(2009) 08 MAD CK 0331

Madras High Court

Case No: Writ Petition No. 6456 of 2002

Sarojini		APPELLANT
	Vs	
The Special Commissioner and Commissioner of Land Reforms and The Assistant Commissioner Competent Authority (Urban Land Ceiling)		RESPONDENT

Date of Decision: Aug. 7, 2009

Acts Referred:

- Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 - Section 11(3), 11(5), 11(6), 33, 9(5)
- Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 4

Hon'ble Judges: P.K. Misra, J; D. Hariparanthaman, J

Bench: Division Bench

Advocate: V. Ramesh, for R.C. Paul Kanagaraj, for the Appellant; G. Desingu Special Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The writ petition is to quash the order dated 28.02.2001 of the Tamil Nadu Land Reforms Special Appellate Tribunal in T.R.P. No. 399 of 1999 confirming the order of the first respondent, the appellate authority in proceeding RC.J2/23003/93 dated 16.02.1995 confirming the notice issued u/s 11(5) of the Act by the second respondent, the competent authority under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978.

2. The facts leading to the filing of the writ petition are as follows:

The petitioner states that she is the owner of land in T.S. No. 15 of Pallipattu village measuring an extent of 1994 sq.meters. The entire property is fully surrounded by a compound wall with a shed constructed during later half of 1991 and a toilet in it. She is in absolute possession and enjoyment of the same, even today.

3. The petitioner states that proceedings were initiated under Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, shortly the Act and the second respondent acquired an extent of 994 sq.meters excess vacant land after allowing 1000 sq.meters towards family eligibility.

4. The petitioner preferred an appeal u/s 33, against the said acquisition u/s 9(5) of the Act, before the first respondent. The contention in the appeal was that the road portion measuring 345 sq.meters, which was taken over by the Corporation of Madras, should be excluded from the total extent of 994 sq.meters notified as excess. The said appeal was disposed on 12.12.1988, accepting the said contention.

5. The petitioner states that without complying the said directions of the appellate authority, the second respondent issued a notice u/s 11(5) of the Act to hand over possession. Hence she filed again an appeal u/s 33 to the first respondent, against the notice u/s 11(5) of the Act to hand over possession. Her contentions in the appeal were that she decided to go ahead with the project of growing mushroom on a commercial basis and so requested to exempt the land; while determining excess vacant land, the entitlement of one more adopted son also should be taken note of; deletion of portion set apart for road. The appeal was dismissed by the first respondent in proceeding RC.J2/23003/93 dated 16.02.1995.

6. The petitioner challenged the aforesaid order dated 16.02.1995 in WP. No. 3525/1995 before this Court. She also obtained interim order that was in force till the disposal of writ petition. The same was transferred to Tamil Nadu Land Reforms Special Appellate Tribunal and re-numbered as T.R.P. No. 399 of 1999. The Tribunal dismissed the T.R.P. No. 399 of 1999 on 28.02.2001. The present Writ petition is against the said order of the Tribunal.

7. We heard the submissions made on either side. The learned Special Government Pleader has produced the entire records for our perusal and we have also perused the said records.

8. The learned Counsel for the petitioner strenuously contended that the Tribunal erred in holding that the take over of possession on paper by the Revenue authorities on 13.07.1995 was sufficient. In view of such a finding, the Tribunal came to an erroneous conclusion that Section 4 of the Repealing Act 1999 would not help the petitioner, according to the learned Counsel for the petitioner.

9. The learned Counsel for the petitioner argued that there should be actual take over of possession and the take over of possession in record is not the physical possession of the surplus lands. If the land owner is not a party to the Land Delivery

Receipt, the take over should be established by getting signature from independent witnesses, preparing Panchanama, etc. But the records reveal that it is only possession in papers.

10. The learned Counsel for the petitioner relied on the judgment of the Honourable Mrs.Justice Prabha Sridevan in W.P. No. 19845 of 2006 dated 31.07.2006, wherein in paragraph No. 13, the learned Judge held that mere recording of possession by the authorities will not amount to actually taking of possession. The learned Judge rejected the plea of taking of possession based on the similar Land Delivery Receipt produced in that case. In this context, the learned Judge recorded in paragraph No. 8 that the Land Delivery Receipt does not show in whose presence, the possession was taken. The learned Judge also relied on a paragraph in W.P. No. 35490 of 2004, which is as follows:

When the respondent does not say that the petitioner had surrendered possession on it''s own, then the respondent ought to have taken possession. u/s 11(6) of the Principal Act, whenever a urban land owner fails to surrender possession as demanded u/s 11(5) of the Act, then the competent authority may take possession of the lands and may, for that purpose, use such force as may be necessary. Therefore, from the above two aspects namely, the urban land owner was directed to surrender possession and since he is not shown to have surrendered possession and the power of the Government to use such force as may be necessary in taking possession, clearly indicate that physical possession of the land must be taken by the competent authority. There is nothing on record to show that "on what day possession was taken; was any representative of the writ petitioner present; the name of the person who took possession the person from whom possession was taken; are there any contemporary record to show that possession was in fact taken at such a time and on such a date when possession was handed over to the Revenue Inspector, Pallikaranai; are there any record to show such handing over to the Revenue Inspector, Pallikaranai and the name of the officer, who received possession of the lands...
In 2002 (2) L.W. 764 (C.V. Narasimhan v. The Government of Tamil Nadu etc., and 2 Ors.), while considering the impact of the Repealing Act, had held that where physical possession of such land continues to be with the owner, the statutory vesting u/s 11(3) of the Act is of no relevance at all.

