



W.A.No.1562 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.09.2023

Delivered on: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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and

C.M.P. Nos.8150 of 2018 and 20482 of 2017

1. The Special Commissioner and
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai – 600 005.

2. The Assistant Commissioner,
Urban Land Tax and Competent Authority,
Urban Land Ceiling, Salem.

3. The Assistant Commissioner,
Land Reforms and Urban Land Tax,
Urban Land Tax and Competent Authority,
Urban Land Ceiling, Erode.

4. The District Revenue Officer, Salem.

.. Appellants

Vs.

1. Elumalai S/o. Perumal Gounder

2. Erusa Gounder S/o. Perumal Gounder



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3. Govindan (Deceased) S/o. Perumal Gounder,
4. Chinnammal W/o. Sadayan @ Palanisamy,
5. Lakshmi
6. Babu @ Mariappan
7. Ramesh
8. Eswari
9. Sumathi
10. Chinnapillai

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.3655 of 2005 dated 30.11.2011.

For Appellants : Mr. U.M. Ravichandran, Special
Government Pleader.

For Respondents : Mr. D. Shivakumar, [for R1, R2 & R4]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The State, aggrieved by the order of the Writ Court in issuing a writ of a Certiorarified Mandamus, quashing the order dated 31.12.1990, under the ***Tamil Nadu Urban Land Ceiling and Regulation Act, 1978***, is the appellant before us.

2. The respondent, as writ petitioner, filed W.P. No.3655 of 2005, contending that the lands measuring 5303 sq. meters in Survey No.131/20 in Pallapatty Village originally belonged to one Perumal Gounder son of



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Irusa Gounder, the father of the respondents. An order dated 31.12.1990, was passed under ***Section 9(5) of the Tamil Nadu Urban Land Ceiling and Regulation Act, 1978*** holding that 3803 Square meters of land comprised in S.No.131/20, was found to be excess vacant land. According to the respondents, the said order came to be passed against C.Perumal Gounder and his son P.Kalimuthu Gounder who were not in any way connected to the subject lands which belonged only to the respondents, pursuant to a deed of partition dated 14.12.1982, in respect of which the respondents are also paying kist. Claiming that the respondents have always been in possession of the subject lands, including the alleged excess vacant land determined by the Authorities, it is stated that the Village Administrative Officer refused to receive kist from the respondents on 06.9.1999 and only then, it came to the knowledge of the respondents that the Authorities under the Act had passed an order under Section 9(5) of the Act. According to the respondents, on a perusal of the said order they further came to know that, the order was passed against C.Perumal Gounder and his son P.Kalimuthu Gounder who were not in any way related to the respondents. The respondents therefore preferred an appeal before the Special Commissioner and Commissioner of Land Reforms,



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Chennai, which was returned by the said Authority citing repeal of the Act.

Challenging the said order of the 1st respondent, the Writ Petition came to be filed. An interim order was also passed at the time of the admission of the Writ Petition on 07.02.2005 and the same continued to be in force till the disposal of the Writ Petition.

3. On behalf of the appellants, as respondents a counter affidavit was filed stating that the land owners had failed to file returns under Section 7(1) of the Act and therefore, notice U/s 7(2) was issued to the said C.Perumal Gounder and P.Kalimuthu Gounder as their names alone were reflected in the available records. According to the appellants, further notice U/s 9(4) of the Act was issued to the said C.Perumal Gounder and P.Kalimuthu Gounder and the same was served on the son of the said C.Perumal Gounder, by name P.Radhakrishnan. As there were no objections forthcoming from the said land owners the Assistant Commissioner, Urban Land Tax and Competent Authority proceeded to determine the excess vacant land as 3803 Square meters and an order came to be passed U/s 9(5) of the Act on 31.12.1990. It is further contended by



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the appellants that final statement contemplated U/s 10(1) of the Act was served on another son of C.Perumal Gounder by name P.Srinivasan on 16.04.1991 and notification U/s 11(1) of the Act was issued on 24.07.1992 which was also duly published in the Tamil Nadu Government Gazette on 19.08.1992. It is contended that subsequently Section 11(3) notification vesting the land with the Government was issued on 30.09.1997 and the same was also published on 05.11.1997. This was followed up by Section 11(5) notice dated 09.03.1999, directing the landowners to surrender possession of the excess land. According to the appellants possession was taken on 24.05.1999, after observing all formalities. The Writ Court held that the respondents have not been able to establish the factum of service of notice on the petitioners as contemplated under the Act and finding that petitioners had constructed a house and have been residing there, enjoying electricity service connection and also cultivating the lands and on these grounds the Writ Court allowed the Writ Petition.

