IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.4.2016

CORAM

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Appeal No.488 of 2016
and
C.M.P.No.6691 of 2016

1. The Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai 600 009.

2. The Assistant Commissioner of Urban
   Land Tax and Competent Authority
   of Urban Land Ceiling,
   Poonamallee, Chennai 600 056. ... Appellants

Versus

A.G.Mani ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 6.12.2012 made in W.P.No.36751 of 2007.

W.P.No.36751 of 2007 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of a Mandamus, forbearing the Respondents from taking possession of the Petitioner's land situated in Survey No.11/2 and 11/5 in Amuthoormedu Village, Poonamallee Taluk.

For Appellants : Mrs.A.Srijayanthi,
Special Government Pleader

JUDGMENT

V.BHARATHIDASAN, J.

The instant intra-court appeal has been directed against the order passed in W.P.No. 36751 of 2007, dated 6.12.2012.

2. The respondent herein filed the writ petition seeking a direction forbearing the appellants herein from taking possession of the petitioner's land situate in Survey Nos.11/2 and 11/5 in Amuthoormedu Village, Poonamallee Taluk. The above writ petition was filed on the ground that the respondent

purchased the above properties by means of a registered sale deed dated 20.2.1981, from one Jayaram Naicker and right from the date of purchase, he has been in possession and enjoyment of the land. Earlier, a proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter called as Act) was initiated against the vendor of the respondent in the year 1985. Now, without issuing any notice under section 11(5) of the Act, the appellants are trying to take possession of the property, in the above circumstances, the writ petition was filed.

3. The appellants herein contested the writ petition by filing counter affidavit stating that a notice under section 7 (2) of the Act was issued to the vendor of the petitioner Jayaram Naicker on 29.12.1995 and the same was received by his wife but, no reply was received, and a draft statement under section 9(1) alongwith notice under section 9(4) of the Act was issued on 29.2.1996 calling for objections. Despite receipt of the notice by the land owner, no objection was raised, hence, an order under section 9(5) of the Act was issued by the second appellant on 19.8.1996 to acquire the excess land of 8350 sq.mtrs, the above order was received by the daughter of Jayaram Naicker. According to the appellant, thereafter, a notification under section 11(1) of the Act was published in the Government Gazette on 26.8.1998 and another notice under section 11(3) of the Act was issued on 28.9.1998. Thereafter, after issuing a notice under section 11(5) of the Act on 29.12.1998, possession of the excess land was taken by the Deputy Tahsildar and handed over to the Revenue Inspector, Thirunindravur on 14.6.1999.

4. The learned Single Judge, after hearing the arguments and perusing the records, came to a conclusion that there is no evidence for service of notice under section 11(5) of the Act either to the land owner or to the respondent and the procedure contemplated under section 11(5) of the Act was not followed for taking over possession of the land, following a Division Bench judgment of this court in G.Krishnamoorthy and others vs. Government of Tamil Nadu, represented by its Secretary, Revenue Department, Chennai and others reported in (2009) 8 MLJ 85, the learned Single Judge allowed the writ petition. Challenging the same, the present writ appeal has been filed.

5. We have heard Mrs.A.Srijayanthi, learned Special Govt. Pleader for the appellants and perused the records.

6. As rightly held by the learned Single Judge, there is no material available to establish the issuance of notice under section 11(5) of the Act to the land owner or the respondent and taking physical possession of the property from them. In the above circumstances and in the absence of any evidence for taking physical possession, the respondent/writ petitioner is

entitled to the benefit under section 4 of the repealing Act viz., Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20/1989, repealing the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976. In the above circumstances, there is no infirmity or irregularity in the order passed by the learned Single Judge and we do not find any reason to interfere with the order of the learned Single Judge. Hence, the writ appeal fails and consequently, the same is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai 600 009.

2. The Assistant Commissioner of Urban
   Land Tax and Competent Authority
   of Urban Land Ceiling,
   Poonamallee, Chennai 600 056.

+1cc to the Government Pleader, S.R.No.25872

Writ Appeal No.488 of 2016

PA(CO)
CA(26/05/2016)