

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI

W.P.Nos.25940 & 25941 of 2003

&

W.M.P.Nos.31802 & 31803 of 2003

M/s.Aishtma Educational Trust
Rep.by its Manager
No.53, Raja Muthiah Road
Periamet, Chennai 600 003 ...Petitioner
in both W.Ps

Vs

1. The State of Tamil Nadu
rep.by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The Special Commissioner & Commissioner
of Land Reforms, Ezhilagam,
Chepauk, Chennai 600 005.
3. The Assistant Commissioner(ULC),
Adambakkam, Chennai 600 088.
4. The Tahsildar,
Tambaram, Chennai 45.

... Respondents 1 to 4 in both W.Ps

5. The Tamil Nadu Land Reforms Special
Appellate Tribunal, Rep.by its Registrar
Santhome, Mylapore, Chennai 600 005.

....R5 in W.P.No.25941 of 2003

PRAYER IN W.P.No.25940 of 2003: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Declaration, declaring that any proceedings taken under the Urban Land (Ceiling & Regulation) Act, 1978 as repealed by Act 20 of 1999 in respect of the petitioner's property comprised in S.No.302B/1B & 2B as null and void and unenforceable in law and as being abated in terms of the Repeal Act 20 of 1999.

PRAYER IN W.P.No.25941 of 2003: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to Order in TRP.247/99 on the file of Tamil Nadu Land Reforms Special Appellate Tribunal at Chennai dated 18.09.2000 and to quash the same and consequently, forbear the respondents or their subordinate officers from interfering with the right of ownership of the petitioner in respect of the lands and buildings comprised in S.Nos.302B/1B/2B situated in Tiruneermalai Village, Saidapet Taluk, Kancheepuram District measuring an extent of 1 acre 89 cents.

For Petitioner : Mr.V.Ayyadurai
Sr.Counsel for R.Bharanidharan
in both W.Ps

For Respondents: Mr.J.Ramesh
in both W.Ps Additional Government Pleader

O R D E R

The Prayer in W.P.No.25940 of 2003 for issuance of a Writ of Declaration, declaring that any proceedings taken under the Urban Land (Ceiling & Regulation) Act, 1978, as repealed by Act 20 of 1999, in respect of the petitioner's property comprised in S.No.302B/1B & 2B, as null and void and unenforceable in law and as being abated in terms of the Repeal Act, 20 of 1999.

2. The prayer in W.P.No.25941 of 2003 for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to Order in TRP.247/99 on the file of Tamil Nadu Land Reforms Special Appellate Tribunal at Chennai dated 18.09.2000 and to quash the same and consequently, forbear the respondents or their subordinate officers from interfering with the right of ownership of the petitioner in respect of the lands and buildings comprised in S.Nos.302B/1B/2B situated in Tiruneermalai Village, Saidapet Taluk, Kancheepuram District measuring an extent of 1 acre 89 cents.

3. The case of the petitioner is that he is the Manager of the petitioner Trust, which is a registered public charitable Trust established with an object of promoting the leather, tannery industries and to start a training institute and other incidental matters relating to tannery industries. For the aforesaid purposes, the petitioner purchased a land and building comprised in S.No.302B/1B/2B, measuring an extent of 1 acre 89 cents

situated in Thiruneermalai Village, Saidapet Taluk, Kanchipuram District, by virtue of a registered sale deed dated 07.12.2001.

4. According to the petitioner, the said premises was originally owned by one Ponnann, who died, leaving behind him 4 daughters and 2 sons. One of the sons by name Murugan pre-deceased leaving behind him four sons at the relevant point of time when action under Urban Land (Ceiling & Regulation) Act was stated to have been proceeded with. The legal heirs of Ponnann/Original owner, sold the property by virtue of registered sale deed dated 23.06.1982 in favour of M/s. Coastal Tanners, which was a partnership firm, comprising of two partners. Out of two partners, one partner retired from the partnership firm, by executing necessary Release Deed dated 10.04.1984 and hence the property became an absolute owner of Suryakumari and that the property has been put in use for tannery purposes for a long number of years. According to the petitioner, no notice was issued under the Urban Land Ceiling & Regulations Act, 1978, to the person who was in actual possession at the relevant point of time.

