IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.A.No.1128 of 2017
and CMP.No.15681 of 2017

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

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

3.The Tahsildar
Sriperumbudur
Kancheepuram District. ..Appellants/Respondents

Vs.

S.Duraikannu .. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 18.02.2016 made in W.P.No.4892 of 2013. Praying to issue a quash the proceedings of the 2nd respondent in proceedings of the Asst. Commissioner Urban Land Tax Kundrathur in R.C. No.2694/ 1988 dated 12.5.1989 under Sec 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 Appellants : Mr.R.Vijayakumar
Additional Government Pleader

For Respondent : Mr.S.Srinivasan

JUDGMENT

[Order of the Court was made by M.SATHYANARAYANAN,J.]

The official respondents in W.P.No.4892 of 2013/appellants, aggrieved by the impugned order dated 18.02.2016 passed in W.P.No.4892 of 2013, in and by which, the respondent/writ petitioner was declared that he was entitled to the benefit of the Tamil Nadu Urban Land (Ceiling and Regulations) Repeal Act, 1999, had filed this writ appeal.

2. The facts leading to the filing of this writ appeal has been narrated in detail and in extenso in the impugned order, which is the subject matter of challenge and therefore, it is unnecessary to re-state the facts once again.

3. It is the case of the respondent/writ petitioner that his father had purchased the property through a registered sale deed bearing document No.2915/1965 on the file of the Sub-Registrar, Poonamallee, and as such he became the owner of the property after his father's demise during the year 1997, and thereafter, his mother, two brothers, two sisters and himself had succeeded to his estate. It is the categorical stand of the first respondent/writ petitioner that the lands in question are classified as agricultural lands and as such, it falls outside the ambit of Tamil Nadu Urban Land [Ceiling and Regulation] Act, 1978 [in short "TNULC Act"]. That apart, the petitioner also took a stand that the respondents 2 and 3 have not resorted to the procedure contemplated under Section 11(6) of the TNULC Act, and no compensation is being paid to the land owners as per Clause 12 of the Act read with Rule 8 of the Rules.

4. The appellants herein had refuted the stand of the first respondent/writ petitioner by stating that the jurisdictional Deputy Tahsildar had inspected the land on 16.07.1987, and reported that the earth has been removed for manufacture of bricks and therefore, it should be treated as urban land.

5. On a perusal of the typed set of documents, the appellants/respondents on their own admission would concede that, notice under Section 9(4) and draft statement under Section 9(1) of the Act were issued vide proceedings dated 22.06.1987 in the name of one Narayanan, the land owner, who is no more, and it was received by his son Shanmugam on 02.07.1987, and since the father of the respondent/writ petitioner had died, the respondent/writ petitioner, in turn sent a letter dated 16.07.1987 informing about the demise of his father and also stated that the lands in question are classified as agricultural lands, and no objection was also filed by the land owner or his representative before the competent authority and final

statement under Section 10 of the Act was issued by the second appellant and the same was served by affixture on the land in question.

6. The learned Judge, after taking note of the stand of the respondent/writ petitioner as well as the appellants/official respondents and also on going through the records, and also the own admission of the appellants that the land in question was classified only as "agricultural land" and also found that the possession of the land has not been taken in accordance with law, at the best, it can only be considered as an agricultural land. The learned Judge had further held that the records also clearly show that the notice was sent only in the name of the dead person namely Narayanan and that apart, in the absence of reclassification of the lands in the revenue records treating them as urban land, the land in question would deem to continue as an agricultural land, and the learned Judge had further stated that taking over of possession is a paper delivery and found that respondent/writ petitioner is entitled to the benefit of the Repeal Act, 1999 and allowed the writ petition.

7. Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the appellants/official respondents in the writ petition would submit that since the earth has been removed from the land in question for manufacture of bricks, it should be termed as "non-agricultural land" and would further add that the possession of the land has been taken during the year 1991 by the Revenue Authorities and therefore, the findings rendered by the learned Judge in this regard is unsustainable.

8. Per contra, Mr.S.Srinivasan, the learned counsel who appears for the respondent/writ petitioner would contend that the learned Judge, on a careful scrutiny and consideration of the revenue records in entirety, has rightly concluded that the urban land provision for the land in question had lapsed on account of the Repeal Act and has rightly allowed the writ petition and hence, prays for dismissal of this Writ Appeal.

9. This Court has considered the rival submissions and also perused the materials placed before it.

10. In the considered opinion of the Court, the findings rendered by the learned Judge is based upon the scrutiny and consideration of the records maintained by the Office of the second appellant/second respondent in the writ petition. Admittedly, the third appellant himself has conceded that in the revenue classification, the land is still shown as "agricultural land" and that apart, the final statement was sent only in the name of the dead person namely Narayanan, despite the fact that his son Shanmugam has sent a letter dated 16.07.1987, stating about the classification of the land as agricultural land and the final statement dated 11.12.1989 was issued only in the name

of the dead person. Moreover, the perusal of the files which has been produced by the learned Additional Government Pleader would merely indicate a paper delivery, as recorded in the impugned order and the actual physical possession has not been taken in accordance with law. Therefore, the findings rendered by the learned Judge in allowing the writ petition cannot be termed as perverse or without application of mind.

11.This Court, on an independent application of mind to the entire materials, is of the considered view that there is no perversity or infirmity attached to the findings of the learned Judge in allowing the writ petition in W.P.No.4892 of 2013 and finds no merit in this writ appeal. Therefore, the Writ appeal is dismissed confirming the order 18.02.2016 made in W.P.No.4892 of 2013.

12. In the result, the writ appeal is dismissed confirming the order 18.02.2016 made in W.P.No.4892 of 2013. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To:

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Sriperumbudur
Kancheepuram District.
+1 CC Mr.S.Srinivasan Advocate SR.No.66206
+1 CC Govt. Pleader Advocate SR.No.66428

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EGR 30/10/2017