IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2023

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

AND

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

W.A.No.704 of 2016
AND
C.M.P.No.9251 of 2016

1.The Special Commissioner and Commissioner
for Urban Land Ceiling and Urban Land Tax
Chepauk, Chennai 600 005

2.The Assistant Commissioner
for Urban Land Tax-cum-Competent Authority
Alandur, No.169, Sannathi Street
Chennai 600 088 .. Appellants

Vs.

G.Selvaraj .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 15.04.2013 passed by this Court in W.P.No.10311 of 2005.

For Appellants	:	Mr.A.Silambanan Additional Advocate General Assisted by Mr.Vadivelu Deenadayalan Additional Government Pleader
For Respondent	:	No appearance

JUDGMENT

(Delivered by V.LAKSHMINARAYANAN, J.)

This appeal arises against the order dated 15.04.2013 passed by the learned Single Judge in W.P.No.10311 of 2005.

2. Brief facts of the case are as under :

2.1. The writ petitioner is the son of one Ganesa Mudaliar. The said Ganesa Mudaliar had settled the property in writ petitioner's favour on 22.12.1986. The settlement was by way of a registered document bearing No.3907/1986. After the writ petitioner had been benefited with the settlement, he had been favoured with a patta by the Revenue Department in patta No.308.

2.2. It is case of the writ petitioner that the 2nd appellant *viz.*, The Assistant Commissioner for Urban Land Tax-cum-Competent Authority, Kundrathur had passed an order on 14.07.1998. In and by way of this order in Na.Ka.No.768/98-B, the said authority, had determined that an extent of about 3150 sq. mtrs. is excess holding and that the petitioner is entitled only to an extent of 500 sq. mtrs. Prior to the passing of the order, he was not served with any notice and since no objection has been received from any quarters, the impugned order came to be passed.

2.3. The writ petitioner further alleged that prior to passing the impugned order, no efforts were taken to ascertain the correct address and since the lands are agricultural in nature, it will not attract the provisions of the Urban Land Ceiling Act.

2.4. The writ petitioner would further allege that prior to passing the impugned order, no verification of the owner's address was done. He would state that the order passed under Section 9(5) of the Tamil Nadu Urban land (Ceiling & Regulation) Act, 1978, was done without verification of the address or details of the present owner or after verification of the revenue records. He would state that the extent of 0.91 acres of Gerugambakkam Village, Sriperumbudur Taluk, comprised in S.No.370, continues to be in his exclusive possession and enjoyment.

2.5. The writ petitioner would rely upon Tamil Nadu Urban land (Ceiling & Regulation) Act, 1999 (Act 20 of 1999), on the ground that the said Act had repealed the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (in short "the 1978 Act") and since the physical possession continued to be with the petitioner, the proceedings had abated. Being left with no other option, he came forward with the writ petition challenging the proceedings under Section 9(5) of the 1978 Act dated 14.07.1998.

2.6. To this writ petition, a counter affidavit was filed on behalf of the respondents. The respondents conceded that the revenue records show that the writ petitioner is the owner of the land situated in S.No.370/1 of Gerugambakkam Village. It would state that as the required return was not filed, in terms of Section 7 of the 1978 Act, a notice dated 27.02.1998 was issued by the 2nd respondent to the writ petitioner. It is alleged that the notice was served on 11.03.1998. The Deputy Tahsildar, in charge of the office of the 2nd respondent, had inspected the land on 01.04.1998 and had reported that the land was no longer an agricultural land, but had been converted into an urban land. Therefore, on the basis of the revenue records and the inspection report of the Deputy Tahsildar, the respondent issued a notice under Section 9(4) of the 1978 Act, together with a draft statement under Section 9(1) of the 1978 Act, was issued on 07.04.1998.

2.7. The respondent would further state that the said notice was served on the mother of the writ petitioner on 20.05.1998. Despite the service of notice, there was no counter or objection filed to the draft statement under Section 9(1) of the 1978 Act. Consequently, the 2nd respondent inspected the land on 09.07.1998 and confirmed that it was no longer an agricultural land and had been converted into house plots. Consequently, he determined the entitlement at 500 sq. mtrs. and passed an order on 14.07.1998, determining the vacant land as 3150 sq. mtrs.

2.8. On the basis of this order dated 14.07.1998, the respondent alleged that a final statement under Section 10(1) of the 1978 Act was issued on 28.08.1998 and it was served by affixture on the land. This affixture is said to have taken place on 03.09.1998, in the presence of the Revenue Inspector, in charge of the Village and two witnesses. This procedure had been adopted, since the writ petitioner was not available for service. Thereafter, a notification was issued under Section 11(1) of the 1978 Act on 05.10.1998 and the said notification was published in the Tamil Nadu Government Gazette on 11.11.1998.

