IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 10/09/2015

DATED : 18/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.7592 of 2010

and

M.P.No.1 of 2010

P.Ganesan ... Petitioner

vs.

The Competent Authority of
Urban Land Ceiling and Assistant Commissioner
of Urban Land Tax,
Tambaram (E),
Chennai-88. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records relating to the proceedings dated 30.11.1994 in Na.Ka.8666/88 and proceedings dated 30.06.1997 in even Number of the respondent herein obtained by the petitioner on 15.02.2010 and quash the same.

For Petitioner : Mr.P.Srinivas

For Respondent : Mr.Karthikeyan
Government Advocate

O R D E R

The petitioner has submitted that he is the owner of the land of an extent of 1.39 acres in S.No.242 in Thiruneermalai Village, Tambaram Taluk. The petitioner purchased the lands by way of registered sale deed dated 18.02.1993 for valuable consideration without notice of any proceedings of any acquisition of lands under any enactment. Since the date of purchase, the petitioner is in possession of the lands and till date, the petitioner is regularly paying the taxes and other incidental charges. The petitioner is in continuous possession and enjoyment of the land ever since the date of purchase without any let or hindrance from any person and at no point of time there was objection from either the first respondent or Governmental Authorities.

2. The petitioner has further submitted that the entire area around the petitioner's land is full of stone crushers operating the stones quarried in the nearby area. While so, the petitioner desirous of installing a stone crusher unit in the said lands made enquiries for the formalities for starting the same. At that time, the petitioner came to know that the lands were the subject matter of the acquisition proceedings under the Urban Land Ceiling Act. On further enquiry, he came to understand that the proceedings under the Urban Land Ceiling Act were set-aside by the competent authority viz., the Special Commissioner and Commissioner of Land Administration on 23.05.1994 and the matter seems to have been remanded to the respondent herein. The respondent thereafter without any notice to the petitioner, had passed orders under Section 9(5) of the Land Ceiling Act on 30.11.1994. The said order had not been communicated to the petitioner and also the vendor of the petitioner did not inform the petitioner at all. The petitioner was not put on notice even after the order was passed.

3. The petitioner has further submitted that subsequently when he took steps to install the stone crusher and made enquiries, the petitioner was informed of the said proceedings. The petitioner has further submitted that the previous landowners have opposed the proceedings under the Land Ceiling Act and thereafter notification under Section 11 (5) of the Act was issued on 30.09.1997. Though the same has been issued giving 30 days time to surrender possession, the possession was not taken till date. The petitioner has further submitted that aforesaid proceedings dated 30.11.1994 and the consequential notification dated 30.09.1997 under the Urban Land Ceiling Act and the threat to dispossess the petitioner are arbitrary, illegal and wholly without jurisdiction and at any rate the proceedings have lapsed and abated as on 16.06.1999 when the Tamil Nadu Urban Land Ceiling and Regulation Act was repealed. Hence, the petitioner entreated the Court to allow the above writ petition.

4. The petitioner has also filed written arguments and submitted that by virtue of purchase made on 18.02.1993 having become the owner of the property on and from that date and all the revenue records have been mutated in the petitioner's name and he is the person entitled to hold the lands and as such, any proceedings subsequent to the said date can be taken only after notice to the petitioner herein as "the person" within the meaning of the Act. The petitioners herein have not been served with any notice at any point of time in respect of the impugned acquisition and as such he did

not have the opportunity of objection to the acquisition. The petitioner has further submitted that when the earlier proceedings dated 26.07.1990 have been set-aside and remanded to the Competent Authority to issue the proceedings once again after following the due process under the Act and when the lands have been purchased by the petitioner as early as on 18.02.1993, the subsequent proceedings should have been taken after due notice to the petitioner. The petitioner has further submitted that even from the impugned proceedings, it is apparent that the original owner has informed the first respondent herein that the property has already been disposed of. Thus, the first respondent, being aware of the change of ownership and the person in occupation, has not chosen to issue any notice under Sections 9, 10, 11 to the petitioner herein and hence, the entire acquisition proceedings are illegal and deserves to be quashed.

5. The petitioner has further submitted that the possession has not been taken by the first respondent or by any other person at any point of time,even till date. Hence, the lands are vested with the State Government. While so, as the Ceiling Act has been repealed on 16.06.1999, the entire proceedings stands abated and the respondent cannot take possession of land from the petitioner under any pretext. The petitioner has further submitted that the identical issue had been considered by the Hon'ble Division Bench of this Court in the judgment reported in 2007 (1) MLJ Page 750 and it had been held that regardless of the date of the sale of the lands to the purchaser, the taking of possession by the Competent Authority without issuing notice to the person concerned under Section 11(5) is illegal and the Hon'ble Division Bench has held that the proceedings of the Urban Land Ceiling Authority is invalid and has allowed the said writ petition. In the case of this petitioner also, the impugned order issued for the taking of possession is after the purchase of the petitioner and therefore, without issuing notice under Section 11(5) to the petitioner the entire proceedings are liable to be set aside.

6. The learned counsel appearing for the petitioner has submitted that the petitioner is the owner of the subject land comprised in Survey No.242 of Thiruneermalai Village, Tambaram Taluk, measuring about 1.39 Acres. He has purchased the said land under a registered Sale Deed, dated 18.02.1993. From the date of purchase, he is in possession and enjoyment of the same without any interference and also remitting mandatory taxes to the statutory authorities. Therefore, the learned counsel has prayed for this Court to allow the writ petition.

7. The learned Government Advocate appearing for the respondent has submitted that the lands, comprised in Survey Nos.242, 246, 248 and 254 of Thiruneermalai Village, Tambaram Taluk, to an extent of 16,160 sq.meters, were belonging to one

Koorathazhvar. After excluding 500 sq.meters of land, the respondent had acquired the remaining lands and handed over the same to the Tahsildar, Saidapet. Aggrieved by the same, Koorathazhvar and others filed a review application before the Special Commissioner, Land Reforms, who had after considering the facts and circumstances of the case, passed an order discharging 2000 sq.meters of land and 600 sq.meters of land over which high tension wire is passing from the acquisition proceedings and declaring the rest of the land to an extent of 8,150 sq.meters as surplus land. The said lands have not been classified as agricultural lands and hence, the said lands are under the care and maintenance of the revenue authorities. In such circumstances, the subject land purchased by the petitioner, under a Sale Deed, dated 18.02.1993, is not valid under law since during the relevant period the said property was under the care and maintenance of the Revenue Department. Further, if the petitioner is aggrieved by the impugned order passed by the respondent, he was given liberty to prefer appeal before the Special Commissioner, Land Reforms. Therefore, for all the reasons, the learned Government Advocate has prayed this Court to dismiss the writ petition.

8. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the subject lands have been acquired by the respondent under the Tamil Nadu Land Reforms Act as surplus lands. After acquiring the said lands, the respondent in turn handed over the same to the Tahsildar, Saidapet. Since the vendor of the petitioner had not possessed valid title over the subject lands, the alienation that took place, on 18.02.1993, is not valid. Therefore, the impugned order is suitable for execution and it is fit to be proceeded with further. In such circumstances, the writ petition does not generate sufficient force to allow it and hence, the writ petition is liable to be dismissed.

9. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s / krk

To:

The Competent Authority of
Urban Land Ceiling and Assistant Commissioner
of Urban Land Tax,
Tambaram (E),
Chennai-88.

+1 C.C to The Government Pleader, High Court Madras, SR.No.69235

W.P.No.7592 of 2010
and
M.P.No.1 of 2010

EV(CO)
RA 03.02.2016