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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. NO.25970 OF 2005

AND

W.M.P. NO.28377 OF 2005

1. G. Subramani Naicker (Deceased)
 2. S. Kothai Nayagi
 3. S. Udhaya Rani
 4. S. Vedavalli
 5. S. Veeraraghavan
 6. S. Jayakumar
 7. S. Saravanan
- P2 to P7 substituted as Lrs of deceased
sole petitioner vide order dated
08.04.2022 made in WMP No.173 of 2011 in WP.25970/2005

.... Petitioners

Versus

1. The Assistant Commissioner,
Urban Land Tax cum competent Authority
Urban Land Ceiling,
Kundrathur Zone,
Chennai - 600 088.
2. The Principle Commissioner &
Commissioner of Land Reforms,
Chennai - 600 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Declaration declaring all proceedings initiated in Na.Ka. No.4053/978, dated 03.10.1997 on the file of the first respondent in respect of petitioner's land viz., 2.50 acres in S. No.323 Revenue Villages No.42, Mangadu (Now Kancheepuram District) as illegal and null and void as the same stand abated in view of the Section 4 of the TN Act 20 of 1999.



For Petitioners :Mr. N.Srinivasan
For Respondents :Mr.A. Anandan,
Govt. Advocate

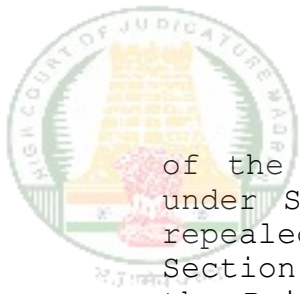
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ORDER

This writ petition has been filed to declare all proceedings initiated in Na.Ka. No.4053/978, dated 03.10.1997 on the file of the first respondent in respect of petitioner's land viz., 2.50 acres in S. No.323 Revenue Villages No.42, Mangadu (Now Kancheepuram District) as illegal and null and void as the same stand abated in view of the Section 4 of the TN Act 20 of 1999.

2. The case of the petitioners is that the original petitioner is the absolute owner of the lands measuring 2.50 acres out of total extent of 4.14 acres comprised in Survey No.323 of Mangadu Village. The said 2.50 acres of lands have been purchased by him from different vendors viz., 1.00 extent of land vide Document No.8884, dated 27.11.87 from the Legal Heirs of Mohamed Sulaiman Sahab; likewise another 1.00 extent of land vide Document No.9639, dated 23.12.87 from the same vendor and 0.50 extent (wrongly mentioned in the affidavit as 1.50) of land vide Document No.1076, dated 29.03.90 from Muthu and Ravi. Subsequent to his purchase, mutation of name in Revenue Records was also effected and the revenue officials assigned Patta No.262 for the aforesaid lands and the Village in which the lands are situated is classified as B.Village. That being so, ever since from the date of his purchase, the original petitioner raised paddy crops in the entire field and cultivation activities were carried on, without any break.

3. While so, the Tamil Nadu Urban Land Ceiling and Regulation act, 1978 (hereinafter referred to as "the Principal Act") was extended to the aforesaid village with effect from 09.08.1995 and G.O. No.679, Revenue Department, dated 17.07.1995 was issued in this regard. Suddenly, when the original petitioner approached the authorities concerned for remitting the land revenue, to his shock and surprise, it came to light that the lands pertaining to him were attracted by provisions of the Tamil Nadu Urban Land Ceiling Regulation Act. However, the 1st respondent had initiated action under Section 9 (1) of "the Principal Act" against one Krishnapillai and Subramani and notice under Section 9(4) of the Act was also issued. Thus, the entire extent of 4 acres in Survey No.323 of Mangadu B Village was treated as "Urban Land", besides allowing 1000 sq. meters as entitlement area i.e., excess vacant land" and issued proceedings, dated 3.10.1997 under Section 9(5) of the Principal Act. It is averred that the respondents without serving the copy of the proceedings initiated under Section 9(5)



of the Principal Act to the petitioner, published Notification under Sections 11(1) and 11(3). Further the Principal Act was repealed by the Tamil Nadu Act 20 of 1999 and by virtue of Section 4 of the Repeal Act, all proceedings initiated under the Principal Act stood abated, when the possession is with the petitioner on the date of commencement of the Repeal Act viz., 16.06.1999.

