

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2018

PRONOUNCED ON : 28.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.190 of 2018
and CMP.No.1326 of 2018

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

2.The Assistant Commissioner
& Competent Authority,
Urban Land Tax & Urban Land Ceiling,
Coimbatore - 641 018. ... Appellants/Respondents

Vs.

P.Chandrika ... Respondent/Petitioners

PRAYER : Appeal is filed under clause 15 of Letters patent, to
set aside the order dated 18.02.2015 made in WP.No.20125 of 2014.

Prayer in WP.20125 of 2014: For the reasons stated in the
accompanying affidavit it is prayed, that this Honourable court
may be pleased to issue a Writ of Certiorarified Mandamus under
Article 226 of the Constitution of India to call for the records
of the Respondents especially the Orders of the First Respondent
dated 06/01/2014 vide Rc.No. 6503/2013/J3 in respect of
Petitioner Land in S.No.63/1 of Kavundampalayam Village
Coimbatore District admeasuring about 134.5 (Cents) and quash
the same and consequently direct the Respondents to treat the
proceedings as abated under Section 4 of Tamil Nadu Land
(Ceiling & Regulation) Repeal Act 20 of 1999 and thus render
justice.

For appellants : Mrs.Narmadha Sampath, AAG
assisted by Mrs.A.Srijayanthi, Spl.GP.

For respondent : No appearance

JUDGMENT

P. VELMURUGAN, J.

This appeal is filed against the order dated 18.02.2015 passed by the learned single judge in WP.No.20125 of 2014.

2. It is stated in the writ petition that the land in question originally owned by Ranga Naicker by virtue of a partition deed dated 17.07.1912 executed between himself and his brothers. After the death of Ranga Naicker his son Venkitasamy Naicker succeeded to the estate. During the life time of Venkitasamy Naicker, he retained half share and in respect of the remaining half share, he executed a Will dated 11.09.1985 in favour of his only son V.Gopalakrishnan vide registered Doc.No.273 of 1985 on the file of Joint Sub Registrar - I, Coimbatore. The said Venkitasamy Naicker died on 28.05.1994. During the lifetime of Venkitasamy Naicker, there was a dispute between his sisters and Gopalakrishnan. Subsequent to the death of Venktiasamy Naicker, his sisters and another person by name Devaraj, filed a civil suit in OS.No.1245 of 1998 on the file of the Sub Court, Coimbatore on 20.09.1999. During the pendency of the above suit V.Gopalakrishnan died on 12.08.2003. The respondent/P.Chandrika is the wife of deceased V.Gopalakrishnan. In the meanwhile, the above captioned suit was transferred and renumbered on the file of FTC.No.III, Coimbatore as OS.No.160 of 2002 and the same was disposed of in favour of deceased V.Gopalakrishnan. Yet another suit was filed by one Meenakshiammal who is the relative of Venkitasamy Naicker as against the respondent herein in OS.No.588 of 2004 on the file of FTC.No.III, Coimbatore. The said suit was also disposed of in favour of the respondent. After obtaining certified copy of the judgment and decree, the respondent approached VAO, Kavundampalayam for transfer of patta. After a period of two years she was informed that patta in respect of the subject property cannot be effected as the property in question has been taken over by the Urban land ceiling department.

3. The respondent made representation before the Assistant Commissioner, Urban Land Tax, Coimbatore on 05.06.2013 requesting to release the property stating that no notice under Section 11(1) and 11(5) of the Act has been served, and that compensation has also not been paid.

4. The notification under Section 11(1) of the Act was published on 23.01.1991. The notification under Section 11(3) of the Act was published on 2.2.1994. The notice under Section 11 (5) of the Act was served on 08.7.1994. The possession of the excess urban land was handed over to the Revenue Authorities on 7.1.1997 i.e, well before the Repeal Act came into force and no proceeding was pending on the date of the Repeal Act.

Subsequently, the respondent herein filed a writ petition for quashing the urban land ceiling proceedings. The learned single judge after hearing the arguments of both sides, allowed the writ petition.

5. Aggrieved against the said order passed by the learned single judge, the present writ appeal has been filed by the Government.

6. Heard the learned Additional Advocate General appearing for the appellants. We have also perused the entire materials placed on record and the original file submitted by the department.