5. The above said Suryakumari raised loan by hypothecating machineries embedded in the said premises apart from depositing the title deeds. In the meantime, one Doss claimed interest over the said property, which resulted in compromising the suit filed between Suryakumari and Doss. The petitioner has made the said Doss as a confirming party to the sale deed dated 07.12.2001 under which the petitioner, purchased the said premises. According to the petitioner, the aforesaid facts would go to show that the subject matter of the property is not a vacant land but with buildings and has been used for industrial purpose. As such, the provisions of the Urban Land Ceiling Act cannot be made applicable to the said premises. That apart, the property had been sold as early as in 1982, in favour of the 3rd party whereas the proceedings under the Urban Land (Ceiling & Regulation) Act was stated to have been initiated only in the year 1988 i.e., after 7 years from the date of purchase of the property. It is pertinent to state that no notice was served upon the actual owner of the property at the relevant point of time.

6. The petitioner has submitted a plan for approval to put up a training center relating to tannery industry. Only then, he came to know that there some proceedings were initiated under the Urban Land (Ceiling & Regulation) Act during 1988-89. The 2nd respondent herein

passed an order dated 25.04.1989 under Section 9(5) of the Urban Land (Ceiling & Regulation) Act in respect of subject premises. Neither the legal heirs of the deceased Ponnann nor the purchaser being served with any notice pertaining to the proceedings under the Urban Land (Ceiling & Regulation) Act, 1978. However, the above said purchaser challenged the validity of proceedings under Section 11(1) notifying 3700 sq.mts as surplus urban land in W.P.No.1012/92, which was transferred to the file of the Tamil Nadu Land Reforms Special Appellate Tribunal and renumbered as TRP 247/99.

7. A perusal of the impugned order would disclose that the same is dismissed for want of production of adangal extract by the petitioner herein and on the ground that the subject land was not an agricultural land, as per the Entry made in Adangal extract of the year 1987, besides holding that the possession of the land was taken over on 26.06.1991, on the basis of unilateral document.

8. It is submitted that the Tamil Nadu Land (Ceiling & Regulations) Act, 1978 was repealed with effect from 16.06.1999 as per which, all the proceedings are deemed to have been abated in case where the physical possession of the said premises is not taken over by the authorities under the Tamil Nadu Urban Land (Ceiling & Regulations) Act. Challenging the same, the present writ petition is filed.

9. The learned counsel for the petitioner would submit that the Tamil Nadu Urban Land (Ceiling & Regulations) Repeal Act, 1999 came into force with effect from 16.06.1999. The Repeal Act is enacted because of failure to achieve the object sought to be achieved by the Tamil Nadu Urban Land (Ceiling & Regulations) Act, 1978. As per Section 4 of the Repeal Act, every proceeding is abated in respect of the Urban Land which are in actual possession of the land. As stated supra, the petitioner has been in actual possession and enjoyment of the subject land as on the date of the Repeal Act came into force. The Tamil Nadu Urban Land Reforms Special Appellate Tribunal dismissed the case in TRP.No.247/99 on 18.09.2000 i.e. well after the Repeal Act came into force. The Tribunal has not considered the case in the light of the provisions of the Repeal Act, 1999. Consequently, the impugned order of the Tribunal is liable to be quashed on the grounds of irregular exercise of power, and error apparent on the face of the record.

