

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:18.08.2014

DATED:09.09.2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.3507 of 2014

and

M.P.No.1 of 2014

1. Mr.S.Kailasanathan

2. M/s.Annai Builders Real Estate Private Limited,
rep. by its Managing Director Mr.T.Narayanan
No.76, Medavakkam Main Road,
Madipakkam, Chennai - 600 091. ...

Petitioners

Vs.

1.The Special Commissioner and Commissioner
for Land Ceiling and Land Tax,
Chepauk, Chennai - 600 005.

2.The Assistant Commissioner of Urban Land Tax and
Competent Authority of Urban Land Ceiling,
Alandur Area, Sannadhi Street,
Adambakkam, Chennai - 600 088.

3.The Tahsildar,
Sholinganallur Taluk,
Sholinganallur , Chennai - 600 119. ...

Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the third respondent to issue patta in favour of the second petitioner herein by his Application dated 12.07.2013 without insisting the no objection certificate from the First and Second Respondents.

For Petitioners

:Mr.A.Ramu

For Respondents

:Mr.M.S.Ramesh

(Additional Government Pleader)

O R D E R

The petitioner submits that he himself and his mother S.Mangalam and his sisters Mrs.Visalatchi, Mrs.Meena, Mrs.Padmavathy, and his brother one Mr.S.Subramaniam have all jointly filed a writ petition

in W.P.No.32845 of 2003 before this Court, for challenging the second respondents impugned order in his proceedings SR.496/77A, dated 30.01.1990 under Section 9(5) of the Principal Act, declaring the excess vacant land in Survey No.269/5 Vengaivasal Village to an extent of 1522 square meters out of 2522 square meters and subsequent proceedings all are abated in view of the Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999.

2. The petitioner further submits that originally the land comprised in Survey No.269/5, to an extent of 2,250 square meters in Vengaivasal Village, Tambaram Taluk, now at Sholinganallur Taluk, Kancheepuram District was purchased by his father Mr.Swaminathan, in and by a Registered Sale Deed dated 09.07.1968 in Sub Registrar's Office at Tambaram. Since, after purchase his father was in exclusive possession and enjoyment of the same. His father Swaminathan died on 15.10.1994 leaving behind his mother and three sisters and one brother to inherit the estate belonging to him. Accordingly, we were in joint possession and enjoyment of the above said land.

3. The petitioner submits that while these facts being so the second respondent herein have issued the impugned proceedings in his S.R.496/77/77A, dated 30.01.1990 under the Principal Act and thereby determined the excess vacant land of 1,522 square meters in the name of his father and filed a writ petition in W.P.No.32845 of 2003 challenging the above said impugned order and the same was set aside by this Court on 03.04.2013 and thereby the third respondent is directed to consider the petitioner's grievance and pass suitable order.

4. The petitioner further submits that since after the order passed by this Court either the first respondent or Government have preferred any appeal or review against the order passed by this Court on 03.04.2013 in W.P.No.32845 of 2003, hence the order passed by this Court is final.

5. The petitioner further submits that on 12.07.2013, the second petitioner herein who is the purchaser from them, had applied for transfer patta as per the documents vide 2491 of 2007, dated 09.03.2007 before the third respondent herein in which the third respondent herein called for the personal appearance on 19.08.2013 at 11.00 a.m., of the second petitioner with all documents. Since after appearance the second respondent neither passed any order nor to take any steps for transferring the patta in the name of the 2nd petitioner herein. Since the 2nd petitioner herein who is the legitimate purchaser as per the indemnity clause in the sale deed as the vendors are bound to clear the encumbrance pertaining to the sale deed, therefore, the second petitioner herein who is an authorized person to mute the patta in his name according to his sale deed.

6. The petitioner further submits that since after enquiry by the 3rd respondent, statement was obtained from the second petitioner herein and he insisted the second petitioner to obtain no objection certificate from the first and second respondents herein. The act of the 3rd respondent herein for insisting on No Objection Certificate from the authority concerned is highly misconceived and against law, since the order was passed by this Court as early as on 03.04.2013 and thereby the impugned proceedings of the second respondent was set aside, there is no appeal, review filed by the respondents even till date, while these facts are so, by mere insisting on the No Objection Certificate from the respondents authorities concerned is a delay of tactics adopted by the third respondent which is against law. Hence, there is no other alternative effective and efficacious remedy other than to invoke the extra ordinary jurisdiction under Article 226 of the Constitution of India seeking writ of mandamus directing the 3rd respondent to mute the patta in the name of the second petitioner herein as per his document without insisting on no objection certificate from the respondents or authority concerned on the second petitioner's Application dated 12.07.2013.

7. The highly competent counsel Mr.A.Ramu, appearing for the petitioner submits that the petitioner and his mother and sisters and his brothers had filed a writ petition before this Court and challenged the acquisition proceedings of the 2nd respondent herein. The same was allowed. Consequently, the acquisition proceedings have abated under section 4 of the Tamil Nadu Urban Land Ceiling Act. The petitioner's father had purchased land to an extent of 2,250 sq.meters comprised in S.No.269/5, situated at Venkaivasal Village in the year of 1968. From the date of purchase, the petitioner and his family members were enjoying the said property jointly. Thereafter, the respondent had determined that the excess vacant land to an extent of 1522 sq.meters which had been declared by the respondents in their proceedings dated 30.01.1990. The same was challenged before this Court by way of writ petition and the impugned order of the respondent was set aside.

8. Till now, all the relevant records stand in the name of the petitioner. As such, there is no excess vacant land possessed by the petitioner. Hence, the petitioner prays this Court to issue patta in the name of petitioner without insisting on No Objection Certificate.

9. The very competent Additional Government Pleader, Mr.M.S.Ramesh, appearing for the respondents submits that the respondents had acquired surplus lands from the petitioner, under the Tamil Nadu Urban Land Ceiling Act. As such, the surplus land is under the care and maintained by the respondents. Therefore, the petitioner is not entitled to receive patta. Besides, No Objection Certificate cannot be issued to the petitioner for getting patta from the Tahsildar.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set papers, this Court is of the view that this Court cannot give any direction to the 3rd respondent to issue patta without insisting on No Objection Certificate, since the petitioner had not produced any current documents namely property tax receipts, Chitta and Adangal and documentary proof to show that he is in physical possession. Further, this Court had given liberty to the respondents in W.P.No.32845 of 2003, dated 03.04.2013, to consider the petitioner's objections, if any. As such, this Court cannot give any direction to the executive authorities to give patta in the name of the petitioner. Hence, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

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Sholinganallur , Chennai - 600 119.

+1 cc to M/s.A.Ramu & M.G.Sivaraj, Advocates, sr.49954(08/10/2015)

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and
M.P.No.1 of 2014