G.Selvaraj Vs. Spl. Commissioner and Commissioner for Urban Land Ceiling

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Court : Chennai

Decided On : Apr-15-2013

Judge : T.RAJA

Appellant : G.Selvaraj

Respondent : Spl. Commissioner and Commissioner for Urban Land Ceiling

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 15 04.2013 CORAM THE HONOURABLE MR. JUSTICE T.RAJA W.P.No.10311 of 2005 and W.P.M.P.No.11211 of 2005 and W.V.M.P.No.79 of 2010 G.Selvaraj .. Petitioner Vs.

1. The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax, Chepauk, Chenna

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2. The Assistant Commissioner for Urban Land Tax-cum-Competent Authority, Alandur, No.169, Sannathi Street, Chenna

088. .. Respondents Writ petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorari to call for the entire records in pursuance of the second respondent impugned order in Na.Ka.No.768/98-B, dated 14.07.1998 and quash the same. For Petitioner ... Mr.A.Ramu For Respondents ... Mr.S.Gomathinayagam, Additional Advocate

General, Assisted by Mr.S.V.Durai Solaimalai, Additional Govt. Pleader. ORDER The present petition has been filed by Selvaraj in the year 2005 for issuance of Writ of Certiorari to call for the records of the second respondent, Assistant Commissioner for Urban Land Tax -Cum- Competent Authority, Alandur, Chennai relating to the order passed in Na.Ka.No.768/98-B, dated 14.07.1998 and quash the same. 2.It is the case of the petitioner that he acquired the agricultural land bearing Survey No.370/1 to an extent of 0.91 acres under the settlement deed dated 22.12.1986 in Document No.3907 of 1986 at Gerugambakkam Village, Sriperambudur Taluk, Kancheepuram District from one Ganesa Mudaliar, son of Murugappa Mudaliar, who is the father of the petitioner. Since the date of settlement, the petitioner has been in exclusive possession and enjoyment of the property. In view of the same, Patta was also issued in favour of the petitioner vide Patta No.300. While so, the second respondent issued impugned order dated 14.07.1998, in which the excess vacant land has been determined as 3150 sq.mts. leaving only 500 sq.mts. of land in favour of the petitioner. Challenging the same, the petitioner has come to this Court by filing this Writ Petition. 3.The learned counsel for the petitioner has submitted that it is an admitted fact the the land in question is a family property of the petitioner. After registering the settlement deed dated 22.12.1986 in Document No.3907 of 1986, he has been in physical possession and enjoyment of the property. Unfortunately, the second respondent, without any notice, passed the impugned order in Na.Ka.No.768/98B, dated 14.7.1988 in the name of the petitioner by not following any subsequent procedure for determining the excess land. 4.Further, it was pleaded that only after issuance of the impugned order, the petitioner came to know all the following facts namely, the notice dated 27.2.1998 issued under Section 7(2) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter referred to as "the Act") by way of affixture on 11.3.1998; notices under Sections 9(4) and 9(1) of the Act were issued on 7.4.1998, which were served on 20.06.1998; the final statement under Section 10(1) of the Act was served on 3.9.1998; thereafter, notifications under Sections 11(1) and 11(3) of the Act were issued on 5.10.1998 and 15.12.1998, which was also published in the Government Gazette on 17.2.1999; final notice dated 12.03.1999 under Section 11(5) of the Act was issued directing the land owner to surrender or deliver the possession of the excess vacant land

