IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.29366 of 2024
and
W.M.P.No.32012 of 2024

E.Sankar ... Petitioner

Vs.

1.The Special Commissioner And Commissioner
Land Reforms
Chepauk,Chennai-600005

2.The Assistant Commissioner/Competent Authority
Urban Land Ceiling And Urban Land Tax,
No.5,Sannathi Street, 2nd Floor,
Poonamallee,Chennai 600056

3.The Tahsildar
Chennai Thiruvallur High Road,
Gandhi Nagar,
Ambattur,Chennai 600 053 ...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus,calling for the records of the respondents especially the order of the 2nd respondent in ref S.R.Rc.No.141/91/C2/272/92/A1 passed under section 9(5)10(1) and 11(5) dated 30.01.1992,13.08.1993 and 25.08.1995 respectively in respect of land measuring an extent of 33 cents comprised in survey no.29/2 Menambedu Village,Ambattur Taluk,Thiruvallur District and quash the same and incorporate the name of the petitioner as owner in all revenue records and thus render justice..

For Petitioner : M/s.V.Ramesh

For Respondents : M/s.M.R.Gokul Krishnan, AGP, for R.1 to R3

ORDER

The petitioner has filed the above Writ Petition seeking to quash the order passed by the 2nd respondent and consequently to incorporate the name of the petitioner in all the revenue records.

2. The property which is the subject matter of this Writ Petition is an extent of 33 cents comprised in S.No.29/2, Menambedu Village, Ambattur Taluk, Thiruvallur District. The petitioner's contention is that this property was originally held by his great grandmother, Alamelu Ammal who had purchased the same under a registered sale deed dated 12.06.1908. After her demise, the property devolved on the petitioner's grandfather K.Rajagopal. The said K.Rajagopal had died on 17.06.1956 leaving behind his two sons Elumani, (the petitioner's father) and Subramani. After the demise of his great grandmother and grandfather, the property was being held by the petitioner's father. Besides the subject property his father also owned other properties in S.Nos.30, 30/3B, 33/1 and 34/1B in the same village. The said Elumalai died on 07.11.2015 leaving behind him surviving his wife, son, the petitioner herein and four daughters. The daughters were all married and settled even prior to the death of Elumalai. During his lifetime, the petitioner's father has been in possession and enjoyment of the subject property and paying urban land tax in respect of the same.

3. After the demise of his father, the petitioner had approached the revenue authorities seeking mutation of the revenue records. However, he was surprised to know that the subject property had been acquired under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as the "Ceiling Act"). The petitioner thereafter approached the 2nd respondent and on legal advice had applied for issuance of the certified copies of the orders passed under Section 9(5), 10(1) and 11(5) of the Ceiling Act. The copies were furnished to the petitioner under cover of the 2nd respondent's letter dated 18.12.2019.

Since the petitioner had come to know about the proceedings only when he had approached the 3rd respondent for mutating the revenue records he cannot be accused of latches.

4. It is the further contention of the petitioner that the property continues to be in his possession. It is also contended that challenging the ceiling proceedings with reference to the lands in S.Nos.33 and 34 the petitioner's father had earlier filed Writ Petition Nos.28056 and 27689 of 2003. Having already challenged the proceedings with reference to two other properties had the petitioner's father come to learn about the proceedings in respect of the subject property he would have challenged that as well. Therefore, it is the contention of the petitioner that there has been no delay on his part. The petitioner would submit that no notice has been issued to his grandfather father K.Rajagopal, his father Elumalai and his uncle Subramani in respect of the Ceiling proceedings. Hence the Writ Petition.

5. The 2nd respondent had filed a counter for herself and on behalf of the other respondents as well. It is their contention that the land in question was registered in the name of Rajagopal. He did not file the return under Section 7(1) of the Ceiling Act. Hence, notice was issued to him on 30.04.1991. The said notice has been served by affixure on 05.10.1991 by the VAO. Since no reply was received, notice under Section 9(4) along with draft statement under Section 9(1) of the Ceiling Act was issued on 14.08.1992 calling for his objection for the acquisition of the excess vacant land measuring an extent 850 sq.mts. in S.No.29/2B of Menambedu Village after allowing 500 sq.mts. as family entitlement.

6. The respondents would contend that this notice was received by one R.Arumugam (relative of the land owner) on 07.12.1991 and there has been no objection filed by the land owner. Hence, orders under Section 9(5) of the Ceiling Act was passed to acquire the excess vacant land and the same was served by affixure. This was followed by the final statement under Section 10(1) of the Ceiling Act which was issued on 13.08.1993 and once again served on the relative of the land owner, R.Arumugam. They would further contend that possession was taken on 23.07.1996 and notice under Section 12(7) of the Ceiling Act 12.08.1998 was issued on 12.08.1998. Thereafter, an order under Section 12(6) of the Ceiling Act determining the land value of Rs.1,700/- payable for the land acquired was issued on 12.08.1998.

7. They would further contend that the Repeal Act will not apply in the case of the petitioner as the repeal would not affect lands of which possession has been taken. They would fairly concede that the Writ Petition Nos.28056 and 27689 of 2003 filed by the petitioner's father challenging the ceiling proceedings had been allowed by orders of this Court dated 23.01.2009 and thereafter orders had been passed for changing the revenue records and issuing patta in the name of the urban land owner. However, in the instant case, the property was acquired from one Rajagopal. They would therefore submit that the Writ Petition has to be dismissed.

