IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5682 of 2012
and
M.P.Nos.1 & 2 of 2012

1.D.Thyagarajan
2.D.Jeevarajan
3.Grace Abraham ... Petitioners

Vs.

1.The Competent Authority (ULC) &
Assistant Commissioner (ULT) Madhavaram,
Urban Land Tax (Madhavaram Zone)
No.2, Vivek Nagar, Redhills Road,
Kolathur, Chennai - 600 099.

2.The Tahsildar,
Madhavaram Taluk,
Thiruvallur District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of declaration declaring that the entire proceedings of the 1st respondent under the Tamil Nadu Urban Land (Ceiling & Regulation) Act 1978 in R.C.No.3012/92/D dated 30.05.1994 and Notice under form No.VII dated 26.11.1998 in relation to the petitioners lands situated at Survey Nos.86/1 and 86/2 in kathirvedu Village, Ambattur Taluk, presently Madhavaram Taluk, Thiruvallur District, measuring of an extent of 84 ½ cents, as unconstitutional and illegal.

For Petitioner : M/s.G.Ilangovan
For Respondents: M/s.A.Madhumathi
Special Government Pleader

O R D E R

This writ petition has been filed by three petitioners namely D.Thyagarajan, D.Jeevarajan & Grace Abraham. All the three petitioners are children of G.Devadoss.

2. The prayer sought for in the present writ petition is to declare the entire proceedings initiated by the first respondent under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as "the Act") as unconstitutional, illegal and liable to be set aside.

3. The undisputed facts are that the petitioners' father late G.Devadoss, purchased agricultural land measuring an extent of 1.08 cents at Kathirvedu Village, Ambattur Taluk by way of registered sale deed dated 17.08.1960. The petitioners father died on 27.07.1970 leaving behind the petitioners' mother and petitioners as his legal heirs. During the year 2001, the petitioners have executed a gift deed in favour of a Religious Institution to an extent of 23.5 cents out of 43 cents in S.No.86/1. The remaining extent of 84.5 cents was partitioned among the petitioners by way of partition deed vide Registered Doc.No.2362 of 2011. Pursuant to the partition, the third petitioner applied for individual patta, which was granted on 30.11.2011, bearing Patta No.3542.

4. The petitioners' case is that when the first and second petitioners applied for grant of patta, pursuant to the partition deed, they were informed that the lands are declared as surplus under the provisions of the Act. Thereafter, the petitioners have applied for furnishing copies of the relevant documents and the present writ petition has been filed. When the writ petition was entertained, an order of status quo was granted on 07.03.2012 and it is submitted that the petitioners continued to remain in possession as on date.

5. An elaborate counter affidavit has been filed by the first respondent and the relevant file has also been produced by the learned Special Government Pleader. What is required to be seen is whether the proceedings under the Act are validly held and if not validly held, whether the petitioner would be entitled to the benefit of the Repeal Act 20 of 1999, which came into effect on 16.06.1999. Before going into the manner in which the proceedings were initiated under the Act, it needs to be mentioned that a joint patta was granted in favour of the petitioners on 08.06.1990 and a copy of the same has been produced before this Court in Patta No.244. On a perusal of the patta, it is seen that the Adangal Registry has been verified before issuance of the patta. The document states, it is a copy of the patta signed by the Zonal Deputy Tahsildar, Ambattur on 08.06.1990.

6. Therefore, this Court can safely presume that what has been issued on 08.06.1990 is an extract of the Revenue Register and patta No.244 should have been granted much earlier. But however, for the purposes of this case, this Court will proceed on the basis of the joint patta, which was granted in the name

of the petitioners on 08.06.1990. The first respondent in the counter affidavit submitted that the land stood registered in the name of the first petitioner, as per the Revenue Records, however, he did not file Returns under Section 7(1) of the Act and hence Notice under Section 7(2) of the Act was issued on 11.03.1992.

7. In the counter affidavit, it has been admitted and the records also show that the notice was issued in the name of the first petitioner only. Admittedly, as pointed out above, joint patta was granted on 08.06.1990. If that be so, notice should have been sent to all the petitioners. Therefore, there is a fundamental error in the commencement of the proceedings. In the counter affidavit, it is stated that the urban land owner was not living in the village. Therefore, the notice was served by affixture. Admittedly, the lands were agricultural lands and it appears that no steps were taken to ascertain the correct address of the petitioners before resorting to the procedure of substituted service. In the file, there is noting to the effect that the department had knowledge that the urban land owner was not residing in the village but residing at Chennai.

8.The notice under Section 9(4) along with the statement under Section 9(1) of the Act is stated to have been issued on 19.08.1992, the notice is stated to have been served on 07.02.1993. But it is not stated as to the manner of service of private notice. The first respondent further states that since no objection was received, an order was passed on 30.05.1994. According to the first respondent, the urban land owner refused to receive the order and therefore, it was served by affixture. If the order was refused to be received, obviously the whereabouts of urban land owner was within the knowledge of the first respondent/department. Thus, if the orders under Section 9 (5) was tendered to the urban land owner, it is not correct on part of the first respondent to resort to the procedure of affixture. Further, there is no record to show that the order was refused to be received and hence, it was served by affixture.

