IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2184 of 2012
and
M.P.Nos.1, 2 of 2012

1.M.Muthiah Pandian (Deceased)
2.M.Mohanam
3.M.Tharani
4.M.Muthunagai
5.Selvarajan Muthiah Pandian
6.Shanmughathai Muthiah Pandian

(P3 to P6 are substituted as Legal Heirs of Deceased P1 M.Muthiah Pandian, as per order dated 27.06.2018 by VPNJ in W.M.P.No.14377 of 2018 in W.P.No.2184 of 2012)

... Petitioners

Vs

1. The Government of Tamil Nadu
   Rep. by its Secretary to Government,
   Revenue Department,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner of Land Reforms,
   Urban Land Tax,
   Chepauk, Chennai.

3. The Assistant Commissioner,
   Urban Land Tax, (Kundrathur),
   No.153, Karuneegar Street,
   Adambakkam, Chennai - 600 088.

4. The Tahsildar,
   Sriperumbudur Taluk,
   Kancheepuram District.

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the proceedings dated 30.03.1990 in Rc.No.491 of 1989 of the 3rd respondent herein as void and abated in view of the Tamil Nadu Urban Land Ceiling Regulation Repealing Act 20 of 1999.

For Petitioners : M/s.AL.Ganthimathi

For Respondents : Mr.M.R.Gokul Krishnan, Government Advocate

ORDER

This writ petition has been filed to issue a Writ of Declaration, declaring the proceedings dated 30.03.1990 in Rc.No.491 of 1989 of the 3rd respondent herein as void and abated in view of the Tamil Nadu Urban Land Ceiling Regulation Repealing Act 20 of 1999.

2. The first deceased petitioner along with second petitioner have purchased the property to an extent of 0.65 acres comprised in Survey No.526/3, to an extent of 1.29 acres in Old Survey No.527/3 and New Survey No.527/3A and to an extent of 12 cents in New Survey No.527/3B by a registered sale deed dated 09.09.1999 from one Anbalagi, wife of Chockkalinga Nadar. From the date of purchase, they are in possession and enjoyment of the said property. In fact, after purchasing the said property, in respect of registration of sale deed, they were issued notice under Section 47-A of the Indian Stamps Act to pay deficit stamp duty. On payment of deficit stamp duty, the Registering Authority released the document. Thereafter, the petitioners applied for patta and came to understand that the subject land was notified under the Tamil Nadu Urban Land Ceiling and Regulation Act, 1978 (hereinafter called as "the Act"). Thereafter, they applied for information under Right to Information Act and came to understand about the impugned proceedings.

3. The learned counsel for the petitioners would submit that a notice under Section 7(2) of the Act was affixed which was addressed to one Tmt.Chellammal, wife of Chinnadurai, thereby calling upon her to file a return under Section 7(1) of the Act for the land comprised in Survey Nos.527/3, 526/3 situated at Kundrathur Village.

4. On receipt of the same, she did not file any return, therefore the draft notice under Section 9(1) and with 9(4) of the Act was affixed on the address of the said Chellammal, thereby, she was allowing to an extent of 500 Square Metres out

of the total extent of 8200 Square Metres. Since, no objections were raised by her, an excess vacant land was acquired as excess land.

5. The Form VII was affixed and thereby informed that the excess land was vested with the State Government under Section 11(3) of the Act. In fact, while the proceedings were pending, she died and the notice under Section 11(5) of the Act was affixed in the name of the said Chellammal. Thereafter, no physical possession has been taken over and the petitioners are the bonafide purchasers for valid sale consideration. From the date of their purchase they wee in possession and enjoyment of the property as no physical possession has been taken over by the respondents.

6. In support of her contention, she relied upon the Judgment reported in 2021 SCC Online Madras 2853 A.Abdul Rahim and others -vs- Special Commissioner and Commissioner Urban Land Ceiling and Urban Land Tax and Another and 2015(3) LW 640 Mrs.P.Chandrika -vs- The Commissioner, Commissioner of Urban Land Ceiling and Urban Land Tax, Ezhilagam, Chepauk, Chennai - 5 & another.

