

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-03-2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.Noss.21484, 21485, 21486 and 21487 of 2014

Mrs.A. Rosalind Santhi ... Petitioner in WP Nos.21484 & 21485 of 2014

Dr.S. Athi Muthu ... Petitioner in WP Nos.21486 & 21487 of 2014

vs

1. The State of Tamil Nadu
rep by its Secretary to Government,
Revenue Department,
Fort. St. George,
Chennai-600 001
2. The Director,
Tamil Nadu Slum Clearance Board,
Chennai - 600 005
3. The Assistant Director of Survey & Land Records,
Kancheepuram District, Kancheepuram
4. The Assistant Commissioner,
Urban Land Tax,
Tambaram Zone,
No.153, Karuneegan Street,
Adambakkam,
Chennai-600 088
5. The Tahsildar,
Tambaram Taluk,
Kancheepuram District

... Respondents in all the writ petitions

W.P.No.21484 of 2014 filed by the petitioner under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the respondents to receive payments from the petitioner as per G.O.No.565 dated 26.09.08 passed by the first respondent under the innocent buyers category for the land measuring an extent of 28 cents i.e., 12208 sq.ft in S.No.412/2 in Perunkulathur village, Tambaram Taluk, Kancheepuram District, Tamil Nadu and confirm the title and possession of the petitioner over the aforesaid land.

W.P.No.21485 of 2014 filed by the petitioner under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the respondents to dispose of her representation dated 28.2.2014 in the light of G.O.Ms.No.565 dated 26.09.98 passed by the first respondent.

W.P.No.21486 of 2014 filed by the petitioner under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the respondents to receive payments from the petitioner as per G.O.No.565 dated 26.09.08 passed by the first respondent under the innocent buyers category for the land measuring an extent of 15 cents i.e., 6,540 sq.ft in S.No.412/2 in Perunkulathur village, Tambaram Taluk, Kancheepuram District, Tamil Nadu and confirm the title and possession of the petitioner over the aforesaid land.

W.P.No.21487 of 2014 filed by the petitioner Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the respondents to dispose of his representation dated 28.2.2014 in the light of G.O.Ms.No.565 dated 26.09.08 passed by the first respondent.

For petitioners : Mr.A. Abdul Hameed

For RR.1, 3 to 5 : Mr.S. Pattabiraman
Govt. Advocate

For 2nd respondent : Mr.B.S. Sundaramoorthy

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COMMON ORDER

Since the issues involved in all these writ petitions are similar, all the writ petitions are disposed of by this common order.

W.P.No.21484 of 2014 has been filed by the petitioner to issue a Writ of Mandamus directing the respondents to receive payments from the petitioner as per G.O.No.565 dated 26.09.08 passed by the first respondent under the innocent buyers category for the land measuring an extent of 28 cents i.e., 12208 sq.ft in S.No.412/2 in Perunkulathur village, Tambaram Taluk, Kancheepuram District, Tamil Nadu and confirm the title and possession of the petitioner over the aforesaid land.

The petitioner in W.P.No.21484 of 2014 also filed a Writ Petition in W.P.No.21485 of 2014 to issue a Writ of Mandamus directing the respondents to dispose of her representation dated 28.2.2014 in the light of G.O.Ms.No.565 dated 26.09.98 passed by the first respondent.

W.P.No.21486 of 2014 has been filed by the petitioner to issue a Writ of Mandamus directing the respondents to receive payments from the petitioner as per G.O.No.565 dated 26.09.08 passed by the first respondent under the innocent buyers category for the land measuring an extent of 15 cents i.e., 6,540 sq.ft in S.No.412/2 in Perunkulathur village, Tambaram Taluk, Kancheepuram District, Tamil Nadu and confirm the title and possession of the petitioner over the aforesaid land.

The petitioner in W.P.No.21486 of 2014 also filed a writ petition in W.P.No.21487 of 2014 to issue a Writ of Mandamus directing the respondents to dispose of his representation dated 28.2.2014 in the light of G.O.Ms.No.565 dated 26.09.2008 passed by the first respondent.

2. The brief case of the petitioners are as follows:

According to the petitioner in W.P.No.21484 of 2014, she is the owner of the land, measuring an extent of 28 cents i.e. 12208 s.ft in Survey No.412/2, in Perunkulathur Village, Tambaram Taluk, Kancheepuram District, having purchased the same under a registered Sale Deed dated 3.6.96.

