

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2015

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.25392 of 2001

Sri.Sameer Kumar Sharma,
No.L-4, Paras Apartments,
11, Jeevarathnam Nagar,
Adayar, Chennai -20. Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep., by its Secretary,
Revenue Department,
Fort.St.George,
Chennai - 9
- 2.The Special Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai - 5.
- 3.The Assistant Commissioner/
Competent Authority
Urban Land Ceiling
Tambaram.
- 4.The Commissioner,
Tambaram Municipality,
Tambaram.

- 5.The Rotary Club of Madras,
Rayala Tower I, II Mezzanine Floor,
158, Anna salai, Chennai - 600 002. Respondents

R-5 impleaded as per Court order dated 05.02.2009 in
W.P.M.P.No.106/2009

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorified Mandamus, to call for the records of the respondents especially the proceedings of the third respondent in his reference no.1087 of 83, dated 15.06.1988 in respect of land in Survey No.377/1A of Seliyur village as confirmed by the Tamil Nadu Land Reforms Special Appellate Tribunal in T.R.P.No.310 of 99, dated 30.08.2001. and quash the same and further directed the respondents to treat the land as falling outside the purview of Act 24 of 78.

For petitioner .. Mr.V.Ramesh

For Respondents .. Mr.P.H.Aravind Pandian, AAG
Assisted by
Mr.S.T.S.Murthy G.P., and
Mr.V.R.Kamalanathan AGP for RR1to3
Mr.P.Srinivas for R4

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM,J.)

The petitioner, one Sameer Kumar Sharma, seeks to challenge an order, dated 15.06.1988 passed by the Assistant Commissioner/competent authority under the Tamil Nadu Urban Land Ceiling Act, (TN Act 24 of 1978), third respondent, as confirmed by the Tamil Nadu Land Reforms Special Appellate Tribunal in T.R.P.No.310 of 1999, dated 30.08.2001 in respect of the land in Survey No.377/1A of Selaiyur village.

2. The challenge to the impugned proceedings are on two grounds. Firstly that the acquisition proceedings initiated under the provisions of the Tamil Nadu Act 24 of 78, would abate in view of Section of the Tamil Nadu Urban Land [Ceiling and Regulation] Repeal Act, 1991, Act 20 of 1999; secondly as to whether the competent authority/respondent had taken actual physical possession of land pursuant to the notice issued under Section 11(5) of the Act 24 of 78.

3. Before we proceed to consider the contentions raised by the petitioner and the grounds of challenge to the impugned proceedings, we may note as a matter of fact that the land in question after having been acquired vested with the State free from all encumbrances and was allotted to the Rotary Club of Madras, fifth respondent herein and the said organisation has constructed an institution in the said property, which has been in existence for over a decade. The photographs of the Institution were produced before us. Thus, the land as on date is in actual physical possession of the fifth respondent and a fully functional education institution in the said land established by the Rotary Club for the benefit of the downtrodden.

4. The petitioner's case is that the land belonged to one Mr.C.M.Sharma, who is the petitioner's paternal uncle, who have executed a Will, dated 17.07.1979, bequeathing the subject property along with the other properties to the petitioner and his two sisters, one of whom is said to be in Bombay and other at United Kingdom. The petitioner's sisters are not parties to this Writ Petition and have not joined the petitioner in challenging the impugned orders. After the demise of C.S.Sharma on 11.07.1980, his last Will and testament was probated before this Court in O.P.No.43 of 1982. The petitioner would further state that Mr.C.M.Sharma, filed a statement under Section 6(1) of the Act 24 of 78 on 15.10.1977, in respect of the lands in Survey No.377/1A, measuring an extent of 25 grounds and 1967 sq.ft. A draft statement under Section 9(1) with notice under Section 9(4) was issued to Mr.C.M.Sharma on 28.06.1985 for filing objections for the proposed acquisition. It is stated that the notice was not served on the land owner, as he was not residing in the village and one Mr.M.R.Adi Narayanan, executor of the Will of the Mr.C.M.Sharma, attended the enquiry on 13.9.1981 and filed a statement. Based on the statement and objections filed, proceedings was passed under Section 9(5) on 15.06.1988, declaring the families eligibility to hold 500sq.mtrs and the remaining 7150 sq.mtrs., were acquired in accordance with the same, a statement under Section 10(1) was published on 30.09.1988, which has been served. Pursuant thereto, a notification under Section 11(1) of the Act was issued on 24.02.1989 and published in the Tamil Nadu Government Gazettee, dated 22.03.1989.

