

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17654 of 2009

and

M.P.No. 1 of 2011

1. Mrs.Krishnaveni
2. Mr.N.Veeran
3. Mr.N.Devaraj
4. Mrs.N.Mahalakshmi
5. Mrs.N.Deivayanai
6. Mr.N.Thanikachalam ...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,
Kundrathur at
Alandur,
Chennai - 600 088. ... Respondents

Prayer: The writ 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 his Na.Ka.No. 1820/95A dated 21.11.1995 as abated in view of Section 4 of the Repeal Act, since the

physical possession of the Land comprised in Survey No. 1237/1 to an extent of 1.26 Acres of Agriculture Land situated at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District are with the petitioners.

For Petitioners : Mr.A.Ramu
For Respondents : Mr.J.Ramesh
Additional Government Pleader

O R D E R

The petitioners have filed this Writ Petition, to issue a writ of Declaration, declaring the proceedings initiated by the Second Respondent in his Na.Ka.No. 1820/95A dated 21.11.1995 as abated in view of Section 4 of the Repeal Act, since the physical possession of the Land comprised in Survey No. 1237/1 to an extent of 1.26 Acres of Agriculture Land situated at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District are with the petitioners.

2. The learned counsel appearing for the petitioners would submit that the first petitioner's husband Late Narayanan has purchased the Land comprised in Survey No. 1237/1 to an extent of 1.26 Acres situated at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District by way of a Sale Deed dated 04.10.1979, Registered as Document No. 3340/1979, before the Sub Registrar Office, Poonamallee. The first petitioner and her husband Late Narayanan has been in possession and enjoyment of the same, by effecting change of name in Patta No. 176.

3. The learned counsel appearing for the petitioners further submitted that originally the land was owned by one T.V.K.Balasundara Mudaliar. After his demise, his sons have effected a registered Partition Deed dated 15.03.1974, registered as Document No.779 of 1974 registered in the S.R.O. at Poonamallee. Thereafter, Mr.Mohanasundaram, who is one of the sons of Late T.V.K.Balasundara Mudaliar, had acquired the said Property and he has sold the same to the first petitioner's husband.

4. During the course of cultivation of Agriculture, the second respondent has passed an impugned order under Section 9 (5) of the Act 24 of 1978 in proceedings in Na.Ka.No.1820/95A, dated 21.11.1995, whereby determining the excess vacant land of 4600 Square Meter, after allowing 500 Square Meter as entitlement Area, out of 5100 Square Meter. No notice has been served to the first petitioner or her family members. Moreover, the opportunity of hearing with the proceedings has not been provided to them. Hence, the impugned order itself is Mechanical and contrary to law.

5. The learned counsel appearing for the petitioners would submit that the physical possession of the said land lies with the petitioners. Though the Second Respondent passed the impugned order, the physical possession was not taken from the petitioners. Moreover, the petitioners have no notice over the said proceedings, when they went to pay the kist after demise of

the first petitioner's husband. Hence, the petitioners filed this writ petition immediately, after getting the impugned order. Furthermore, since the Principal Act has been Repealed by the State Act 20 of 1999, dated 16.06.1990, the Second Respondent's proceedings have become abated as the petitioners are in physical possession and enjoyment of the property.