3. Similarly, the petitioner in W.P.No.21486 of 2014 is the owner of the land, measuring an extent of 15 cents i.e., 6,540 sq.ft in Survey No.412/2, in Perunkulathur Village, Tambaram Taluk,

Kancheepuram District, having purchased the same under a registered Sale Deed dated 5.6.96.

4. In the year 2005, the petitioners approached the fifth respondent for sub division of the lands and also requested the fifth respondent to issue patta in their names. The fifth respondent had asked the petitioners to get 'No Objection Certificate' from the fourth respondent.

5. On 13.8.2005, the petitioners addressed letters to the fourth respondent individually and sought for No objection certificate in respect of their properties. The fourth respondent, by proceedings dated 30.8.2005, had informed the petitioners that the petitioners' lands were acquired under the Urban Land and Ceiling Act, 1978 during the year 1990 itself.

6. According to the petitioners, they have purchased the properties wayback in the year 1996 itself without knowing the acquisition proceedings. The fourth respondent, by proceedings dated 5.6.2007, informed the petitioners that their lands were acquired under the Urban Land and Ceiling Act, 1978 and allotted in favour of the second respondent during 2001 itself.

7. On 21.09.2007, the petitioners addressd letter to the third respondent and requested the third respondent to furnish a copy of "A" Extract and a copy of FMB Sketch. On 8.2.2008 and 14.02.2009 the petitioners addressed letters to the District Collector, Kancheepuram, informing him that their lands are lying vacant and that they are in the absolute possession and requested the District Collector to issue Patta.

8. On 26.09.2008, the first respondent had issued a Circular for regularisation of the lands purchased by the innocent buyers vide G.O.No.565 dated 26.9.98 and informed the innocent buyers that, they can regularise their lands as per G.O.Ms.No.649 dated 29.7.98 on the terms and conditions contained therein.

9. Pursuant to the Government Order, the petitioners gave representations on 26.12.2008 for regularisation of the purchase of the land under the Innocent Buyers Category. The fourth respondent requested the petitioners to produce the sale deeds, which were also produced before the fourth respondent.

10. On 28.6.2010, the fourth respondent issued an enquiry notice and called upon the petitioners to appear on 12.7.2010 with necessary documents. On 28.12.2011 and 11.9.2012, the petitioners addressed

letters to the second respondent and requested them to furnish No Objection Certificate in their favour in respect of their lands.

11. On 28.2.2014, the petitioners addressed letters separately to the first respondent and informed them that they are willing to pay the additional regularisation fees if any and also requested the first respondent to issue patta in their favour under Innocent Buyers Category.

12. The first respondent also forwarded the representations to the fourth respondent for necessary action. According to the petitioners, the fourth respondent has neither conducted any enquiry nor taken any action in the matter. In these circumstances, the petitioners have filed the above writ petitions.

13. The brief case of the respondents are as follows:

According to the respondents, after conducting enquiry, final Notification under Section 11(3) of the Act detailing the vesting of land with the Government with effect from 21.2.1990 was published in Tamil Nadu Government Gazette on 21.2.1990. Notice under Section 11 (5) of the Act was issued on 28.2.1990 to the Urban Land owners instructing them to surrender or deliver possession of excess vacant lands. All the acquisition proceedings have been completed properly and finally the possession of excess vacant lands were taken and handed over to the Revenue Department on 6.8.1990. Notice under section 12(7) of the Act was issued to the original land owners on 29.5.1992. Orders under Section 12(6) of the Act have been issued fixing the amount due for the acquired lands, but the land owner have not responded to it. Thereafter, the land, measuring an extent of 15200 sq.mts was allotted to Tamil Nadu Slum Clearance Board vide G.O.No.484 Revenue Department dated 6.11.2001 on collection of cost of acquisition plus 40% service charges as land value. The Tamil Nadu Slum Clearance Board has paid an amount of Rs.21,280/- and it was remitted to Government Account on 10.3.2006.

14. As per Sec.6 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act 1978, the sale or purchase made after the commencement of the Act i.e., 3.8.1976 is null and void. Therefore, it is the fault of the petitioners for purchasing the said lands after the acquisition under the Act. The lands were already vested with the Government with effect from 21.2.1990. As per G.O.Ms.No.565 Revenue Department dated 26.9.2008 the lands were acquired as per the provisions of Tamil Nadu Urban Land (Ceiling & Regulation) Act 1978 and the lands were purchased by the individuals innocently upto 26.9.2008 without knowing the fact of acquisition and can be regularised on payment of amount, fixed in the Government Order.