7. The respondents filed counter and stated that one Chellammal owned an extent of 8200 sq.mts of excess vacant land in Survey No.526/3 (0.65 Acres), 527/3 (1.61 Acres) of Kunrathur Village. Since the land owners failed to file the return under Section 7(1) of the Act, a notice under Section 7(2) of the Act was issued by the third respondent in S.R.No.906/98 dated 10.08.1988 to the urban land owner Chellammal in respect of Survey Nos.526/3, 527/3 of Kunrathur Village. It was served on 03.12.1988 by the Village Administrative Officer, Kunrathur. The Deputy Tahsildar of the third respondent's Office inspected the case land on 13.01.1989 and reported that the case land was converted as urban land.

8. On the basis of revenue records and based on the inspection report of the Deputy Tahsildar attached to the third respondent's office, a notice under Section 9(4) with draft statement under Section 9(1) of the Act was issued to the land owner Chellammal by the third respondent in his Rc.No.491/89(A), dated 01.04.1989. The same was sent through RPAD which was returned by the postal department on 15.04.1989. Neither the urban land owner nor their representative did file any objection before the third respondent.

9. Then, the case land was inspected by the second respondent on 13.02.1990 and found that the land was lying vacant with 'Velikathan' bushes. The adangal extracts for the period from Fasali 1381 to 1393 show that the land was not

cultivated and kept as 'Tharisu' (lying vacant). Thereafter, an extent of 7700 sq.mts. of land determined as excess, out of total extent of land of 8200 sq.mts. after allowing 500 sq.mts. towards the urban land owner's family entitlement. Accordingly, an order under Section 9(5) of the Act was passed by the third respondent in Rc.No.491/89(A), dated 30.03.1990. It was served on the urban land owner's son-in-law Sornalingam on 26.06.1990.

10. Thereafter, final statement under Section 10(1) of the Act was issued by the third respondent in Rc.No.491/89/A, dated 10.09.1990 and it was served by affixture on 17.09.1990 in the presence of Village Administrative Officer, Kunrathur since, the urban land owner has refused to receive the same. One Tmt.Anbalagi filed an appeal before the Principal Commissioner and Commissioner of Land Reforms being the second respondent herein against the 10(1) final statement dated 10.09.1990. The second respondent in his Proc.D.Dis.No.6268/91 dated 17.07.1991 had rejected the appeal and confirmed the orders passed by the third respondent dated 30.03.1990.

11. Later, notification under Section 11(1) of the Act was issued and published in Tamil Nadu Government Gazette dated 27.03.1991 in notification No.VI(1)/472/91 dated 22.01.1991. Notification under Section 11(3) of the Act, 1978, vesting the land with Government was issued by the third respondent and got published in Tamil Nadu Government Gazette No.44 dated 20.11.1991 in notification No.VI(1) 1556/91 dated 16.12.1991. Final Notice under Section 11(5) of the Act was issued by the third respondent in Rc.No.491/89(A), dated 16.08.1994 directing the land owner to surrender or deliver possession of excess vacant land. It was also served by affixture through the Village Administrative Officer, Kunrathur.

12. Finally, the possession of the excess vacant land was taken and handed over to the Firka Revenue Inspector, Kunrathur Village on 12.06.1996. Necessary changes were carried over in Taluk 8A records. An extent of 7700 sq.mts. in Survey Nos.526/3 (2450), 527/3 (5250) of Kunrathur Village was entered as Government Urban Land Ceiling Land in the relevant register vide Tk.8A/421/1404, dated 24.01.1995 by the Surveyor of third respondent's Office. Orders under Section 12(6) of the Act for the amount of Rs.7700/- was passed in Rc.491/89(A), dated 28.02.1997 by the third respondent. The amount of Rs.7700/- was drawn and kept in Revenue Deposit at Sub-Treasury, Poonamallee vide challan No.239 dated 25.03.1998 since the urban land owner had not turned up to receive the same. All the acquisition proceedings were completed and possession of the land was finally handed over to revenue authorities on 12.06.1996 which is well before the Repeal Act 20 of 1999 came into force. The excess vacant land stands vested with Government.

