IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.11098 of 2008
and
M.P.No.2 of 2008

1.K.V.George
2.K.George
3.K.Jacob
4.Jacob Verghese
5.Jacob M.George
6.Master Arjun Abraham Punnen ... Petitioners

Vs.

1. The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax Chepauk, Chennai 600 005.

2. The Assistant Commissioner for Urban Land Tax Cum Competent Authority, Sannathi Street, Poonamallee, Chennai 600 056. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that the proceedings initiated by the second respondent in S.R.No.777/95 D to 780/95 D dated 29.12.1995 is abated in view of Section 4 of the Repeal Act, since the physical possession of the lands comprised in Survey No.108/1 (Part) as per Patta 108/1-B of an extent of 1.30 acres and in Survey No.108/1 (Part) as per Patta 108/1-D of an extent of 1.01 acres and in Survey No.108/1 (Part) as per Patta 108/1-C of an extent of 0.48 acres in all totalling to 2.79 acres situated at Adayalampattu Village, Ambattur Taluk, Thiruvallore District is with the petitioners.

For Petitioners : M/s.A.Ramu

For Respondents : Mr.J.Ramesh.
Additional Government Pleader

ORDER

These petitioners have filed this petition for issuance of a Writ of Declaration declaring that the proceedings initiated by the second respondent in S.R.No.777/95 D to 780/95 D dated 29.12.1995 is abated in view of Section 4 of the Repeal Act, since the physical possession of the lands comprised in Survey No.108/1 (Part) as per Patta 108/1-B of an extent of 1.30 acres and in Survey No.108/1 (Part) as per Patta 108/1-D of an extent of 1.01 acres and in Survey No.108/1 (Part) as per Patta 108/1-C of an extent of 0.48 acres in all totalling to 2.79 acres situated at Adayalampattu Village, Ambattur Taluk, Thiruvallore District is with the petitioners.

2. The case of the petitioners is that the land measuring 10.10 acres of Adayalampatu Village, Saidapet Taluk, Chengelpet District comprised in Survey No.108/1 belonged to one G.Bakthavatchalu Naidu. The said lands are agricultural lands. Subsequently, the lands conveyed to several persons and ultimately, it came to be owned by a Partnership firm under the name and style of Sri Lakshmi Venkateswara Brick Works. On 16.07.1994, the said Partnership firm was dissolved and the assets of the firm viz., the landed properties aforementioned was divided amongst the partners individually.

3. While being so, the Urban Land Ceiling Authority viz., the Assistant Commissioner for Urban Land Tax cum Competent Authority initiated to issue proceedings under the Urban Land Ceiling Act 1978 and subsequently, he passed orders on 23.08.1994. It is clear that the above lands are agricultural lands and therefore, they are exempted from the provisions of Urban Land Ceiling Act. After the issuance of the said proceedings, a portion of the said lands measuring 1.01 acres were allotted to one of the Partners, Mrs.C.B.Lakshmi Bai and the said land was purchased by petitioners 4 and 5 from Mrs.C.B.Lakshmi Bai under a registered sale deed dated 06.10.1994. Another portion of the said lands measuring 1.30 acres was purchased by the petitioners 1 to 3 under a registered sale deed dated 01.09.1995. A further extent of 0.48 acres was purchased by the sixth petitioner on 04.08.2005. All the lands were thus purchased by the petitioners from the Partners of Sri Lakshmi Venkateswara Brick Works or their successors under the sale deeds refrerred to above. Pursuant to the said purchase, the Revenue Authority issued pattas in favour of the petitioners bearing patta Nos.30, 31 and 32 respectively on 25.01.1995. While being so, the respondent had issued a proceeding dated 29.12.1995 under Section 9(5) of the Act determining a substantial part of the above lands as excess vacant lands under the Urban Land Ceiling Act. It appears that the said proceedings were issued in the name of the erstwhile

owners after they sold the property in favour of the petitioners. Without any notice either to the original owner or to the petitioners is a clear violation of Act. Subsequently, the act was repealed by the Repeal Act XX of 1999. In view of the passing of the Tamil Nadu Act XX of 1999 repealing the Urban Land Ceiling Act and the fact that the possession of the lands in question had not been taken by the authorities, the entire proceedings initiated under the Act would stand abated as per Section 4 of the Repeal Act. Challenged the proceedings, the abovesaid writ petition is filed.

