IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2017
Delivered on : 13.12.2017

CORAM :

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1665 of 2014 and
M.P.No.1 of 2014

S.Ramakrishnan
Rep. By Power Agent
S.Jnaneshwar ...Appellant/Petitioner

Vs

1.The Special Commissioner and
Commissioner of Urban Land Ceiling,
Chepauk, Chennai -5.

2.The Competent Authority (Urban Land Ceiling)
and Assistant Commissioner (Urban Land Tax)
T.Nagar, Arcot Road, Chennai 600 024.

3.Tahsildar,
Mambalam - Guindy Taluk, Chennai - 83.

4.D.Azhumani
5.V.Meenakshi
(Respondents 4 and 5 represented by their
Power of Attorney Agent N.Mani)

6.N.Mani ...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 19.08.2014 made in W.P.No.11205 of 2008.

Prayer in WP.No.11205/2008:Petition under Article 226 of the Constitution of India for a writ of declaration declaring that the entire proceedings initiated by the respondents herein in Rc. 4592/81D for acquisition of the surplus lands under the Tamilnadu Urban Land (Ceiling and Regulations)Act 24 of 1978 held by the petitioner in respect of old S.Nos. 316/6B and 316/6F present survey No.316/6B2 admeasuring 5570 sq.mtrs velachery village Mambalam Guindy taluk as void ab inition arbitrary illegal uncostitutional more particularly in the light of the provisions contained in Tamil Nadu Urban Land Ceiling and Regulation Repeal Act 20 of 1999 as the petitioner continues to remain in actual physical possession and consequently direct the third respondent to carry out necessary mutation in the revenue records in favour of the petitioner.

For Appellant : Mr.S.Parthasarathy
Senior Counsel for Mr.S.Ramesh

For Respondents : Mrs.A.Srijayanthi,
Spl.Govt.Pleader for R1 to R3

J U D G M E N T

K.K.SASIDHARAN,J.

Introductory

This intra court appeal is a clear abuse of process of Court inasmuch as the original land owner participated in the proceedings initiated by the competent authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act for determining the excess land and accepted the compensation and it was followed by taking possession of the excess land by the Authorised Officer. The erstwhile land owner was satisfied with the legality and correctness of the proceedings. However, the Power Agent of the appellant initiated a fresh proceedings after 24 years on the ground that possession was not taken and as such, the entire proceedings would lapse on account of the Tamil Nadu Urban Land Ceiling and Regulation Repeal Act 20 of 1999 (hereinafter referred to as "Repeal Act 20 of 1999").

Factual Matrix

2. The Power Agent of the land owner filed a writ petition in W.P.No.11205 of 2008 alleging that despite declaration under Section 9 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as the "Act"), his principal continued to remain in possession till the cut off date under the Repeal Act 20 of 1999. The appellant pleaded that he was not aware of the final declaration passed under Section 11 of the Act. It was only when the authorities made an attempt to take possession in 2008, the appellant came to know that the land ceiling proceedings culminated in passing a declaration.

3. The Assistant Commissioner (Urban Land Tax), Chennai, in his counter affidavit explained the proceedings taken by the competent authority under the Act. The Assistant Commissioner contended that after the conclusion of the proceedings, Notice under Section 11(5) of the Act was issued on 11 October, 1983. It was received by the land owner on 17 October, 1983. The possession of the land was taken over on 25 February, 1984. The urban land owner received the entire amount of compensation determined by the Authorised Officer. According to the Assistant Commissioner, there were no proceedings pending as on the date on which the Repeal Act 20 of 1999 came into force.

4. The learned single Judge dismissed the writ petition.

Summary of Submissions

5. The learned Senior Counsel for the appellant contended that notices were not given by the Authorised Officer to the land owner and as such, he was not aware of the statutory proceedings. The learned Senior Counsel by placing reliance on the endorsement dated 23 October, 2008 made by the Special Commissioner submitted that even as per the endorsement, possession was not taken before the Repeal Act 20 of 1999. The learned Senior Counsel contended that since possession was not taken, the entire proceedings abated.

