(2009) 08 MAD CK 0339

Madras High Court

Case No: Writ Petition No. 14106 of 2002 and W.P.M.P. No. 19028 of 2002

Chandralekha and Others	APPELLANT
Vs	
The State of Tamil Nadu	RESPONDENT

Date of Decision: Aug. 7, 2009

Acts Referred:

- Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 - Section 11(1), 11(3), 11(5), 11(6), 27
- 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 the Appellant; G. Desingu, Special Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.
The first petitioner and Late Mr. Pon Vedakkan purchased two plots of lands measuring 2400 Sq.ft and 4389 Sq.ft in Survey No. 92/2A1 of Neelangarai Village, Saidapet Taluk, by two sale deeds dated 07.11.1983 and 12.11.1983 from one P.K. Koshy. The petitioners 2 to 5 are the legal heirs of Late Mr. Pon Vedakkan.

2. The learned Counsel for the petitioners states that pursuant to the statement made u/s 27 of the Tamil Nadu Urban Land (Ceiling and Regulation Act) 1978 (hereinafter referred to as the Act) in Form XIII prescribed under Rule 19 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 (hereinafter referred to as the Rules) before the Registering Authority, the second respondent held an enquiry on 25.06.1984 as per his notice dated 13.06.1984. This was brought to our notice to show that the second respondent is aware of the purchase made by the petitioners in 1983.

3. The learned Counsel for the petitioners further states that they are in possession and enjoyment of the plots that were purchased. The first petitioner obtained telephone and electricity connection for the watchman quarters put up by her. She also raised a compound wall. The first petitioner further states that the plot of land was mortgaged with Indian Bank and educational loan was obtained for the purpose of her son''s education. As per the letter issued by the Indian Bank, which is enclosed at page No. 71 of the typed set, the educational loan was sanctioned on 08.08.1990. The first petitioner states that the Bank officials wanted her to submit the land tax receipt to the Bank and that therefore, she approached the Village Administrative Officer for payment of land tax and the said officer refused to receive the tax on the ground that the lands were acquired as surplus lands from the said P.K. Koshy under the Act. At this juncture, the first respondent issued a Government Order in G.O.Ms. No. 26, Revenue Department, dated 08.01.1993 allotting the excess land to All India Service Officers Co-operative Housing Society, Madras. Hence, the petitioners filed a Writ Petition at the earliest on 09.02.1993 before this Court in W.P. No. 3575 of 1993 questioning the notification issued u/s 11(1) and 11(3) of the Act as well as the said G.O.Ms. No. 26. The writ petition was transferred to the Tamil Nadu Land Reforms Special Appellate Tribunal and was renumbered as T.R.P. No. 15 of 2000. After hearing both the parties, the Tribunal dismissed the said T.R.P. No. 15 of 2000 on 27.11.2001. This writ petition is against the said order of the Tribunal.

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

5. The learned Counsel for the petitioners strenuously contended that the petitioners were not served notice u/s 11(5) of the Act, which is mandatory. He further argued that the Tribunal erred in holding that the petitioners need not be given notice u/s 11(5) of the Act and the notice u/s 11(5) to the erstwhile owner was sufficient. The learned Counsel for the petitioner brought to our notice ground (d) in their affidavit and strongly contended that while notices u/s 9(4) or u/s 7(2) of the Act ought to be addressed to the owner of the land for the purpose of determining the excess vacant land, the notice contemplated u/s 11(5) of the Act is to be issued to the person in possession also, since the purpose was seeking delivery of possession. He further pointed out that notice contemplated u/s 11(5) of the Act is quite different from notice contemplated under other provisions of the Act. He also pointed out that the words used in Section 11(5) of the Act "any persons who may be in possession" and no such wording is found in Sections that deals with the acquisition of the land.

6. The learned Counsel for the petitioners heavily relied on the judgment of the Division Bench of this Court (presided over by Honourable Mr. Justice Sathasivam as he then was) in V. Somasundaram, Nityakalyani and V. Sugandhi Vs. The Secretary to Government Revenue Department, The Assistant Commissioner (Land Reforms and Urban Land Ceiling) and S. Pitchai, . Paragraph No. 9 of the said judgment is heavily

relied on by the learned Counsel for the petitioners, which is extracted here-under:

9. From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner. As per Section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days'' time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.04.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 16.09.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act.

