

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.770 of 2015
and
M.P.No.1 of 2015

- 1.The Assistant Commissioner (ULT)
Tambaram,
153, Karuneegar Street,
Chennai-600 088.
- 2.The Special Commissioner,
Commissioner of Land Reforms,
Chepauk, Chennai-600 005.
- 3.The Tahsildar,
Tambaram Taluk,
G.S.T. Road,
Tambaram, Chennai.
- 4.The Village Administrative Officer,
Chitlapakkam Main Road,
Chitlapakkam, Chennai-64. ... Appellants

Vs.

- 1.V.Gajapathy
- 2.G.Ashokapathy .. Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 29.04.2013 passed in W.P.No.20274 of 2010.

Writ Petition No.20274/10 has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorari and Mandamus to call for records in Ref.Rc.3830/86c dated 09/3/94 on the file of the 1st respondent and quash the same in so far as it relates to the survey No.178/3A (part) measuring 2447 sq.ft. and 178/3B(part) measuring 11 sq.ft and belonging to these petitioners and direct the 3rd respondent to issue patta in favour of the petitioners pertaining to Survey No.176/1A part measuring 4730 sq.ft. Survey No.177/2B part measuring 1040 sq.ft. Survey No.178/3A part measuring 2447 sq.ft.. Survey No.178/3B measuring 11 sq.ft.

For Appellants : Mr.P.S.Sivashanmugasundaram
Spl.G.P

For Respondents : Mr.R.Yashodvardhan, SC
for Mr.D.Saravanan

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JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 29th April, 2013 passed in W.P.No.20274 of 2010.

2 The writ petitioners / respondents herein filed the writ petition, seeking quashment of proceedings in Ref.Rc.3830/86C dated 9th March, 1994 of the first appellant herein in respect of S.No.178/3A (Part) measuring 2447 sq.ft. and S.No.178/3B (part), measuring 11 sq.ft, belonging to the writ petitioners and for a direction to the third appellant herein to issue patta in favour of the respondents herein in respect of S.No.176/1A (Part) measuring 4730 sq.ft., S.No.177/2B (Part), measuring 1040 sq.ft., S.No.178/3A (part) measuring 2447 sq.ft. and S.No.178/3B measuring 11 sq.ft.

3 The properties in question comprised in S.Nos.176/1A part, 177/2B, 177/2C part, 178/3A, 178/3B and 168/1 part in all measuring 9539 sq.ft, were under the ownership of the grand father of the second writ petitioner and the father of the first writ petitioner. A part of the said land, as aforesaid, was acquired by the second appellant herein under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as "Urban Land Act"), vide proceedings dated 31st October, 1990 and it was served on the owners on 16th November, 1990.

4 The case of the appellants herein are that proper draft statement, proposing the acquisition of excess vacant land from the respondents herein under Section 9(1) along with notice under Section 9(4) of the Urban Land Act was issued on 31st May, 1990 and the same was served on the respondents herein on 25th June, 1990. One more notice was issued on 20th September, 1990 and served on the respondents herein on 8th October, 1990, affording an opportunity of making their objection / representation. One more notice was sent on 20th October 1990. After receipt of the draft statement and notice, the respondents herein had not chosen to file any objection or representation. The requisite notification under Section 11(1) of the Urban Land Act was published in the Tamil Nadu Government Gazette dated 13th March, 1996. Vide notification under Section 11(3) of the Urban Land Act, the said excess vacant land has been vested with the Government as per the notification published in the Tamil Nadu Government Gazette on 17th July, 1996. A notice under Section 11(3) of

the Urban Land Act to surrender possession of the excess vacant land was issued on 31st October, 1996 and served on 8th January, 1997. In default of surrender of possession of excess vacant land, possession was taken by the Department and handed over to the Revenue Department on 12th February, 1997. Thus, the possession of the land was taken over on 12th February, 1997.

5 The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "Repeal Act") came into force on publication on 16th June, 1999 on receipt of the assent of the Governor. Section 3(i) (a) of the Repeal Act providing that the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority and (b) the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder; (2) Where;- (a) any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the Competent Authority; and (b) 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, shall not be affected by the said Repeal Act, 1999.

6 The learned counsel appearing for the appellants would submit that the erstwhile land owner was enquired on 2nd February, 1994 long back and the possession was taken over on 12th February, 1997. Thereafter, the respondents herein have not taken any action, even after the Repeal Act, 1999 came into force, for a period of 11 years when the instant writ petition was filed. Thus, the writ petition ought to have been dismissed on the ground of laches, as such a long inordinate laches and delay was unexplained.

7 The second contention advanced by the learned counsel for the appellants is that since the possession of the land in question was already taken over, the provisions of Repeal Act, 1999 would not be applicable.

8 On the other hand, the learned Senior counsel appearing for the respondents herein / writ petitioners would contend that the impugned order passed by the learned Single Judge that possession of the land in question was never taken by the authorities and the petitioners have been in continuous possession of the same, is perfectly correct. There was no occasion to file the writ petition even after the Repeal Act, 1999 came into force as the possession continued throughout with the petitioners and as such, there was no laches and delay, as pleaded by the learned counsel for the appellants.

9 The learned Single Judge recorded the findings in respect of taking over of possession as under :

"10.Further, though possession is said to have been taken from the petitioners, the records do not reveal that possession has been taken from the petitioners. In such circumstances, I am of the considered view that the respondents cannot harbour that possession has been taken from the petitioners. Even assuming, if the land owner or person in possession fails to surrender the land in his possession, then power is conferred on the respondents to take possession of the land by using force under Section 11(6) of the Act. Since it is not the case of the respondents that the petitioners have surrendered the land under Section 11(5) of the Act, the proceedings under Section 11 (6) of the Act should have been taken and there is nothing on record to show that such proceedings were initiated against the petitioners.

11.In the decisions reported in AIR 1975 SC 1767 - B.N.Bhagte v. M.D.Bhagvt and AIR 1996 SC 3377 - Tamil Nadu Housing Board Vs. A.Viswam, the Hon'ble Apex Court has held that a person shall be deprived of possession only after preparation of a Memorandum or Panchanama signed by witnesses. In the given case on hand, there is nothing in the file to show that the possession has been taken over by the ULT Revenue Inspector, Tambaram in the presence of the witness. Therefore, in my considered view, the claim made by the respondents that possession has been taken over from the petitioners and the possession vests with the respondents cannot be accepted."

10 The appellants have failed to produce any document apart from certain proceedings, wherein it is recorded that possession has been taken over. Neither Memorandum nor Panchanama executed in the presence of the witnesses at the time of taking over possession, was produced before the learned Single Judge or before us and as such, there is no reason to take contrary view than the one taken by the learned Single Judge. The order sought to be impugned in this appeal is just and proper, warranting no interference.

11 Resultantly, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

vvk
To

- 1.The Assistant Commissioner (ULT)
Tambaram,
153, Karuneegar Street,
Chennai-600 088.
- 2.The Special Commissioner,
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- 4.The Village Administrative Officer,
Chitlapakkam Main Road,
Chitlapakkam, Chennai-64.

+6 cc to Mr.D.Saravana Advocate sr.37887,37583
+1 cc to Government Pleader sr.no.37631

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W.A.No.770 of 2015

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