8. Mr. V.Ramesh, learned counsel appearing on behalf of the petitioner would place his argument on the following points:-

(a) The entire proceedings had been initiated against a dead person. In respect of the above contention, he would draw the attention of the Court to the legal heirship certificate that has been appended in the typed set of papers wherein it has been stated that K.Rajagopal had died on 17.06.1956 itself at the age of 43 and the legal heirship certificate would show the names of Elumalai, the petitioner's father and Subramani as his surviving legal representatives. He would submit that therefore the proceedings have been initiated against the dead person and therefore there has been no notice served on the landowners as contemplated under the Ceiling Act. Even the said Arumugam, who the respondents claimed had received the notice is not in any way related to Rajagopal or his son.

(b) The property in question is an agricultural land and therefore the provisions of the Ceiling Act will not apply.

(c) The order has been passed without considering the entitlement of each members of the family to hold property as contemplated under the Ceiling Act.

(d) He would further submit that the possession of the property continues with the petitioner and therefore by virtue of the Repeal Act the proceedings under the Ceiling Act automatically stands abated. He would also rely upon the following judgements in support of his argument:-

i. (2012) 4 SCC 718 - Vinayak Kashinath Shilkar Vs. Deputy Collector and Competent Authority and Others.

ii. (2013) 4 SCC 280 - State of Uttar Pradesh Vs Hari Ram

iii. (2014) 12 SCC 523 - Gajanan Kamlya Patil Vs. Additional Collector and Competent Authority (ULC) and others.

iv. (2014) 15 SCC 332 - Mangalsen Vs. State of Uttar Pradesh and another

v. 2014-3-L.W. 328 - The Government of Tamilnadu rep. by its Secretary, Revenue Department & others vs. I. Richardson

vi. 2015-2- L.W. 391 - State of Tamilnadu rep. by its Secretary to Government, Revenue Department, Secretariat, Chennai & others vs. Sumati Srinivas.

9. Per contra, Mr. Gokul Krishnan, learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 would submit that the notice of the proceedings has been affixed on the property and the notice under Section 9(4) of the Ceiling Act as well as the final statement under Section 10(1) of the Ceiling Act had been received by the relative of Rajagopal one Arumugam and therefore his contention is that the notice contemplated under the Ceiling Act has been issued and received and therefore the petitioner cannot feign ignorance about the proceedings more particularly when his father has contested the acquisition proceedings with reference to S.Nos.33 and 34. He would submit that the possession of the subject property was also handed over to the Revenue Authorities on 23.07.1996 and therefore the Repeal Act would not apply in the instant case.

10. Heard the counsels on either side.

11. A perusal of the impugned order dated 30.01.1992 which is the order passed under Section 9(5) of the Ceiling Act determining the excess land and directing further action for taking possession has been issued to the said Rajagopal. This notice, the respondent would claim has been affixed on the subject property. However, the property in question has been described as vacant site and there is nothing to show where the notice has been affixed. Further, the respondents have not been able to establish a connection between the said Arumugam and the family of Rajagopal. Therefore, the respondents have failed to prove service of any of the notices under the Ceiling Act. That the petitioner continue to be in possession even after the alleged date of taking over of possession by the respondents is evident from the taxes that have been paid post the acquisition proceedings for Faslis 1401 to 1416.

12. Therefore, it is clear that possession has not been taken by the respondents. That apart, in the counter affidavit, the respondents would contend that possession was handed over to them. However, there is no details given as to the person from whom possession had been taken by the respondents and no supporting documents evidencing the taking over possession have also been produced before this Court. Once the possession has not been taken and what has been taken is only a symbolic possession with the coming into force of the Repeal Act, which came into effect on 16.06.1999, the entire proceedings under the Ceiling Act would stand abated.

13. In the judgement reported in ***(2013) 4 SCC 280 - State of Uttar Pradesh Vs Hari Ram***, the learned judges after discussing a voluntary surrender, peaceful dispossession and forceful dispossession observed as follows:-

> *"37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to*

decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall.

39. The above mentioned directives make it clear that sub-section (3) takes m only de jure possession and not de facto possession, therefore, if the landowner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10(5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.

Thereafter, the learned Judges went on to observe that where the State pleads a voluntary surrender they have to establish the said surrender and failure to establish the above the land owner could avail the benefits of the Repeal Act.

14. The very same view has been taken in a subsequent judgement of the Hon'ble Supreme Court which has been reported in ***(2014) 12 SCC 523 - Gajanan Kamlya Patil Vs. Additional Collector and Competent Authority (ULC) and others.*** Similar is the situation in the instant case.

15. Therefore, in the light of the above judgements and discussions set out supra it is clear that the entire proceedings have been initiated against a dead person and further possession of the subject property has not been taken by the respondents. Therefore, the proceedings initiated under the Ceiling Act automatically stands abated.

16. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the respondents shall carry out the necessary changes in the revenue records and issue patta in the name of the petitioner within a period of 2 months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

17.12.2024

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

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