13. Heard Mrs.AL.Ganthimathi, the learned counsel for the petitioners and Mr.M.R.Gokul Krishnan, learned Government Advocate for the respondents.

14. The points for consideration are that:

1. Whether the respondents issued notice under Section 11(5) of the Act?

2.Whether the possession of the subject land was taken over by the second respondent?

15. Admittedly, the petitioners have purchased the subject property by the registered sale deed dated 09.09.1999. Whereas the proceedings under the Tamil Nadu Urban Land Ceiling Regulation Repealing Act 20 of 1999 was initiated by the notice under Section 7(2) of the Act on the file of the third respondent on 10.08.1988. Though it was served on the Urban Land owner, she did not raise any objections, even on the draft statement issued under Section 9(4) and Section 9(1) of the Act dated 01.04.1989. However, the said notice was returned and thereafter it was affixed in the Urban Land Owner's address. When the petitioners applied for patta they came to understand about the impugned proceedings under the Right to Information Act.

16. It revealed that the order under Section 9(5) of the Act was passed by the third respondent on 30.03.1990. It was served on the Urban Land owner's son-in-law one Sornalingam on 26.06.1990. Thereafter, the final statement under Section 10(1) of the Act was issued by the third respondent on 10.09.1990. It was also served by affixture on 17.09.1990. The petitioners' vendor Anbalagi filed an appeal before the second respondent herein and the same was dismissed on 17.07.1991. Thereafter, the notification under Section 11(1) of the Act was issued and published under the Tamil Nadu Government Gazette on 27.03.1991.

17. Though the notification under Section 11(3) of the Act was served and the subject land was vested with the Government for taking physical possession, the final notice as contemplated under Section 11(5) of the Act was issued in the name of Chellammal, the erstwhile land owner (she died on 16.08.1994). Subsequently, it was served by affixture through Village Administrative Officer of Kunrathur Village. There is no records to show that the Urban Land owner handed over excess vacant land to the Firka Revenue Inspector, Kunrathur. If the Urban Land owner refused to handover the possession, they have to issue notice under Section 11(6) of the Act to take forcible possession of the excess land and the same was taken and handed

over to Firka Revenue Inspector, Kunrathur on 12.06.1996.

18. Thereafter, the Revenue records were mutated and the award was also passed under Section 12(6) of the Act on 28.02.1997. The compensation amount was drawn and kept in Revenue Deposit at Sub Treasury, Poonamallee on 25.03.1998, since the Urban Land owner had not turned up to receive the same. Therefore, the physical possession has been taken over after the Repeal Act 20 of 1999 came into force.

19. Whereas the petitioners are in possession and enjoyment of the subject property and they repeatedly applied for patta before the Revenue Officials. The respondents also failed to produce any records to show that the Urban Land owner refused to hand over possession and thereafter, forcibly had taken possession under Section 11(6)of the Act. In fact, 11(5) notice also served with affixture. In this regard, it is relevant to rely upon the Judgment of the Hon'ble Division Bench of this Court in (2021) 6 MLJ 176 LNIND 2021 MAD 2377 A.Abdul Rahim and Others -vs- Special Commissioner and Others and this Court held as follows:

> "9. The main thrust of the appellants' contention is that the physical possession of the property continues to be with them and the Government had never taken possession. The respondents have not established that physical possession of the subject land has been taken in accordance with Section 10(5) and 10(6) of the Act. It has been held in catena of decisions that the proceedings would get abated, wherever actual possession has not been taken by the Government before the date of coming into force of the Repealing Act. Failure to take physical possession would entitle the land owners to get the benefit of Section 4 of the Repealing Act.
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> 10. In "State of U.P. Vs Hari Ram" reported in 2013-3-MLJ-408 (SC), the Hon'ble Supreme Court has asserted the above legal position. In the said judgment, it is held as under:
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> "39. The mere vesting of the land under sub-section (3)of sec.10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or

surrender and delivery of peaceful possession under sub-section (5) of section 10 or forceful dispossession under sub-section (6) of section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of section.3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of section.3 of the Repeal Act."