15. In G.O.Ms.No.565 Revneue dated 26.9.2008, it is stated in paragraph (viii) that while regularising the purchase under Innocent Buyers Scheme (IBS), the Special Commissioner of Urban Land Ceiling and Urban Land Tax (ULC & ULT) should ensure that the land is free from any court proceedings. In these circumstances, the respondents prayed for dismissal of all the writ petitions.

16. Heard Mr.A. Abdul Hameed, learned counsel for the petitioners and Mr.S. Pattabiraman, learned Government Advocate for the respondents 1, 3 to 5 and Mr.B.S. Sundaramoorthy, learned counsel for the second respondent.

17. The learned counsel for the petitioners submitted that the petitioners are innocent buyers, having purchased the lands bonafidely without knowing about the acquisition proceedings. Further, the learned counsel for the petitioners submitted that the petitioners are continuing in possession of the property till this date.

18. That apart, the learned counsel for the petitioners submitted that the issues involved in the present writ petitions are squarely covered by the order passed by this Court on 23.01.2014 in W.P.No.26291 of 2013.

19. Countering the submissions made by the learned counsel for the petitioners, the learned Government Advocate, appearing for the respondents 1, 3 to 5 submitted that the petitioners are not in possession of the property and that the respondents have taken possession of the property as early as on 6.8.1990 itself and that the lands were also allotted to Tamil Nadu Slum Clearance Board, the second respondent herein on 6.11.2011. Further, the learned Government Advocate submitted that since the petitioners have purchased the lands after the acquisition of the lands under the Act, they cannot be termed as "Innocent Buyers". In these circumstances, the learned Government Advocate prayed for dismissal of the writ petitions.

20. Mr.B.S. Sundaramoorthy, learned counsel apperaing for the second respondent submitted that the respondents 1, 3 to 5 have already taken possession of the lands from the petitioners on 6.8.1990 and the same was allotted to the second respondent Slum Clearance Board on 6.11.2011 itself. Therefore, the learned counsel submitted that the purchase made by the petitioners is null and void. In these circumstances, the learned counsel prayed for dismissal of all the writ petitions.

21. Having regard to the submissions made by the learned counsel on either side, it could be seen that the petitioner in W.P.Nos.21484 of 2014, and 21485 of 2014 is the owner of the land measuring an extent of 28 cents i.e., 12208 sq.ft in Survey No.412/2 in Perunkulathur Village, Tambaram Taluk, Kancheepuram District, having purchased the same under a registered Sale Deed dated 3.6.96.

22. The petitioner in WP No.21486 and 21487 of 2014 is the owner of the land measuring an extent of 15 cents i.e., 6,540 sq.ft in Survey No.412/2 in Perunkulathur Village, Tambaram Taluk, Kancheepuram District, having purchased the same under a registered Sale Deed dated 5.6.96.

23. According to the petitioners, they came to know about the acquisition of their respective lands under the Urban Land Ceiling Act only in the year 2005, when they sought "No Objection Certificate" in respect of their lands from the fourth respondent for getting patta to their lands. On 8.2.2008 the petitioners have addressed letters to the District Collector, Kancheepuram and informed that the lands are lying vacant and are in their absolute possession and therefore, requested the District Collector to issue patta in their favour.

24. The petitioners contended that they are in possession and enjoyment of their respective lands till this date and that the respondents have not taken possession of the same till today. However, the respondents submitted that they have taken possession of the petitioners land as early as on 6.8.90 itself and that the acquired lands were allotted to the second respondent Tamil Nadu Slum Clearance Board on 6.11.2001.

25. Today, the respondents produced the original records pertaining to the proceedings before this Court. After perusing the entire records, the learned Government Advocate was not in a position to point out the document, under which, the respondents took possession of the lands from the petitioners. On a perusal of the original documents, it could be seen at page No.209, a Transfer Charge Certificate in Re.6189/82D dated 6.8.90 signed by the Revenue Inspector, Tambaram Firka, Saidapet Tauk has been enclosed.

26. On perusal of the said certificate, it is clear that the Revenue Inspector has given a certificate stating that he has taken over only symbolic possession of the lands. The learned Government Advocate was not in a position to point out any other document except this document with regard to taking over of the possession of the lands.

27. From this it is clear, that on 6.8.90, only symbolic possession was taken over by the respondents. Therefore, in the absence of any document to establish the contention of the respondents that they have taken actual possession of the lands, the said contention cannot stand and is liable to be rejected and accordingly, the same is rejected. Hence I am of the view that the petitioners are still in possession of the lands, in question. The learned counsel for the petitioners submitted that the petitioners have also constructed houses in the said land.

