

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.28072 of 2005

1.Sadhana Goel

2.Sashi Goel

...Petitioners

vs

1. The Competent Authority of Urban
Land Ceiling and Assistant Commissioner
of Urban Land Tax,
Madhavaram,
Chennai-29.

2. The Competent Authority
Chennai-Trichy-Madurai,
Pipeline Project,
4/2, Arockiasamy Street,
Crawford Colony, Trichy-12.

3. The State of Tamil Nadu
Rep.by the Secretary to Government
Revenue Department, Secretariat,
St.George Fort, Chennai-5.

(R3 impleaded as per order dated 07.07.2008
in W.P.M.P. No. 1347/2007 in W.P.28072/2005)

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari, to
call for the records relating to the proceedings dated
30.11.1985 in Rc.2636/84/C and proceedings dated 15.11.1991 in
Rc.2636/84/d dated 15.11.1991 of the first respondent herein
obtained by the petitioners on 08.07.2005 and quash the same.

For Petitioner : Mr.AR.L.Sundresan,
Senior Counsel for
M/s.A.L.Ganthimathi

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

O R D E R

The petitioners have filed the present writ petition to issue a Writ of Certiorari, to call for the records relating to the proceedings dated 30.11.1985 in Rc.2636/84/C and proceedings dated 15.11.1991 in Rc.2636/84/d dated 08.07.2005 and quash the same.

2. The case of the petitioners is that they are the owners of the land in S.No.253/1, subsequently, subdivided as S.No.253/1A2, 253/1B, to an extent of 0.97 acres of land in Manali Village, Saidapet Taluk. The petitioners have stated in the affidavit that the petitioners herein purchased the lands by way of registered sale deeds dated 17.05.1984 and 31.05.1984 for valuable consideration, since the date of purchase, the petitioners are in possession of the lands and the revenue records were also changed in the name of the petitioners and till date, the petitioners are regularly paying the kist and other taxes and other incidental charges. The patta in respect of the said lands was duly transferred in the name of the petitioners on 03.02.1985.

3. While so, suddenly during the first week of July 2005, the first respondent threatened to dispossess the petitioners, since the lands were subject matter of the acquisition proceedings under the Urban Land Ceiling Act. On further enquiry, the petitioners came to understand that the draft statement under Section 9 of the Act was prepared on 26.04.1985 and the previous land owners have refused to receive the notice, which was sent through R.P.A.D. on 30.11.1985, and the same was returned by the Postal Authorities. Thereafter, the said notice was affixed on 25.10.1985 and thereafter, notification under Section 11(3) of the Act was issued on 15.11.1991 and in pursuant to the aforesaid proceedings, the respondents were threatening to invade into petitioner's possession.

4. The petitioner has also stated that the aforesaid proceedings dated 30.11.1985 and the consequential notification dated 15.11.1991, are arbitrary, illegal and without jurisdiction. When the Tamil Nadu Urban Land Ceiling and Regulation Act was repealed, the proceedings have lapsed and abated as on 16.06.1999. However, it appears that the 2nd respondent has also proposed to acquire the said lands for implementation of the pipe lands project. Challenging the same, the present writ petition is filed.

5. The learned Senior counsel for the petitioners would submit that the properties were originally owned by Sri.Siman and Sri.Lesile, sons of one Mathew. The said original owner

executed the Power of Attorney in favour of one Thiru.V.T.Lazar (hereinafter referred to as "vendor"). Thereafter, the vendor executed the sale deed in favour of the petitioners. Though the initial notice was sent to the previous land owners, they have refused to receive the notice, which was sent through R.P.A.D. and it was returned by the Postal Authorities. Notification was issued under Section 11(3) of the Act on 01.10.1991 and another Notification under Section 11(5) of the Act was issued on 15.11.1991. However, the petitioners herein are not aware of the proceedings and the impugned proceedings came to their knowledge only in July, 2005. Hence, there is no delay or laches on the part of the petitioners.

6. The learned counsel would further submit that based on the impugned proceedings, the first respondent is threatening to take possession of the lands from the petitioners and the second respondent is also taking steps to obtain permission from the Government for implementation of the pipe line project under the guise that the lands have been vested with the State Government.