11. Though it is claimed by the respondents that the compensation has been paid to the owner of the subject matter, it is not acceptable for the simple reason that the respondents did not even know who is the actual owner of the property on the relevant date. Further the respondents have not taken the possession either through voluntary surrender by the owners or through forcible dispossession. The alleged symbolic possession of the subject land by making self-serving entries on the records without following due procedure is not acceptable.

12. As per Section 4 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999, if the physical possession of the land is not vested with the Government, the acquisition proceedings should be deemed to have got abated. The learned Single Judge has not appreciated the failure to serve the notice on the real owner and also the failure to take physical possession in right perspective.

13. When a specific procedure is contemplated under Section 10 (5) and (6) of the special Act, it ought to have been followed by the Government. Only if physical possession is taken as per the above procedure it could happen with the knowledge of the owner. Even if the owner refused to hand over the possession, the authorities were entitled to dispossess them forcibly. Since it was not established that the possession of the land have been taken by the Government either through voluntary surrender or through forcible dispossession, it ought to have been concluded that the possession of the subject land was not vested with the

Government on the date when the Repeal Act came into force. Since the learned single judge omitted to notice the above material facts, we are inclined to interfere and reverse the order of the learned single Judge."

20. The Hon'ble Division Bench of this Court categorically held that when the subject procedure is contemplated under the Act for taking physical possession of the subject property, the Government ought to have followed the procedure laid down under the Act. If the owner refuse to hand over the possession, the authorities were entitled to dispossess the same forcibly. In instant case on hand, the physical possession of the subject property is very much with the petitioners. Even according to the respondents the notice under Section 11(5) was served by affixture.

21. Thereafter, there is no records to show that the physical possession was handed over by the Urban Land owner to the parties concerned. Therefore, it has to be concluded that the physical possession of the subject land was not vested with the Government on the date of the Repeal Act came into force namely 16.06.1999. As such since the physical possession has not been taken as required under the Repeal Act, the entire proceedings stands abated.

22. In view of the above discussion, the proceedings dated 30.03.1990 in Rc.No.491 of 1989 of the third respondent herein is set aside. The fourth respondent is directed to mutate the Revenue records in favour of the petitioners insofar as the subject land to an extent of 0.65 acres comprised in Survey No.526/3, and the land measuring to an extent of 1.29 acres in Old Survey No.527/3 and New Survey No.527/3A and 12 cents in New Survey No.527/3B obtained by way of registered sale deed dated 09.09.1999 from one Anbalagi, wife of Chockkalinga Nadar and issue patta to the petitioners within a period of six weeks from the date of receipt of a copy of this order.

23. Accordingly, this writ petition is allowed. No order as to costs. Consequently, the M.P.Nos.1, 2 of 2012 are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Revenue Department,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner of Land Reforms,
   Urban Land Tax,
   Chepauk, Chennai.

3. The Assistant Commissioner,
   Urban Land Tax, (Kundrathur),
   No.153, Karuneegar Street,
   Adambakkam, Chennai - 600 088.

4. The Tahsildar,
   Sriperumbudur Taluk,
   Kancheepuram District.

+2ccs to Mr.AL.Ganthimathi, Advocate, S.R.No.54001

+1cc to the Government Pleader, S.R.No.53884

W.P.No.2184 of 2012
and
M.P.Nos.1, 2 of 2012

KV(CO)
SU(02/11/2021)