IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 31/07/2014

DATED : 02/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.7706 of 2004

1.Ranganayaki Ammal
2.Krishnaveni
3.Tamaraichelvi
4.Dhamayanthi ... Petitioners

vs.

1.The State of Tamil Nadu
rep.by its Secretary
Revenue Department
Fort St.George, Chennai-9

2.The Special Commissioner
Commissioner of Land Reforms
Ezhilagam, Chepauk
Chennai-5

3.The Assistant Commissioner (ULT)
Competent Authority (ULC)
Thiruvallur District
Poonamallee Zone, Chennai-56 ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records relating to the impugned order in Na.Ka.S.R.568/94, dated 13.10.1995, passed by the third respondent and quash the same

For Petitioners : Mr.S.Rajendran

For Respondents : Mr.M.S.Ramesh, A.G.P.

O R D E R

The second petitioner has filed the affidavit on her behalf and on behalf of other writ petitioners. She has submitted that the property situated at Numbal Village in Survey No.45/2, measuring an extent of 0.27.0 Hectares (66 Cents) and in Survey No.55/3, measuring about 0.23.5 Hectares (58 Cents) in all aggregating to 1 Acre and 24 Cents (5050 sq.mts.) was originally allotted to her mother Mrs.Annamalai, by the Settlement Tahsildar, Thiruvannamalai and Patta bearing No.8, was also issued in her name, as per the Settlement Order, dated 19.07.1985. Ever since the date of the Settlement Order, the petitioners' mother was in uninterrupted possession and enjoyment of the aforesaid properties and paid kist for the same and in all the revenue records, the same had been incorporated in their mother's name. During the lifetime of Annamalai till 2002, she was in absolute uninterrupted possession and enjoyment of the properties situated at in Survey No.45/2, measuirng about 66 Cents and in Survey No.55/3, measuring about 58 Cents in all aggregating to 1 Acre 24 Cents in Numbal Village. In one part of the land, she had constructed a house and lived there till her demise and the remaining portion of the lands were used as cultivation lands, where greens and vegetables were cultivated.

2.The second petitioner has further submitted that her mother, during her lifetime, during 1995, executed a registered Will bearing document No.15 of 1995, registered on the file of S.R.O.Kundrathur, bequeathing all her properties, including the properties situated in Survey No.45/2, measuring about 66 Cents and in Survey No.55/3, measuring about 58 Cents, in all aggregating to 1 Acre and 24 Cents, in Numbal Village, to herself and to her sisters, viz., Ranganayaki Ammal and Saroja to enjoy the same absolutely, after her lifetime. Wherein, the said Saroja predeceased her mother leaving behind the petitioners 3 to 5 as her surviving legal-heirs to inherit her share over the properties.

3.The second petitioner has further submitted that her mother Annammal died on 03.01.2002, leaving behind her and her elder sister Ranganayaki Ammal and the petitioners 3 to 5 herein as the legal-heirs to inherit all her properties including the aforesaid properties. Based on the aforesaid Will executed by the mother Annammal, she and the other petitioners herein, as per the registered Will, claimed interest and title over the properties left by Annammal and thereby approached the Revenue Authorities to get transfer of the properties, which stood in the name of her mother Annammal to their names, but the Tahsildar informed the second petitioner that the lands in Survey Nos.45/2 and 55/3 of Numbal Village will not be granted Patta and refused their claim. While the matter stood thus, the second petitioner came to understand that the third respondent herein had initiated proceedings under the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978 and treated the lands in Survey No.45/2, measuring about 66 Cents and in Survey No.55/3, measuring about 58 Cents, in all aggregating to 1 Acre and 24 Cents of land in Numbal Village, measuring an extent of 4550 sq.mts., of lands in the name of Annammal as excess land under Tamil Nadu Urban Land Regulation and Ceiling Act, 1978 and passed orders as per the Regulation Act and therefore, the lands in the aforesaid Survey Nos.45/2 and 55/3 of Numbal Village will not be granted Patta to the beneficiaries of the Will. Therefore, the second petitioner made an application for the copy of the order passed by the third respondent.

4.The second petitioner has further submitted that to her shock and surprise, the third respondent herein, without any basis, treated the agriculture lands situated in Survey No.45/2, measuring an extent of 66 Cents and in Survey No.55/3, measuring about 58 Cents, in all aggregating to 1 Acre and 24 Cents in Numbal Village, as vacant land, and seems to have issued notice under Section 7(2) of the said Act on 28.01.1993. The second petitioner understood that by Order, dated 13.10.1995, passed by the third respondent, under Section 9(5) of the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978, notices under Sections 7(2), 9(1) and 9(4) of the said Act, were also served and since no reply or objection were received from the landowners, 4550 sq.mts., of land in Survey Nos.45/2 and 55/3 in Numbal Village were declared as surplus from and out of the total extent of 5050 sq.mts. These facts are all not known to them, till the lifetime of Annnammal, all the properties were under her control and maintained by them and as per the registered Will, dated 23.02.1995, bearing document No.15 of 1995, the properties are jointly administered by them without any mutation.