and finally on 6.5.1999, the symbolic possession was taken over by the second respondent. 5.It was further pleaded by the learned counsel for the petitioner that when notice under Section 11(5) of the Act was not served on the petitioner, as he is the interested person from the date of settlement dated 22.12.1986, the petitioner need not surrender the physical possession of the vacant land as no provision of the Act has been followed till now. Hence, the symbolic possession taken over from the petitioner by the second respondent is against the Act. Moreover, under Section 9(4) of the Act, the second respondent, who is the competent authority shall prepare the draft statement and thereupon the same shall be served upon the person concerned together with a notice, stating that any objection to the draft statement shall be preferred within 30 days of the service thereof, unfortunately, the second respondent has not served any notice on the petitioner under Section 9(4) of the Act, therefore, the second respondent has not followed the provisions of the Act while issuing final statement under Section 10(1) of the Act. Hence, the very determination of excess vacant land as 3150 sq.mts, leaving only 500 sq.mts of land to the petitioner as a urban land by the impugned order dated 14.7.1998, passed by the second respondent is liable to be interfered with. 6.Again it was strongly pleaded before this Court that when the second respondent also in their counter statement fairly admitted that final statement under Section 10(1) of the Act was served by way of affixture on 3.9.1998 in the presence of Revenue Inspector with witnesses, the contention of the petitioner that the respondents have violated the mandatory requirements contemplated under Section 9(1), 9(4) and 10(1) of the Act has to be accepted. With the result, the notification issued under Section 11(1) of the Act on 5.10.1998, will not carry any seal of approval of the Act. While so, the subsequent publication published in the Tamil Nadu Government Gazette No.43 in Part VI Section 1, dated 11.11.1998 and notification under Section 11(3) of the Act vesting the land with Government issued on 15.12.1998 by the second respondent also will have no validity in the eye of law, therefore, the final notice issued under Section 11(5) of the Act by the second respondent on 12.03.1999 thereby directing the land owner to surrender or deliver the possession of the excess vacant land, followed by the symbolic possession taken by the respondents on 06.05.1999 cannot have any legality. 7.Finally, it was contended that when the petitioner has been in physical possession and enjoyment of the property, the benefit of the Repeal Act which came into force on 16.6.1999 will go in favour of the landlord and therefore, the petitioner who is in physical possession of the land should be allowed to use continuously, by setting aside the the impugned order dated 14.7.1998 passed by the second respondent determining the excess land namely 3150 sq.mts. from the lands of the petitioner. 8.A detailed counter affidavit has been filed by the respondents refuting the averments made by the petitioner. 9.The learned Additional Advocate General appearing for the respondents has submitted that the provisions of law under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 are completely different from the mandatory provisions contemplated under the Tamil Nadu Land Acquisition Act. For which, the Tamil Nadu Land Acquisition Act deals with the provision of the acquisition procedure, the State Government is liable to follow the mandatory provision in letter and spirit by issuing notices, determining compensation and subsequently paying the compensation is in violation of any provision under this Act will be fatal. 10.Whereas, in the present case, the non issuance of notices under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 by registered post to the land owner should not be viewed seriously, the reason being, the Act was introduced only for the purpose of taking out the excess land from the landlords. Therefore, he pleaded, the issuance of notice by way of affixture is more than sufficient for the State Government to take away the excess land. Hence, the possession of the excess vacant land of the petitioner taken and handed over to the Revenue authorities on 6.5.1999 prior to the commencement of the Repeal Act was valid in law. Hence, the Writ petition is liable to be dismissed as the possession of the excess vacant land namely 3150 sq.mts. has been rightly taken from the petitioner. 11.Heard Mr.A.Ramu, learned counsel appearing for the petitioner and Mr.S.Gomathinayagam, learned Additional Advocate General appearing for the respondents. 12.The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 clearly contemplates that the second respondent, competent authority is bound to issue notice to the land owner under Section 7(2) of the Act, in regard to the vacant land in excess of the ceiling limit. In the present case, the second respondent rightly issued notice under Section 7(2) of the Act, but unfortunately he has not issued notice under Section 7(1) of the Act for the reasons best known to him. Moreover, the mandatory provisions contemplated under Sections 9(4), 10(1), 11(3) and 11(5) of the Act have not been meticulously followed. In the counter affidavit filed in support of the impugned order, it is fairly admitted that after the notice was issued under Section 7(2) dated 27.2.1998 in the name of the petitioner, no other mandatory provisions contemplated under Sections 9(4), 10(1) and 11(3) have been followed, therefore, the impugned order dated 14.7.1998 passed by the second respondent determining the excess land, namely 3150 sq.mts. from the lands of the petitioner is wholly unacceptable. 