IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-02-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.4892 of 2013

S. Duraikannu .. Petitioner

Vs

1. The Special Commissioner Land Reforms
(Urban Land Ceiling)
Ezhilagam
Chepauk, Chennai 600 005

2. The Competent Authority
Urban Land Ceiling and Asst. Commissioner
Urban Land Tax, Kundrathur Zone
at Adambakkam, Chennai 88

3. The Thasildar
Sriperumbudur
Kancheepuram District .. Respondents

Writ Petition under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to quash the proceedings of the second respondent in proceedings of the Asst. Commissioner Urban Land Tax, Kundrathur in R.C. No.2694/1988 dated 12-05-1989 under Section 9(5) of the ULC Act in respect of possession of the property in S.No.444/2 of Kundrathur Village, measuring an extent of 91 cents and for consequential relief of mandamus directing the authorities to restore the lands in S.No.444/2 of Kundrathur Village, measuring an extent of 91 cents to the name of the petitioner and his family members.

For petitioners : Mr. S. Srinivasan
For respondents : Mr. R.Rajeswaran, Spl.G.P.

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ORDER

The petitioner has filed this writ petition praying for a writ of certiorarified mandamus to quash the proceedings of the second respondent dated 12-05-1989 issued under Section 9(5) of the Tamil Nadu Urban Land Ceiling Act (Act) in respect of the property in survey No.444/2 of Kundrathur Village measuring an

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extent of 91 cents and to restore the lands to the petitioner.

2. The petitioner is the son of one Narayanan stated to be an illiterate and belonging to a suppressed class of society. The petitioner's father is said to have purchased the property by a registered sale deed bearing document No.2915/1965 on the file of the Sub-Registrar, Poonamallee. The petitioner's father died during 1997 leaving behind his mother, two brothers, two sisters and himself. The petitioner's specific case is that the entire lands were agricultural lands and cultivation was being carried on by family members and that was the only source of income for the entire family. It is stated that the proceedings were initiated by the respondent under the Act and notice under Section 7(2) was issued on 27-11-1986 and the notice under Section 7(1) was received on 16-12-1986. That notice seems to have been issued in the name of the land owner Narayanan. Subsequently, the proceedings were initiated and the authorities is said to have declared an extent of 2000 sq.metres as retainable extent by the family under the Urban Land Ceiling Act. This has also been disputed by the petitioner that the entitlement of the family has not been properly calculated. Subsequently, notice was issued under Section 11(5) of the Act on 10-04-1991.

3. The petitioner has come forward with this writ petition challenging the impugned proceedings on the ground that the land being agricultural land, the same should not have been brought under the provisions of Tamil Nadu Urban Land Ceiling Act, as the land is not an urban land and in the light of the Tamil Nadu Urban Land (Ceiling and Regulation Act, Repealing Act 20 of 1999, the entire proceedings stand abated. Further, it is submitted that the respondent Nos.2 and 3 have not resorted to the procedure contemplated under Section 11(6) of the Act and the Government has not paid any compensation to the land owners as per Section 12 of the Act read with Rule 8 of the Rules. It is further submitted that the agricultural lands being in possession of the petitioner, the petitioner is entitled to the benefit of the Repeal Act and accordingly, the entire proceedings have to be set aside.

4. The learned counsel for the petitioner has reiterated the above submissions and contended that the acquisition proceedings are liable to be quashed.

5. The learned Special Government Pleader referring to the counter affidavit submitted that the land owner failed to file a return under Section 7(1) of the Act and a notice under Section 7(2) has been issued by the authority and it was received by the petitioner on 18-12-1986. The Deputy Tahsildar is said to have inspected the land on 16-07-1987 and reported that earth has been removed for the manufacture of bricks and the case land may

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be treated as urban land. It is thereafter, a notice under Section 9(4) and draft statement under Section 9(1) of the Act were issued in the name of the land owner N. Narayanan by proceedings dated 22-06-1987 and the same has been received by his son Shanmugham on 02-07-1987. It is further submitted that the petitioner in his letter dated 16-07-1987 informed the Assistant Commissioner (Urban Land Tax) that the land has been maintained as an agricultural land and it has been used in Casuarina cultivation during the relevant fasli 1393 and because of lack of rain, the land could not be cultivated and his father Narayanan has expired and the petitioner also furnished the family details. Thereafter, proceedings under Section 9(5) of the Act was issued declaring an extent of 1700 sq. metres as excess vacant land and allowing the retainable extent as 2000 sq.ms.