10. The learned counsel for the respondents would submit that the said land was stated to have been sold to M/s.Coastal Tanners on 23.06.1982 and an endorsement dated 23.08.1982 was made, after two months and this endorsement cannot come to the aid of the petitioner to contend that the land involved in this case is only agricultural land and the entries in adangal would show that the lands were lying waste and so they were treated as urban vacant land. The land was acquired and handed over to Revenue Department as early as in the year 1991 (dated 26.09.1991). The Repeal Act came into force with effect from 16.06.1999. Section 3(1)(a) of the Repeal Act 1999 protects the land acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The learned counsel would further submit that the Adangal extract as well as inspection remarks (dated 13.10.1988) of the then Assistant Commissioner reveals that the land was lying vacant.

11. In the present case, the core question that arises for consideration is whether the procedure contemplated under Rule 8(2)(c) was followed or not, before taking a decision under Section 11(5) of the Act.

12. The undisputed facts is that the said premises was originally owned by one Ponnann. After his demise, the said property devolved on the legal heirs of Ponnann, and at the relevant point of time, action was taken under Urban Land (Ceiling and Regulation) Act. Thereafter, there was no notice issued under Urban Land Ceiling & Regulations Act, 1978, to the petitioner who was in actual possession. Admittedly, the Act of the Tamil Nadu Urban Land (Ceiling & Regulation), 1978, was repealed on 16.06.1999. A perusal of the Act discloses that the vesting of any vacant land under Sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the Competent Authority. Apart from that, the learned counsel for the petitioner would submit that, in view of the failure on the part of the respondents in complying with the provisions, especially 11(5) of the Act, the entire proceedings would be vitiated. In support of his contentions, the learned counsel would also rely upon the Division Bench decision of this Court reported in 2011 (3) CTC 843 in the case of the Government of Tamil Nadu represented by its Secretary to Government, Revenue Department and others vs.Nandagopal and others. The relevant paragraph Nos.6 and 7 are extracted hereunder:

"6. By that Rule, the draft statement together with the notice referred to in sub-section (4) of Section 9 shall be served on the holder of the vacant lands, and 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. Only in the event the notice sent through Registered Post could not be served for any reason, the question of affixture would arise.

7. In order to find out as to whether the notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the competent authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and inspite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the respondents must be accepted'".

13. In view of the above, the respondent has issued notice only to the previous owner Thiru.Ponnan, under Urban Land (Ceiling and Regulation) Act and thereafter the property was sold by a third party to the petitioner in the year 2001. But the respondent has not issued any notice under Rule 8(2)C to the petitioner who was in actual possession of the above said property at the relevant point of time. Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, is extracted hereunder:

" where any vacant land is vested in the State Government under Sub-section (3), the competent authority may, by notice in writing,

order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice."

14. In such circumstances, applying the principles laid down in the aforesaid judgment, this Court has no hesitation to hold that the entire proceedings initiated under the provisions of the Act ended in the impugned order, and the subsequent events, including alleged taking over of possession, as claimed by the respondents, are completely vitiated, as the said procedure as adopted by the respondents cannot be approved in the eye of law.

15. In the result, the writ petition stands allowed. No costs. The impugned proceeding passed by the second respondent is quashed. Consequential proceedings, including the claim of taking over the land in question from the petitioners, are declared to be invalid. Therefore, by virtue of the Repealing Act, the land shall vest with the owners of the land, viz., the petitioner herein.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The State of Tamil Nadu
rep.by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The Special Commissioner & Commissioner
of Land Reforms, Ezhilagam,
Chepauk, Chennai 600 005.
3. The Assistant Commissioner(ULC),
Adambakkam, Chennai 600 088.
4. The Tahsildar, Tambaram, Chennai 45.
5. The Registrar, Tamil Nadu Land Reforms Special
Appellate Tribunal,
Santhome, Mylapore, Chennai 600 005.

+1 cc to Government Pleader Sr.No. 58095,58028

+2ccs to Mr.R.Bharanidhran, Advocate SR.No. 57393

W.P.Nos.25940 & 25941 of 2003

&

W.M.P.Nos.31802 & 31803 of 2003

A.SK(09/10/2019)