5. A notice under Section 11(3) was issued on 10.08.1989, stating that the lands vested with the Government with effect from 31.08.1989. Thereafter, a notice under Section 11(5) of the Act was issued to the urban land owner to surrender the premises to the Revenue Department within 30 days and possession was handed over to the Revenue authorities through the Deputy Tahsildar attached to the office of the third respondent on 19.12.1989. A notice under Section 12(6) was issued on 21.06.1990 and even prior to that the claim for exemption made under Section 21 of the Act was rejected on 19.03.1990. The appeal filed under Section 33 of the Act before the Special Commissioner and Commissioner of Land Reforms, the second respondent, was rejected on 16.03.1991, and the land had been allotted to the Rotary Club of Madras, Boys Town Society vide Government Order in G.O.Ms.No.1519, Revenue Department, dated 29.12.1992. The petitioner filed a Writ Petition in W.P.No.17612 of 1992 to quash the proceedings of the third respondent, which is also impugned in this Writ Petition and for a direction to treat the lands as falling under Section 5(3) of Act 24 of 1978. Upon the constitution of the Tamil Nadu Land Reforms Special Appellate Tribunal, the Writ Petition was transferred to the Special Appellate Tribunal and renumbered as TRP.No.310 of 1999. The Tribunal by order dated 30.08.2001, dismissed the Revision Petition and this order is also impugned in this Writ Petition.

6. We have elaborately heard Mr.V.Ramesh, learned counsel appearing for the petitioner and Mr.P.H.Aravind Pandian, learned Additional Advocate General assisted by MrS.T.S.Murthy Government Pleader and Mr.V.R.Kamalanathan, Additional Government Pleader appearing for the respondents 1 to 3 and perused the materials placed on record including the original files, which were circulated by the official respondents.

7. The challenge to the impugned proceedings was confined to the aspect that the entire acquisition proceedings under Act 24 of 78 would abate in view of Section 4 of the Repealing Act 20 of 1999, as the respondent has not taken actual physical possession of the land pursuant to the notice under Section 11(5). In support of this contention, the learned counsel appearing for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Assam vs. Bhaskar Jyoti Sarma & Ors., reported in (2015) 5 SCC 321.

8. Since the case of the petitioner solely revolved upon the factual situation, we called upon the learned Additional Advocate General to place the entire original files, which were perused by us. Prior to which the learned counsel for the petitioner had perused it in the office of the Government Pleader.

9. From the files it is seen that the notice issued under Section 11(5) has been acknowledged and the postal acknowledge card is available and a receipt shows that the notice has been received on behalf of Asha A Dave and the petitioner. The said Asha A Dave is none other than the petitioner's sister, who is also said to be entitled to the property under the Will executed by C.M.Sharma, but did not join the petitioner in this Writ Petition. The original records revealed that the possession was taken over by the Revenue Inspector, the Tambaram Firka on 19.12.1989.

10. The endeavour of the learned counsel for the petitioner is to convince that these documents are all inter-departmental and at best could be construed as taking over of paper possession and this would not satisfy the requirements under the provisions of the Act.

11. The question of forcible dispossession could arise only under circumstances when the land owner does not surrender vacant possession after notice under Section 11(5) has been issued. However, the case on hand shows that not only the petitioner, but his two sisters Asha A Dave and Jyothi Dave have given a joint statement on 23.05.1988, in the capacity as beneficiaries and legal heirs of late C.M.Sharma in terms of his Will, that they have no objection for the proposed acquisition of the land in Survey No.377/1A/1A Part, measuring 7150 sq.mtrs., in Selaiyur village. This statement is found in page No.463 of the file. The statement has been given by the petitioner and his two sisters in the presence of the Assistant

Commissioner (Urban Land Tax), Tambaram. The petitioner cannot be now permitted to wriggle out of the statement after 27 years, the statement binds the petitioner and his sisters. It is seen that after the lands were voluntarily surrendered by the petitioner and his sisters, the competent authority has prepared a sketch on 13.06.1988, showing the area permitted to be retained by the petitioner to an extent of 500sq.mtrs, which has been shaded 'red' in the plan found at page No.465 of the file, the lands which were already sold before 03.08.1976, namely 2550 sq.mtrs, has been shaded in 'brown' and the acquired possession of 7150 sq.mtrs, shaded 'yellow'. The files disclose that there has been mutation of the Revenue records showing the retainable extent at the hands of the petitioner and his sister.