7. It is not in dispute that the property originally belonged to Ranga Naicker on the strength of a partition deed dated 17.7.1912. After the death of Ranga Naicker, Venkitasamy Naicker succeeded to the above property. Thiru.Venkitasamy Naicker did not file any returns under Section 7(1) of the Act. The competent authority has sent notice to the owner of the land/Venktiasamy Naicker. It is the case of the appellants that since Venkitasamy Naicker did not file any returns under Section 7(1) of the Act, after making enquiry and field inspection and having found that the land was kept vacant, a draft statement under Section 7(2) of the Act was prepared and notice was issued under Section 9(4) of the Act along with draft statement under Section 9(1) of the Act. The said notice was received by Venktiasamy Naicker on 19.09.1989 and his signature is also found in the original file. Since, no objection was received within thirty days, the competent authority prepared a final statement under Section 10(1) of the Act. The said statement along with the notice was received on 8.1.1990 by Rangasamy who is none other than the father of Venkitasamy Naicker. Notification under Section 11(3) of the Act was issued stating that the land stood vested with the Government. Section 11(5) notice was also sent to the land owner for delivery of possession.

8. According to the respondent, the original owner Venkitasamy Naicker, executed a Will dated 11.09.1985 bequeathing half share in favour of V.Gopalakrishnan. The said Will came into force after the death of Venkitasamy Naicker i.e., on 28.05.1994 and V.Gopalakrishnan was in possession and occupation of the land till his death i.e., on 12.08.2003. After the death of V.Gopalakrishnan, the respondent herein succeeded to the subject land. It is her contention that the competent authority has not issued any notice to her or to the erstwhile owners and therefore, the acquisition is vitiated. Similarly, no compensation was paid to the respondent. It is the contention that when the repeal Act came into force during 1999, the respondent was in possession of the property, and on this sole

ground, the entire land acquisition proceedings lapsed.

9. It is found from the records that the original owner of the subject land in question is Venkitasamy Naicker. The said Venkitasamy Naicker did not file any returns before the competent authority. The land was kept vacant prior to preparation of draft statement. Notices under Section 7(2), 9(4) and 9(1) of the Act were received by the owner of the land i.e, Venkitasamy Naicker on 19.08.1989. The same is found at page No.19 of the original file. Even after the receipt of the notice, Venkitasamy Naidu did not file any objection on or before 18.09.1989. Even though due opportunity was given by the competent authority to the land owner for filing objections, no such objection was filed. Therefore, final statement was prepared under section 10(1) of the Act indicating that after deducting the personal entitlement of 3000sq.mtr the remaining extent of 8939sq.mtr was excess land. The said statement was also duly sent to the Venkitasamy Naicker and the same was received by Rangasamy who is none other than the father of Venktiasamy Naicker. The signature of Rangasamy is also found in the original file at page No.45. Even after the receipt of the said notice, the land owner has not filed any objection before the competent authority. The copy of the proceedings of Assistant Commissioner dated 20.11.1989 was also sent to the land owner and the same was duly received by a family member by name Palaniammal, who is the grand daughter of Venktiasamy Naidu. All the communications were sent to the land owner i.e, Venkitasamy Naicker and the same was duly served directly on the land owner or on the adult members of the family.

10. The respondent has not denied the relationship of the family members who have received the communications. The notification vesting the land with the Government was served on the landowner. The notice under Section 11(5) of the Act to surrender or deliver possession of the land was also served on the landowner and the same was received by Palaniammal, who is none other than the grand daughter of Venkitasamy Naicker. Her signature is found at page No.139 of the original file. The competent authority has taken over the possession of the land and after effecting mutation, the land was handed over to the revenue authorities vide possession certificate dated 07.01.1997. Before the Repeal Act came into force, the land stood vested with the Government. Even the possession was also taken over by the Government before the repeal Act.