28. In Government Order in G.O.Ms.No.565 Revenue ULC 1 (1) Department dated 26.9.98, the Government have decided to regularise the purchase of lands by the innocent buyers covered under Urban Land Ceiling Act for the places in T. Nagar, Ambattur, Kundrathur, Poonamallee, Tambaram, Alandur, Egmore, Madavaram, Tondiarpet in Chennai City and other Cities such as Triuchirappalli, Salem, Coimbatore, Madurai and Triunelveli. In G.O.Ms.No.565 dated 26.9.98, the Government also determined the price of the lands per ground. The Government Order indicates that earlier the extent of land permissible for regularisation under the Scheme was only 1½ grounds, but under G.O.Ms.No.565, orders have been issued to effect that the said Government Order would be extended to all the innocent purchasers of the lands, as on the date of issuance of the above said Government Order.

29. In G.O.Ms.No.565 dated 26.8.98, the Government had decided to regularise the purchase made by the innocent buyers. It is also brought to the notice of this Court that the Government had regularised lands, which belonged to 21 persons, by G.O.Ms.No.174, Revenue (ULC 1 (2) Department dated 20.5.2011. When the Government have regularised the lands purchased by 21 persons in G.O.Ms No.174 dated 20.5.2011, the respondents cannot deny the benefit to others, who are similarly placed.

30. This Court, in a similar writ petition, by order dated 23.1.2014 in W.P.No.26291/2013, held that the innocent buyers are entitled to the benefits as per G.O.Ms.No.565 Revenue ULC 1 (1) Department dated 26.9.98. The order passed in the said writ petition squarely applies to the facts and circumstances of the present case.

31. Following the ratio laid down in the said order, I am of the view that the petitioners are entitled to the benefits under G.O.Ms.No. 565 Revenue ULC 1 (1) Department dated 26.9.98.

32. The petitioners have also given separate representations dated 28.2.2014 to the first respondent to permit them to pay the additional regularisation fees, if any, as per G.O.Ms.No.565 dated 26.9.98 and also requested for issuance of patta under Innocent Buyers Category.

33. However, according to the petitioners, the first respondent has not considered the representations made by the petitioners till this date. In these circumstances, the petitioners filed Writ Petitions in W.P.No.21485 and 21487 of 2014 to direct the respondents to dispose of the representations in the light of G.O.Ms.No.565 dated 26.9.98.

34. Since this Court has found that the petitioners are entitled to the benefits under G.O.Ms.No.565 dated 26.9.98, I am of the view that the first respondent should be directed to consider the representations of the petitioners dated 28.2.2014..

35. In these circumstances, I direct the respondents to receive the payments from the petitioners as per G.O.Ms.No.565 dated 26.9.98 under the Innocent Buyers Category for the land measuring an extent of 28 cents i.e. 12208 sq.ft (in respect of the petitioner in W.P.No.21484 of 2014) and an extent of 15 cents i.e. 6540 sq.ft (in respect of the petitioner in W.P.Nos 21486 of 2014) in S.No.412/2 in Perunkulathur village, Tambaram Taluk, Kancheepuram District, Tamil Nadu and confirm the title and possession of the petitioners over their respective lands.

36. With regard to W.P.Nos.21485 and 21487 of 2014, I direct the first respondent to consider the petitioners' representations dated 28.2.2014 and pass orders in the light of G.O.Ms.No.565 dated 26.9.98 and also the order passed in the Writ Petitions in W.P.Nos.21484 and 21486 of 2014, within a period of eight weeks from the date of receipt of copy of this order.

37. In the result, all the writ petitions are allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The Secretary to Government
State of Tamil Nadu
Revenue Department,
Fort. St. George,
Chennai-600 001
2. The Director,
Tamil Nadu Slum Clearance Board,
Chennai - 600 005
3. The Assistant Director of Survey & Land Records,
Kancheepuram District, Kancheepuram
4. The Assistant Commissioner,
Urban Land Tax,
Tambaram Zone,
No.153, Karuneegan Street,
Adambakkam,
Chennai-600 088
5. The Tahsildar,
Tambaram Taluk,
Kancheepuram District

+1cc to Mr.B.S.Sundara Moorthy, Advocate, S.R.No.14568
+4cc's to Mr.AAV Partners, Advocate, S.R.No.14598
+1cc to the Government Pleader, S.R.No.14204

W.P.Nos.21484, 21485,
21486 & 21487 of 2014

EV(CO)
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