

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 29.11.2017	Date of pronouncing Judgment 23.01.2018
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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Appeal No.2257 of 2013
and C.M.P.No.1 of 2013

1. State of Tamil Nadu
represented by the Secretary
Revenue and Urban Land Department
Fort St. George, Chennai - 600 009.
 2. Competent Authority and
Assistant Commissioner
Urban Land Ceiling
Coimbatore. ... APPELLANTS
- Versus
- P.Sundarasamy ... RESPONDENT

Writ Appeal has been filed under clause 15 of Letters Patent against the order of this Court dated 20.04.2012 made in W.P.No.100 of 2006.

W.P.No.100 of 2006 PRAYER:-

Petition filed Under Article 226 of the Constitution of India praying for writ of certiorarified mandamus calling for the records of the 2nd respondnet in connection with the proceedings vide Ref.No. Na.Ka.6386/92/E2 datd 22.12.1992 and quash the same and for bearing the respondent from interfering with the peaceful possession and enjoyment of the petitioner house site property in respect of Survey No.164/1E, Saravanampatty Village, coimbatore Taluk, Coimbatore District.

For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondent : Mr.J.Pradeep
for Mr.P.Saravana Sowmiyan

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

This Writ Appeal has been filed by the respondents in the Writ Petition against the order passed by the learned single Judge dated 20.04.2012 in W.P.No.100 of 2006.

2. The brief facts of the case are as follows:-

(i) The subject matter of the land originally belonged to one Mr.Natarajan, which fall under the Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred to as Principal Act). After the Principal Act came into force, as per Section 7 (1) of the Principal Act, the owner has to submit Form-I statement. Since the said Natarajan has not submitted Form-I under Section 7(1) of the Principal Act, the competent authority has sent notice to the original/registered owner under Section 7 (2) of the Principal Act. Even after serving notice, the said Natarajan has not filed any statement or made any representation for exemption. Therefore, the competent authority sent a draft statement under Section 9(1) of the Principal Act. Even after the same, Mr.Natarajan has not filed any statement or objection. Then final statement under Section 10(1) was sent to Natarajan. After completing the proceedings under Sections 11(1) to 11(3) of the Principal Act, when notice under Section 11(5) was attempted to be served on Natarajan, he refused to receive it and stated that already he informed on 16.07.1996 that the land is agricultural land. Therefore, the said notice was served by affixture. The endorsement of the competent authority to that effect is found in the copy of Section 11(5) notice. Since the registered owner refused to surrender the possession of the land voluntarily, the land was acquired and possession was taken over by the competent authority and it was handed over to the revenue authority.

(ii) According to the respondent, he purchased the property as per sale deed dated 28.12.1992 and registered as document No.7610 of 1992 on the file of Sub Registrar Office, Gandhipuram. The original owner divided the property into several plots and sold it to several persons. After purchasing the property, the respondent constructed a house and no notice was issued to him by the authorities. The proceedings under Section 11(5) was also not sent to him. The possession of the property was not taken on the effective date of the Repeal Act.

The respondent is in possession and the appellants disturbed his enjoyment and peaceful possession of land. Therefore, the respondent filed the Writ Petition before this Court for quashing the proceedings issued by the appellants dated 22.12.1992.

(iii) According to the appellants, after the introduction of Principal Act, the original owner was expected to file Form-I statement under Section 7(1) of the Act. Since the original registered owner has not filed Form-I Statement, notice under Section 7(2) of the Principal Act was served on the registered owner to submit a statement. Even then, the original owner has not submitted the statement. Therefore, as per Section 9(1) of the Principal Act, draft statement was sent to the registered owner. Even after that, he has not filed any objection in the matter.

(iv) It is further stated by the appellants that even according to the respondent, the registered owner submitted a statement claiming that the land was agricultural land and hence, exemption should be granted. Whereas, the respondent himself admitted that the original owner divided the land into plots and sold it to various persons. Therefore, the stand taken by the original owner that the land is agricultural land, was not correct. The respondent himself clearly admitted that he has purchased the land from the original owner as a plot. Therefore, the stand of the registered owner that as on the material date of the Principal Act, the land was under cultivation, is not acceptable.