4. In short, it is the grievance of the original petitioner that without ascertaining the ownership and nature of land, which was meant for agricultural activities, the respondents issued Proceedings under the Principal Act, that too without serving notices, which action does not apply to his lands as per the provisions of the Principal Act. According to the original petitioner, he is in possession and enjoyment of the property, but notices under Section 9(1) and 9(4) were issued to his predecessor-in-title and not to him. Further, it is the stand of the original petitioner that the entire proceedings of the 1st respondent stands abated in view of the Repeal Act. Aggrieved over the action of the 1st respondent, in passing orders under Section 9(5) of the Act, dated 03.10.1997 and further Notification under Sections 11(1) and 11(3) of the Act and without taking into account of Section (4) of the Repeal Act, this writ petition has been filed.

5. Pending writ petition, the original petitioner died and the petitioners 2 to 7, who are the Legal Heirs of the deceased 1st petitioner were brought on record.

6. The learned counsel for the petitioners vehemently argued that the original owner was not at all served with any notice of proceedings contemplated under the Act and therefore, the entire proceedings of the 1st respondent is non est in law. Moreover, the Urban Land Ceiling Act was repealed by the Tamil Nadu Act 20 of 1999. By virtue of Section 4 of the Repeal Act, wherever the possession remains with the land owner i.e., the original petitioner on the date of the commencement of the Repeal Act viz., 16.06.1999, all proceedings initiated by the authorities under the Act shall stand abated. He also submitted that the original petitioner has also preferred Appeal under Section 33 of the Principal Act before the 2nd respondent, but in view of the Repeal Act, the appellate authority had become "functus officio". Hence, he prays before this Court for allowing of this writ petition.

7. Mr.A.Anandan, learned Government Advocate, on instructions produced the original file before this Court and placed his submissions that proper notices contemplated under the Act were issued to the land owners. Further, reiterating the counter affidavit, particularly, paragraph 4 and 5, he



submits that notices were issued on 20.11.98 to the land owners as per Adangal Receipt and all the acquisition proceedings were completed finally on 23.03.1999. He further submitted that the 1st respondent inspected the lands and concluded as urban land determined as house sites. Further, it is his contention that the entire acquisition proceedings as per Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 were completed before the introduction of the Repeal Act i.e., before 16.06.1999. Hence, the prayer sought for in this writ petition deserves no merit and prays for mere dismissal.

8. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the original file as well other materials available on record.

9. It is the case of the petitioner that he had utilised his land for agricultural purposes, whereas the respondents issued proceedings under the Tamil Nadu Urban Land Ceiling and Regulation Act treating the petitioners land as Urban Land. There is no material on record shown by the respondents to substantiate their plea that the lands acquired under the Act are house sites. Though it is the further stand of the respondents that notices were issued to land owners, but no records are available to substantiate their claim that notices were served on and received by the original petitioner. There is also no material to substantiate the plea of the respondents that possession was taken before the repeal Act. However, it is the plea of the petitioner that physical possession of the property is with the petitioners on the date of repeal Act. Further, the petitioners have also paid the entire tax amount which also shows the land to be agricultural lands. In that scenario, the original petitioner approached the competent authority to release the land, which was in his possession citing the repeal Act.

10. The petitioner places his entire case on the non issuance of notice to the original petitioner, which is nothing but violation of principles of natural justice and to this end, a catena of decisions of this Court have been placed and it has been the consistent view of the Courts that when possession is not taken over before the repeal Act, the entire proceedings will lapse.

11. Further on a careful perusal of the Adangal extract, it reveals that the lands in dispute were utilised for agricultural activities. Further it reveals from the counter affidavit that all notices were served only by way of affixture through Village Administrative Officer and it also reveals that no steps were taken to identify the original petitioner. Mere affixture



would not be sufficient to show compliance of issuance of notice. Affixture is an alternate form of serving of notice, if the petitioner could not be traced. However, in the case on hand, it is not the case of the respondents that the petitioner could not be traced and his whereabouts were not known. Thus, it is clear that the respondents without ascertaining the original land owner sent notices under the Principal Act and affixed the same on the lands. The impugned order passed by the 1st respondent without considering all the aforesaid facts clearly reveals non-application of mind and the said order, is arbitrary, perverse, illegal, unreasonable and unsustainable and the same deserves to be set aside.

12. For the reasons aforesaid, the order impugned herein is set aside and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Assistant Commissioner,
Urban Land Tax cum competent Authority
Urban Land Ceiling,
Kundrathur Zone,
Chennai - 600 088.
2. The Principle Commissioner &
Commissioner of Land Reforms,
Chennai - 600 005.

+1cc to Mr. N.Srinivasan, Advocate, S.R.No.27681
+1cc to the Government Pleader, S.R.No.28374

W.P. No.25970 of 2005

NR(CO)
PM/24/05/2022