5.The second petitioner has further submitted that during the lifetime of her mother Annammal, no notice was served upon her either by the third respondent or their agents in respect of the properties situated in Survey Nos.45/2 Part and 55/3 of Numbal Village, either under Sections 7(2), 9(1), 9(4) and 9 (5) of the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978 and therefore the entire proceedings initiated by the third respondent and the order passed by him under the provisions of the Act are vitiated by illegality, so also the order, dated 13.10.1995, passed under Section 9(5) of the said Act by the third respondent is illegal, since the third respondent has not followed the mandatory provisions of the Act. Therefore, the order, dated 13.10.1995, is vitiated illegal and against law.

6.The second petitioner has further submitted that after obtaining the order passed by the third respondent, she intended to prefer an appeal under Section 15 B of the UL (C & R) Act 24/1978 against the said impugned order before the Special Appellate Tribunal, Chennai, and came to know that the Tamil Nadu Urban Land Regulation and Ceiling Act stands repealed, by virtue of the Tamil Nadu urban Land Regulation and Ceiling Act (Repealed Act 20 of 1999) and thereby the entire proceedings initiated by the third respondent are therefore abated as per the decision of this Court in Mrs.Ayesha Haque vs. State of Tamil Nadu and another, reported in 2003 Writ LR 193. Thereafter, the second petitioner, once again approached the Tahsildar, Ambattur Taluk, to get name transfer for the said lands in their name from the name of Annammal as the Tamil Nadu Urban Land Regulation and Ceiling Act was repealed and the lands situated in Survey No.45/2, measuring about 66 Cents and in Survey No.55/3, measuring about 58 Cents, in all aggregating to 1 Acre 24 Cents in Numbal Village, are all in their absolute possession and enjoyment till date without any hindrances, but the Tahsildar, Ambattur Taluk, advised them to obtain a Court order for mutation of records in respect of the said lands. The third respondent herein had not served any notice to her mother during her lifetime nor any notice to any one of them under Section 11(4) and Section 11(5) of Tamil Nadu Urban Land Regulation and Ceiling Act, which are mandatory as per the Act, and further the actual possession was not taken by the third respondent from them in respect of the surplus land (4550 sq.mts) situated in Survey No.45/2, measuring about 66 Cents and in Survey No.55/3, measuring about 58 Cents of Numbal Village. On this score also, the order passed by the third respondent, dated 13.10.1995, under Section 9(5) of the Tamil Nadu Urban Land Regulation and Ceiling Act, has to be set aside. Hence, the petitioners have filed this writ petition.

7.The respondents have filed their counter affidavit stating that Annammal was found to be the owner of the lands in Survey No.45/2, measuirng about 2700 sq.meters and in Survey No.55/3, measuring about 2350 sq.meters in Noombal Village, as per the revenue records. Since she had not filed return, under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978) (hereinafter referred to as "the Act"), a notice under Section 7(2) of the Act was issued on 01.12.1992 and it was served on 25.02.1993. Since she had not filed any objection, a notice under Section 9(4) along with statement under Section 9(1) of the Act was issued calling for objections for the proposed acquisition of 4,550 sq.meters after allowing an entitlement area of 500 sq.meters. The notice was served on one C.Rathinam, grandson of Annammal, on 02.02.1995. The landowner had not filed any objections. The land was inspected by the Deputy Tahsildar on 20.09.1995 and it was found that land in Survey No.45/2 is covered by building and playground and land in Survey No.55/3 was vacant. The then Competent Authority had passed order, under Section 9(5) of the Act in Rc.No.568/94, dated 13.10.1995 to acquire the excess vacant land of 4,550 sq.meters. The final statement, under Section 10(1) of the said Act was issued on 30.11.1995, and served on the landowner on 06.03.1996. The notification under Section 11(1) of the Act was issued on 08.04.1996 and published in the Tamil Nadu Government Gazette No.22, dated 12.06.1996. The notification, under Section 11(3) vesting the land with effect from 01.10.1996 was issued on 30.08.1996 and published in the Tamil Nadu Government Gazette No.3, dated 22.01.1997. The notice under Section 11(5) of the said Act was issued on 30.06.1997 and served by affixture on 28.11.1997, since the landowner had refused to receive it. The possession of the excess vacant land was handed over to the Zonal Deputy Tahsildar, Ambattur, on 30.03.1998. The notice under Section 12(7) of the said Act was issued on 20.05.2002, and served on 31.05.2002 by affixture. The orders under Section 12(6) of the said Act determining the amount payable was issued on 11.12.2003 and served on the second petitioner on 28.01.2004. At this stage, the first petitioner and four others have filed this writ petition.