6. The learned Additional Government Pleader appearing for the respondents would submit that since the first petitioner's husband / land owner failed to file the return under Section 7 (1) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, a notice in SR.12/95, dated 06.03.1995, under Section 7(2) of the Act was issued by the 2nd respondent. It was also served on the first petitioner's husband on 18.03.1995. A notice under Section 9(4) with draft statement under Section 9(1) of the Act was issued to the first petitioner's husband by the 2nd Respondent in Rc.No.1820/95(A), dated 04.07.1995. The same was also served on him on 23.08.1995. Neither the first petitioner's husband nor his representative filed any objection before the 2nd respondent against the acquisition proceedings. Then, the land in question was inspected by the 2nd respondent and it was found that the same was converted as urban land and was laid out into house site plots. Thereafter, after allowing 500 Sq.mts., towards the first petitioner's husband entitlement, an extent of 4600 Sq.mts., of land was determined as excess and in this regard, an order was passed by the 2nd respondent in Rc.No.1820/95/A, dated 21.11.1995. That order was served to one M.Nagappan on 19.12.1995 who is said to be the then owner of the case land by the Revenue Inspector of the 2nd respondent's office. After the receipt of the order, he had also not filed any objections against the acquisition before the 2nd respondent. Later, final statement was issued by the 2nd Respondent in Rc.No.1820/95/a, dated 24.01.1996, and it was served on Nagappan, on 26.02.1996, in the presence of the Revenue Inspector. Later, notification under Section 11(1) of the Act was issued and it was published in Tamil Nadu Government Gazette No.20, dated 29.05.1996, in notification No.VI(1)573/96, dated 12.04.1996. Thereafter, the notification under Section 11(3) of the Act, 1978 vesting the land with Government was issued by the 2nd Respondent and got published in Tamil Nadu Government Gazette No.36, dated 18.09.1996, notification dated 27.08.1996. Thereafter, a final notice under Section 11(5) of the Act was issued by the 2nd respondent, dated 26.02.1997, and the same was sent by R.P.A.D., directing the land owner to surrender or deliver possession of the excess vacant land. It was returned by the Postal Authorities with an endorsement as 'not claimed' and the same was served with Nagappan on 16.05.1997 by the Revenue Inspector of the 2nd respondent office. Finally, the possession

of the excess vacant land was taken and handed over to the Firka Revenue Inspector, Kundrathur Village on 30.06.1997.

7. In view of the above facts now this Court has to consider whether the notice sent to the petitioners were returned as unclaimed can be construed service of notice or not.

8. For better appreciation, the relevant provisions of Section 11 (5) and 11 (6) of the Tamil Nadu Urban Land Ceiling Act, 1978 and Rule 8 of the Tamil Nadu Urban Land Ceiling Rules, 1978 are extracted hereunder:

"11..... (5). 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 in this behalf within thirty days of the service of the notice.

(6). If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may taken possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may, for that purpose, use such forces as may be necessary."

"8. Particulars to be contained in draft statement as regards vacant land 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 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 that 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 is known to have last resided or carried on business or personally worked for gain."

9. On a perusal of the above provisions, 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. For the purpose of complying Section 11 (5) of the Tamil Nadu Urban Land Ceiling Act, 1978, the procedure for sending notice is contemplated under Tamil Nadu Urban Land Ceiling Rules, 1978. Rule 8 (2)(a) (b) of the Tamil Nadu Urban Land Ceiling Rules, 1978 makes it clear that 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 the person.

10. In the present case, the final notice under Section 11 (3) of the Act was issued by the second respondent and the same was published in the Tamil Nadu Government Gazette No.36, dated 18.09.1996. Thereafter, final notice under Section 11 (5) of the Act was issued by the second respondent dated 26.02.1997 and the same was sent by RPAD directing the land owner to surrender or deliver possession of the excess vacant land. It was returned by the Postal Authorities with an endorsement 'not claimed' and the same was served on one Nagappan on 16.05.1997 by the Revenue Inspector of the second respondent Office.

11. In view of the postal Endorsement, this Court has no hesitation to arrive at a conclusion that notice is served on the interested person by virtue of Rule 8 (2)(a)(b) of the Tamil Nadu Urban Land Ceiling Rules, 1978 and after effecting the

service required as per the Rules, the land was taken possession by the Government on 30.06.1997 and the same was handed over to the CMDA for formation of Outer Ring Road Project for the year 2005 and the said land is utilized for formation of Outer Ring Road Project. However, the petitioners have filed the writ petition on the ground no notice was served, which is unsustainable.

12. Hence, this Court is not inclined to interfere with the impugned order. Accordingly, the present writ petition stands dismissed and liberty is granted to the petitioner to claim, if any excess land is available. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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,
Kundrathur at
Alandur,
Chennai - 600 088.

+1 cc to M/s.A.Ramu, Advocate Sr.No.64601
+1 cc to The Government Pleader Sr.No. 64666

AKM/19.11.19/6P- 5C /

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