7. The learned Counsel for the petitioners cited another decision dated 18.06.2007 of the Division Bench presided over by the Honourable Mr. Justice S.J. Mukhopadhaya, in W.A. Nos. 693 to 695 of 2003 in Annie Jacob and Ors. v. The State of Tamil Nadu and Anr. wherein a similar view was expressed. Paragraph No. 8 of the decision is extracted here-under:

8.There is nothing on the record to suggest that the competent authority issued any notice in writing directing the original land holder or the appellants to surrender or deliver possession of the lands in question. Nothing has been produced to suggest that the original land holder or the appellants refused or failed to comply with such order and on failure the possession of the lands were taken by force. In absence of such notice u/s 11(5) or action taken u/s 11(6), a bald statement as made by the respondents that possession was taken on 10th February, 1995, cannot be accepted....

8. On the other hand, the learned Special Government Pleader contended that the petitioner is not entitled to notice u/s 11(5) of the Act in view of the Division Bench decision of this Court in Prabhavathi Jain and 4 Ors. v. The Government of Tamil Nadu and 8 Ors. reported in 1995 (2) L.W. 200. We have perused the judgment. We are of the view that the judgment did not decide whether Section 11(5) contemplates service of notice on the person who is in possession of the concerned excess land. On the other hand, the judgments cited by the petitioner are on the point. Further it is not the case of the petitioner that he is entitled to notice u/s 7 or 9 while acquiring the land.

9. We are of the view that notice u/s 11(5) should have been served on the petitioners particularly, when the second respondent issued notice in 1984 itself pursuant to the statement made by the petitioners u/s 27 of the Act at the time of registering their sale deed and also in view of the categorical pronouncement of this

Court referred to above.

10. The learned Counsel for the petitioners further argued that in view of Section 4 of the Repealing Act 20 of 1999, all the proceedings under the Act must be held to have abated, since the actual possession of the land was not taken over by the Government u/s 11(5) or 11(6) of the Act.

11. The learned Counsel for the petitioners vehemently contended that the Tribunal erred in holding that once the title of the land vests with the Government pursuant to the notification issued u/s 11(3) of the Act, the symbolic possession on record is sufficient and no actual taking over of possession is required. He further pointed out that the Tribunal was not correct in holding that the Act does not specify any particular mode of taking possession like drawing Panchanama or taking possession in the presence of witnesses and the taking over of possession of excess urban land by the Revenue Inspector of Saidapet Taluk by signing the Land Delivery Receipt on 29.11.1990 is sufficient as the proof for taking over of possession.

12. The learned Counsel for the petitioners 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/petitioner pursuant to notice u/s 11(5), the possession should have been taken through the manner suggested u/s 11(6). Since the notice u/s 11(5) was not even served, the symbolic possession is not a possession as contemplated under Sections 11(5) and 11(6) of the Act.

13. The learned Counsel for the petitioners argued that the taking over of possession is complete only when it is signed by the land owner/the petitioners, while delivering the excess land u/s 11(5) of the Act read with Rule 10(3) of the Rules. If no such delivery of possession took place, the second respondent has to resort to Section 11(6) of the Act. Admittedly, in this case, neither the erstwhile land owner nor the petitioners signed the Land Delivery Receipts and also the second respondent did not resort to Section 11(6) of the Act. Hence, according to the learned Counsel for the petitioners, there was no actual take over of possession by the respondents.

14. The learned Counsel for the petitioners 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.

15. The learned Counsel for the petitioners 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.

16. The learned Counsel for the petitioners 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 position 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.

17. The learned Counsel for the petitioners 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.

18. On the other hand, the learned Special Government Pleader vehemently contended that the symbolic possession is sufficient and the actual take over of possession is not contemplated under the Act and the Tribunal was therefore correct in its conclusion.

19. The learned Counsel for the petitioners also brought to our notice that though the Tribunal noted that the records relating to telephone connection, electricity connection and issuance of patta were placed on record by the petitioners to establish the possession of lands with them, the Tribunal committed error in not accepting the same.

20. But, we are not in agreement with this submissions in view of the categorical pronouncements of this Court referred to above that were brought to our notice by the learned Counsel for the petitioners.

21. The learned Counsel for the petitioners also relied on the judgment of the constitutional Bench of the Honourable Apex Court in Smt. Angoori Devi v. State of Uttar Pradesh and Ors. reported in JT 2000 (Supp.) 1SC 295 wherein it is held that all the proceedings under the Act must be held to have abated in view of Section 4 of the Repealing Act 20 of 1999, once the possession was not taken over by the Government.

22. Since we have held that the actual possession was not taken over by the Government and the petitioners are still in enjoyment of the plots in issue, the petitioners are entitled to the benefit of Section 4 of the Repealing Act 20 of 1999.

23. 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 27.11.2001 passed in T.R.P. No. 15 of 2000 by the Tamil Nadu Land Reforms Special Appellate Tribunal is quashed. We, further declare that all the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had abated in view of the Repealing Act. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

P.K. Misra, J.
I have gone through the draft 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.