6. The learned Special Government Pleader by placing reliance on the documents available on file submitted that the present litigation is nothing but a fraudulent one initiated by the Power Agent, who appears to have purchased the land after taking possession by the Government. According to the learned Special Government Pleader, proceedings were completed long before the Repeal Act 20 of 1999 and as such, the appellant has no justifiable claim in the matter.

Discussion

7. The Power Agent has taken up a contention that his Principal was not aware of the statutory proceedings undertaken by the competent authority under the Act. Therefore, we have summoned the entire file.

8. We have perused the file page by page and it proved the falsity of the claim made originally by the land owner, who is only a name lender, the real villain being the Power Agent.

9. The land originally belonged to Thiru.S.Ramakrishnan, who filed a return under Section 7(1) of the Act. A draft statement under Section 9(1) with notice under Section 9(4) of the Act calling for the objection, if any, for the proposed acquisition of land held by Thiru.S.Ramakrishnan in S.No.316/6B and 316/6F ad measuring 5529.75 Sq.metres of Velacherry Village was issued to him on 5 November, 1981. The statutory notice was received by the land owner on 13 November 1981. There was no objection to the notice at the instance of the land owner. The competent authority therefore passed an order under Section 9(5) of the Act in his proceedings dated 17 December, 1981, whereby and where under, land ad measuring 5529.75 Sq.metres was declared as excess land after allowing 500 Sq.metres towards individual entitlement. The final statement under Section 10(1) of the Act was issued on 3 June, 1982. The final statement was sent to the land owner by registered post. It was received by the urban land owner on 8 June 1982. The Notification under Section 11(1) of the Act was published in the Tamil Nadu Government Gazette dated 9 March, 1983. Similarly, Notification under Section 11(3) of the Act vesting the land with the Government was also published. Thereafter, Notice under Section 11(5) of the Act was issued on 11 October, 1983. Notice was duly served on the

urban land owner Thiru.S.Ramakrishnan on 17 October, 1983.

10. The urban land owner received part payment by way of a bank instrument in person and authorised his representative to receive the balance amount. The authorised representative received the balance consideration and issued a receipt. The land was taken possession by following the prescribed procedure and it was handed over to the Tamil Nadu Housing Board.

11. The writ petition in question was filed by the Power Agent pleading ignorance of the statutory proceedings initiated against his Principal, who was shown as the urban land owner. The urban land owner took part in the proceedings throughout and accepted the compensation determined by the competent authority for acquiring the excess urban land. We therefore reject the contention taken by the Power Agent that the proceedings were initiated behind the back of the urban land owner.

12. The Power Agent initiated the writ petition under the premise that possession was not taken from the urban land owner. The said contention is nothing but a false one. The falsity of the case is revealed from the file produced by the second respondent.

13. The land owner Dr.S.Ramakrishnan, took part in the entire statutory proceedings. He responded properly to the notices and filed his response. It was on consideration of the statement filed by him, the competent authority determined the excess land and took possession after publishing the statutory declaration and notification. It was not an ex parte proceedings. The land owner even received the compensation, after taking possession of the land.

14. The competent authority after the conclusion of the statutory proceedings issued a notice under Section 11(5) of the Act on 11 October 1983 calling upon the urban land owner to surrender vacant possession of the excess land within 30 days. The notice dated 11 October, 1983 was received by the land owner on 17 October, 1983. The acknowledgment is part of the records. Thereafter, by notice dated 12 December,1983, the competent authority informed the land over to hand over possession at 11 a.m., on 19 December, 1983. Since it was a vacant land, the competent authority took possession as scheduled and it was handed over to the Tamil Nadu Housing Board. The land owner received the compensation and issued receipts.

