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**V.Sankaran and ors. Vs. State of Tamil Nadu and ors.**

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**Court** : Chennai

**Decided On :** Jun-07-2011

**Judge** : K.Chandru, J.

**Acts** : Tamil Nadu Act; Constitution of India - Article 300A

**Appeal No.** : W.P.NO.12161 of 2003

**Appellant** : V.Sankaran and ors.

**Respondent** : State of Tamil Nadu and ors.

**Advocate for Def.** : Mr.M.Dhandapani, Adv.

**Advocate for Pet/Ap.** : Mr.T.Viswanatha Rao; Mr.K.P.Santhosh, Advs.

**Judgement** :

1. This writ petition came to be posted before this Court on being specially ordered by the Hon ble Chief Justice vide order dated 27.07.2010.

2. The three petitioners have filed the present writ petition seeking to challenge the proceedings dated 27.02.1998 passed by the second respondent Assistant Commissioner (Urban Land Ceiling), Tambaram and after setting aside the same seeks for a direction to the third respondent Tahsildar, Tambaram, to grant necessary patta in respect of the petitioner s land comprised in S.No.382/5 to the extent of 0.38 acres in Tambaram Village in favour of the petitioners.

3. The writ petition was admitted on 22.04.2003 and an interim stay was granted. Subsequently, when the matter came up on 29.08.2003, the petitioners asserted before this Court that they are in possession of the property, though the impugned order has been passed as early as 27.02.1998. Hence, the interim stay already granted was made absolute on 29.08.2003.

4. On notice from this Court, the first respondent State has filed a counter affidavit dated 18.05.2006.

5. It is the case of the petitioners that first and second petitioners are brothers and the third petitioner is the widow of another deceased brother. They are the sole legal heirs of their father V.Vaidyalingam Iyer, who died on 07.12.1992. Their mother Gomathiammal also died on 28.04.1997. The land in question measuring to an extent of 0.38 acres in S.No.382/5 in Tambaram Village originally belonged to one Narayanaswamy Reddiar. The petitioners father purchased the land from the erstwhile land owner and his wife by a registered sale deed dated 22.11.1966. Ever since the date of purchase, till the date of his death on 07.11.1972, the petitioners father was in possession and enjoyment of the said property. After the death of their father, they have also partitioned the properties under a registered deed of partition dated 18.01.1973. The three sons equally shared the vacant land having 1/3rd share therein, viz., 12-2/3 cents of land to each of them. When they approached the concerned Village Administrative Office for transfer of patta for the said land, they were informed that the land was dealt with by the second respondent namely Assistant Commissioner (Urban Land Ceiling). It was also found that since the vendor of the property Narayanaswamy Reddiar did not file any statement under Section 7(1) of the Act, notice under Section 7(2) was served by Affixture to a pole erected in the land. As no response or objections were received from him, a further notice under Section 9(1) r/w statement under Section 9(4) of the Act was served on their vendor. They were further informed that on 17.02.1998, an inspection was conducted and the lands were found to be house sites. An order under Section 9(5) of the Act was passed taking over 1050 Sq.mts of land leaving the balance 500 sq.mtrs to the benefit of the erstwhile land owner. A notice under Section 10(1) was given separately. Thereafter, orders were passed under Section 11(5). The petitioners on coming to know of these

developments, made an application for getting certified copies of those proceedings and have come forward to challenge the same.

6. It was contended by the petitioners that the land was purchased as early as 22.11.1966 in favour of the petitioners father. No notice was issued to the real owner of the property. It was claimed that notice under Section 9(1) and 9(2) did not satisfy the mandatory requirements and the statutory procedure to pass an order under Sections 9(3) 9(4) of the Act were not followed. It was further contended that the final statement under Section 10 of the Act was not served on the real owners. Hence, the authority could not have taken possession of the land.

7. Contradicting the stand taken by the petitioners, in the counter affidavit, it was stated that due procedure was followed by the respondents. It was also claimed that final notice under Section 10(1) of the Act was issued by the Assistant Commissioner (Urban Land Tax) on 05.05.1998 and served by Affixture on 09.08.1998. A final notice under Section 11(5) of the Act was issued on 24.02.1999 and possession of excess vacant land was taken over on 23.03.1999 and handed over to the Revenue Department. It was further stated that all the notices and orders were issued in the name of the original land owner Narayanaswamy. Since the petitioners have not effected changes in the revenue records after purchase, no notices were issued to them. Neither the original land owner nor the subsequent purchasers had informed the details of transfer to the competent authority, notices and orders were issued in the name of Narayanaswamy. Since the land already taken over was vested with the Government, the petitioners cannot claim any relief under the repealing T.N Act 20 of 1999.

8. In view of the rival contentions made by the parties on either side, this Court directed the original records to be produced by the respondents.