11. The learned Counsel for the petitioner further cited the decision dated 25.09.2006 of the Honourable Mr. Justice F.M.Ibrahim Kalifulla in W.P. Nos. 33839 and 33911 of 2004, wherein the learned Judge followed his earlier decision dated 09.09.2004 in W.P. No. 6641 of 1997 and the same is extracted here-under:

11. In this context, it is worthwhile to refer to the decision of S. JAGADEESAN, J in the judgment reported in C.V. Narasimhan rep. by his Power Agent Smt. Jayalakshmi, No. 12, Bishop Garden, Raja Annamalaipuram, Chennai 28 v. 1. The Government of

Tamil Nadu, rep. by its Secretary, Revenue Department, Fort St. George, Chennai-9. 2. The Special Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5. 3. The Competent Authority, Urban Land Ceiling, Alandur 2002 2 L.W. 764, wherein the learned Judge has clearly stated that so long as the physical possession of the land continues to be with the owner, even the statutory vesting of the land will be of no consequence.

The learned Judge in paragraph No. 7 of the same judgment dated 25.09.2006 has held as follows:

7. To the same effect is the order of Justice R. Balasubramanian, dated 22.8.2006 passed in W.P. No. 17416 of 2004, where the learned Judge, reiterating the possession that the possession means taking physical possession, had held, "Therefore, the sine qua non to keep the property declared as surplus under the provisions of the Act is that physical possession of the said property ought to have taken by the competent authority despite coming into force of the Repealing Act.

12. The learned Counsel for the petitioner heavily relied on paragraph No. 10 of the judgment dated 19.10.2006 of the Honourable Mr. Justice K. Chandru in W.P. No. 29061 of 2003, which is as follows:

This Court in its judgment reported in Sosamma Thampy Vs. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and The Special Commissioner and Commissioner of Land Reforms, Government of Tamilnadu,
, has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC Act and noting in the file that symbolic possession is taken cannot be accepted as taking of physical possession. This Court is in complete agreement with the ratio laid down in the aforesaid decision which also squarely applies to the facts and circumstances of the case.

13. The learned Counsel for the petitioner strenuously contended that the Act contemplates that if the persons in possession failed to deliver possession within 30 days of receipt of notice u/s 11(5), the Competent Authority has to take possession u/s 11(6) of the Act. The learned Counsel has brought to our notice that the words "may for that purpose use such force as may be necessary" used in 11(6) indicates that to take actual possession, the Competent Authority is clothed with power u/s 11(6). In the absence of delivery of possession by land owner pursuant to notice u/s 11(5), the possession should have been taken through the manner suggested u/s 11(6). The symbolic possession is not a possession as contemplated under Sections 11(5) and 11(6) of the Act. The learned Counsel asserts that the petitioner is still in possession and pointed out the affidavit in support of the writ petition in this regard. The counsel points out that no counter affidavit is filed except relying on the symbolic possession on paper.

14. The learned Counsel for petitioner submitted that since the notice u/s 11(5) is the subject matter of appeal and later in TRP No. 399/99 and in this Writ petition, the

respondents could not invoke even Section 11(6) before the finality is reached to the proceeding challenging the notice u/s 11(5) of the Act.

15. The learned Special Government Pleader vehemently argued that symbolic possession is sufficient when the actual take over of possession is not contemplated under the Act. We are not in agreement with that submission in view of the categorical pronouncements of this Court referred to above.

16. Once the possession is not taken over by the Government as held by us, all the proceedings under the Act must be held to have abated u/s 4 of the Repealing act, in view of the categorical pronouncements of the constitutional Bench of the Honourable Apex Court in Smt. Angoori Devi v. State of Uttar Pradesh and Ors. reported in JT 2000 (Suppl.1) SC 295.

17. In these circumstances, we are inclined to set aside the order passed by the Tamil Nadu Land Reforms Special Appellate Tribunal. Accordingly, the order dated 28.02.2001 passed in T.R.P. No. 399 of 1999 by the Tamil Nadu Land Reforms Special Appellate Tribunal is quashed and all the proceedings under the Act must be held to have abated in view of Section 4 of the Repealing Act 20 of 1999. Accordingly, the writ petition is allowed. No costs.

P.K. Misra, J.
I have gone through the judgment prepared meticulously by my learned brother Judge and I agree with the views expressed. However, I would like to highlight one point which was raised at the fag end of the hearing.

2. At the time of conclusion of the arguments, learned Counsel for the State raised a technical objection that the Land Reforms Tribunal, whose order is being impugned in the present writ petitions, has not been impleaded as a party and, therefore, the writ petitions should be dismissed for non-joinder of necessary parties.

3. It is no doubt true that in Certiorari proceedings, the inferior Tribunal whose order is being impugned before this Court, is required to be made as a party. The basic principle in impleading the inferior Tribunal as a party is with a view to ensure production of records before the High Court. The inferior Tribunal, which is obviously discharging judicial function, is not impleaded as a party with a view to give any opportunity of hearing as it cannot be said that the Tribunal has got any interest in one way or the other. Since, in the present case, being called upon, the Counsel for the State has produced all the records including that of the Tribunal, non-impletion of the Tribunal as a formal party cannot be considered as a ground to dismiss the writ petition, particularly when no such objection was raised when the writ petition was filed and entertained or subsequently when the matter had remained pending in the High Court for a pretty long period. Since the objection of impleading of inferior Tribunal has been achieved and as a matter of fact learned Counsel for the State has been heard at length, non-impletion is fatal in the present case.