

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22681 of 2006

and

M.P.No.2 of 2006

1.Minor Jayapal

Repd. by his father and Natural Guardian
Thirunavukarasu

2.Sundaramoorthy

Vs.

...Petitioners

The Competent Authority
(Urban Land Ceiling & Assistant
Commissioner (Urban Land tax)
Ambattur, Madras-29.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records on the file of the respondent in its proceedings S.R.37/91 Rc.No.3981/91 and dated 27.11.1991 and quash the same as illegal incompetent and without jurisdiction.

For Petitioners : Mr.V. Srimathi

For Respondents : Mr.J.Ramesh
Additional Government Pleader

O R D E R

The petitioners have filed this writ petition for issuance of writ of Certiorari, to call for the records on the file of the respondent in its proceedings S.R.37/91 Rc.No.3981/91 and dated 27.11.1991 and quash the same as illegal incompetent and without jurisdiction.

2.The case of the petitioners is that the petitioners are the owners of the property. The property was inherited by the petitioners by way of an executed Will dated 10.02.1995. The property is situated at Survey No.470/1 of Agraharam, Korattur Village. The said property was purchased by their grand father from one Kanniah Naidu under a Registered sale deed dated 11.05.1975 vide document No.804 of 1975. Thereafter, the patta

was issued in the name of their grand father. The electricity connection in tariff No.IV also secured and installed 7.5 HP motor and the said land was utilising for agricultural purposes. After the demise of their grand father, the petitioners became the absolute owners of the property. When that being so, the petitioners approached the competent authority for development of their land, then, they were informed that the property is within the ceiling area and Urban land proceedings have been initiated against Kanniah Naidu. However, the said Kanniah Naidu lost title to the property even before the promulgation of the ceiling laws. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to the Act) came into force on 03.08.1976. The land was purchased by their grand father on 11.05.1975 itself. The entire urban land proceedings were initiated only as against the vendor of the petitioners. The petitioners were not served with any notice under Section including 7(2), 9(4), 11(5) of the Act. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioners would submit that though the petitioners' grand father purchased the property on 11.05.1975 and the revenue records show that the property was purchased before the Act came into force, the authorities without verifying the actual fact before initiating action under the Act, however, issued the alleged notice under Section 7(2) on the original vendor of the petitioner i.e. Kannaiah Naidu on 13.03.1991 and initiated action for acquisition which is unsustainable one and further the said Act had also been repealed and the proceedings were abated by Act 20/99. Hence, prays for allowing this petition.

4.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that one Kannaiah Naidu is the owner of the land in S.No.470/1 measuring 2500 sq. mts. in Korattur Village, as per the revenue records who had failed to file the return under Section 7(1) of the Act, 1978. Hence, a notice under Section 7(2) of the Act was issued by the respondent being the competent authority in S.R.15/91 dated 07.03.1991 to the Urban land owner i.e. Kannaiah Naidu, directing him to file a necessary statement under Section 7(1) of the said Act. Since he refused to receive the notice, it was served by affixture on 13.03.1991 in the presence of Village Administrative Officer. The land owner had failed to file any objection, the draft statement under Section 9(1) and Notice under Section 9(4) of the Act was issued in SR.37/91 dated 25.04.1991 allowing 500 sq. mtrs. As entitlement area as per section 5(1)(i) of the Act and the excess vacant land was arrived at 2000 sq. mtrs. and sent to the urban land owner calling him to file objections if any against the proposed acquisition within 30 days. As he refused to receive the notice under Section 9(4) and draft statement under Section 9(1) of the

Act, it was served by affixture on 09.10.1991. In the absence of his objections, orders under Section 9(5) of the Act was issued by the respondent being the Competent Authority in proceedings Rc.3981/91 dated 27.11.1991 declaring 2000 sq. mts. As the excess vacant land. The orders were served by affixture in the presence of the Village Administrative Officer on 21.04.1992 as the Urban Land Owner had not been residing in the village and his address was unknown. The final statement under Section 10(1) of the Act was issued on 31.01.1995 and served by affixture on 30.09.1995. The Notification under Section 11(1) was issued on 10.06.1996 and it was published on Tamil Nadu Government Gazette part VI Section 1 No.26 dated 10.07.1996. The Notification under Section 11(3) of the Act was also issued on 31.10.1996 and it was published in the Tamil Nadu Government Gazette on 02.12.1996. The notice under Section 11(5) of the Act was issued to the urban land owner Kannian Naidu with a direction to hand over the possession of excess vacant land to the Tahsildar, Ambattur in Rc.398/91 dated 22.10.1998 and it was served by affixture on 29.10.1998.

5.The learned Additional Government Pleader would further submit that the action was taken as per the provisions of the Act, in the name of the owner as on 03.08.1976 the date of commencement of the Act. The details given by the petitioners were not brought to the notice of the respondent when the urban land proceedings were pending. Thiru.Kannian Naidu was the owner of the land as per Revenue Records on the date of commencement of the act and action was taken in his name as per the provisions of the Act. The purchaser has not transferred the patta in his name. As per the Revenue Records the petitioners are not the owner of the land hence no notice was served on them. The land was inspected by the Deputy Tahsildar in the office of the respondent on 25.04.1991 and found vacant and the details about the family members of the land owner could not be ascertained. Moreover, the Urban Land Owner has not sent any evidence i.e. adangal etc., to the respondent, that the lands are agricultural. The petitioners claim is after thought. It is also submitted that Thiru.Kannaiah Naidu was the owner of the land on the date of the commencement of the Act as per Revenue Records, Thiru.Subramaniam said to be the grand father of the petitioners has not transferred patta in his name. The petitioners have become the owners of the land as per the Will dated 10.02.1995 executed by Thiru.Subramaniam, who has not transferred the patta in his name though he purchased the land before the ULC Act came into force. Hence, the action was taken as per the provisions of the ULC Act, 1978. Hence, prays for dismissal of the petition.

