

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-11-2008

Coram

THE HON'BLE MR.JUSTICE K.CHANDRU

WRIT PETITION No. 9004 OF 2004

....

M/s.P.T.R.Rice and Dhall Mill

rep.by its Proprietor

Mr.P.Pandian,

residing at

No.Naga Arjuna Flats,

36, Raman Street,

T.Nagar, Chennai-17

..Petitioner

Vs.

Competent Authority,

(Urban Land Ceiling -cum- Assistant

Commissioner (ULT) Madhavaram

Kolathur, Chennai-99.

..Respondent

For petitioner :: Mr.T.Teekaraman

For respondent :: Mr.A.Arumugam, Spl.G.P.,

Writ Petition filed under Art.226 of the Constitution of India seeking for the issue of a writ of certiorarified mandamus to call for the records relating to the proceedings in Rc.No.86/92/C/ dated 1.8.2001 on the file of the respondent and quash the same.

O R D E R

The writ petition is filed by an industry, viz., P.T.R Rice and Dhall Mills, represented by its Proprietor R.Pandian, challenging the Proceedings of the respondent in Rc.No:86/92/C/Dated 1.8.2001 issued under Sub Section (7) of Section 12 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. As against the said order, the petitioner preferred an application before the Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai under Section 15-B of the said Act and the said matter was taken up on record by the said Tribunal as SRP.No.44/2001. However, subsequent to the abolition of the Tamil Nadu Land Reforms Special Appellate Tribunal, the matter was transferred to this Court and numbered as CRP.No:1963/2003. But since this Court felt that CRP will not lie, a memo was filed by the petitioner to convert the CRP into one of Writ Petition and this matter was renumbered as Writ Petition No.9004/2004.

2. It is seen from the records that the petitioner who was running a Rice and Dhall Mill was granted exemption from the operation of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 under Section 21(1)(a) for the purpose of running the industry by G.O.Ms.No.1019, Revenue Department, dated 25.7.1986. Subsequently,

since the period of two years had expired, a further order in G.O.Ms.No:2207, Revenue Department, dated 20.12.1989 came to be passed granting extension of two more years. The exemption was further extended by G.O.Ms.No: 174, Revenue Department, dated 14.2.1997 and subsequently permission was also granted in G.O.Ms.No:524, Revenue Department, dated 25.5.1997 to sell the unobjectionable land. Thereafter, it transpires that the Special Commissioner of Land Reforms gave a report that the purpose for which the exemption was granted was not being utilised and therefore the exemption G.O., should be recalled. On the basis of the said letter, a show cause notice dated 7.8.1998 was given to the petitioner. Pursuant to the same, the acquisition proceedings was sought to be made by a Gazette Notification dated 5.7.2000. The petitioner also made representations on 17.8.2001 and 27.8.2001 to the Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5 and to the Competent Authority (ULT), Madhavaram respectively stating that the excess vacant land was not taken possession by the State Government on the date of repeal of the Act and therefore the acquisition proceedings are abated as on 16.6.1999, i.e., the date of repeal.

3. Admittedly, on the date, when the acquisition notice was issued, the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force with effect from 16.6.1999. Therefore, by virtue of the Repeal Act, if the possession is already in the hands of the land owner, then the land owner cannot be deprived of the land as the Act itself has been repealed. This position of law has been enlightened by this Court in A.Joseph Louis and another Vs. State of Tamil Nadu and others, reported in 2004 (3) L.W 208. Speaking for the Court, P.K.Misra, J., had observed in Paragraphs 4 and 5 as follows:-

"4. The learned counsel for the State relied upon Section 3(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act. The same has been already extracted above. In the present case, the possession of the land had not been taken over by the State at any time. On the other hand, exemption had been granted. The impugned order indicates that the authority wanted to take action on the ground that the order of exemption has been violated by the petitioners and requested the Special Commissioner of Land Reforms to take appropriate action to acquire the land by giving proper instructions to the Assistant Commissioner. This clearly indicates that possession had not been taken and the authority wanted to proceed further for acquisition of the land under the Act. Since such Act had been repealed, there is no jurisdiction vested with the authorities to proceed further.

5. In this context, the provision containing Section 3 (2) of the Repealing Act makes it clear that if possession has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority; and any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government. A

combined reading of Section 3(1) and 3(2) of the Repealing Act makes it clear that unless possession had already been taken after payment of entire compensation, the State government would not have jurisdiction to retain the land. On the other hand, if the compensation had been paid by the Government the person is allowed to take possession of the land provided to refund the amount received. Since in the present case neither possession had been taken nor compensation had been paid, there is no jurisdiction for the State Government or for any authority to pass impugned order. Hence the impugned order is hereby set aside and the writ petition is allowed. There shall be no order as to costs."

3. In the light of the above, the Writ Petition is allowed setting aside the proceedings of the respondent in Rc.No.86/92/C, dated 1.8.2001. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gkv

To:-

The Competent Authority,
(Urban Land Ceiling -cum- Assistant
Commissioner (ULT) Madhavaram
Kolathur, Chennai-99.

1 cc To The Government Pleader, SR.67288
1 cc To Mr.P.Jegadeesan, Advocate, SR.66958

WP.No. 9004 OF 2004

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KSJ(CO)
SRA(12/12/2008)