

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.15978 of 2007

and

M.P.No.2 of 2007

S.Chandran
rep.by his Power of Attorney
Tmt.R.J.Brinda Janardhanam

... Petitioner

vs.

1.The Principal Commissioner and
Commissioner
Land Reforms, Chepauk, Chennai-5

2.The Assistant Commissioner
Land Reforms, Urban Land Ceiling
and Urban Land Tax
I Floor, MRC Complex
Pudukottai Road, TVS Tollgate
Tiruchirappalli-20

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records of the second respondent pertaining to the notification, dated 16.01.1984, under Section 11(1) and notification, dated 23.04.1985 under Section 11(3) pursuant to the Order, dated 23.12.1983 under Section 9(5) and final statement U/s.10(1) of the Tamilnadu Urban Land (C & R) Act, 1978 in R.C.A.1 134/82 and quash the same, consequently directing the 1st respondent to issue suitable directions to the second respondent to drop all further proceedings in view of Section 4 of the TNUL (C & R) Repeal Act (TN Act 20 of 1999).

For Petitioner : Mr.K.Radhakrishnan

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

O R D E R

Reserved on : 12.10.2015
Pronounced on : 19.11.2015

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus, to quash the second respondent's notification, dated 16.01.1985, under Section 11(1), notification, dated 23.04.1985, under Section 11(3), pursuant to the Order, dated 23.12.1983, under Section 9(5) and final statement under Section 10(1) of the Tamilnadu Urban Land (C & R) Act, 1978 in R.C.No.A1/134/82 and to direct the first respondent to issue suitable directions to the second respondent to drop all further proceedings in view of Section 4 of the TNUL (C & R) Repeal Act (TN Act 20 of 1999).

2. The short facts of the case are as follows:

According to the petitioner, his father owned an extent of 3.52 Acres of dry lands in S.F.No.124/2 of Kottappattu Village, Tiruchirappalli District, under a Sale Deed No.4544 of 1944. The said land was in his exclusive possession and enjoyment. He died in the year 1972 intestate leaving behind his wife Guna Bai, and children, namely, Prema, Vijayalakshmi and Chandran (petitioner herein). After his demise, the said land came to be enjoyed by the four persons inclusive of the petitioner equally at 88 Cents equivalent to 3550 sq.mts., each. The petitioner is in possession of his share.

3. Further, the petitioner submitted that the second respondent sought to acquire the petitioner's land under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 holding that the petitioner owns vacant lands in excess of the ceiling limit. Though the said land is agricultural land and classified as 'Dry Land' in the revenue records, the second respondent treated the said land as "Urban Vacant Land" for the reason that the land was left uncultivated for the years and initiated action under the provisions of the above Act against all the four persons. Insofar as the petitioner and his mother are concerned, the action was jointly taken in file No.134 of 1982. The second respondent determined that both the petitioner and his mother were holding vacant land to an extent of 2050 sq.mts., each in excess of the ceiling limit fixed in S.F.Nos.124/8A and 124/7A of Kottapattu Village out of the total extent of 3550 sq.mts., owned by them each and issued an order under Section 9(5) and final statement under Section 10(1) of the Act by proceedings, dated 23.12.1983 in R.C.No.A1/134/82, acquiring the above lands from them besides vesting the same in the State Government and the notification under Section 11(1) and 11(3) of the Act were also published in the Government Gazette, dated 30.01.1985 and 08.05.1985 respectively. Both the

petitioner and his mother were thus allowed to retain 1500 sq.mts., each as their entitlement under the aforesaid Act and the remaining extent of 2050 sq.mts., held by each of them has been acquired and deemed to have vested in the Government.

4. The petitioner further submitted that challenging the acquisition of the land of their mother Guna Bai and two daughters, namely, Prema and Vijayalakshmi, who were bequeathed the property as per the Will executed by Guna Bai and registered as document No.43 of 1986, filed W.P.No.11693 of 2000 and this Court by Order, dated 21.08.2000 in W.M.P.No.16740 of 2000, granted interim injunction. Although 2050 sq.mts., of land in S.F.No.124/8A of Kottappattu Village belonging to the petitioner has been acquired and deemed to have been vested in the State Government under Section 11(3) of the Tamil Nadu Urban Land (C & E) Act, 1978, the physical possession of the said land continues to be with him similar to the land of his mother. Survey stones have been planted on all the four boundaries of the land besides putting up of live fence. A thatched shed has been erected on the land and the watchman is guarding the land to prevent any unscrupulous persons entering into the land.