13.Further, Section 16 of the Act envisaging the payment of compensation to the land owner also has not been till date followed by paying the compensation as envisaged by Section 16 of the Act. It is relevant to extract Section 16 as follows: "Mode of payment of amount: (1)The State Government shall, within a period of six months from the date of the order of competent authority determining the amount to be paid under Section 12, or, in a case where an appeal has been preferred against such order under Section 13 or where a revision has been preferred under Section 15, within a period of six months from the date of final order of the appellate or revisional authority, pay the amount referred to in Section 12 to the person or persons entitled thereto. (2)(a)It is amount payable is twenty-five thousand rupees or below, it shall be paid in cash forthwith. (b)If the amount payable exceeds twenty-five thousand rupees shall be paid in cash forthwith and the balance shall, during a period of fifteen years, be paid in cash in equal annual instalments carrying an interest at the rate of six per cent per annum with effect from the date on which the vacant land is deemed to have been acquired by the State Government under Sub-section (3) of Section 11." 14.In the present case, when the second respondent has determined 3150 sq.mts. as excess vacant land out of 3650 sq.mts. of land after allowing 500 sq.mts as his family entitlement, even now the respondents have not come forward to determine the amount of compensation payable to the petitioner for the land sought to be acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Although Section 16 of the Act contemplates that the State Government shall, within a period of six months from the date of the order of competent authority determine the amount to be paid under that Section, the respondents have not followed the same. As a matter of facts, when it was complained that no procedure whatsoever has been followed by the respondents, the respondents have not placed any record before this Court to show that the second respondent, who has passed the impugned order, has made at least a single attempt to determine the value of the land. Besides, when the respondents have not taken any steps to determine the quantum of compensation as per Sections 12 and 16 of the Act, this Court is not in a position to accept the the contentions placed before this Court by the learned Additional Advocate General appearing for the respondents to support the impugned order that the non-payment of the compensation till now, would not vitiate the impugned order, which took away the excess land namely, 3150 sq. mts. 15.Therefore, for the two reasons that (a) the second respondent has failed to issue notice on the petitioner, who is not only the owner of the property/land in question, but also keeping the physical possession and enjoyment of the same and also for the reason that (b) till date, the second respondent has not come forward to pay the compensation for the land assessed as excess land (as in other words it should have been done within six months from the date of final order determining excess land), this Court is not inclined to support the impugned order. 16.In this context, it is more pertinent to refer to the latest decision of the Apex Court in VINAYAK KASHINATH SHILKAR VS. DEPUTY COLLECTOR AND COMPETENT AUTHORITY AND OTHERS [2012 (5) MLJ 45.SC] wherein, the Apex Court has categorically held as follows: "where the possession of the vacant land has not been taken over by the State Government by any person duly authorised by the State Government in this behalf or by the Competent Authority, the proceedings under the Act would not survive. Mere vesting of the vacant land with the State Government by operation of law without actual possession is not sufficient for operation of Section 3(1)(a) of the Repeal Act." 17.One another decision of this Court in V.GURUNATHAN S/O VISWANATHA IYER REP. BY POWER OF ATTORNEY AGENT, G.ASOKAN S/O GOPALA KRISHNAN VS. THE ASSISTANT COMMISSIONER OF URBAN LAND TAX AND CEILING, TAMBARAM AREA, SANNADHI STREET, ADAMBAKKAM, CHENNAI AND ANOTHER [2007 (3) CTC 362.needs to be mentioned here. Paragraph 8 of the above said decision is extracted hereunder: "The learned Government Advocate appearing on behalf of the respondents could not produce any record to show that actual possession of the land in question had been taken and due compensation paid. From the records placed before this Court, it is seen that the lands is question had been taken and handed over to Firka Revenue Inspector, Alandur on 30.06.1993. According to the provisions of the Repeal Act 20 of 1999 and based on their interpretation, as found in a series of decisions of this Court, it is clear that mere vesting of the land in the Government is not sufficient. It should be shown that actual possession was taken over. Taking of actual possession of the land and the payment of compensation thereafter, are the crucial factors. If such taking over of possession and payment of compensation is not shown to have been done, all proceedings pending with regard to the lands in question, ought to be taken as abated on coming into the force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (20 of 1999). In such view of the matter, the Writ Petition stands allowed. No costs." 18.In the light of the above, if this Court considers the present case, the respondents have not satisfactorily proved before this Court the actual taking over of the physical possession of the land in question and payment of the compensation to the petitioner. In fact, it was admitted before this Court that till date, no compensation is paid to the petitioner. In a similar occasion, this Court in V.GURUNATHAN's case reported in 2007 (3) CTC 36.has held that if the Government failed to establish two crucial factors of taking of actual possession and payment of compensation, the Repeal Act 20 of 1999 would stand attracted. With a result, all the proceedings initiated under the Tamil Nadu Urban Land (Ceiling & Regulation) Act 1978 would stand abated. As this ratio clearly applies to this case on hand, the Writ Petition is allowed. The impugned order passed by the second respondent is set aside. There is no order as to cost. Connected W.P.M.P.No.11211 of 2005 and W.V.M.P.No.79 of 2010 are closed. cla To 1. The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax, Chepauk, Chenna

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2. The Assistant Commissioner for Urban Land Tax-cum-Competent Authority, Kundrathur, No.118, Kundrathur High Road, Porur Chenna

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