

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.10.2017
CORAM :
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
WA.No.145 of 2016
and CMP.No.1942 of 2016

1.Dr.V.P.R.Varadharajan
2.V.P.R.Raja ... Appellants/petitioners
Vs.

1.The State of Tamil Nadu
Represented by
The Assistant Commissioner
Urban Land Ceiling and Tax
Kundrathur - Alandur (E)
No.153 Karuneegar Street,
Adambakkam, Chennai-88.

2.The Sub Registrar,
Adayar Sub Registrar Office,
Adayar, Chennai-20 ... Respondents/Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent to set aside the order of the learned single judge made in WP.No.1255 of 2015 dated 25.11.2015

WP.No.1255 of 2015:Petition presented to this court to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondents Letter No.Na.Ka.B/364/13 dated 27.9.2013 issued by the 1st respondent against the property comprised in Survey No.227/6E measuring an extent of 46 cents situated in Kottivakkam Village Saidapet Taluk Kanchipuram District and quash the same as the Urban Land Ceiling Proceedings initiated by the 1st respondent are ceased to exist in view of Repeal of Act 15 of 1999 dated 16.6.1999 and accordingly direct the 1st respondent duly communicate the same to the 2nd respondent to cancel the entries forwarded by the 1st respondent relating to the property of the petitioner to the 2nd petitioner by order dated 27.9.2013 and duly comply the orders of Honourable court

For appellants : Mr.P.Subba Reddy.
For respondents: Mr.Anandhamoorthy, AGP
for R1 and R2.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The writ appeal is directed against the order of the learned single judge dated 25.11.2015 made in WP.No.1255 of 2015 filed by the appellant.

2. On 13.12.1943, Mr.Kannu Chettiar executed a settlement deed in favour of Mr.Sabhapathi Chettiar, which is the subject matter of this appeal. The legal heirs of Mr.Sabhapathi Chettiar executed a sale deed dated 12.09.1962 in favour of the appellant's father Dr.V.P.Rama Pandiaraj vide Doc.No.2439 of 1962 on the file of the SRO, Saidapet. The said Dr.V.P.Rama Pandiaraj died on 20.07.1972 leaving behind his wife, three sons and three daughters. The three daughters released their respective undivided share to and in favour of the three male heirs of the deceased Dr.V.P.Rama Pandiaraj bearing Document No.2071, 2072, 2073 of 1972 on the file of the SRO, Mylapore.

3. The Urban land ceiling Act came into force on 30.08.1976, at that time the subject matter of the property is only a vacant seashore land at Kottivakkam, at that time all the family members were residing at No.90, Dr.Natesan Road, Mylapore, Chennai. At the time of purchase of land the address was No.90, Barbars Bridge Road, later on converted into Dr.Ambadkar Bridge Road, Mylapore, Chennai-4, i.e, continuation of Dr.Natesan Road. While the sisters released the property, the address in the document is Dr.Natesan Road, Mylapore. Thus, the residential address is only Mylapore, Chennai not Kottivakkam than as to how the respondents served notice to Kottivakkam is not known.

4. The entire proceedings were communicated to one exparte person that too against Mr.Lakshmi Narayanan but when patta stands in the name of Mrs.Lakshmi Rama Pandiaraj. The tax receipts and the patta stands in the name of Mrs.Lakshmi Rama Pandiaraj. All the proceedings were initiated against Mr.Lakshmi Narayanan instead of Mrs.Lakshmi Rama Pandiaraj and all the letter were addressed to the vacant site address and the proceedings were not served on the residential address of the land owners. On 31.03.1997, the Assistant Commissioner, Urban Land Ceiling passed an exparte order against Mr.Lakshmi Narayanan, Kottivakkam Village. In the meanwhile, the said Mrs.Lakshmi Rama Pandiaraj died on 20.12.1993 leaving behind her three sons and three daughters.

5. According to the respondents the possession was taken on 15.03.1999, from one officer to another officer by way of exchange of letters. The Repeal Act came into force on 16.06.1999 and Urban Land ceiling Act has been repealed in total

without any saving clauses i.e, Act 15 of 1999. When there is no saving clause all the acts done by the Government earlier ceased to exist. The Assistant Commissioner, passed an order on 27.09.2013 stating that they have already taken possession which is questioned by the appellants herein in WP.No.1255 of 2015.

6. The learned single judge after hearing the arguments of both sides, passed the following order, while concluding the order the learned single judge observed as follows :-

"19.Considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on either side and on perusing the typed set of papers, this Court is of the view that the first respondent had acquired the said land during 1997, who in turn handed over the same on 15.03.1999, to the Revenue Authorities. A communication also sent to the second respondent on 31.03.1999. This fact revealed by the respondents by way of filing counter affidavit on the basis of the records maintained by the Government. Hence, the impugned order dated 27.09.2013, is only a subsequent communication and the same cannot be considered as an original cause of action. In such circumstances, the writ petition is liable to be dismissed."

7. Aggrieved against the order of dismissal passed by the learned single judge in WP.No.1255 of 2016, the appellants have filed the present writ appeal.

8. Heard the rival submissions made on both sides and perused the available records.

9. On perusal of the documents available in the typed set of papers, the order of the learned single judge runs from pages 90 to 98, the paragraphs 1 to 18 of the order, the learned single judge has narrated the facts of the case, extracted the portion of the Repeal Act and submissions made by both the counsel. In paragraph 19 alone the learned single judge has concluded the order, without going into the merits of the case by simply referring the counter filed by the learned Additional Government Pleader and passed a non-speaking order by dismissing the writ petition.

10. The learned counsel for the appellants mainly contended that the entire proceedings passed against a wrong person called Mr.Lakshmi Narayanan when there is no such person in the said address. Further, the eligibility given is only 500sq.mtrs. The total family members are eight, hence, entitled for 2,000sq.mtrs for the entire family itself proceeded as a wrong impression and presumption. Hence, the order of learned single

judge is liable to be set aside.

11. Further, the learned single judge has vaguely recorded that the first respondent acquired the said land during 1997 and handed over the same to the revenue authorities on 15.03.1999 and a communication was also sent to the second respondent on 31.03.1999. The respondents also admitted that the said facts are available from the records maintained by the Government. Apart from recording the above, the learned single judge has not assigned any valid ground or reason for dismissing the writ petition. Viewing from any angle, we are of the considered opinion, that the order passed by the learned single judge is not on merits and the same is liable to be set aside.

12. In the result, the writ appeal is allowed, by setting aside the order of the learned single judge passed in WP.No.1255 of 2015 dated 25.11.2015 and the writ petition is remitted back for deciding the issue afresh in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner
The State of Tamil Nadu
Urban Land Ceiling and Tax
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No.153 Karuneegar Street,
Adambakkam, Chennai-88.

2.The Sub Registrar,
Adayar Sub Registrar Office,
Adayar, Chennai-20.

3.The Section Officer
Writ Section High Court Madras

+1cc to the Government Pleader sr 71702
+3 ccs to Mr.P.Subba Reddy Advocate sr 71277 & 71687

WA.No.145 of 2016

aa02/11/2017