5. Further, the petitioner submitted that it is incumbent upon the second respondent even, if the land vested in the State Government under Section 11(3) of the Act, taking possession as laid down under Sections 11(5) and 11(6) is mandatory. It is clear from the provisions of Sections 11(3), 11(5) and 11(6) of the Act that the second respondent must first secure possession of the land from the land owner and then only he can hand over possession to the District Collector for safe custody until it is allotted by the Government as per Section 24 of the Act read with Rule 23 framed under the Act. The District Collector is the authority to take possession of the land so acquired from the competent authority and to hand over the same to the allottee as per Rule 23(6). The fact remains that the second respondent has not taken possession of the said land so far and hence the second respondent cannot proceed further with regard to the allotment of the said land to any third party.

6. The petitioner further submitted that the principal Act "Tamil Nadu Urban Land (C & E) Act, 1978 has been repealed with effect from 16.06.1999, by the enactment of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Tamil Nadu Act 20 of 1999). As per Section 3 of the Tamil Nadu Act 20/1999, after vesting of the land under Section 11 (3) if possession has not been taken over such land can be restored to the owners on the refund of the compensation amount, if the compensation has been paid. In the present case possession had not been taken and compensation not paid pursuant to the Order under Section 11(3) of the Act and as such the second respondent is estopped from taking possession

of the said land after the Tamil Nadu Act 20 of 1999. Whiles, the watchman, who is guarding the land brought to the petitioner's notice that the field staff attached to the office of the second respondent visited the said land on 22.01.2007 and took measurement of the land. When questioned by the watchman as to what was happening, the field staff had told him that they are taking measurements as per instructions of the second respondent. The said action is invalid, against law and without jurisdiction in view of the principal Act repealed by an amended Tamil Nadu Act 20 of 1999.

7. The petitioner further submitted that no appeal could be filed before the first respondent against the order of the second respondent as the principal Act, 1978 which contained provision for appeal to the first respondent under Section 33 of the Act has ceased to exist with effect from 16.06.1999 consequent on the enactment of Tamil Nadu Act 20 of 1999. Therefore, the petitioner filed this writ petition seeking the relief as stated above.

8. Mr.K.Radhakrishnan, learned counsel, for the petitioner has submitted that the petitioner's father purchased an extent of 3.52 Acres of land in Kottappattu Village, Tiruchirappalli District, in the year 1944. He died in the year 1972 leaving behind two daughters and one son. All the legal heirs have enjoyed the said land. All legal heirs are entitled to receive 88 Cents equally among themselves. In such circumstances, the second respondent had sought to acquire the said land under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act on the ground that the petitioner owns vacant land in excess of the ceiling limit. Actually, the land is classified as dry land as per the revenue records, but the second respondent treated the said land as urban vacant land.

9. Further, the learned counsel has submitted that the second respondent determined that both the petitioner and his mother were holding 2050 sq.meters of land each, which is in excess of the ceiling limit. Hence, the second respondent passed an order for acquiring the said land. Subsequently, the said order had been published in the Tamil Nadu Government Gazette, after allowing to retain 1500 sq.meters each as their entitlement under the said Act. The petitioner's mother executed a registered Will and bequeathed the property to her two daughters. However, the physical possession of the said land is vested with the petitioner and his mother, wherein a thatched shed has been erected and engaged a watchman to safeguard the property. As such, the second respondent had not taken the said acquired property. Therefore, the proceedings initiated by the second respondent had become defunct. Further, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 had been repealed with effect from

16.06.1999 and accordingly to Tamil Nadu Act 20 of 1999, the land can be restored to the petitioner, on the refund of the compensation amount. In the instant case, possession has not been taken and compensation amount has not been paid. Under these circumstances, the second respondent and his subordinates had measured the land on 22.01.2007, as such the land acquired by the second respondent under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 is not valid. Hence, the learned counsel prayed this Court to quash the entire proceedings and to obtain discharge beside dropping all further proceedings.

