

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT APPEAL No.804 OF 2012

1. The Competent Authority and
Assistant Commissioner,
Urban Land Tax,
Coimbatore.
2. The No.2 Joint Sub Registrar,
Joint Sub Registrar Office,
Raja Street,
Coimbatore 1. Appellants

-vs-

Palaniappa Nagar
E.B. Colony Welfare Association,
rep. By its President,
M.Sethu Subramaniam,
No.62, E.B. Colony,
Coimbatore 641 001. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.07.2010 passed by the learned Single Judge in W.P.No.1762 of 2010. Petition presented under Art.226 f the constitution of India to issue a writ of certiorarified mandamus to call for records from the file of the 1st Respondent relating to the impugned notification in Ref.No.21919/86/A-1 dated 28.10.1990 issued in respect of S.F.Nos.10/1B 11/1B 15/1A2 and 14 of Kumarapalayam Village Coimbatore Taluk and quash the same and consequently directing the 2nd Respondent The No:2 Joint Sub-Registrar Joint Sub-Registrar Office Raja Street Coimbatore to register the documents in respect of the approved layout of Palaniappa Nagar Municipal Corporation Electricity Employees Colony of Kumarapalayam Village Coimbatore Taluk.

For Appellants : Mr.N.Srinivasan,
Addl. Government Pleader
For Respondent : Mrs. Hema Sampath, Senior Counsel
for Mr.S.Gunalan

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

This Writ Appeal is filed challenging the order dated 20.07.2010 passed by the learned Single Judge in W.P.No.1762 of 2010, whereby, the Writ Petition seeking to quash the notification dated 28.10.1990 issued by the 1st appellant herein was allowed with a direction to the 2nd appellant herein to register the documents in respect of the properties in question, if presented by the writ petitioner Association or its members.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. According to the appellants herein, the subject lands are acquired after following the procedures contemplated under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the lands are vested with the Government from 17.02.1994. It is their contention that the learned Single Judge ought to have noted that the possession of the lands was taken over by them and that it can be established only in respect of vacant lands on the basis of record and there is no other mode to establish possession. It is also their contention that the learned Single Judge failed to consider that the acquisition proceedings were completed on 17.02.1994 and the Writ Petition filed after 16 years ought to have been rejected on the ground of laches.

4. It is not in dispute that the lands in question belong to the writ petitioner Association and action has been initiated prior to the enactment of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20 of 1999), repealing Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Inasmuch as the physical possession of the lands has never been taken over by the State Government or by any person duly authorised by the State Government, there is an automatic application of Section 4 of the Repeal Act that will have a role on all proceedings, including the one which is the subject matter of the Writ Petition.

5. Similar issue came up before the First Bench of this Court in W.A.Nos.137 & 587 of 2009, etc. batch and the provisions of Section 11 of the Principal Act as also the Repeal Act have been fully dealt with. One of us (S.Vaidyanathan,J.) had an occasion to consider a similar plea in W.P.No.4315 of 2011 with reference to the said First Bench judgment of this Court. Relevant portion of the order dated 16.07.2014 made in W.P.No.4315 of 2011 is extracted below:

"12. It is further held in the above said batch cases by the Hon'ble Division Bench "thus, possession allegedly taken over by the respondents without issuing due notice to the person who was in actual possession of the land was held to be illegal in the eye of law. Therefore, the question of initiating fresh proceedings applying the mandatory provisions under the Act would not arise at this distant point of time as the 1978 Act had come to be repealed by Act 20 of 1999. A perusal of the records in this case reveals that neither the petitioner, who was the actual owner, nor his immediate vendor had even been served with a notice. The possession allegedly taken over by the respondents without issuing due notice to the person who was in actual possession of the land was held to be illegal in the eye of law."

6. On a perusal of the records, it is seen that there is no documentary evidence to show that property tax has been paid by the Government after the Repeal Act. But, some other writ petitioners have filed documents after the year 2010 regarding payment of property tax, which clearly shows that possession has not been taken over by the Government. Learned Single Judge, in the order dated 20.07.2010 has also observed that no notice has been sent to the original land owners, i.e. the members of the writ petitioner Association, under Section 11(5) of the Principal Act, which is mandatory.

7. Moreover, as none was dispossessed and property was not taken over by the Government and finality was not attained with regard to possession of lands prior to the coming of the Repeal Act and also in view of the decision of the First Bench of this Court rendered in W.A.Nos.137 & 587 of 2009, etc. batch and taking note of the decision rendered in W.P.No.4315 of 2011, dated 16.07.2014 (S.Vaidyanathan,J.), this Court is of the view that the order of the learned Single Judge in allowing the Writ Petition is perfectly in order and the same is confirmed.

In fine, the Writ Appeal stands dismissed. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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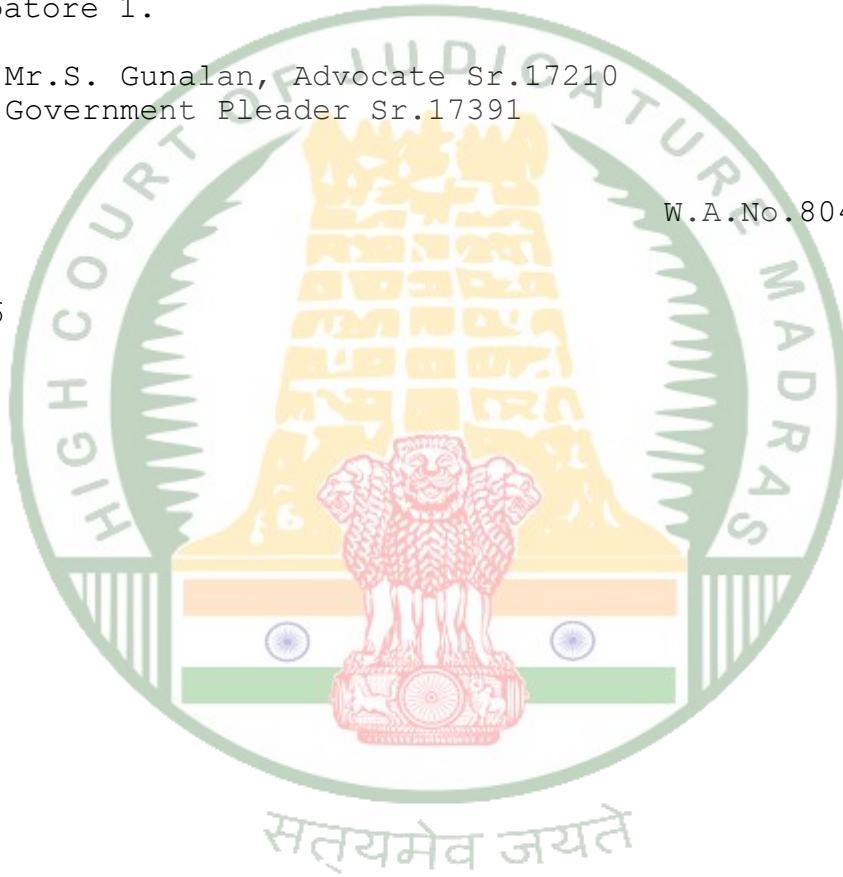
To

1. The Competent Authority and
Assistant Commissioner,
Urban Land Tax,
Coimbatore.
2. The Joint Sub Registrar,
Joint Sub Registrar Office,
Raja Street,
Coimbatore 1.

+ 1 cc to Mr.S. Gunalan, Advocate Sr.17210
+ 1 cc to Government Pleader Sr.17391

W.A.No.804 of 2012

RSY(CO)
Eu 19.5.16



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