

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2017

PRONOUNCED ON : 02.02.2018

CORAM:

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

WA.No.404 of 2016
CMP.Nos.6009 & 6010 of 2016

S.Sethuraman (deceased)

1. S.Geetha
2. Prabhu Sethuraman
3. Priya Robson
4. Praba Subramanian .. Appellants/Petitioners
(A3 and 4 rep. by their
Power Agent Mrs.S.Geetha
the 1st Appellant herein)

V.

1. Principal Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai-5.
2. Assistant Commissioner (Urban Land Ceiling)
Arcot Road, Kodambakkam,
Chennai - 24.
3. The Tahsildar,
Mylapore, Triplicane Taluk,
Chennai-4. .. Respondents/Respondents

PRAYER : Appeal is filed under clause 15 of Letters patent, to
set aside the order dated 12.01.2016 made in WP.No.25636 of 2008.

WP.No.25636 of 2008:-

Petition presented under 226 of the Constitution of India
for Writ of Declaration or any other Writ or Order like nature,
that the land to an extent of 1 Ground 1848 sq.ft. comprised in
Old R.S. No. 26/1D and 24/3A4 new R.S.No. 24/3A4 T.S.No. 20/2
Block No.8 (Old Door No.7, Ventarathanam Street, Adayar,
Chennai - 20) at Pallipatu Village, Venkatrathi nagar

extension II, Chennai, Mylapore, Triplince taluk belonging to the petitioners does not attract the provisions contained in Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 or Section 3(i)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999

For appellants : Mr.S.Parthasarathy, Senior Counsel
for Mr.SK.Rahul Vivek.
For respondents : Mr.A.Srijayanthi, Spl.GP.

J U D G M E N T

P. VELMURUGAN, J.

This appeal is filed against the order dated 12.01.2016 passed by the learned single judge in WP.No.25636 of 2008.

2. The case of the appellants is that the land originally belonged to one R.Munusamy Chettiar and others. The said Munusamy Chettiar and others through their power of attorney dated 26.11.1979 registered as document No.191 of 1979 on the file of Sub Registrar, Saidapet sold the property to Thiru.Sethuraman under the sale deed dated 28.01.1980 vide Document No.163 of 1980 on the file of the Joint Sub Registrar-II, Saidapet, Chennai-15. The present appellants are the legal heirs of deceased Sethuraman.

3. The predecessors in title have been in absolute possession and enjoyment of the said property and obtained necessary orders from the competent authority, Urban land ceiling, Saidapet in K.Dis.A3-21/PPT/79 in and by which the subject property was exempted from the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [herein after referred to as "Principal Act"]. The said Sethuraman had put up additional construction over the said property by obtaining necessary planning permission from the Corporation of Chennai in PPA.No.7083/96 dated 10.01.1997. Subsequently, Thiru.Sethuraman settled the property to his wife/Geetha and daughter/Prabha Subramanian by giving each 1/3rd share vide Doc.No.937 and 938 of 2007 dated 16.11.2007 on the file of the Sub Registrar, Adyar and he retained 1/3rd share. Thus all of them have become joint owners of the said property. All of a sudden, the officials instructed the appellants to handover the possession of the said land. It was found on verification that the lands were acquired by the respondents under the Principal Act. Before that neither the second respondent nor 3rd respondent issued notice to the deceased Sethuraman, during his lifetime regarding cancellation of clearance certificate and there was no disturbance to the possession of land. Moreover,

Thiru.Sethuraman has not received any compensation for the acquired land. Further, the patta was already issued in favour of the predecessor in interest of the appellants. During the pendency of the writ petition Thiru. Sethurman died and his legal heirs were impleaded in the writ petition.

4. The learned single judge after hearing the arguments of both sides, dismissed the writ petition.

5. Aggrieved against the order passed by the learned single judge in WP.Nos.25636 of 2008 dated 12.01.2016, the legal heirs of Thiru.Sethuraman have preferred the present writ appeal.

6. The learned counsel for the appellants would submit that the learned single judge erroneously dismissed the writ petition without considering the fact that S.Sethuraman purchased the land only after verifying the exemption order dated 22.11.1979 passed by the competent authority, Urban Land Ceiling (Saidapet), Madras-15 vide proceedings No.K.Dis.A.3.21/PFT/79. No notice was given to S.Sethuraman before cancelling the clearance certificate vide Lr.No.122228/T2/80-8 dated 25.06.1982 and no proceedings under the Principal Act was pending when he purchased the property. The Draft statement under Section 9(1) for acquisition of the excess vacant lands in the name of Babyammal was issued on 11.04.1984 to the legal heirs of the Babyammal alone. However, notice was not sent to S.Sethuraman the actual owner who was in possession and ownership of the subject land and as such, the entire proceedings stood vitiated for non compliance of Rule 8. The proceedings were initiated in the name of a dead person viz., Babyammal, and as such, the entire proceedings is ab initio void.

