

G.Murugesan Vs. Commissioner of Urban Land Ceiling and Urban Land Tax

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Court : Chennai

Decided On : Jul-19-2013

Judge : T.RAJA

Appellant : G.Murugesan

Respondent : Commissioner of Urban Land Ceiling and Urban Land Tax

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

19. 07.2013 CORAM THE HONOURABLE MR. JUSTICE T.RAJA W.P.No.865 of 2012 1.G.Murugesan S/o.Gopal Naicker 2.Mrs.M.Balliammal W/o.G.Murugesan 3.Mr.M.Panneerselvam S/o.G.Murugesan 4.Mrs.P.Latha Lakshmi W/o.M.Panneerselvam 5.Mr.M.Srinivasan S/o. G.Murugesan 6.Mrs.M.Shanthi W/o. V.Kamalakaran ... Petitioners Vs. 1.The Commissioner, Urban Land Ceiling and Urban Land Tax, Chepauk, Chennai 5. 2.The Assistant Commissioner, Urban Land Ceiling and Urban Land Tax, No.5, Sannathi Street, Ambattur, Poonamalle, Chennai 56. ... Respondents PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari as stated therein. For Petitioners : Mr.V.Subbarayan For Respondents : Mr.P.Vijayakumar, AGP

ORDER

The petitioner seeks for issuance of a writ of certiorari to quash the order passed by the respondents in proceedings Na.Ka.No.3515/94 A2 passed under Sections

7(1), 7(2), 9(1), 9(4) and 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978 (in short ".Act".) dated 08.11.1991, 15.09.1995 and 17.03.1997, by calling for the records connected thereto.

2. Learned counsel appearing for the petitioner submitted that one Gopal Naicker had two wives --- Tmt.Seeyathammal and Tmt.Dhanabakayammal --- and through the first wife, the first petitioner and one Valliammal were born and through the second wife, four male child ---- Ponnan, Munuswamy, Elumalai and Pachappan --- and one female child / Chinnammal, were born. The said Gopal Naicker, in the year 1929, purchased a property comprised in Survey No.179/part, measuring to an extent of 39 cents, from one Dhasammal, w/o.Ayyal Reddy. The said Gopal Naicker also again inherited another property in Survey No.222/2, measuring to an extent of 36 cents. Thereafter, in the year 1933, he executed a settlement deed settling the above said properties in favour of his wife/Tmt.Seeyathammal. The said Seeyathammal, in the year 1962, bequeathed the above said properties in favour of her daughter-in-law (Balliammal) / second petitioner herein, by way of a registered settlement deed dated 07.03.1962. Since the possession of the land in question continued with the petitioners, one Valliammal, who is the daughter of the first wife of Gopal Naicker, filed a civil suit in O.S.No.75 of 2004 and thereby got a decree in her favour. Similarly, one Mrs.Balliammal, who is the wife of the first petitioner, filed a civil suit in O.S.No.352 of 2003 against the said Valliammal and one another suit was also filed in O.S.No.205 of 2002 by the first petitioner. All these suits are pending on the file of the District Munsiff Court, Ambattur, seeking equal shares in the above said properties. During the pendency of the civil suits, in the year 2006, 9 = cents out 39 cents in S.No.179/2 have been settled in favour of one Mr.Yogeshwar, son of M.Panneerselvam, who is the third petitioner herein, and 14 = cents have been settled in favour of the petitioners 5 and 6 --- M.Srinivasan and K.Santhi --- as agricultural lands and the remaining 5 cents have been settled in favour of one Yogeshwar, son of third petitioner herein. It is also submitted that the Revenue Authorities also had granted patta in No.5967/T.K.8A/657/1407 in favour of the second petitioner. After the above settlement, when third petitioner approached the Revenue Authorities for grant of patta, it was informed that the above lands are covered with the land ceilings proceedings. Immediately thereafter, the second petitioner applied to the second