9.The same procedure was adopted by the authorities when final statement was drawn under Section 10(1) on 10.01.1995 and was served by affixture on 23.03.1995 and Notification under Section 11(1) issued on 24.06.1996 and published in Tamil Nadu Government Gazette. The first respondent has not stated as to whether the Notification under Section 11(1) of the Act was served on the urban land owner. Such procedure was adopted while issuing Notification under Section 11(3) and nothing has been stated about the service of such Notification. The notice under Section 11(5) dated 26.11.1998 is said to have been served by affixture, alleging that the urban land owner was not available in the village as mentioned in the file, which indicates that the respondent is having knowledge about the fact that the petitioner was residing at Chennai. According to the first respondent, the possession of the excess vacant land was taken on 26.05.1999 by the Deputy Tahsildar of the first respondent Office and it was handed over to the Revenue Inspector, Redhills on 10.07.1999 and by that date the Repeal Act came into force i.e., on 16.06.1999. Thereafter, the first respondent/department proceeded to issue notice under Section 12 (7) dated 13.10.2000 to receive the amount payable under Section 12(6) and this notice is stated to be sent by post and the same was returned with an endorsement "no such addressee - Returned"

10.Thus, it is clear that for the first time, the first respondent/department had resorted to the procedure of service of notice by the post. In fact, the mandate under Rule 8 has been ignored as the first respondent/department failed to follow such procedure provided under Rule 8, while serving notice under Section 4(5). On account of such an error, the acquisition proceedings has to be held to be not sustainable in law. This view is supported by the judgment of the Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, rep.by its Secretary to Govt., Revenue Department, Chennai - 600 009 and ors., vs. Nandagopal and ors. (2011) 4 MLJ 577.

11.The respondents have stated that the petitioners have approached this Court after 12 years after the acquisition proceedings by filing this writ petition and therefore, the same is to be dismissed. Unfortunately, in the instant case, the procedure required to be followed under the Act, has not been adhered to. The respondent in paragraph No.5 of the counter affidavit stated that if patta had been issued during the process of acquisition, the same cannot be considered. However, patta was granted on 08.06.1990 which is prior to initiation of the proceedings under the Act. Therefore, the patta cannot be ignored by the first respondent. Furthermore, the transaction which have occurred after 03.08.1976 is stated to be null and void under Section 6 of the Act and therefore, the gift deed executed by the petitioner dated 05.12.2001 and the partition deed dated 15.03.2011 are stated to be not valid in law. The said contention cannot be permitted to be raised by the first respondent, as they failed to follow the proper procedure under the Act.

12.Upon testing the correctness of the procedure, this Court has no hesitation to hold that it suffers from gross error in the decision making process. Furthermore, the notices do not contain the initial of the petitioner, nor the address. What has been stated in the address is "Name: Thiagarajan, Address: Kadirvedu", when the respondents were aware of the fact that the urban land owner was not residing in the village. That apart, possession is alleged to have been taken on 26.05.1999, obviously this possession is paper possession and not actual physical possession which is mandatory under the Act.

13.In this regard, it will be beneficial to refer to the decision of the Division Bench in the case of Government of Tamil Nadu represented by the Commissioner and Secretary to Government, Revenue Department, Secretariat, Chennai - 9 and others vs. Mecca Prime Tannery rep.by its Managing Director Tmt.V.Jayakodi, Chennai - 44 and others reported in (2012) 6 MLJ 273. One more factor, which also needs to be taken note of is that on 30.11.2011 the third petitioner has been granted individual patta. All this would go to show that acquisition suffers from gross violation of the procedures to be followed under the Act and consequently, the proceedings initiated under the Act have to be held to be erroneous as a result of which the petitioner would be entitled to the benefit of Repeal Act in terms of Section 4.

14.For the above reasons, the writ petition is allowed and it is held that the entire proceedings initiated by the first respondent under the provisions of the Act are null and void and the petitioners are entitled to the benefit of the Repeal Act. The Second respondent is directed to consider the application filed by the petitioners 1 and 2 for grant of patta expeditiously. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Pns
To

1.The Competent Authority (ULC) &
Assistant Commissioner (ULT) Madhavaram,
Urban Land Tax (Madhavaram Zone)
No.2, Vivek Nagar, Redhills Road,
Kolathur, Chennai - 600 099.

2.The Tahsildar,
Madhavaram Taluk,
Thiruvallur District.

+1 CC to Mr.G. Ilangovan, Advocate sr 22517
+1 CC to The Govt. Pleader sr 23190.

BR(CO)
SP(17/07/2020)