(v) It is also stated by the appellants that since all the notices were sent to the original owner and the competent authority has meticulously followed all the statutory procedures as contemplated under the Principal Act and no statement was filed by the original owner, the second appellant under Section 9(5) of the Principal Act rightly issued proceedings dated 22.12.1992 determining an extent of 2450 sq.mts as excess vacant land after allowing an extent of 1,500 sq.mts as per legal entitlement. Then it was declared in the final statement under Section 10(1) of the Act. Notices under Sections 11(1), 11(3) and 11(5) of the Act were sent to the registered owner and he refused to receive the same stating that he divided the land into plots and sold it to several persons. Since he refused to receive the notice under Section 11(5) was affixed in the land. Since there was no resistance, competent authority had taken possession of the land and handed over the same to the revenue authority. All these procedures were completed before the Repeal Act coming into force. Therefore, as on the date of Repeal Act, no proceedings were pending. Moreover, the present respondent has filed Writ Petition before the Writ Court only in the year

2006, i.e., 14 years after 9(5) proceedings dated 22.12.1992 and 7 years after the Repeal Act coming into force, claiming that the 9(5) proceedings dated 22.12.1992 has to be quashed and his possession should not be disturbed by the appellants. The respondent is not entitled for any notice, including notice under Section 11(5) of the Principal Act, since he has purchased the land under sale deed dated 28.12.1992 i.e., after passing the order under Section 9(5) dated 22.12.1992. The sale is null and void as per Section 6 of the Principal Act. Hence, he has no right and title over the land. His possession cannot be protected under the Repeal Act.

(vi) After hearing the arguments, the Writ Court allowed the Writ Petition. Aggrieved by the order passed by the Writ Court, the State has preferred the present Appeal.

3. During the final hearing, We have directed the Special Government Pleader to produce the original files. Accordingly, the original files were produced.

4. Heard the submissions on behalf of the parties.

5. A perusal of the records would show that one Natarajan was the registered owner of the property which is the subject matter of this appeal and after the Principal Act came into force in the year 1978, no statement under Section 7(1) of the Principal Act was filed by the registered owner. Therefore, the competent authority has sent notice dated 26.08.1992 to the registered owner under Section 7(2) of the Principal Act. Since there was no response from the registered owner to the said notice, the competent authority sent notice dated 24.09.1992 under Section 9(4) along with draft statement under Section 9 (1). Thereafter, proceedings dated 22.12.1992 under Section 9 (5) of the Principal Act was sent to the registered owner declaring an extent of 2450 sq.mts as excess vacant land after allowing an extent of 1,500 sq.mts. Even after the same, the registered owner has not filed any statement or objections. The competent authority therefore sent final statement dated 03.03.1993 under Section 10(1) of the Principal Act to the registered owner. Since there was no response, the competent authority issued a notice dated 31.08.1998 under Section 11(1). The Gazette Publication dated 14.10.1998 under Section 11(1), Gazette Notification dated 24.11.1998 under Section 11(3) of the Principal Act were also made. As per Section 11(3) of the Principal Act, the land would vest with the Government and the Government has to take possession separately. Therefore notice under Section 11(5) of the Principal Act for surrendering the possession was issued on 28.01.1999. When notice under Section

11(5) was offered to Natarajan, he refused to receive the same. Therefore, the said notice was affixed in the land on 24.04.1999. The endorsement of the official to that effect is found in the copy of Section 11(5) notice. Hence, the land was acquired and possession was taken over by the competent authority and the same was handed over to the revenue authority on 04.06.1999. Since there was no resistance, there is no need to invoke Section 11(6) of the Principal Act to use force to take possession. Though the Repeal Act came into force on 16.06.1999, all the proceedings completed on 04.06.1999 itself and therefore, as on the crucial date of the Repeal Act, no proceedings were pending.

6. The original records does not contain any material to show that the registered owner submitted representation either for exemption or for giving intimation that he sold the land earlier to the Principal Act came into force. Further as per Section 6 of the Principal Act, if any sale is effected after the Principal Act coming into force, the same is null and void.

7. At this juncture, it is useful to extract section 6 of the Principal Act, which reads as follows :-

"6. Transfer of Vacant Land : - No person holding in excess of the ceiling limit immediately before the commencement of this Act vacant land, shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 11; and any such transfer made in contravention of this provision shall be deemed to be null and void."

8. Admittedly, the respondent purchased the land only on 28.12.1992, which was during the course of acquisition proceedings under the Principal Act. Since the sale deed is null and void under Section 6 of the Principal Act, title has not been passed on to the respondent. There are no records to show that the respondent intimated the appellants regarding his purchase of the land. Even at the time of registration of the documents also, the respondent has not filed Declaration Form under Section 27 of the Principal Act.

9. Section 27 of the Principal Act relates to "statement to be made before the registering authority in certain cases", which reads as follows:-

"27. (1) No document relating to transfer of any vacant land either by sale, gift, exchange, lease, possessory mortgage, surrender, agreement, settlement, or otherwise, shall be registered unless a statement in writing is made in duplicate in such form as may be prescribed and filed by the transferor and the transferee before the registering authority under the Registration Act, 1908 (C Act XVI of 1908), as to the total extent of vacant land held by him:

Provided that no statement as required under this sub-section need be filed by the transferor and the transferee to the registering authority in respect of such document as is referred to in this sub-section which has been presented to the registering authority before the commencement of this Act and is pending registration on the date of the publication of this Act in the Tamil Nadu Government Gazette.