respondent requesting for issuance of a copy of the proceeding if any on the above said lands. Thereafter, the second respondent gave a certified copy of the proceedings issued under Sections 9(1) and 9(4) of the Act 24 of 78 on 08.04.2008. Subsequently, the second respondent also issued a letter dated 17.04.2008 calling upon the petitioner to submit the particulars for enquiry on 06.05.2008 and 08.05.2008 and in response to the same, the petitioners also appeared for the enquiry on the due date by producing the documents showing for ownership of the above said lands. But, unfortunately, the respondents, even after receiving the documents from the petitioners, did not pass any order till date. In view of the above notice dated 17.04.2008 calling upon the petitioners to appear for an enquiry, when no further action was taken, the petitioners again approached the second respondent for passing final order. But, the second respondent informed the petitioner that the enquiry report along with the documents were sent to the first respondent for further action. Till date, the matter is pending on the file of the first respondent without any further action.

3. Further, he contended that the order dated 15.09.1995 of the second respondent or order dated 30.09.1996 passed under Sections 11(3) and 11(5) of the Act or order passed under Sections 7(1), 7(2), 9(1) and 9(4) had been admittedly attempted to be served only on the dead person, namely, Seeyathammal, as she died on 26.12.1988, except the notice under Section 7(2), therefore, it is contended that the service of notices of the above are not valid in law since the same was abated, hence, in the eye of law, no proceeding is maintainable. Adding further, it is contended that although the records show that the land in question bearing the name of Gopal Naicker between fasli years 1387 and 1402, the question of effecting the notice on the dead person-Seeyathammal clearly shows that the respondents have not followed the procedures contemplated under Section 7(5) nor the condition mentioned in Section 9(2) of the Act.

4. Finally, he contended that, as per the Tamil Nadu Land (Ceiling and Regulation) Repeal Act, 1999, Act 20 of 1999 (in short 'Repeal Act'), if no physical possession was taken over till 16.06.1999 by the authority from the petitioner or the land owners, the proceedings initiated shall stand abated and therefore, on that basis,

he sought for setting aside the impugned orders passed by the respondents.

5. Per contra, learned counsel appearing for the respondents submitted that although the lands in question covered in Survey Nos.179/part and 222/2 were sought to be determined by the provision of the Act, the petitioners have not even informed about the excess of land, therefore, a notice under Section 7(2) of the Act was issued in the name of Seeyathammal on 17.11.1988, on the date when she was alive. Subsequently, various notices were sent as mandated under the Act, but, there was no reply to those notices. Further, answering the contention of the learned counsel for the petitioners that the land in question is agricultural land and therefore, the same cannot be acquired saying that it is an excess land, learned counsel for the respondents submitted that the land in question is urban in nature and therefore, an action has to be taken for acquisition of the excess land under the provisions of the Act and accordingly, the Deputy Tahsildar submitted his report dated 30.10.1991. He further contended that, pursuant to the report of the Deputy Tahsildar, the possession of the excess vacant land was handed over to the Revenue Authorities as early as on 15.06.1999 and to that effect, necessary changes were also made in the revenue records and therefore, he contended, the transactions made by the petitioners are null and void as per Section 6 of the Act.

6. Heard both sides.

7. It is no doubt true that the lands in question comprised in Survey No.179/part, measuring to an extent of 39 cents and Survey No.222/2, measuring to an extent of 36 cents, originally belonged to Gopal Naicker. It is also an admitted fact that the said Gopal Naicker executed a settlement deed settling the above said properties in favour of his wife Seeyathammal in the year 1933, and again, the said Seeyathammal also bequeathed the above said properties in favour of the second petitioner herein/Balliammal, who is none other than the daughter-in-law of the said Seeyathammal, by way of registered settlement deed dated 07.03.1962. Whiles, a notice under Section 7(2) of the Act was issued on 17.11.1988 in the name of Seeyathammal, wife of Gopal Naicker. Therefore, now the question that arises is that whether the subsequent proceedings initiated by the competent authority in respect of the above said lands by issuing notices under Sections 9(1),

9(4), followed by 9(5) and 10(1) were valid or not. As rightly shown by the learned counsel for the petitioner, the adangal receipts filed in the typed set of papers show the name of the Gopal Naicker, therefore, when the records show that the said Gopal Naicker is the owner of the land in question on the date of issuance of notice dated 17.11.1988, the respondents, before invoking the provisions of the Act, by issuing notice under Section 7(2), should have taken extra care whether the said Seeyathammal was the rightful person for issuing notice under Section 7(2) of the Act.

