same so far it related to the lands belonging to the family of the petitioner in S.Nos.729, part, 733/1, 759/1, 762/1, 763/1, 764/1, 769/A, 770/B, 771/A, 772/B, 765/B Part at Narammalpuram, Tirunelveli District are concerned and direct the respondents to drop all further proceedings pursuant to the impugned order.

2. Learned single Judge dismissed the writ petition by order dated 22.8.1991. It appears that after the order was passed by the learned single judge, the petitioner died and his legal representatives have filed this appeal aggrieved by the said order of the learned single Judge.

3. Briefly stated the facts which are considered relevant and necessary for the disposal of this appeal are the following: The writ petitioner and his wife purchased the survey lands under two separate sale deed dated 31.3.1965. The

said lands were cultivable agricultural lands; except a portion of the said land all other lands which were sought to be acquired as excess vacant land under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (in short, "the Act") are entered as agricultural lands in the revenue records. The writ petitioner has further stated that himself and his wife were separately cultivating the lands from the year 1967 onwards; himself, his wife and their children were included in Category III of Schedule I of the Act. They filed different statements u/s 7 of the Act. The writ petitioner received draft statement from the second respondent u/s 9(1) of the Act along with notice u/s 9(4) of the Act, calling upon him to file his objections to the draft statement. The writ petitioner filed his objections. Although, the writ petitioner, his wife and his sons had filed separate returns, they were clubbed together as a single family. Finally, an extent of 94929.80 sq. metres of land were declared to be surplus land. According to the petitioner, the authorities were not right in clubbing the separate returns filed by the petitioner, his wife and his sons and the authorities were also not right in treating the agricultural lands as urban vacant land. In the affidavit filed in support of the writ petition, some more details and particulars are given raising various contentions and grounds. We do not propose to narrate them in detail in the view we are proposing to take. Learned single Judge rejecting the contentions of the writ petitioner, dismissed the writ petition by the order under appeal. Under the circumstances, the appellants have filed this appeal challenging the order of the learned single Judge on various grounds.

4. We think it appropriate to extract ground Nos.6,7, 10 and 11 of the memorandum of writ appeal in order to show that the grounds raised require examination having regard to the facts and circumstances of the case keeping in view the submissions made by Mr. K. Alagiriswami, learned Senior Counsel, appearing for the appellants.

"The learned Judge failed to appreciate that the purchase of a separate land in the name of the appellant/petitioner's wife and the settlement in favour of the minor son of the petitioner have been made well ahead of the introduction of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter called the Act) and separate pattas have been issued in the name of the said individuals by the revenue authorities. Failure to appreciate the relevant facts have vitiated the entire judgment of the Court below.

"The learned Judge failed to appreciate that the land sought to be declared as surplus are admittedly agricultural lands, classified as the same in the revenue records and that the cultivation process has been carried on."

"The learned Judge failed to render a finding with regard to the allegation of the appellant/petitioner that the land belonging to neighbours in the same survey number of the same area viz., Pandarakulam Taluk have been exempted singling out the appellant herein. The question of discrimination and the violation of Article 14 was not considered and therefore, the impugned order is liable to be set aside.

"The finding of the learned Judge that an opportunity of being represented was afforded on the ground that the petitioner has filed his objection on 10.7.1992 is not justified since provisions of Section 9(4) provides for a reasonable opportunity. Therefore, the judgment deserves to be set aside on the ground of principles of natural justice also."

5. Learned Senior Counsel made several submissions to contend that the order of the learned single Judge cannot be sustained. In particular, he drew our attention to Section 9(5) of the Act to state that a reasonable opportunity of being heard ought to have been given by the competent authority. According to the learned Senior Counsel merely providing an opportunity to file objections to the draft statement as required u/s 9(4) of the Act was not enough. In order to appreciate this submission, we find it necessary to extract Section 9(4) and (5) of the Act.

"9(4) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

9(5) The competent authority shall duly consider any objection received within the period specified in the notice referred to in sub-section (4) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit."