(2) The registering authority referred to in subsection (1) shall forward within such time and in such manner as may be prescribed, one copy of the statement referred to in sub-section (1) to the competent authority, within whose jurisdiction such land which is the subject-matter of the transfer or the major part thereof is situated.

(3) On receipt of the copy of the statement under sub-section (2), the competent authority may obtain such information as may be necessary and take such action as he deems fit in accordance with the provisions of this Act, and in accordance with such rules as may be made in this behalf."

10. Therefore, in the absence of such declaration or statement before the registering authority, the claim of the respondent is not legally sustainable.

11. Though Section 11(3) says that after publishing notification under Section 11(3), the land would vest with the Government, the Hon'ble Apex Court in a batch of cases, reported in 2013 (4) SCC 280 (State of Uttar Pradesh ..vs.. Hari ram), held that "The expression 'deemed to have been acquired' used as a deeming fiction under sub-Section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under

Section 2(1) of the Act." (Section 2(1) of the Central Act is corresponding to Section 3(1) of the Tamil Nadu State Act). Of course, the Government has taken possession after issuing notice to the registered owner under Section 11(5) of the Act. The words "any person who may be in possession of it" mentioned in Section 11(5) of the Act does not mean the purchaser under a void document, who is treated as an encroacher. "Any person who may be in possession of it" mentioned in Section 11(5) of the Principal Act restricted only to the persons who are in possession as defined under Section 3(1) of the Principal Act and not any other person. The meaning of 'any person who may be in possession of it' has to be interpreted only as indicated in Section 3(1).

12. Section 3(1) of the Act reads as follows:-

(1) "to hold" with its grammatical variations, in relation to any vacant land, means

- (i) to own such land; or
- (ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power-of-attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

Explanation I.-For the purpose of this clause, "tenant" means any person who has paid or has agreed to pay rent or other consideration for his being allowed by another to enjoy the land of the latter under a tenancy agreement, express or implied, and includes

- (i) any such person who continues in possession of the land after the determination of the tenancy agreement ;

- (ii) the heirs, assignees, legal representative of such person, or persons deriving rights through such person.

Explanation II.-Where the same vacant land is held by one person in one capacity and by another person in another capacity, then, for the purposes of this Act, such land shall be deemed to be held by both such persons"

13. As per Section 6 of the Principal Act, all the sales effected after the Principal Act coming into force, shall be deemed to be null and void. Since the sale in favour of the respondent is null and void, he is treated as an encroacher. Since, the respondent has not come under any one of the capacities as defined under Section 3(1) of the Act he is not

entitled to get the benefit under the Repeal Act.

14. The Combined reading of Sections 3(1), 6, 11(4), 11(5) and 27 of the Principal Act would show that the words 'any person who may be in possession of it' mentioned in Sections 11 (5) of the Act would only mean that the person who is in possession under any one or more of the capacities as mentioned in Section 3(1) and not any encroacher or any person who is in illegal possession. Those persons cannot take shelter under the legal provisions either under the principal Act or under Repeal Act.

15. In fact, it is settled that the statute must be read as a whole in its context. Specifically when a question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context entirety. Such context means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. Therefore, the Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute and also compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

16. The respondent has challenged the proceedings dated 22.12.1992 and on that date, admittedly, he was neither the owner nor in possession of the subject property in any one of the capacities mentioned in Section 3(1) of the Act. Hence, he cannot say that no notice was served on him and possession was not taken from him. All the acquisition proceedings have been completed on 04.06.1999, which was much earlier to the Repeal Act. Since the respondent is not the owner or the person in possession in any of the capacities mentioned in Section 3(1) of the Act, he is not entitled to the benefit of the Repeal Act. The learned single Judge simply held that possession was not taken and therefore, the proceedings stood lapsed and abated.

17. In the affidavit filed by the respondent in Writ Petition, it was stated that he has purchased the house site and on the date of purchase, it was a house site. But during the course of arguments in this Appeal, it was contended that the respondent has constructed a building in the house site. But there are no records to show that he has constructed the building.

18. In view of the above discussion, we are of the considered opinion that the order passed by the learned single judge warrants interference.

19. The Writ Appeal is allowed. The order of the learned single Judge dated 20.04.2012 in W.P.No.100 of 2006 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

mra/tsh

To

1. State of Tamil Nadu
represented by the Secretary
Revenue and Urban Land Department
Fort St. George, Chennai - 600 009.
2. Competent Authority and
Assistant Commissioner
Urban Land Ceiling
Coimbatore.

+1cc to Mr.P.SARAVANASOWMIYAN, Advocate, S.R.No. 5035
+1cc to the Government Pleader, S.R.No. 5498

Pre-delivery Judgment in
Writ Appeal No.2257 of 2013
and
C.M.P.No.1 of 2013

LRS (CO)
TR(07/02/2018)

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