4. Challenging the said order of the Writ Court, the present appeal has been preferred by the appellants on the ground that possession was



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already handed over to the Revenue Department on 24.05.1999 and therefore, the repeal Act, *Act 20 of 1999*, has no application to the facts of the case and that the Writ Petition filed after a lapse of 6 years was belated and not maintainable in law.

5. We have heard Special Government Pleader Mr. U.M. Ravichandran and Mr. D. Shivakumar for respondents 1, 2 & 4. We have also perused the original records produced by the appellants, besides the order of the Writ Court.

6. It is the specific case of the respondents that they were sons of one I.Perumal Gounder who was alone the owner of the subject property pursuant to a partition dated 14.12.1982. It is their specific case that even after an order dated 31.12.1980 passed U/s 9(5) of the Act, the respondents have been paying kist and only on 16.09.1999, the said payment of kist was not accepted, for the first time, citing the order dated 31.12.1990, which necessitated the respondents to file an appeal before the 1st appellant.



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7. The case of the appellants is that they have served notice on C.Perumal Goundar and his son P.Kalimuthu Gounder who were the owners of the subject lands. On the other hand the case of the respondents that father of the petitioner is I.Perumal Gounder his father name being Iruasa Goundar. From the records as well as the stand taken by the appellants before the Writ Court, it is evident that notices were served on the sons of C.Perumal Gounder through his sons P.Kalimuthu Gounder and P.Radhakrishnan. The further case of the respondents was that none of the notices under the act was served on them. The said allegation has not been specifically denied by the appellants and it is not shown by the appellants that the said C.Perumal Gounder was the father of the respondents. However, it is contended by the respondents that the respondents were claiming under one Perumal Gounder, son of Iruasa Goundar who was originally owning the subject lands and that there was also a family partition in the year 1982 and that the persons on whom notices were allegedly served had nothing to do with the subject property.

8. Admittedly, at the time of the repeal of the principal Act by **Act 20**



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of 1999, the respondents were in physical possession of the subject lands.

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Proceedings have not been initiated against them for the possession. In fact even the appellants have only contended that the final statement U/s.10(1) of the Act was served on one, P.Srinivasan S/o C.Perumal Goundar. However, there are no details with regard to service of final notice U/s.11(5) of the Act. In any event, issuance of Section 11(5) notice does not in any way bring a finality to the proceedings. When the owner of the lands does not comply with the demand for handing over vacant possession U/s.11(5), then necessarily the authorities have to invoke Section 11(6) and take forcible possession from the land owners.

9. From the original records, we found that one P.Radhakrishnan has received the Section 9(4) notice on 20.11.1990. Even in the 10(1) final statement, the names of the owners has been mentioned as C.Perumal Gounder and P.Kalimuthu. However, in the second column which requires the father's name or the husband's name to be set out both the land owners are shown as if they are the sons of C.Perumal Goundar. The Section 11(5) notice does not appear to have been served on anyone and there is no



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endorsement by the land owners, confirming receipt of the final notice U/s 11(5). A Possession Certificate is available dated 24.05.1999, which merely states that the Special Deputy Tahsildar, Urban Land Tax, Salem has handed over the excess lands to the Zonal Deputy Tahsildar, Salem. There is absolutely no evidence on record to even suggest that the mandate of Section 11(6) has been followed. As seen from the records, even the service of notice under Section 11(5) was not effected.

10. In so far as physical possession of the subject lands, the respondents have been able to substantiate the same by producing documents before the Writ Court. They have constructed a house and they continue to reside in the said subject lands. By production of receipts evidencing payment of electricity consumption charges as well as property tax receipts, they have proved the physical possession. Moreover, they have also had the benefit of an interim order right from the admission of the Writ Petition till the final disposal of the same, that too ending in their favour. Further, in any event the appellants are also not able to show that they have taken over physical possession by following the prescribed



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procedure under Section 11 of the Act.
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11. The Writ Court has considered all the materials available on record and also perused the original records and proceeded to allow the Writ Petition. We have also independently perused the records produced by the appellants. We do not find any error or infirmity or illegality in the order passed by the Writ Court.

12. In fine Writ appeal stands Dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(D.K.K.J) & (P.B.B.J)

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
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