



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.9608 of 2010

M.P.Nos.1 & 2 of 2010

1. T.Arulandam @ Arul

2. M.Chandrasekar

... Petitioners

-Vs-

1. The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

2. The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling,
Kundrathur, Chennai.

3. The Tahsildhar
Sriperumbudur.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents, especially the order of the second respondent dated 09.10.1998 vide Na.Ka.No.B/2659/99 under Section 9(5) and notice dated 23.04.1999 vide Rc.B.2655/98 under Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of lands in Survey No.9/3 measuring an extent of 1.00 acres of Moonramkattalai Village, Sriperumbudur Taluk, Thiruvallur District and quash the same by trearing the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) so as to enable the thrid respondent herein to correct and entires in the revenue records by incorporating the name of the second petitioner as owner of the land in the said survey No.9 of Moondramkattalai Village.

For Petitioner : Mr.V.R.Ramesh



For Respondents : Mr.A.Selvendran
Special Government Pleader

WEB COPY

ORDER

The Writ Petition has been filed to call for the records of the respondents, especially the order of the second respondent dated 09.10.1998 vide Na.Ka.No.B/2659/99 under Section 9(5) and Notice dated 23.04.1999 vide Rc.B.2655/98 under Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of lands in Survey No.9/3 measuring an extent of 1.00 acres of Moonramkattalai Village, Sriperumbudur Taluk, Thiruvallur District and quash the same by treating the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) so as to enable the third respondent herein to correct and entries in the revenue records by incorporating the name of the second petitioner as owner of the land in the said survey No.9 of Moondramkattalai Village.

2. The case of the petitioners is that the second petitioner purchased the land ad measuring 1.00 acre comprised in Survey No.9 situated at Moondramkattalai Village, Kundrathur, by the registered sale deed dated 27.03.1998 vide document No.1218 of 1998 from one Arulanandam viz., the first petitioner herein. From the date of the purchase the second petitioner is in possession and enjoyment of the property. The said land is agricultural in character and even till today, the second petitioner is carrying agricultural operations and paying kist for the property.

3. In the mean while, the proceedings were initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred to as "the Act"). However, no notice was served to the second petitioner and the second respondent passed an order under Section 9(5) of the Act dated 09.10.1998 thereby acquiring an extent of 3550 sq.mt., after allowing an extent of 500 sq.mt., towards the first petitioner i.e., the vendor's family entitlement. The said award was passed without affording any personal hearing to the first respondent. Thereafter, the final statement under Section 10(1) of the Act, followed by vesting under Section 11(3) of the Act and the notice under Section (5) of the Act were issued. Even then, the second petitioner is in possession and enjoyment of the entire property.

4. The learned counsel appearing for the petitioners would



submit that the subject land is agricultural in character and it cannot be acquired under Section 3(o) & 3(p) of the Act, which clearly exclude the lands which are agriculture in character for the acquisition proceeding. Without any inspection, the second respondent mechanically passed the order under Section (5) of the Act. All the revenue documents stood as agricultural land and it would clearly established that the said land is agricultural land. No notice as contemplated under Section 8 of the Tamil Nadu Urban Land (Ceiling & Regulation) Rules was issued. It contemplates that the issuance of notice shall be by Registered Post which procedure has been completely violated. According to the respondents, the notice under Section 9(4) of the Act and the draft statement under Section 9(1) of the Act were served to the land owner and they have not objected to the acquisition and nor appeared for any enquiry. Further there is absolutely no records to show that on what mode the notices were served to the land owners. That apart, the order has been passed under Section 9(5) of the Act, without affording any personal hearing to the land owners and no notice was served to the land owners.

4.1. He further submitted that the possession and enjoyment of the said property is still with the second petitioner and no notice was served under Section 11(5) of the Act to take possession. If the land owners not handed over the acquired land, then the respondents ought to have serve notice under Section 11(6) of the Act to take forcible possession in respect of the said property. In this case, no procedure had been followed and the second petitioner is still in possession and enjoyment of the property. Therefore, the entire land acquisition proceedings have been lapsed under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, Act 20 of 1999 (hereinafter referred to as "the Repeal Act").

