

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2017

PRONOUNCED ON : 01.02.2018

CORAM :

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

WA.No.1095 of 2016

1. D.Loganathan
2. D.Devanathan
3. V.Varalakshmi
4. R.Saraswathi
5. M.Revathi
6. P.Shanthi
7. S.Manjula
8. V.Saroja
9. N.Arulselvi
- 10.N.Rajasekaran
- 11.R.Geetha

appellants 1 to 11 are represented by
their General Power of Attorney
Mr.E.Sivaprakasam

12.E.Sivaprakasam ... Appellants/Writ Petitioners

V.

1. The Principal Commissioner
and Commissioner of Land Reforms,
Chepauk, Chennai-5.
2. The Assistant Commissioner of
Urban Land Ceiling,
Poonamallee, Chennai.
3. G.Elumalai ... Respondents/Respondents

PRAYER : Appeals are filed under clause 15 of Letters patent,
to set aside the order dated 27.01.2016 made in WP.No.22802 of
2011.

WP.No.22802 of 2011:-

Writ Petition presented under Article 226 of the
Constitution of India to issue Writ of Mandamus Directing the
1st and 2nd Respondents to declare that all the proceedings

initiated under Tamil Nadu Urban (Ceiling and Regulation) Act 1978 in respect of the property measuring 8 cents comprised in Survey No.186 of Menambedu Village Ambattur Taluk Tiruvallur District have abated on the promulgation of Tamil Nadu Urban (Ceiling and Regulation) Repeal Act 20/1999 as no notice no compensation was given to the Petitioners and no effective possession of the said property was takenover and further declare that the Petitioners are the owners of the above said property based on the representations dated 16.08.2010 and 08.04.2011 respectively

For appellants : Mr.K.Doraisamy, Senior Counsel
for Mr.Kolandaivelu

For respondents: Mrs.A.Srijayanthi, Spl.GP for R1 and R2
Mr.Aadaikala Arockiaraj, for R3.
No appearance.

JUDGMENT

P. VELMURUGAN, J.

This appeal is filed against the order dated 27.01.2016 passed by the learned single judge in WP.No.22802 of 2011.

2. Originally late Duraisamy Reddiyar, purchased 17 cents of agricultural land in S.No.186 in Menambedu village, Ambattur Taluk, Thiruvallur District along with other properties from Lakshmaya Chetty and Lakshammam through registered sale deed No.2046 of 1962 on the file of SRO, Sembium. The appellants 1 to 4 are the children of late Duraisamy Reddiyar and the appellants 5 to 12 are his grand children.

3. The appellants contended that out of 17 cents in S.No.186 of Menambedu village, Ambattur village, Thiruvallur District, 9 cents were acquired by the Government of Tamil Nadu and Compensation was also paid in the year 1991. Now, the appellants are in possession and enjoyment of the remaining 8 cents. The appellants 1 to 11 have executed power of attorney in favour of the 12th appellant to maintain the remaining 8 cents. Till date, the appellants are in possession. The land grabbers tried to interfere with the peaceful possession and enjoyment of the said land. The appellants lodged criminal complaint against them on 03.12.2009 and 18.03.2010. At the relevant point of time, the police officials verified the records from the office of the 2nd respondent and other records from the revenue department and informed that the above property was declared as excess vacant land by the respondents 1 and 2 under Urban land ceiling Act.

4. On verification, it was found that the notice was given to the 3rd respondent erroneously and the property does not come

under the definition of urban land. The appellants are holding only 8 cents of land jointly, and therefore it cannot be declared as excess land under the principal Act. Since the possession was not taken over, the entire proceedings have become abated and the respondents 1 and 2 cannot have any lien over the subject property. If no such possession was taken over, the proceedings initiated under the Principal Act are deemed to be pending. The appellants submitted their representation on 16.08.2010 and 08.04.2011 respectively, seeking necessary orders to declare that they are the absolute owners of the subject property. The appellants filed the writ petition with a prayer to direct the respondents 1 and 2 to declare all the proceedings initiated under the Tamil Nadu Urban (ceiling and regulation) Act, 1978 in respect of property measuring 8 cents comprised in S.No.186, Ambattur Taluk, Thiruvallur District have abated on the promulgation of the Repeal Act, 20/1999. The appellants contended that notice of proceedings was not given and compensation also was not paid. The actual possession of the said property was not taken. The appellants prayed for a declaration that they are the owners of the said property based on the representation dated 16.08.2010 and 08.04.2011 respectively.

5. The learned single judge after considering the arguments of both sides, dismissed the writ petition filed by the appellants.

6. Aggrieved against the order passed by the learned single judge in W.P.No.22802 of 2011, the appellants have preferred the present writ appeal.

7. We have heard the learned counsel appearing for the appellants and the learned Special Government Pleader representing the respondents 1 and 2. We have perused the materials available and the original files produced by the revenue department.