6. Learned Additional Government Pleader in the first place argued in support and justification of the impugned order. He submitted that the authorities have passed the final order after affording an opportunity to the writ petitioner to file his objection to the draft statement and after considering the objections and the materials placed on record, the competent authority, viz., the second respondent passed the order which the learned single Judge has upheld by dismissing the writ petition. On the previous date of hearing we had asked the learned Additional Government Pleader to find out from the records of the authorities whether any opportunity of being heard was given to the writ petitioner. Learned Additional Government Pleader took time to verify from the records and get instructions in that regard. Today, he submitted that from the records it is not possible to say that whether any separate and specific opportunity of hearing was given.

7. We have considered the submissions made by the learned counsel for the parties. It is not disputed that the writ petitioner received draft statement and he did file objections to the draft statement within the time given as required u/s 9(4) of the Act. Section 9(5) of the Act states that the competent authority shall consider the objection received u/s 9(4) of the Act and the authority shall after giving the objector a reasonable opportunity of being heard pass such orders as it deems fit. Apart from the plain reading of Section 9(5) of the Act that a

reasonable opportunity of being heard is required to be given, we have no hesitation in stating that giving a reasonable opportunity of being heard is mandatory, particularly, so when the opportunity is contemplated before passing final order dealing with immovable properties as to vacant urban excess land. It is not disputed before us that such an opportunity of being heard was not at all given. This being the position, the order passed by the competent authority, in our view, cannot be sustained. Having regard to the grounds raised in the appeal memorandum extracted above, it cannot be said that the writ petitioner could not improve or substantiate his case with reference to the materials available. In other words, if an opportunity was given to the writ petitioner, he would have been in a better position to clear the doubts or explain the position relating to his case. Of course, it was open to the competent authority to pass appropriate orders after hearing the writ petitioner. We have extracted the grounds of appeal from the memorandum of appeal in order to show that some substantial questions arise for consideration which require further submission by the writ petitioner, now, of course the appellants herein, after the death of the writ petitioner.

8. The learned single Judge in paragraph 7 of his order dealing with the contention of failure to give opportunity has stated thus:

"With regard to the next contention regarding failure to give an opportunity to the petitioner to put forward his case, it is brought to the notice of this Court by the learned Government Advocate that the notice has been duly served and the petitioner filed his objection on 10.7.82. After considering his objection, 94929.80 sq. metres of lands were excluded. The learned counsel for the petitioner cannot repeat the said contention here. Even otherwise, it is found in para 4 of the affidavit, that the petitioner himself received a draft statement from the second respondent u/s 9(1) of the Act along with the notice u/s 9(4) of the Act and that subsequently, in para 9 he has stated about his objection. Despite the objections, the lands were included and only after giving an opportunity, the final order was passed u/s 9(1) of the Act. Hence, there is no force in the said contention also.

From what is stated in paragraph 7 of the order of the learned single Judge, it appears to us that sub-section 5 of section 9 of the Act missed the attention of the learned single judge. In the affidavit filed in support of the writ petition, the writ petitioner contended that sufficient and reasonable opportunity was not given; enquiry was not held by the competent authority. Since Section 9(5) of the Act, as held by us as above, mandates giving of reasonable opportunity of hearing also in addition to consideration of the objections filed u/s 9(4) of the Act, we find it difficult to sustain the order of the learned single Judge. According to us, the appellants are entitled to succeed in this writ appeal on this short ground that a reasonable opportunity of being heard was not given as required u/s 9(5) of the Act. In this view, we consider it unnecessary to deal with the other contentions raised by the appellants on their merits.

9. In the result, for the reasons stated, we pass the following order: This appeal is allowed. The order of the learned single Judge dated 22.8.1991 in W.P.No.I502 of 1983 as well as the order of the second respondent dated 7.3.1980 relating to the lands in question are set aside. The matter is now remitted to the second respondent for disposal on merits and in accordance with law after giving an opportunity of hearing to the appellants. We make it clear that the second respondent has to issue notice to the appellants for hearing and after hearing the appellants to pass orders on merits and in accordance with law. All the contentions of the parties are left open to be urged before the second respondent. No costs. Consequently, C.M.P. is dismissed.