15. We have perused each and every page of the file in view of the contention taken by the Power Agent that his Principal was not aware of the proceedings and it was only in 2008, when attempt was taken to take possession, the earlier

proceedings were made known to him. The urban land owner is none other than Thiru.S.Ramakrishnan, who is a Consultant Physician and Rheumatologist. The urban land owner has chosen not to file the writ petition as he has to file a false affidavit that he was not aware of the statutory proceedings. The Power Agent made an attempt to make use of the Repeal Act to grab the excess land taken possession by the competent authority. In case, the Principal has sworn to the affidavit filed in support of the writ petition, he is liable for purgery. The contentions taken in the affidavit filed in support of the writ petition are all nothing but false and it is against the voluminous records.

16. The learned Senior Counsel for the appellant placed reliance on the endorsement dated 23 October, 2008 made by the Special Commissioner and Commissioner (Urban Land Ceiling and Urban Land Tax) to the effect that possession was not taken before the Repeal Act 20 of 1999. The said endorsement was cancelled by the Director of Urban Land Ceiling and Urban Land Tax vide endorsement dated 24 March, 2009. The endorsement dated 24 March, 2009 indicates that the earlier endorsement was made against the facts. According to the Director of Urban Land Tax, after taking possession, the land was handed over to the Revenue Department in the year 1984 itself, which was well before the introduction of Repeal Act 20 of 1999 and as such, the earlier endorsement that possession was not taken is factually not correct.

17. The endorsement dated 23 October, 2008 indicates that it was issued pursuant to the application submitted by Thiru.Jnaeshwar, Power Agent of Thiru.S.Ramakrishnan. The then Special Commissioner, colluded with the Power Agent and issued the endorsement to the effect that possession was not taken. The Special Commissioner was well aware that possession was taken after issuing notice under Section 11(5) of the Act and even then, such an endorsement was made and that too, during the currency of the writ petition.

18. The writ petition in W.P.No.11205 of 2008 was filed on 28 April, 2008. The Power Agent submitted an application on 10 June 2008 for an endorsement that possession is not taken. The Special Commissioner danced to the tune of the Power Agent of the land owner and issued an endorsement on 23 October, 2008. It was nothing but a collusive act and part of a conspiracy to snatch the valuable land. The endorsement was rightly cancelled subsequently by the Director of Urban Land Ceiling by endorsement dated 24 March, 2009. Therefore, no reliance could be placed on the endorsement dated 23 October, 2008 to contend that possession was not taken before the Repeal Act 20 of 1999.

19. The competent authority under the Urban Land (Ceiling and Regulation) Act followed the procedure strictly and ultimately took possession of the excess land. The land was handed over to the Revenue Department and thereafter, it was given to the Tamil Nadu Housing Board. The proceedings attained finality in 1984 itself. There was no proceeding pending when the Repeal Act came into force. The appellant was therefore not correct in contending that possession was only with the land owner and as such, the entire proceedings abated under Section 3(1)(a) read with Section 4 of the Repeal Act 20 of 1999.

20. The proceedings initiated by the appellant is nothing but abuse of process of law. The valuable time of the Court is wasted by the appellant by falsely contending that the land owner was not aware of the proceedings and that possession was not taken. We are therefore of the view that the appeal deserves to be dismissed with costs.

21. The writ appeal is dismissed with cost quantified at Rs.50,000/- (Rupees Fifty thousand only). The Power Agent shall pay the cost amount to the Corporation Middle School, Ramasami Street, Waltax Road, Chennai, within a period of four weeks from today, failing which, the same shall be recovered by the District Collector, Greater Chennai, treating it as an arrears of land revenue. Consequently, connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Special Commissioner and
Commissioner of Urban Land Ceiling,
Chepauk, Chennai -5.

2.The Competent Authority (Urban Land Ceiling)
and Assistant Commissioner (Urban Land Tax)
T.Nagar, Arcot Road, Chennai 600 024.

3.The Collector,
Chennai

4.The Commissioner,
Corporation of Chennai.

5.Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 83.

+1cc to Mr.S.Ramesh, Advocate Sr.No.88806/17

GP(CO)
sm:19.1.2018

Judgment in
W.A No.1665 of 2014