7. The learned counsel for the respondents would submit that the initial notice was issued under Section 7(2) of the Act in SR.No.193/83 dated 09.06.1983. Thiru.V.T.Lazar, Power of Attorney of the land owner in his letter dated 25.06.1983 has stated that the land is used for agriculture. The Deputy Tahsildar has inspected the lands and reported on 21.11.1983, that the land is vacant. Again a notice under Section 7(2) was sent on 05.12.1983 through R.P.A.D. The previous owners have not informed about the sale of the land. The petitioners were not the urban land owners as on 03.08.1976 i.e., on the date of enactment of the Tamil Nadu Urban Land(Ceiling and Regulation) Act, 1978. As per Section-6 of the Act, the sale is Null and void. Hence action was taken in the name of the previous owner. The previous owner has failed to produce records to show that the land was used for agricultural purposes. The land was inspected and found vacant without any cultivation. The learned counsel would further submit that excess vacant land was handed over to the Revenue Authorities on 15.10.1992. The present possession of the petitioners has to be treated only as an encroachment in a Government land. Hence, the petition is liable to be dismissed.

8. From the above lines, it is made clear that the petitioners are the subsequent purchasers of the disputed lands from the Power of Attorney of the land owners. A perusal of the records reveals that notice was sent to the previous land owners and they have refused to receive the same. Land acquisition proceedings were initiated against the original owners. In July 2005, the first respondent threatened to dispossess the petitioners from the possession and when enquired, stated that

the lands were the subject matter of the acquisition proceedings under the Urban Land Ceiling Act. Only after conducting an enquiry, the petitioners herein came to know that land acquisition proceedings were initiated against the previous land owners. The first respondent without affording any opportunity to the petitioners, had threatened to dispossess the petitioners.

9. Section 11(5) of the Land Ceiling Act reveals that 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 authorized by the State Government on his behalf within thirty days of the service of the notice.

10. It is seen that the entire records have transferred in the name of the petitioners including patta and other materials also. Without serving any notice to the petitioners, the first respondent threatened to dispossess the petitioners against the provisions of the law. The first respondent acted without following the procedure contemplated under Section 11(5) of the Land Acquisition Act. Hence, the entire proceedings which were initiated against the petitioners is illegal and arbitrary. This Court, in the decision in W.A.No.617 of 2002 reported in (2007) 1MLJ 750 (V.Somasundaram and others vs. Secretary to Government, Revenue Department, Chennai and others), held as follows:

6. The main contention urged by the learned counsel for the appellants is that the appellants are interested persons as they have purchased the lands from the third respondent and are in possession of their respective extent of land and hence the second respondent ought to have issued notice to the appellants, who are the real owners and therefore the action of the respondents are in violation of Sections 9(4), 10(1) and 11(2) of the Act. The learned counsel ultimately argued that the vesting of the lands in question with the Government cannot be accepted in view of the non-compliance of the specific provisions contained in Section 11(5) of the Act, which reads as follows:

"Section 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 thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days' of the service of the notice".

Citing the said provision of the Act, the learned counsel argued that even according to the respondents, possession was taken only on 30.04.1999 i.e., long after purchase of the land by the appellants from 1991 to 1995 and non-issuance of the notice to the appellants vitiates the entire proceedings of vesting of lands with the Government.

9. From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner. As per Section 11 (5) of the Act, the competent authority is bound to issue notice in writing to any person duly authorized by the State Government, within thirty day's time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.04.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.09.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act.

11. In view of the above observations made by this Court and the decision referred above, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

ssb
To

1. The Competent Authority of Urban
Land Ceiling and Assistant Commissioner
of Urban Land Tax,
Madhavaram,
Chennai-29.

WEB COPY

2. The Competent Authority
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3. The Secretary to Government
Revenue Department, Secretariat,
St.George Fort, Chennai-5.

+1 CC to M/s.A.L. Gandhimathi, Advocate sr 54202.

+1 CC to Govt. Pleader sr 54489.

W.P.No.28072 of 2005

MG (CO)
SP(19/07/2019)



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