8.The respondents have further submitted that the petitioners themselves admitted that their mother had constructed a house in the land. They had also added that the remaining portion was used for cultivation of greens and vegetables, which is not correct. The Deputy Tahsildar had inspected the land on 20.09.1995 and reported that the land in Survey No.445/2 is covered by building and the land in Survey No.555/3 is vacant and converted into urban nature. Hence, the petitioners' contention is not correct. The petitioners have stated about the Will registered by their mother during 1995, which was not brought to the notice of the third respondent. Since the Will was made after 03.08.1976 and the landowner expired on 03.01.2002, the action taken treating Annammal as the owner of the land is correct according to the provisions of the said Act.

9. Further, the respondents have submitted that the petitioners have stated that the third respondent had treated the agriculture land as urban land without any basis. This is not correct. The land was inspected by the Deputy Tahsildar on 20.09.1995 and it was found that the land in Survey No.45/2 was covered by building and playground and land in Survey No.55/3 was vacant. Further, the the petitioners have stated that they are not aware of acquisition proceedings till the lifetime of their mother. It is evident that the petitioners have got right over the property as per the Will only after the death of the landowner. The landowner was alive on the date of introduction of the said Act (i.e.03.08.1976) and hence the petitioners cannot be treated as owners as per the provisions of the said Act. The petitioners have claimed that no notice was served upon their mother, which cannot be admitted. Notice under Section 7(2) of the Act was issued on 01.12.1992 and it was served on the urban landowner on 25.02.1993. Notice under Section 9(4) with statement under Section 9(1) of the Act was served on the grandson of the landowner. Final statement under Section 10(1) of the Act was served on the urban landowner on 06.03.1996. After observing all the formalities laid down in the said Act, the excess vacant land was acquired and the possession of the excess vacant land was handed over to the Revenue Authorities on 30.03.1998 and necessary changes have been made in the records. The action taken was in accordance with the provisions of the said Act.

10.The respondents have further submitted that the petitioners have stated that the landowner Annammal had registered a Will bearing document No.15 of 1995, in the Sub-Registrar Office at Kundrathur in their favour. The said Annammal expired on 05.01.2002 and as such, the petitioners can claim right over the property only after the death of Annammal. They cannot be treated as owners of the land as per the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The claim of the petitioners that the possession of the land is with them cannot be accepted. The petitioners can only be treated as encroachers of the Government land. Therefore, the respondents have prayed to dismiss the writ petition.

11.The learned counsel appearing for the petitioners has submitted that the subject lands were allotted to the mother of the petitioners by the Settlement Officer, Thiruvannamalai. Subsequently, he had issued Patta in her name. After settling the said property, the petitioners' mother was in possession and enjoyment of the same without any interruption. All the revenue records had been mutated in the name of the petitioners' mother. Mandatory taxes have been remitted to the statutory authorities. Their mother had constructed a house in a portion of the subject lands and used the rest of the lands for cultivation. She had executed a registered Will during 1995 in favour of the petitioners. She died on 03.01.2002. Subsequently, all the petitioners succeeded the subject lands. Hence the petitioners have levelled a petition before the Revenue Authorities and requested them for mutation and also for fresh Patta in their name. They came to know that the third respondent herein had issued proceedings under the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978 and acquired the excess land.

12.Further, the learned counsel has submitted that the subject lands have been classified as agricultural lands and as such the subjects lands do not come under the provisions of the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978. Therefore, the third respondent had declared 4550 sq.meters of land as a surplus land, which is not appropriate. The third respondent had not issued any notice to the erstwhile settlee and hence the third respondent's proceedings are not sustainable under the said Act. Subsequently, the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978 had been repealed. Therefore, the petitioners are entitled to Patta in their name. Hence, the learned counsel has prayed this Court to allow this writ petition.

13.The learned Additional Government Pleader appearing for the respondents has submitted that the petitioners' mother had been issued a notice, dated 01.12.1992 and the same was served on her on 28.01.1993, under the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978. After receipt of the same, the petitioners' mother had not appeared or made any objection. However, the third respondent, after excluding 500 sq.meters, acquired 4550 sq.meters of land. The said land is situated between the urban area as a vacant land. Hence, the learned Additional Government Pleader has prayed to dismiss the writ petition.

14.On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the third respondent had initiated acquisition proceedings to acquire the excess land under the Tamil Nadu Urban Land Regulation and Ceiling Act, 1978. The said proceedings had been completed during 1995 and the same was published in the Government Gazette during 1996. The Deputy Tahsildar attached to the Revenue Department had given a report stating that the said vacant land is being used as playground and no cultivation was done. Further, possession had been handed over to the Revenue Authorities during 1998. Hence, the impugned order is appropriate to operate further and the writ petition is liable to be dismissed.

15. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

r n s / krk
To:
1.The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-9.
2.The Special Commissioner
Commissioner of Land Reforms,
Ezhilagam, Chepauk,
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3.The Assistant Commissioner (ULT),
Competent Authority (ULC),
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SR(CO)
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