8. On a perusal of records, it is found that after taking possession, the land stood vested with the Government during the year 1990. The writ petition was filed only in the year 2011 i.e., after the repeal Act came into force. Before the repeal Act came into force, the entire acquisition proceedings were over. The land was acquired and Section 11(1) notification was issued on 06.06.1990 and the same was also published in the Tamil Nadu Government Gazette on 11.07.1990. The third respondent/Elumalai initially participated in all the proceedings till the stage of proceedings under Section 11(3) and during 11(5) proceedings he made a representation that he is not the owner of the subject property. However, in the Section 11(5) proceedings notice was also served in the name of

Natarajan. The said Natarajan has not filed any appeal under Section 33 of the Act as against the order of rejection. Therefore, the proceedings initiated by the competent authority has become final.

9. The land was declared as excess vacant land. The possession of the land was handed over to the revenue authority on 18.01.1991 much prior to the introduction of repeal Act. On the date of commencement of the repeal Act no proceeding was pending before the revenue authority or any competent Court. The adult family member after receiving notice, submitted objections. The same was also rejected by the competent authority. The subject land was handed over to the Revenue Inspector, Ambattur and the same was also communicated to the land owner under Section 12(7) of the Act on 08.05.1991. Hence, the appellants are not entitled to get any benefits under the Repeal Act.

10. On a perusal of the files it is found that after the Act came into force in the year 1978 none filed returns or statement in respect of the subject land. The officials inspected the land and found that the land belong to Elumalai and a draft statement was served on him. He accepted the notice and made representation and the same was not considered. The final statement under Section 10(1) of the Act was issued on 14.06.1989 and Section 11(1) notification was issued on 06.06.1990 and the same was also published in the Tamil Nadu Government Gazette on 11.07.1990. Notification under Section 11 (3) of the Act was issued on 20.08.1990 vesting the land with the Government with effect from 26.09.1990.

11. Thereafter, the first respondent rejected the claim as time bared and observed that D.Natarajan's father had purchased 17cents in S.No.186 along with other lands. Since action was taken in the name of the Thiru.Elumalai, D.Natarajan was not entitled to file an appeal and rejected the appeal on 20.05.1991. Since the name of the appellants were not found in the revenue records, no notice could be issued to them. However, Thiru.Natarajan, father of appellants 9th to 11th had filed an appeal before the first respondent against the acquisition proceedings on 04.12.1990 and the same was also rejected. The land owner had exhausted all the statutory remedies available under the Act; including two appeals before the Special Commissioner, Land Reforms/first respondent herein. The said Natarajan is none else than the son of deceased Duraisamy Reddiyar and the power of attorney holder for the appellants 1 to 11. The 12th appellant is none else than the son of deceased Ekambaram, who is the brother of deceased D.Natarajan. Now after the death of Natarajan, and after the lapse of more than 20 years, the appellants are before this

Court. Thiru. Natarajan has actively participated in all the proceedings and exhausted all the remedies before the competent authority.

12. In the writ petition the appellants have stated that no notice was served on them, physical possession was not taken and they are in possession and enjoyment of the subject property. The appellants have come up with a prayer in the writ petition that all the proceedings initiated under the Tamil Nadu Urban (ceiling and regulation) Act, 1978 in respect of property measuring 8 cents comprised in S.No.186, Ambattur Taluk, Thiruvallur District have abated on the promulgation of the Repeal Act, 20/1999.

13. On a bare perusal of the original files, it is clear that the authorities had followed every procedure meticulously before taking possession of the land, which cannot, at any stage be found fault with. In the case on hand, the possession of the appellants, if any has to be treated only as an encroachment on the Government land. The possession of the acquired land was handed over to the Firka revenue inspector on 18.01.1991. The repeal Act came into force during 1999. The appellants filed the writ petition during 2011, after the expiry of more than 20years and 10years after the Repeal Act came into force.

14. The writ appeal is liable to be dismissed mainly on two grounds viz., one of the family members had participated in the acquisition proceeding and exhausted all the remedies under the Act and that the order passed in appeal under Section 33 of the Act has become final. The other ground is that as on the date of commencement of the Repeal Act, no proceedings was pending before the competent authority. The land was acquired and notification was also published in the Government Gazette. The subject land was handed over to the Firka revenue Inspector on 18.01.1991. The appellants are therefore not entitled to the benefits of the Repeal Act.

15. We are of the considered view that the appellants have not put-forth any valid ground before this Court for consideration and there is no merit in the appeal.

16. In the result, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner
and Commissioner of Land Reforms,
Chepauk, Chennai-5.
2. The Assistant Commissioner of
Urban Land Ceiling,
Poonamallee, Chennai.

+lcc to Mr.Kolandaivelu, Advocate, S.R.No.7585
+lcc to the Government Pleader, S.R.No.7970

WA.No.1095 of 2016

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