

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30-04-2009

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.17445 of 2004

Mr.Aalim Muhammed Salegh Trust
rep. by its Managing Trustee
Mr.Shaik Athaullah
813, Anna Salai,
Chennai-2.

... Petitioner.

Versus

1.The Government of Tamil Nadu rep. by
its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.

2.The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk,
Chennai-5.

3.The Asst. Commissioner/Competent
Authority, Urban Land Ceiling
No.5, Sannadhi Street,
Poonamallee,
Chennai.

.. Respondents.

Prayer: This petition has been filed seeking for a writ of Certiorarified Mandamus, calling for the records of the respondents especially the order of the 3rd respondent under Sections 9(5), dated 30.3.90, 10(1), dated 23.5.90 and 11(5), dated 28.12.92, vide rep. 5321/86/A, in respect of lands in S.Nos.5/4 and 5/7, Muthapudupet Village, Ambattur Taluk, measuring an extent of 5000 Sq.Mts and quash the same and further direct the third respondents to treat the proceedings referred to above as abated under Tamil Nadu Urban Land Ceiling and Regulation Act.

For Petitioner : Mr.V.Ramesh

For Respondents : Mr.V.Sivashanmugam
Government Advocate

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. It has been stated that the petitioner is a registered Minority Trust, registered under the Societies Registration Act, having been established, on 17.1.1990. The object of the Trust is to promote and to develop education in the field of Engineering. As such, the petitioner Trust had purchased lands in Muthapudupet Village, in Ambattur Taluk. The petitioner Trust has established certain institutions of learning in the said lands in S.Nos.5/4 and 5/7, in Muthapudupet Village. While so, the petitioner had applied to the first respondent for exemption of the agricultural lands belonging to the petitioner Trust, under Section 37-B of the Tamilnadu Land Reforms (Fixation on Ceiling) Act. The relevant forms had been submitted to the first respondent, as required under the Act. Thereafter, an enquiry had been held, based on which a report had been sent to the Government for granting the exemption. Thus, it is clear that the petitioner Trust had purchased agricultural lands in Muthapudupet Village and it cannot be said to be urban lands.

3. In the recitals contained in the sale deeds and in the relevant entries in the revenue records, the lands in question have been described as agricultural lands. However, the Village Administrative Officer concerned had informed the petitioner that the lands, in S.Nos.5/4 and 5/7 of Muthapudupet Village, had been acquired by the respondents, under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, by initiating the proceedings in the name of Bhaskaran Pillai and therefore, the adangal extracts for the said lands cannot be issued to the petitioner. Thereafter, the petitioner had obtained the certified copies of the orders passed by the third respondent and it was found that the lands had been acquired, under the Act 24/1978, in the name of Bhaskaran Pillai. In such circumstances, the order of the respondent, under Section 9(5) of the Act and the notice, under Section 11(3) of the Act, have been challenged by the petitioner Trust before this Court, under Article 226 of the Constitution of India.

4. From a reading of the order, dated 30.3.1990, passed under Section 9(5) of the Act, it is clear that the erstwhile owner had stated in his reply to the notice, under Section 9(4) of the Act, that the lands in question were agricultural in character and that he is carrying on agricultural activities in the said lands. This fact

had not been verified by the third respondent before acquiring the land, under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978. The only reason for rejecting the claim of the erstwhile owner of the land is that he had not produced any record to substantiate his claim that he was cultivating the said lands. In fact, the third respondent ought to have held an enquiry, with regard to the claim that the lands were agricultural in character, before acquiring the said lands. Further, the third respondent ought to have verified the revenue records to find out the nature of the land. Further, the lands held by educational institutions could be exempted, under Section 20 of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978. Before the establishment of the educational institutions the lands were agricultural in character and they would not come under the purview of the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, by virtue of Section 20 of the said Act.

5. It has also been stated that after orders had been passed, under Section 9(5) of the Act, the third respondent had proceeded further and had issued a notice under Section 11(5) of the Act, to Bhaskaran Pillai, asking him to hand over possession of the land, in spite of knowing that Bhaskaran Pillai was no longer the owner of the land. Since no other notice had been served on the petitioner, the land acquisition proceedings cannot be held to be valid in the eye of law. The actual possession of the lands in question had not been taken over by the respondents. Mere paper transfer and taking over of possession by recording the same in the files would not be sufficient to say that the land acquisition proceedings had been completed. There is no record available with the respondents to show that actual physical possession had been taken by them, after preparing a panchanama or a memorandum signed by the necessary witnesses. In such a situation all the proceedings said to have been initiated by the respondents, under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, would stand abated. Section 11(5) of the Act contemplates the issuance of the notice to the land owner to voluntarily surrender possession of the lands. However, on the failure of the land owner to do so, the powers under Section 11(6) would be invoked. However, in the present case no such procedure had been followed. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

6. No counter affidavit has been filed on behalf of the respondents. No records have been produced to deny the claims made on behalf of the petitioner Trust.

7. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner Trust had purchased the lands in question by way of two sale deeds from two different persons. However, the proceedings had been initiated by the respondents only in the name of one person, namely, Bhaskaran Pillai. In fact, for the land acquisition proceedings to be valid, the respondents ought to

have proceeded independently against both the persons. Even otherwise the petitioner Trust was entitled to receive the notice issued, under Section 11(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978. Even though the original land owner, namely, Bhaskaran Pillai, had appeared before the authorities concerned and had submitted that the lands in question were agricultural in nature, during the enquiry held, on 14.12.1986, an order had been passed, on 30.3.1990, without considering the claims made by the erstwhile land owner. The relevant adangal extracts show that the lands in question are agricultural in character. The records available, upto the year 1990, shows that the lands are agricultural in character, as it stood in the name of Govindasamy Naidu, who had owned the lands earlier. Since the procedures contemplated under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, and the rules framed thereunder, have not been complied with, the petitioner Trust is entitled to request this Court to set aside the impugned proceedings, as prayed for in the present writ petition.