7. According to the learned counsel, notice under Section 11 (5) of the Principal Act for delivery of possession were served only on the legal heirs of Babyammal on 30.12.1991 and not on Thiru.Sethuraman. The respondents failed to produce any document to show that notice was sent to S.Sethuraman who was in actual physical possession of the lands. In the absence of any such proof, the learned single judge ought to have held that the actual possession of the land was only with S.Sethuraman and the appellants are entitled to the benefits of the Repeal Act. The respondents could not have taken physical possession of the excess lands from the legal heirs of Babyammal on 23.10.1994 as the subject land was sold to S.Sethuraman during 1980 through a valid sale deed and physical possession of the land was handed over to him on 02.08.1980.

8. The learned Special Government Pleader appearing for the respondents would submit that Tmt.Babyammal w/o.R.Venkataramulu Chettiar filed return under section 6(1) of the Tamil Nadu Urban

Land (Ceiling & Regulation) Act, 1976 on 13.07.1977 and mentioned that the above land was proposed to be surrendered. The notice was sent to the land owner for enquiry, but she failed to appear for enquiry. The subject land was inspected by the competent authority on 23.02.1978 and found that the land was vacant and there was no super structure on the land. Being an individual, she is entitled to 500sq.mtr as entitlement area. Out of the total extent of 4426sq.mtr an extent of 3926sq.mtr was treated as excess land and acquisition proceedings were initiated under section 9(1) of the Principal Act. After following the prescribed procedure and issuing Declaration, possession of the excess land was taken long before the commencement of Repeal Act.

9. We have perused the materials available on record and the original files produced by the respondents.

10. According to the appellants, the subject land was purchased by S.Sethuraman during 1980 through a valid sale deed and physical possession of the land was handed over to him on 02.08.1980. It was after passing the exemption order dated 22.11.1979 by the competent authority. Therefore, any possession said to have been taken from a wrong person who was not in possession of the property is non-est in the eye of law.

11. According to the respondents, Thiru.Sethurman purchased the land to an extent of 1ground 1848sq.ft vide Doc.No.163 of 1980 dated 28.01.1980. He purchased the acquired land after commencement of the Principal Act i.e, 03.08.1976 and therefore, is null and void as per Section 6 of the Principal Act. The original owner Babyammal filed a return under Section 6(1) of the Principal Act. Babyammal expired on 27.10.1978. Notice under Section 9(4) of the Principal Act alongwith the statement under Section 9(1) were served on the legal heirs of the urban land owner Babyammal. The notice under Section 11(5) to hand over the possession of the excess vacant land was also issued and the same was served through affixture on 06.04.1992. The possession of the excess vacant land was handed over to the Tahsildar Mylapore on 23.03.1994. With regard to payment of compensation, notice under Section 12(7) of the Principal Act was issued on 13.05.1994. The legal heirs of Babyammal appeared before the second respondent and stated that the excess vacant land under acquisition was sold to various persons.

12. A perusal of records would go to show that Tmt.Babyammal w/o.Venkataramulu Chettiar was the owner of the land in TS.No.20/2 of Block 8, Palliapattu Village as on 03.08.1976 i.e., on the date of the commencement of the Principal Act. The total extent of the land is 4426sq.mtr. She filed a return under Section 7(1) of the Act. Despite receiving notice she had not

appeared for enquiry. The draft statement under Section 9(1) sent to Babyammal was returned with an endorsement "deceased". Tmt.Babyammal died on 27.10.1978. The legal heirs of the deceased Babyammal submitted a representation before the competent authority for issuing clearance certificate. The competent authority had also issued a clearance certificate on 22.11.1979 to the legal heirs of deceased Babyammal. It is found that one Thiru.Vadivel preferred a complaint to the first appellant on 30.08.1980 alleging that the competent authority has wrongly issued the clearance certificate infavour of Thiru.Munusamy Chettiar and others in respect of the land held by Tmt.Babyammal. After the enquiry, the first respondent sent his report to the Government dated 23.10.1981 with a conclusion that the legal heirs of deceased Babyammal had misrepresented the facts and obtained clearance certificate. Subsequently, the Government have cancelled the clearance certificate issued by the competent authority on 25.06.1982. The cancellation was duly intimated to the legal heirs of deceased Babyammal. Babyammal had no issues and her husband predeceased her. Out of the total extent of 4426sq.mtr she is entitled to 500sq.mtr to be retained. The remaining extent of 3926sq.mtr was treated as excess land and a direction was issued to proceed under Sections 9 to 11 of the Principal Act. In the meanwhile, they have sold the land to third parties including the said Sethuraman.