6.On a perusal of record, it reveals that the petitioners' grand father purchased the property on 11.05.1975 vide document No.804/1975. The property was thereafter

inherited by the petitioners through a Registered Will, executed by his grand father on 10.02.1995. The learned Additional Government Pleader produced the records pertaining to this case before this Court. The record shows that the ULC proceedings were initiated in the year 1991 and the 7(2) notice was prepared only as against the Kanniah Naidu on 07.03.1991, the vendor of the petitioners' grand father. Even on a perusal of 7(2) notice, it is seen that the notice was not served as per Rule 8 of the ULC Rules 1978. As per Rule 8, the draft statement has to be recorded and vacant land particulars shall contain under Section 9(1) in Form No.3. The said draft statement together with notice referred ought to have been served on the holder of the vacant land and on the other persons who have or are likely to have any claim or interest in the ownership or possession of the vacant land by sending the same by Registered Post addressed to the person concerned. If the said draft statement and notice are returned or refused by the addressee, the same shall be deemed to have been duly served on such a person. If the said service in the above said clauses are not successful, then the respondent shall follow the procedure contained as per clause (b) i.e. the draft statement and the notice shall be served by affixing copies of the same on the conspicuous place of the office of the competent authority and also upon the conspicuous place of the house in which the holder of the vacant land has a case, the place lastly resided and carried on business or personally work for gain.

7. In the present case, though the initial notice 7(2) was served only on the previous owner through RPAD, however, the subsequent notice was not served in the manner known to law. When the procedure resorted by the authorities is foreign to the Act, this Court has to come to a conclusion that no procedures were followed as contemplated under the Act, which makes the entire procedures vitiated. 7(2) notice was not served on the real owner and subsequent notice under Section 9(4) of the Act not effected as per the Rule. The procedure adopted by the authorities are not contemplated under the Rules set out in the Act. Hence, this court is inclined to allow this writ petition.

8. The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar

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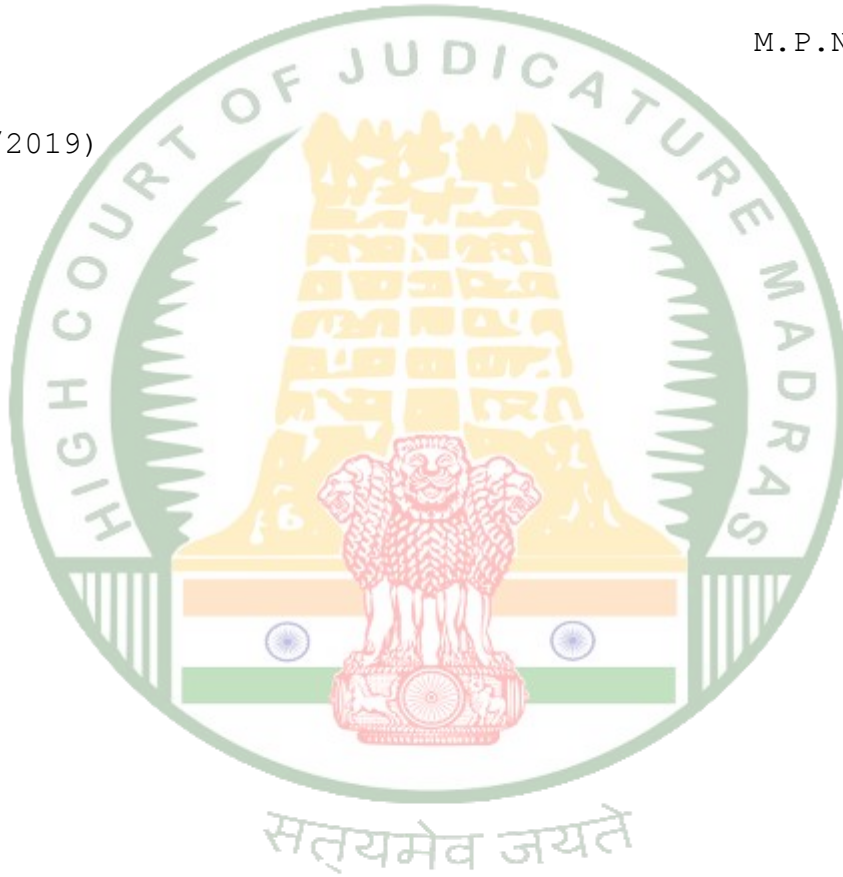
The Competent Authority
(Urban Land Ceiling & Assistant
Commissioner (Urban Land tax)
Ambattur, Madras-29.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.49522
+1cc to the Government Pleader, S.R.No.50126

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and
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JP (CO)

RRS (29/07/2019)



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