9. It is seen from the original file that since the original land owner was not residing in the village and the address was not known, notice under Section 7(2) was served by Affixture by inserting a pole in the land. But it is seen that when inspection was made on 17.02.1998, the competent authority found that the lands were sub-divided into house sites with facility of a passage. Even then, no attempt

was made by the respondents to find out the owner of the land. It was recorded in the original file that the land owner was not in the village and therefore, it was served by Affixture. It is rather unfortunate that when a valuable land of the owner is taken away, no attempt was made to serve either the original owner or the subsequent purchasers, who have admittedly purchased the land before the Act had come into force. Continuously, it was recorded in the file that the real owner Narayanaswamy did not appear for the enquiry. It is understandable that the original owner having sold the land as early as in the year 1966 would not have bothered to make any response even if he was served with the notice. No doubt the respondents are entitled to proceed on the basis of the entry in the Revenue Records. But it is unconceivable that even after inspection, when it was found that the land had been divided into plots by appropriate lay outs including pathways provided, the respondents should have made further enquiries and served the subsequent owners. It is not as if the subsequent owners had purchased the land after the coverage by the Act. No attempt was made by the respondents to find out the address of the subsequent purchasers except by stating that he was not in the Tambaram Village.

10. In this context, in respect of want of notice on the remainderman by the Collector concerned under the Tamil Nadu Act 31 of 1978 came up for consideration by the Supreme Court in S.Palani Velayutham and others v. District Collector, Tirunelvei, Tamilnadu and others reported in (2009) 10 SCC 664. In paragraphs 8 to 11 it was observed as follows:-

8. There is no obligation on the part of the Collector to hold an enquiry to find out whether there are any other persons interested in the land or whether there are any vested remaindermen, in addition to those whose names are entered as the owners/holders/occupiers of the acquired land. Nor does the Collector have any obligation to issue notices to persons whose names are not entered in the revenue records. This does not mean that the persons whose names are not entered in the revenue records do not have any right in the acquired land or that they lose their claim to compensation. Their interests and rights in regard to compensation are protected by the provision relating to apportionment of compensation and provision for referring the disputes to a civil court for apportionment of

compensation.

9. Persons are believed to be interested in the acquired land, if their names are disclosed to the Collector as persons having an interest in the acquired land (though their names are not entered in the revenue records) either in correspondence or otherwise and whom the Collector believes as having an interest in the acquired lands. The question whether a person is believed to be interested in the acquired land, would depend upon the subjective satisfaction of the Collector.

10. The Collector is not expected to hold mini enquiries to find out whether the persons whose names are disclosed, (other than those whose names are entered in the revenue records) are persons interested in the acquired land or not. Therefore no person has any right to assert that the Collector should recognise him to be a person interested in the acquired land, and issue notice to him, merely because someone informs the Collector that such person is also having an interest, if his name is not entered in the revenue records.

11. Of course, if the Collector is prima facie satisfied from his records that someone other than those whose names are entered in the revenue records, are also interested in the land, he may at his discretion, issue notice to them. If he is not satisfied, he need not issue notice to them. Who is to be believed to have an interest is a purely subjective administrative decision. Such persons have no right to claim that notice of acquisition should be issued to them. (Emphasis added)

11. Very recently in the matter of Land Acquisition Act (1894), the Supreme Court has laid down the law relating to service of notice and the presumption of proof of service vide judgment in The Special Deputy Collector, Land Acquisition, CMDA v. J.Sivaprakasam and others reported in (2011) 1 SCC 330. It is necessary to refer the following passage found in paragraph 31:

31. The acquiring authority need not prove actual notice of the proposal to acquire under Section 4(1) of the Act, to the person challenging the acquisition. As the purpose of publication of public notice provided in Section 4(1) of the Act is to give notice of the proposal of acquisition to the persons concerned, such notice can

also be by way of implied notice or constructive notice. For this purpose, we may refer to the difference between actual, implied and constructive notice:

1. When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice.

2. If from the facts it can be inferred that a party knew about the subject-matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfilment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition.

12. If this ratio is applied to the facts on hand, it will be clearly seen that no attempt was made to send a notice to the last known address of the original land owner. The present petitioners who are legal heirs of the purchaser had purchased the land in the year 1966 well before the coverage of the Urban Land Ceiling Act. No attempt was made by the respondents to serve either the erstwhile owner or the present owners. On inspection, it was found that the vacant land has been converted into house site plots and subdivided into various plots with well laid roads. The respondents ought to have taken steps to serve the actual owners. Though under the Central Act, no clear procedure regarding sending notice by registered post to the last known address is prescribed, in the present Urban Land

Ceiling Act, such a procedure is contemplated under the Rules. Therefore, the original file merely recording that it was served by Affixture by pasting a notice on a pole erected in the vacant land is unbelievable and not contemplated under law. If such self-serving procedure is adopted, then the valuable land of the land owners can be deprived without due process of law and that it will clearly infringe Article 300A of the Constitution.

13. In view of the above, the writ petitioners are entitled to succeed. Accordingly, the writ petition stands allowed and the impugned proceedings will stand set aside. Since the possession of the land continues to be vested with the petitioners, the third respondent is hereby directed to make appropriate mutation in the revenue records in favour of the petitioners. However, there will be no order as to costs.

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