IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5199 of 2008

Thulasingam ... Petitioner

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,
   Tambaram, at Alandur,
   Chennai - 600 088. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records in pursuance of the second respondent impugned order dated 25.06.1996 in RC.No.2157/90/C passed in the name of Narasimalu Naidu by omitting other co-owners and quash the same.

For Petitioner : M/s.A.Ramu

For Respondents : Mr.J.Ramesh
Additional Government Pleader

O R D E R

The petitioner is the owner of the agricultural lands in Survey No.112/20 to an extent of 0.12.5 Hectares situated in Rathinamangalam Village, Chengalpattu Taluk, Kancheepuram District. The said land had been inherited by the petitioner's mother Late Jeevarathinammal and Narasimalu Naidu and Perumal Naidu, both sons of Late. Ragupathy Naidu. Thereafter, the Revenue Authority issued a Joint Patta in Patta No.258. Since they have been in absolute possession and enjoyment of the same, excess vacant lands were acquired by the Urban Land Ceiling Authority. The said lands have been in joint possession and enjoyment of the abovesaid persons. However, the impugned notice under Section 7(2) was served to the wife of Narasimalu Naidu and thereafter, no notice was served on the petitioner and the entire service is only through affixture which is impermissible under (1) and Rule 8 of the Urban Land Ceiling Act. Proceeding initiated against the petitioner without issuing any notice to the original owner or to the petitioner is a clear violation of Act. Subsequently, the act was repealed by the Repeal Act 20 of 1999. Consequently, a proceeding No.RC.No.2157/90-C dated 25.06.1996 was initiated against the petitioner. Challenging the above said proceeding, the present writ petition is filed.

2. Learned counsel for the petitioner would submit that the petitioner's mother died on 13.09.1991, leaving behind the petitioner as her legal heir and he has not received any notice from the second respondent. The second respondent passed a proceeding No.RC.No.2157/90-C dated 25.06.1996 under Section 9 (5) order of the Principal Act of 24 of 1978, 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.

3. Notice served on the wife/deceased person is not a valid service as per Rule (8) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The notice has to be served only on the interested persons or on owners. In the present case, notice is not served and the consequential notice also not served either under Section (9) (5) of the Act and hence, the authority has not followed the Service Rules and it was served only through affixture.

4. On perusal of the records, it is seen that the said lands have been in joint possession and enjoyment of the above said persons. Under Section 7 (2) of the Act as well as under Section 9(5) of the Urban Land Ceiling Tax, notice was served only to the wife of the co-owner and not on all the owners. However, the notice under Section 9 (5) and subsequent notice were served and the same have to be effected by affixture.

5. 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."

6. 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.

7. 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.

8. 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

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   and Commissioner for Urban
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   Chennai - 600 005.

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   for Urban Land Tax Cum
   Competent Authority,
   Tambaram, at Alandur,
   Chennai - 600 088.

+1cc to the Government Pleader, S.R.No.50628
+1cc to Mr.A.Ramu, Advocate in sr.no.49965 (27.08.2019)

W.P.No.5199 of 2008

PM(CO)
CS/06/08/2019