11. As stated by the respondent, Thiru.Venkitasamy Naicker executed a Will dated 11.09.195 in favour of his son V.Gopalakrishnan vide Doc.No.273 of 1985. The said Venkitasamy Naicker died on 28.05.1994. After the death of his father, the said V.Gopalakrishnan has been in possession and enjoyment of

the subject land and he also died on 12.08.2003, leaving behind his wife/respondent as the legal heir. Thus, the respondent has become the absolute owner of the subject land. On a perusal of the entire records, it would go to show that Venkitasamy Naicker remained the owner of the land. There are no documents to show that either Thiru.Gopalakrishnan or the respondent were shown as the owner of the land in the revenue records. There was no mutation either in the name of Gopalakrishnan or in the name of the respondent. Further, the records would also show that the competent authority has meticulously followed all the procedures contemplated under the Tamil Nadu Urban land ceiling Act and at every stage, notices were served on the landowner.

12. The possession of the land was taken over by the competent authority and it was handed over during 1997. The repeal Act came into force in the year 1999. The respondent filed the writ petition only during 2014, after the lapse of 16 years. The respondent herself admitted that after the disposal of the suit in the year 2010, she approached this Court by way of the subject writ petition. Even assuming that the suit was disposed of on 24.09.2010, there is no evidence to show that she was in physical possession of the subject land as on the date of the repeal Act. In the absence of any such evidence, it cannot be said that the acquisition proceedings is deemed to have been lapsed.

13. The learned single judge failed to consider the factual matrix of the case and allowed the writ petition, by giving a direction to the authority to effect transfer of patta. The order passed by the learned single judge is unsustainable in law.

14. In view of the above discussion, the writ appeal is allowed by setting aside the order passed by the learned single judge in WP.No.20125 of 2014 dated 18.02.2015. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

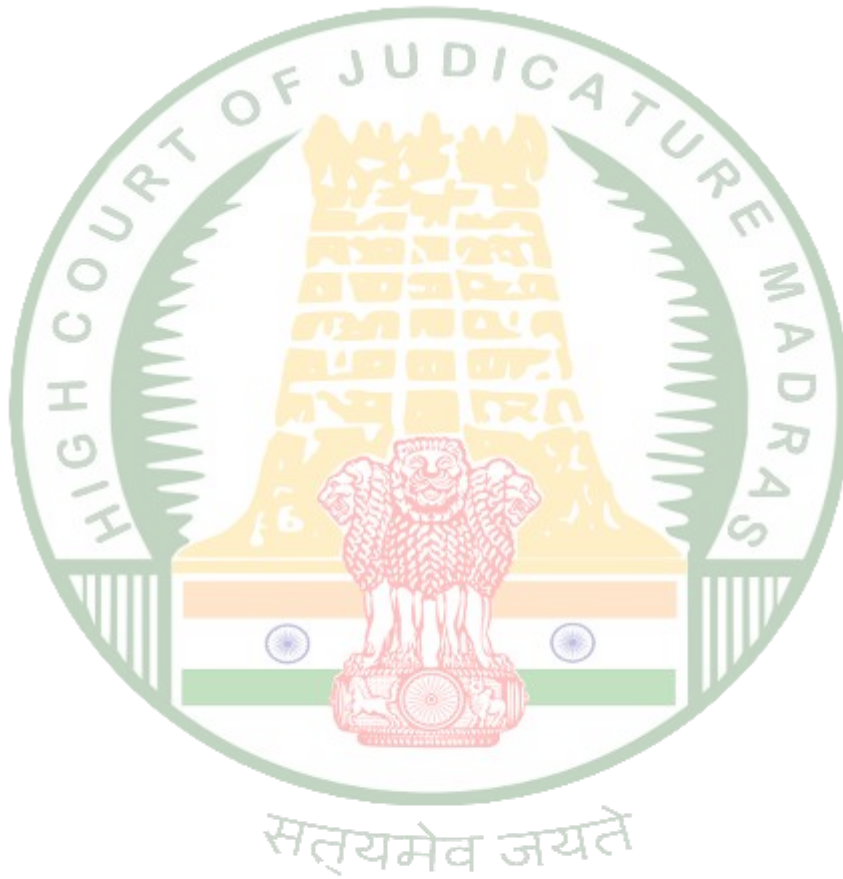
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To
1.The Commissioner,
Commissioner of Urban Land Ceiling and Urban Land Tax,
Ezhilagam, Chepauk,
Chennai-5.

2.The Assistant Commissioner & Competent Authority,
Urban Land Tax & Urban Land Ceiling,
Coimbatore - 641 018.

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SJ (CO)
GN (10/07/2018)



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