8. The learned counsel appearing on behalf of the respondents had submitted that one Bhaskaran Pillai was the owner of the lands in S.No.5/4, having an extent of 2850 Sq.Mts (71 cents). Another extent of 2150 Sq.Mts (54 cents), in S.No.5/7, had also been acquired by the respondents. Since the said Bhaskaran Pillai had not submitted his return, a notice, under Section 7(2) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, had been issued, on 9.5.1986 and it had been served on him. He had submitted his reply, on 16.5.1986, stating that it was not covered under the jurisdiction of the Madras Metropolitan Development Authority and that the lands in question were agricultural in character. Thereafter, a notice, under Section 9 (4) of the Act, had been issued, on 30.10.1986. On 14.12.1986, Bhaskaran Pillai had submitted his reply stating that the lands in question were being used for agricultural purposes and the character of the land had not been changed and therefore, it cannot be acquired under the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978.

9. On 28.12.1986, the petitioner had been requested to attend the enquiry to produce the available documents to prove his claims. However, the petitioner had failed to attend the enquiry. Again on 24.10.1989 and 2.11.1989, notices had been sent requesting the petitioner to take part in the enquiry and to file his documents. Only thereafter, the orders had been issued, under Section 9(5) of the Act, on 30.3.1990, declaring 4500 Sq.Mts. as an excess vacant land and it was ordered to be acquired. On 5.4.1990, the order had been communicated to the land owner. The final statement, under Section 10(1) of the Act had been issued, on 15.5.1990 and it had been received by the urban land owner, on 29.5.90. Section 11(1) notification, dated 30.11.1990, had been published in the Tamilnadu Government Gazette, on 23.1.1991. A notification, under Section 11 (3), had been issued, on 27.2.1991, stating that the vesting of the

lands would be from 25.3.1991. The notice, dated 28.12.1992, issued under Section 11(5) of the Act, had been received by the land owner, on 2.2.1993 and the possession of the lands had been handed over to the revenue authorities, on 24.2.1994. Thereafter, the notice, under Section 12(7) of the Act, had been issued, on 5.5.1994 and it was served on the land owner, on 21.7.1994. The fixing of the land value, under Section 12(6) of the Act, was on 19.12.1994 and it had been served on the land owner, on 4.3.1995. The compensation amount had been deposited in the revenue deposit, on 11.5.2001.

10. It has been further stated that the petitioner should have verified the relevant records before he had purchased the land in question. Therefore, it is not open to the petitioner to claim that he is the rightful owner of the land in question after it had been acquired, in accordance with the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978. Since all the procedures necessary for the acquisition of the land in S.No.5/4 had been duly complied with the claim of the petitioner cannot be sustained in the eye of law. Further, from the adangal extracts of the years 1983, 1985 and 1988, it could be seen that the lands in question were not agricultural lands since no agricultural activity had taken place during those years.

11. In view of the submissions made by the learned counsels appearing for the petitioner, as well as the respondents and on a perusal of the records available, this Court is the view that the impugned proceedings in respect of the lands in S.Nos.5/4 and 5/7, Muthapudupet Village, Ambattur Taluk, measuring an extent of 5000 Sq.Mts. cannot be sustained in the eye of law.

12. It is clear that the respondents had initiated the land acquisition proceedings in respect of the lands in question and had issued notice to Bhaskaran Pillai, by clubbing both the survey numbers 5/4 and 5/7 of Muthapudupet Village. Even though the petitioner Trust had purchased the lands from different persons by way of two separate sale deeds, dated 19.8.91 and 23.3.92, the sale deed, dated 19.8.91, is with regard to S.No.5/4, having an extent of 71 cents, purchased from Bhaskaran Pillai and the sale deed, dated 23.3.92, is with regard to S.No.5/7, having an extent of 20 cents, from Venkatapathy. However, both the survey numbers had been clubbed together for the purpose of the land acquisition proceedings. In fact, the land acquisition proceedings had been proceeded with in the name of Bhaskaran Pillai alone. Even though Bhaskaran Pillai had appeared during the enquiry held, on 14.12.1986, and had claimed that the lands in question were agricultural in character, the third respondent had passed the order, under Section 9(5) of the Act, on 30.3.1990, without considering the claim made by Bhaskaran Pillai. It is seen from the relevant records available, including the adangal extracts, that the lands in question are agricultural lands. Further, it is also seen that the notice, under Section 11(5) of the Act, had

not been served on the petitioner Trust. The impugned order had been passed without application of mind and without giving sufficient opportunity to the petitioner Trust to put forth its case. In such circumstances, the land acquisition proceedings cannot be held to be valid in the eye of law. Hence, the writ petition stands allowed. No costs.

Sd/-
Asst. Registrar

/ True Copy /

Sub.Asst Registrar

csh

To

1. Secretary to Government,
Government of Tamil Nadu rep. by
Revenue Department,
Fort St. George, Chennai-9.

2.The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai-5.

3.The Asst. Commissioner/Competent
Authority, Urban Land Ceiling
No.5, Sannadhi Street, Poonamallee,
Chennai.

+ 1 cc to Mr.V.Ramesh,Advocate,SR.20312
+ 1 cc to the Government Pleader,SR.20253

GR(CO)
EM/4.6.09

Writ Petition No.17445 of 2004

सत्यमेव जयते

WEB COPY