13. After the death of Babyammal, notice under section 9(4) along with draft statement under section 9(1) were sent to the legal heirs of Babyammal. The acknowledgment for the same have been found in the original file Volume-I at page Nos.123 to 128. Thereafter, final statement under Section 10(1) was served on the legal heirs and the acknowledgment for the same have been found in the pages 337 to 341, Volume-I of the original file. The copy of the Government gazette Notification dated 25.02.1991 issued under Section 11(1), declaration under Section 11(3) dated 10.10.1991 and notice under Section 11(5) for delivery of possession are found in pages 443, 457 and 509 respectively in Volume-I of the original file. Notice under Section 12(7) dated 13.05.1994 for payment of compensation was communicated to the legal heirs of Babyammal. The competent authority has also recorded the statement of the legal heirs on 28.07.1994. The records would show that even after the death of Babyammal notices in respect of the proceedings were sent to her and the same were duly acknowledged by the legal heirs. In their statement, they have stated that they are ready to receive the land cost. But their advocate only informed in his statement that the lands were sold to third parties.

14. Thereafter, the second respondent issued notice to the purchasers of the lands from the legal heirs of Babyammal informing that the land is declared as excess land as per

section 10(5) and 11(3) of the Principal Act. The sale deeds covered under Section 6 of the Principal Act shall be deemed to be null and void. Therefore, the said Sethuraman is treated as an encroacher. Further, the second respondent has sent notice to the purchasers of lands for regularising the transaction by paying the market value and called upon them to show their willingness. Some of the purchasers have sent their reply directly and one among them through an Advocate. This would go to show that all the purchasers of the land have been given opportunity to regularise their purchase, provided, they were ready to pay the market value of the land as on date. But the purchasers did not avail the benefits extended by the Government. As per section 6 of the Principal Act, after commencement of the said Act and before declaring the excess land under Section 11(1) of the Principal Act, if any transfer is made it shall be deemed to be null and void.

15. In this case, after the death of Babyammal i.e, on 27.10.1978, some of the persons claiming themselves as legal heirs of Babyammal made a representation. The competent authority without verifying documents to show that they were in joint possession alongwith Babyammal and without considering the entire documents as to whether they have got any right in the said lands as on the date when Babyammal filed returns under Section 7(1) of the Principal Act, issued a clearance certificate in their favour. Only after receiving a compliant, the first respondent ascertained the actual facts and submitted a report before the Government resulting in cancelling the order.

16. A perusal of the records would reveal that originally the land belonged to one Venkataramulu Chettiar. He executed a settlement deed in favour of his wife Babyammal on 29.12.1952. The husband of Babyammal died during 1960. Thereafter, the Babyammal has become the absolute owner of the land. After the Principal Act came into force, Babyammal submitted her return under Section 7(1) of the Act and she died on 27.10.1978.

17. Further, it is seen from the records that as on the date of the commencement of Principal Act, Babyammal was the absolute owner of the land. Accordingly, she submitted her return. She is entitled for 500sq.mtr and the remaining land to an extent of 3926sq.mtr shall be treated as excess land. As per Section 6 of the Principal Act, during the proceedings between sections 7 to 11 of the Principal Act, if any sale is made, the same shall be deemed to be null and void. In the case on hand, the legal heirs have sold the land to third parties based on the clearance certificate given by the competent authority. Subsequently, it was found that the clearance certificate was wrongly issued on misrepresentation and the same was cancelled. Therefore, the legal heirs of the Babyammal are entitled to only 500sq.mtr for

her personal entitlement. The remaining land was declared as excess by the Government. The so called legal heirs of Babyammal have participated in the entire statutory proceedings.

18. At this juncture, it is pertinent to refer Sections 3(1) and 6 of the Act, which are extracted hereunder :-

"3(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.

6. Transfer of vacant land :- No person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act 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.

19. As per Section 6 of the Principal Act, before publishing any notification under Section 11(1) of the Principal Act, if any transfer is made in contravention of the provision, the same shall be deemed to be null and void. Since, the vendor of the appellants do not have any valid title over the land and sale being hit by Section 6 of the Principal Act, the sale is treated as null and void. Therefore, the appellants are not entitled to get any relief as sought for in the writ petition.

20. In view of the foregoing discussion, we are of the considered view that the appellants have not put forth any valid ground and the order passed by the learned single judge does not warrant any interference.

21. In the result, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsh

To

1. Principal Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai-5.
2. Assistant Commissioner (Urban Land Ceiling)
Arcot Road, Kodambakkam,
Chennai - 24.
3. The Tahsildar,
Mylapore, Triplicane Taluk,
Chennai-4.

+2ccs to Mr.SK.Rahul Vivek, Advocate, S.R.No.7846
+1cc to the Government Pleader, S.R.No.8384

WA.No.404 of 2016

RSY(CO)
CS/19/02/18

सत्यमेव जयते

WEB COPY