4. Learned counsel for the petitioners would submit that the petitioners 4 and 5 purchased the land from the Mrs.C.B.Lakshmi Bai on 06.10.1995 and another portion of the said lands was purchased by the petitioners 1 to 3 on 01.09.1995 totalling to extent of land measuring 2.31 acres in S.108/1, without issuing any notice and without following the procedures of service of notice under Section 11 (5) of the Act and Rule, either on the petitioners or on the original owners. Without following the procedures with regard to service of notice, the entire Urban and Land Ceiling Act proceeding initiated by the authority is invalid and vitiated. Accordingly, he prayed for allowing of the writ petition. Further, the physical possession and enjoyment of the land is with the petitioner and the respondent did not take any action to secure the possession of the land and hence, the Act has been repealed by Tamil Nadu Act, XX of 1999 all the proceedings initiated by the authorities would stand abated.

5. Learned Additional Government Pleader would submit that the notice was not received by the petitioners; but the notice was served through the registered post and the same was served on 14.11.1994 to the original owner C.P.Lakshmi Bai. Notice was despatched on 16.02.1995 under Section 7 (2) of the Act and the same was received on 18.02.1995. However, in respect of Section 9 (4) of the Act, notice was not served to the land owners. It is served only by way of affixture. In respect of other landlords viz., Sri Lakshmi Venkateswara Brick Works, notice was served to the representative of the land owners. Further his name and designation was not mentioned in the notice and further notice was also served by affixture. Accordingly, he prayed to pass an appropriate orders.

6. Heard the learned counsel appearing for the petitioners and learned Additional Government Pleader appearing for the respondents.

7. On perusal of the records, it is seen that the petitioners purchased lands from the original owner on 09.10.1994 and 01.09.1995 and the total extent 2.31 acres from

the original landlords with regard to ascertaining the service of notice under Section 7 (2) of the Act as well as under Section 9 (5) of the Urban Land Ceiling Tax, Section 7 (2) notice was served on the original owner viz., C.P.Lakshmi Bai and the same was despatched. However, the fact remains that C.P.Lakshmi Bai sold the lands in favour of the petitioners 4 and 5 on 06.10.1994. However, the 7(2) notice was sent after purchasing the land and the revenue records were mutated in favour of the petitioners on 25.01.1995. Whereas, the 7(2) notice was sent on 18.02.1995. Hence, the notice served under Section 7 (2) of the Act itself served on the wrong persons. In respect of C.P.Lakshmi Bai, notice under Section 7 (2) of the Act was served on the representative of the Sri Lakshmi Venkateswara Brick Works. However, his name and designation were not mentioned in the notice. However, the other notice viz., notice served under Section 9 (5) and subsequent notice were served by affixture.

8. From the above proceedings, it is clear that it is contrary and a clear violation of Rule 8 of Tamil Nadu Urban Land (Ceiling and Regulation) Rules. For better appreciation, the relevant Rules are extracted as follows:

> Rule 8 of Tamil Nadu Urban Land (Ceiling and Regulation) Act reads as follows:
>
> "8. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same:-
>
> (1) Every draft statement prepared under sub-section (1) of Section 9 shall contain the particulars specified in Form III.
>
> (2) (a) The draft statement together with the notice referred to in sub-section (4) of Section 9 shall be served on --
>
> (i) the holder of the vacant lands, and
>
> (ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands,
>
> by sending the same by registered post addressed to the person concerned--
>
> (i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance to sub-section (1) of Section 7, and
>
> (ii) in the case of other persons, at their last known addresses.
>
> (b) where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person referred to in clause (a), in the manner specified in the clause are not successful for reasons other than the reason referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person in known to have last resided or carried as business or personally worked for gain.

(3) the notice under sub-section (4) of Section 9 shall be in Form IV."

Further, no record to show that the physical possession was taken over by the Authority. In view of the passing of the Tamil Nadu Act XX of 1999 repealing the Urban Land Ceiling Act and the fact that the possession of the lands in question had not been taken by the authorities, the entire proceedings initiated under the Act would stand abated.

9. As per Rule, first notice has to be served by RPAD at their last known addresses. In case, the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person. Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person are not successful, the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person have last resided or carried as business or personally worked for gain. In view of the above, the writ petition is liable to be allowed.

10. In the result, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1. The Special Commissioner
   and Commissioner for Urban
   Land Ceiling and Urban Land Tax
   Chepauk, Chennai 600 005.

2. The Assistant Commissioner
   for Urban Land Tax Cum
   Competent Authority, Sannathi Street,
   Poonamallee, Chennai 600 056.

+1cc to the Government Pleader, S.R.No.50629

+1cc to Mr.A.Ramu, Advocate in sr.no.49964 (27.08.2019)

W.P.No.11098 of 2008
and
M.P.No.2 of 2008

PM(CO)
CS/06/08/2019