10. Mr.M.S.Ramesh, learned Additional Government Pleader, for the respondents has submitted that the acquisition proceedings had been initiated during 1983 under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The petitioner's mother filed a statement before the second respondent. After considering the statement of the petitioner's mother, the second respondent acquired the excess land. The second respondent allowed the petitioner and his family members to an extent of 250 sq.meters each. Further, the second respondent had also acquired the excess land to an extent of 337 sq.meters. The said land is situated in Thirumullaivoyil Village. Further, the second respondent had not received any objection from the petitioner or his mother. Therefore, the second respondent declared the 4850 sq.meters of land as excess land. The petitioner and his mother have retained 3000 sq.meters of land. Therefore, the proceedings initiated by the second respondent is valid under law.

11. Further, the learned Additional Government Pleader has submitted that the acquisition proceedings had been completed during 1985. Subsequently, the mother of the petitioner had executed a registered Will in the year 1986 and bequeathed the property to her daughters and as such the Will not maintainable since the during the relevant period the acquired property was under the care and control of the Government. Hence, the learned counsel prayed this Court to dismiss the writ petition.

12. Considering the facts and circumstances of the case and 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 respondents had given notification in the Government Gazette stating that the petitioner's land had been acquired after observing all the legal formalities. Further, the Will had been executed by the petitioner's mother to and in favour of her two daughters in the year 1986. As per the revenue records, the said excess acquired land are in the possession of the respondents and as such the writ petition does not possess sufficient legality. Hence, the writ petition is liable to be dismissed.

13. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

krk

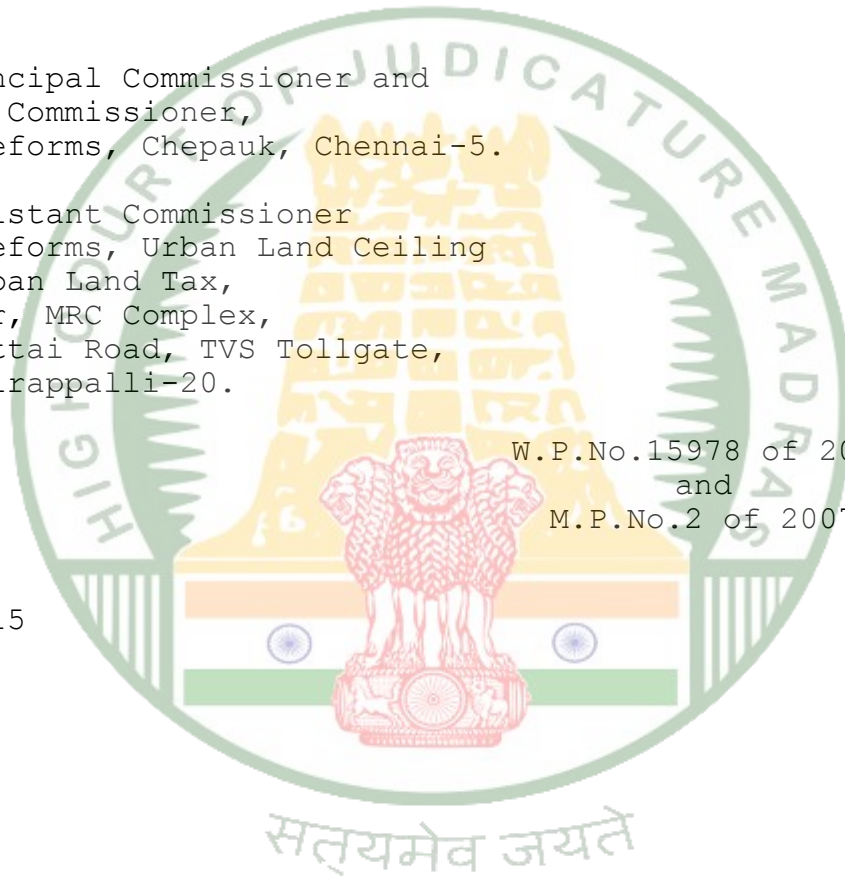
To:

1.The Principal Commissioner and
Commissioner,
Land Reforms, Chepauk, Chennai-5.

2.The Assistant Commissioner
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and Urban Land Tax,
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