12. In the case of Bhaskar Jyoti Sarma & Ors., (supra), the Hon'ble Supreme Court pointed out that if actual physical possession was taken over from the erstwhile land owner any grievance based on Section 10(5) (Central Act), ought to have been made within a reasonable time of such dispossession and if the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time and in such situation, the owner or the person in possession must be deemed to have waived his right under Section 10 (5) of the Central Act. It was further held that any other view would give a licence to a litigant to make a grievance not because he has suffered a real prejudice that needs to be redressed, but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure. The above decisions relied on by the petitioner does not in any manner render support to the case of the petitioner, rather supports the case of the Revenue.

13. Admittedly, in the instant case possession of the excess lands was handed over voluntarily and there are several subsequent proceedings initiated pursuant thereto and the land has also been allotted by the Government to the fifth respondent, which has established a "Boys Town".

14. Thus on facts, we are fully convinced that the petitioner is not entitled for the benefit of the Repeal Act and the challenge to the impugned proceedings has to necessarily fail.

In the result, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CSIII)
dt:08/10/2015

True Copy

Sub-Assistant Registrar

To

1. The Secretary to
The Government of Tamil Nadu,
Revenue Department,
Fort.St.George,
Chennai - 9

2.The Special Commissioner and
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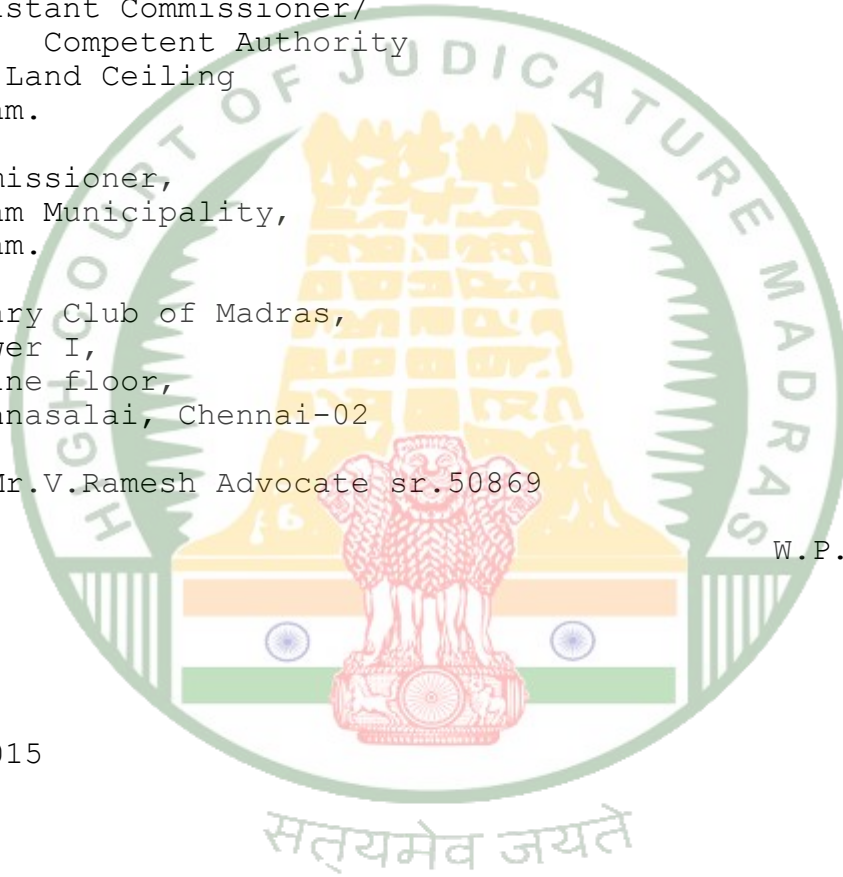
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Rayala Tower I,
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NO.158, Annasalai, Chennai-02

+1 cc to Mr.V.Ramesh Advocate sr.50869

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