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Hemala, and ors. Vs. the Competent Authority, Urban Land Ceiling, Tambaram.

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Court : Chennai

Decided On : Jul-23-2010

Judge : K.Chandru, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.No.8798 of 2004 and C.M.P.No.14262 of 2003

Appellant : Hemala, and ors.

Respondent : The Competent Authority, Urban Land Ceiling, Tambaram.

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

Advocate for Pet/Ap. : Mr.A.Sivaji, Adv.

Judgement :

1. Heard both sides.

2. This writ petition arises out of a Special Revision (SRP.No.19 of 2001) filed by the petitioners before the Special Appellate Tribunal under Section 15 of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (for short Act). The petitioners challenged the Order passed by the respondent dated 24.06.1997 in Ref.No.Na.Ka.SR.177/97/B in that Special Revision Petition.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as CRP No.1908 of 2003. However, a learned Judge of this court opined that no Civil Revision Petition will lie as the officers whose orders under challenge were not a Court but only statutory authorities. Therefore, the CRP was converted into a writ petition and notice was ordered.

4. Before the Tribunal, a counter affidavit dated 20.09.2001 was filed by the respondent.

5. The contentions raised by the counsel for the petitioners were as follows:

a) Impugned order passed against a dead person. Total number of the persons in the family was taken note of in declaring the surplus land. b) No notice was given to the original owners under Sections 7(2), 9(4) and 11(b) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. c) The notice claimed to have been sent is not in accordance with law and more particularly prescribed under Rule 8(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978.

6. It is the case of the petitioners that they are the legal heirs of K.B.Ramachandran. He died on 29.08.1987. However, the respondent proceeded under Section 7(2) of the Act dated 11.04.1997 as if the original owner was alive. It is claimed that the lands in question were agricultural lands and Patta Pass book under Patta No.69 was given to the land owner. The respondent not only proceeded against the petitioners contrary to the provisions of the Act but also proceeded against the dead person in terms of the proceedings initiated in the year 1997. Though the land owner had passed away 10 years before, no attempt was made to serve his legal heirs. The mode of service was also not effected as per law. In the impugned order dated 24.06.1997, it was stated that Section 7(2) notice was served by Affixture by fixing a stick and pasting the notice in the vacant land. It was claimed that the land owners was not living in the village and their address was not known to them. Similarly, the notice under Section 12(7) of the Act was also sent in the name of the dead person. It is seen from the records that the wife of the original owner Tmt.Hemala were living in 29, Pettai Street, Anaikaputhur, Chennai -78. Therefore, it cannot be said that the respondent is not aware of the address of the legal heirs of the original owner.

7. In the counter affidavit filed by the respondent before the Tribunal, in respect of notice under Section 7(2) of the Act, in page 2 of the affidavit, it was averred as follows:-

"...The competent Authority, Tambaram issued notice under section 7(2) in S.R.177/97 dated 11.04.1997 requesting the urban land owner to file the return u/s 7(1) of the Act. It was served by the affixture on the land since the urban land owners not residing in Anakaputhur. The Deputy Tahsildar of the Office of the Competent Authority, Tambaram who inspected the land had reported that the land was a vacant urban land surrounded by Residential houses."

8. In respect of Section 9(5) of the Act, in page 3, it was averred as follows:-

"...The orders u/s 9(5) have been served on Thiru.R.Gothandan on 15.3.98, relative of the Urban Owner Thiru.K.B.Ramachandran."

9. Nowhere, it is stated as to how the said Gothandan was relative of the late Ramachandran. With reference to the classification of the land, the contention based upon Patta pass book was sought to be rejected in the light of the following averment made in page 5: "The patta pass book specify the holding of a person in Revenue Account and it does not specify the nature of the land. As such, the patta pass book is not relevant to specify the nature of the land and that adangal which shows the entries of cultivation alone is the basis for determining whether the land is agricultural or urban."

10. The original land owner was not alive and the petitioners are the persons interested and entitled to have share in the property. The share of each one person ought to have been determined in terms of the Act. Even that was not done. The classification of the land as per the village 'adangal' describes it as vacant land but that does not make it as non- agricultural land.

11. In this context, it is necessary to refer to the term urban defined under Section 3(o) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, which reads as follows:- "3(o) "urban land" means-

(i) Any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.- For the purpose of this clause and clause (p),-

(A)"agriculture" includes horticulture, but does not include-

(i) raising of grass,

(ii)dairy farming,

(iii)poultry farming,

(iv)breeding of livestock, and

(v)such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the commencement of this Act as for the purpose of agriculture."

12. In this context, he refers to the judgment of this Court in S.Sarangapani Iyengar v. The Assistant Commissioner, Urban Land Tax, Alandur and Saidapet reported in 1988-1-L.W 152 wherein in considering a similar definition under the Tamil Nadu Urban Land Tax Act, 1966, this Court in paragraphs 4 and 5 observed as follows:-

"4. At the threshold, it is difficult to uphold the finding given by the Tribunal that the lands in question are not agricultural lands. The Tribunal seems to have taken a view that merely because the lands were kept vacant during the Fasli years 1381 85, they ceased to be agricultural lands. For such a proposition, there does not seem to be any support in any statutory provision. The lands are registered as

agricultural lands in the revenue records. There are adangal records which undoubtedly show that the lands were uncultivated. They also show that they are dry lands. Whether it is agricultural land or not will depend on the nature of the lands and the purpose to which the lands are normally put. Merely because an agricultural land is not cultivated for some time, the land does not cease to be agricultural land especially when it is not put to any other use. It is difficult to appreciate the reasoning of the Tribunal that since the petitioner has merely stated that the lands in question are dry lands and that they have been reserved for formation of horticultural garden, the lands could be said to have ceased to be agricultural lands.

5.When we deal with agricultural land, it must be taken into account that the presumption would be that it is going to be used for the purpose of agriculture. An agricultural land is not normally used for a building site and in any case it is not capable of being used as a building site in the normal course unless of course the owner sets a part of it apart by way of a lay out or intends to construct a building in some part of the property. Normally agricultural lands must be construed as agricultural lands and since agricultural lands are not normally used for building sites, it must be assumed that they are not capable of being used as building sites unless steps have been taken to have it used as building site. Agricultural lands will, therefore, stand excluded from the definition of 'urban land' unless they are intended to be converted for building purposes or house sites. In this view of the matter, the orders of assessment in respect of the agricultural lands in question will have to be set aside."

13. Following the said judgment, the same views were applied in respect of definition found in Section 3(o) of the present Act in a subsequent Judgment in A.Kasi and another v. Special Commissioner and Commissioner of Land Reforms and another reported in AIR 1999 Mad 23. After referring to S.Sarangapani Iyengar's case (cited supra) in paragraph 5 it was observed as follows:- "5. In view of the above decision, merely because the lands were kept uncultivated for some time cannot be characterised the said lands as Urban Land. The authorities below have not given any other reason to come to the conclusion that the lands are urban lands. The only reason given is that the petitioners have not cultivated the

lands during the relevant period. Such a reasoning cannot be sustained."

14. Since no counter affidavit has been filed and no records have been produced, the averments made by the petitioners will have to be accepted as truth. Hence, the writ petition stands allowed. No costs. The impugned proceedings will stand set aside. Connected M.P. stands closed.

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