6. It is the case of the respondent that neither the land owner nor his representative filed objections before the competent authority and hence final statement under Section 10 (1) of the Act was issued by the second respondent on 11-12-1989 and the same was served by affixture by planting a stick in the case land and Notification was issued under Section 11(1) of the Act on 07-03-1991 and was published in Tamil Nadu Government Gazette in Part - VI Sec.1 dated 19-06-1991. The final notification was issued on 24-07-1991 under Section 11(3) of the Act for publication in the Tamil Nadu Government Gazette and a notice under Section 11(5) of the Act, dated 04-10-1991 was issued to the urban land owner instructing him to surrender or deliver possession of excess vacant land and it was received by urban land owner on 10-10-1991. After due notices, the possession of excess vacant land was taken and handed over on 18-12-1991 to the Revenue Inspector, Kundrathur Firka on behalf of Revenue Department. Therefore, it is submitted that the entire procedure as required to be followed under the Act has been followed, proceedings have been properly initiated, and the belated claim of the petitioner is liable to be rejected.

7. On an earlier hearing, the learned Special Government Pleader was directed to produce the entire files and the same was produced today and an opportunity was granted to the learned counsel for the petitioner and he perused the same.

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8. The question that has to be decided is as to whether the Department has followed proper procedure after issuance of the notice under Section 11(5) of the Act. It is noted that the proceedings initiated from the stage of Section 9(5) of the Act, by order dated 12-05-1989 were all in the name of late Narayanan, who was the original land owner and at the relevant point of time, he was no more. This was well within the knowledge of the respondent, since the petitioner’s son appeared before the authority and gave a written representation on 16-07-

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1987 stating that his father is no more and the land is an agricultural land and earth was removed for manufacturing bricks, so as to level the land and since there was no water from the tank, the land is not put to cultivation, but the land is purely an agricultural land. In support of his contentions, the Revenue records have been produced and the details of the revenue entries have also been furnished. These facts have been admitted in paragraph No.3 of the counter affidavit. Further, in Page No.25 of the file, the said letter given by the petitioner dated 16-07-1987 finds place. Further, in the counter affidavit it has been admitted that the proceedings from the stage of Section 9(5) of the Act were proceeded in the name of the dead person, the land owner. Therefore, the proceedings initiated after the petitioner gave a representation on 16-07-1987 in the name of the dead person has to be held to be invalid. Further, in Page No.33, of the file there is a report of the Officer dated 01-08-1987 which clearly says that the land has been utilised for cultivation and the land could not be taken over under the provisions of the Urban Land Ceiling Act. However, this document/report dated 16-07-1987 has not been specifically mentioned in the counter affidavit. Further, in the counter affidavit, in paragraph No.6, it has been admitted that the revenue records show that the lands where agricultural lands and this was verified by the Deputy Tahsildar and he has found that the land was classified as nanjai land and he said it was not used for cultivating purpose and it was used for manufacturing bricks. It is the case of the petitioner that the earth was removed for the purpose of making bricks and it was only to level the lands. Therefore the lands being classified as wet lands have been utilized for agricultural purpose and merely using it for other purpose, i.e., as said that there was a bricklyn in the premises, would not change the nature of the land and further, it is not the case that the entire land was utilized for manufacture of bricks.

9. Under such circumstances, the possession of the land said to have been taken over by the Revenue Inspector can at best be considered as paper possession. The records also clearly show that the notice was sent only in the name of the dead person namely Narayanan. Apart from that there is no reclassification of the lands in the revenue records and therefore, it is deemed to continue as an agricultural land and the provisions of the Urban Land Ceiling Act are inapplicable. Furthermore, the possession has not been divested in the manner known to law and the so-called taking over of possession is only a paper delivery. Hence, for the above reasons, the Court is convinced that the entire proceedings initiated by the respondent under Urban Land Ceiling Act are vitiated and the petitioner is entitled to the benefit of the Repeal Act, 1999.

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11. In the result, the writ petition is allowed. The impugned order is quashed. No costs. Connected M.P.Nos.1 of 2015 and 1 of 2013 are closed.

-s/d-
Assistant Registrar(CSIV)

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Sub-Assistant Registrar

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