8. That apart, the competent authority/the second respondent, before filing final statement as contemplated under Section 10 of the Act, should have complied with the procedure contemplated under Section 7(5) of the Act and also the procedure followed under Section 9(2) of the Act, which are extracted hereunder: ".7(5) ;- If any person who is liable to file a statement under this Section fails to file the statement within the period within which it has to be filed, the competent authority, may obtain necessary information in such manner as it thinks fit. 9(2) ;- Every statement prepared under Sub-Section (1) shall contain the following particulars, namely -- i. the name and address of the person; ii. the particulars of all vacant lands and of any urban or other land on which there is a building, whether or not with a dwelling unit therein, in any urban agglomeration held by such person; iii. the particulars of the vacant lands which such person desires to retain within the ceiling limit and the particulars of the vacant lands which such person is allowed to retain within the ceiling limit; iv. the particulars of the right, title or interest of the person in the vacant lands; and v. such other particulars as may be prescribed.".

9. As stated above, the respondents have not shown from the records or from the counter that they have followed the procedure contemplated under Sections 7(5) or 9(2) of the Act, therefore, it is not known how they could finalise the final statement as contemplated in Section 10 of the Act, which, ultimately, states that before finalising the final statement, the Competent Authority should ascertain the exact extent of the land possessed by the owner or the person interested. Admittedly, in the present case, even the draft statement as contemplated in Section 9(4) of the Act has not been properly served on the land owner or the

person interested, calling upon the person concerned to submit any objection as contemplated under Section 9(5) of the Act. Therefore, when none of the provisions as contemplated under the Act has been followed by the respondents, in view of the fact that the physical possession of the land in question is still continuing with the petitioners and admittedly, as no notice under Section 11(5) of the Act has been issued to the petitioners till date, the benefit of Repeal Act as provided under Section 4 will enure to the petitioners.

10. Further, it is also important to mention that when the petitioners have come to this Court by making serious allegations against non-compliance of Sections 9(1), 9(4), 9(5), 11(3) and 11(5) of the Act, unfortunately, the respondents, in their counter affidavit, which is not paginated and presented in jumbled form, have not met any one of the allegations as stated above, but, sadly, it is stated in the counter affidavit that a notice under Section 12(7) was issued to the Urban Land Owner in R.C.No.1136/2000, dated 31.07.2000 and orders under Section 12(6) of the Act was issued on 08.12.2008. Moreover, they have not even filed any document along with counter affidavit to meet the serious allegations levelled in the affidavit filed by the petitioner. The relevant portion of paragraph 9 of the counter affidavit is extracted hereunder:

9. The notice under Section 12(7) was issued to the Urban Land Owner in R.C.No.1136/2000, dated 31.07.2000 and orders under Section 12(6) of the Act was issued on 08.12.2008 and an amount payable for the excess vacant land was claimed and kept in Revenue Deposit since the urban land owner refused to receive the same.". The above stand of the respondents that a notice under Section 12(7) was issued to the Urban Land Owner on 31.07.2000 and order under Section 12(6) of the Act was issued on 08.12.2008 clearly show that the respondents have not taken physical possession of the land till 2008 and by that time, the Repeal Act has come into force on 16.06.1999. Section 4 of the Repeal Act states that all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act before any Court, tribunal or any authority, shall abate. Therefore, the benefit given under the Repeal Act would favour the petitioners. Again, no document whatsoever has been produced before this Court to prove that a notice

under Section 11(5) has been issued to the petitioners.

11. Therefore, for the reasons stated above, the impugned proceedings of the respondents are set aside and the writ petition stands allowed. No Costs. M.P.No.1 of 2012 is closed. rkm To 1.The Commissioner, Urban Land Ceiling and Urban Land Tax, Chepauk, Chennai 5. 2.The Assistant Commissioner, Urban Land Ceiling and Urban Land Tax, No.5, Sannathi Street, Ambatture, Poonamalle, Chennai 56

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