5. Per contra, the learned Special Government Pleader appearing for the respondents submitted that the notice under Section 7(2) of the Act was issued by the second respondent in S.R.No.99/98 dated 09.07.1998 to the first petitioner for the land owned by him in S.No.9/3 situated at Moondramkattalai Village and it was served on 12.07.1998. The land owner failed to file the return under Section 7(1) of the Act and therefore, the notice under Section 9(4) of the Act and the draft statement under Section 9(1) of the Act have been issued in Rc.No.2659/98 dated 04.09.1998. It has been served by affixture on 09.09.1998. He further submitted that the said land was inspected by the competent authority on 22.09.1998 and found that the land was laid out as plots and it is kept vacant. Since the land owner failed to file any objection and did not give any details about his family, the order under Section 9(5) of the Act was passed in Rc.No.2659/98 dated 09.10.1998, declaring the excess vacant



land as 3550 Sq.mt., after allowing 500 Sq.mt., of land as urban land owner's entitlement area, out of the total extent of 4050 Sq.mt. Available in the said land. Since the urban land owner had refused to receive the order, then it was served by affixture on 23.10.1998 in the land. Thereafter, no reply or details had received from the land owner and therefore, final statement under Section 10(1) of the Act had been issued by the second respondent on 10.11.1998. Since the land owner had moved out from the village, the same was served by affixture on 13.11.1998, in the land.

5.1. The notification under Section 11(1) of the Act was issued on 14.12.1998 and sent to the Collector of Kancheepuram District and the Tahsildar, Sriperumbudur, the local authority concerned etc., and the same had published in Tamil Nadu Government Gazette on 03.02.1999. The final notification under Section 11(3) of the Act was issued on 04.03.1999 and the land has been deemed to have vested with the Government with effect from 05.04.1999. The notice under Section 11(5) of the Act was issued in Rc.No.2659/98 dated 23.04.1999 to the urban land owner instructing him to surrender or deliver the possession of excess vacant land. Since the urban land owner had refused to receive it, it was served by affixture on 27.04.1999 and finally, the possession of the excess vacant land had been handed over to the Revenue Department on 02.06.1999. Hence, he prayed to dismiss the present Writ Petition.

6. Heard Mr.V.R.Ramesh, learned counsel appearing for the petitioners, Mr. A.Selvendran, learned Special Government Pleader appearing for the respondents.

7. On perusal of records revealed that the second petitioner is still in possession and enjoyment of the subject property and the agricultural activities still going on. As rightly pointed out by the learned counsel appearing for the petitioners, when the subject land is agriculture in nature, it cannot be acquired. As per the provisions under Section 3(o) & 3 (p) of the Act, any land situated within the limits of an urban agglomeration and referred to as such in the master plan and where any such land is actually used mainly for the purpose of agriculture, such land shall not be deemed to be urban or vacant land so long as it is continued to be so used for the purpose of agriculture. Therefore, the second respondent without application of mind mechanically passed the order stating that the subject land laid out as house cites and passed order under Section 9(5) of the Act.

8. That apart, according to the respondents, the notice under Section 11(5) of the Act, was issued on 23.04.1999 to the urban land owner instructing him to surrender or deliver the



possession of the excess land. Since the urban land owner refused to receive it, it was affixed on 27.04.1999 and finally the possession of excess lands had been handed over to the revenue department on 02.06.1999. However, there is absolutely no records to show that how the lands were handed over to the revenue department from the urban land owner. If the urban land owner failed to surrender his possession in respect of the excess land, the respondents ought to have invoked the provisions under Section 11(6) of the Act to take forcible possession. In the case on hand, there is no record to show that the urban land owner was served with notice under Section 11(6) of the Act.

9. Further the records produced by the learned counsel appearing for the petitioners viz., Chitta, Adangal etc., revealed that the second petitioner is in possession and enjoyment of the subject land and he is doing agricultural activities. It shows that the respondents had taken possession only by paper and all are desk works. Even till today, the second petitioner is in possession and enjoyment of the property. Therefore, as per the provisions under Section 4 of the Repeal Act, the proceeding initiated under the Act shall stand abate, since the physical possession of the subject land has not been taken till today. Therefore, the entire acquisition proceeding initiated under the Act shall stand lapsed.

10. Accordingly, the impugned order dated 09.10.1998 vide Na.Ka.No.B/2659/99 under Section 9(5) of the Act and Notice dated 23.04.1999 vide Rc.B.2655/98 under Section 11(5) of the Act, passed by the second respondent, in respect of land in Survey No.9/3 ad measuring 1.00 acres situated at Moonramkattalai Village, Sriperumbudur Taluk, Thiruvallur District, are hereby quashed. The third respondent is directed to mutate all the revenue records in respect of the subject property in favour of the second petitioner and issue patta in his favour, within a period of six weeks from the date of the receipt of a copy of this Order.

11. With the above directions, the Writ Petitions stands allowed. Consequently, connected miscellaneous petitions are also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.
2. The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling,
Kundrathur, Chennai.
3. The Tahsildhar
Sriperumbudur.

+1cc to the Government Pleader, S.R.No.63024

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M.P.Nos.1 & 2 of 2010

RSI (CO)
SU(10/01/2022)