2.9. According to the respondent, since notification under Section 11(3) of the 1978 Act had been issued, the land vests with the Government. He would state that the final notice under Section 11(5) of the 1978 Act was issued by the 2nd respondent on 12.03.1999, directing the petitioner to handover the excess vacant land. As the land owner did not handover the possession, the possession of the vacant land *viz.*, 3150 sq. mtrs. was taken over and handed to the Firka Revenue Inspector, Mangadu Village on

06.05.1999. On the basis of this taking over, the revenue records were mutated and on 29.04.1999, it was recorded as "Government ULC Land".

2.10. The 2nd respondent further alleged that since the acquisition proceedings had been completed and possession had been taken over, prior to the introduction of the repeal Act No.20 of 1999, the repeal act is inapplicable. He would state that the writ petition had been filed six years after the vesting of the land with the Government and therefore, the writ petition must be dismissed.

2.11. On the basis of the affidavit, counter affidavit and records produced before the Court, the learned Single Judge took up the matter for hearing on 15.04.2013. The learned Single Judge found that under Section 16 of the 1978 Act, compensation would have to be paid and since in this case, compensation has not been paid at all, the proceedings would have to fail. Crucially, he found that notice under Section 7(1) of the 1978 Act had not been issued to the petitioner and that the mandatory provisions contemplated under Sections 9(4), 10(1), 11(3) and 11(5) of the 1978 Act had not been followed at all. He had also recorded that the notice under Section 7(2) of the 1978 Act alone was issued on 27.02.1998 and none of the mandatory provisions contemplated under the aforesaid sections had been followed. Hence, he came to the conclusion that that entire proceedings was vitiated and therefore, the writ petition was allowed. Aggrieved over this order, the present writ appeal had been preferred before us.

3. The learned Additional Advocate General who appeared on behalf of the appellant was requested to produce the records relating to the urban land ceiling proceedings. We have gone through the records and find that apart from Section 7(2) of the 1978 Act notice dated 27.02.1998, none of the other proceedings have been followed at all.

4. It has been consistently held by this Court that if the mandatory provisions are not followed and possession has been taken, then, the proceedings will have to fail. The manner of taking possession has been settled by two judgments of the Supreme Court in *B.N.Bhagde Vs.*

M.D.Bhagwat and Others (AIR 1975 SC 1767) and *Tamil Nadu Housing Board Vs. A.Viswam (AIR 1996 SC 3377)*. In both these cases, the Supreme Court had held that a person can be held to have been deprived of his possession of the property only after preparation of a memorandum or a panchanama signed by witnesses.

5. As pointed above, there is nothing in the files to show that possession had been taken over by the Revenue Inspector, in the presence of witnesses. Apart from that, the files do not disclose about following the mandatory procedures required under law. It is an admitted fact that the 2nd respondent had initiated proceedings under Section 9(5) of the 1978 Act. It is also admitted that a demand was made on the writ petitioner to surrender the excess land. Further, the writ petitioner did not surrender the lands. Therefore, the only option open to the respondent was to follow the mandatory provisions of Section 11(6) of the 1978 Act.

6. By merely stating that the Revenue Inspector took possession, does not satisfy the requirements of law. In this case, the 2nd respondent has not

followed any of the procedures contemplated under the Act and therefore, we are constrained to hold that the 2nd respondent has not fulfilled the mandate of law and consequently, the proceedings initiated under the Urban Land Ceiling Act have to go.

7. When the mandatory provisions of the Act have not been followed, when compensation has not been paid under Section 16 and when possession has not been taken in accordance with law, then, the provisions relating to the repealed act, will directly apply. Once the provisions of the repealed act applies, all the proceedings of the provisions abate. This in terms of Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act 20 of 1999). Section 4 of the Repeal Act mandates that if possession had not been taken as contemplated under the parent act, the proceedings stand abated. At best, the records produced show paper delivery from one department to another. This does not comply with the requirements of law. Therefore, we are constrained to hold that the order of the learned Single Judge was correct and this writ appeal has to fail.

8. We may also add that under same circumstances, this Court had dismissed the appeal preferred by the Special Commissioner and Commissioner for Land Reforms, holding to the aforesaid effect in W.A.No.3621 of 2019 dated 12.01.2023 (*The Special Commissioner and Commissioner of Land Reforms, Chepauk and Others Vs. Lakshmi Devi, represented by her legal heirs*).

In fine, the Writ Appeal is dismissed. The order of the learned Single Judge dated 15.04.2013 passed in W.P.No.10311 of 2005 stands confirmed. No costs. Connected miscellaneous petition is closed.

(V.M.V.,J.) (V.L.N.,J.)
25.04.2023
(1/2)

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