

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 25/09/2015

DATED : 22/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.10718 of 2010

and

M.P.Nos.1 of 2010 & 1 of 2012

S.Partheeban

... Petitioner

Vs.

1.The State Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department, Secretariat,
Fort St. George,
Chennai-600 009.

2.The Director of Urban Land
Ceiling and Urban Land Tax,
Chennai-600 005.

3.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.

4.The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai-600 005.

5.The Assistant Commissioner,
(Urban Land Ceiling),
Poonamallee.

6.The Tahsildar,
Ambattur Taluk,
Tiruvallur District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records pertaining to the order in Lr.No.13958/2009/G3, dated 19.01.2010 passed by the second respondent herein quash the same as illegal, improper, arbitrary and against the principle's of natural justice and

thereby direct the respondents to regularize the petitioner's land and issue the no objection certificate to him to obtain patta, chitta and adangal towards his property situated at S.No.36/7, 36/8, Plot No.44 and 45, Shanmuga Nagar, 2nd Street, Tiruverkadu, Chennai-77 to an extent of 3600 sq.ft. by receiving appropriate amount from the petitioner on the right of G.O.Ms.No.649, dated 29.07.1998 issued by the Government of Tamil Nadu.

For Petitioner : Mr.A.Rajesh Kannan

For Respondents : Mr.P.Karthikeyan

Government Advocate for R1, R2, R4 to R6

Mr.G.Bhuvaneshkumar for R3

O R D E R

The petitioner has submitted that he is residing in the above mentioned address along with his family members. The petitioner has purchased the landed property situated in S.Nos.36/7, 36/8, Plot Nos.44 and 45, Shanmuga Nagar, 2nd Street, Tiruverkadu, Chennai-77 to an extent of 3600 sq.ft. from one Smt.Harini, wife of Rajappan, residing at No.11 Arjunamedu, Tiruverkadu, Chennai-77, who is registered power agent of one Mr.R.Sahadevan, son of Rathinasamy, residing at No.40/4, 2nd Main Road, Virugambakkam, Chennai-92. The General Power of Attorney executed by Mr.R.Sahadevan in favour of Smt.Harini which was registered in Document No.124/2008 on 08.02.2008 on the file of Sub Registrar, Poonamallee. Based upon the said Power of Attorney, he has purchased the said land from Smt.Harini through registered sale deed in document No.4820/2008, dated 28.05.2008 on the file of Sub Registrar Office, Kundrathur for the valid sale consideration for a sum of Rs.9,00,000/-. The petitioner has further submitted that subsequent to the purchase of the said land, he is holding with the peaceful possession and enjoyment of the said property without any hindrance as on date. The petitioner has put up a superstructure in the said land and applied for the electricity connection. Considering his request, service connection was given to his premises in service connection No.427-002-585. The petitioner has been regularly paying the electricity bill amount. Even the Municipality of Tiruverkadu have assessed the property tax to his land for the year 2009-2010 in assessment No.12412 and he has also paid sum of Rs.242/- to the Tiruverkadu Municipality towards the property tax levied by them. The petitioner has further submitted that even the encumbrance certificate issued by the Sub Registrar, Kundrathur clearly reflects that as on date, he is holding with peaceful possession and enjoyment of the property. The said property stands in his name. but all of a sudden the subordinates attached to the fifth respondent's office came to his premises and stated that his land was already acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act,

1974. Hence, they ordered him to vacate from their premises. Thereafter, only he came to know that his land was already acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The petitioner is a bona-fide purchaser, purchased the said land through registered sale deed in Document No.4820/2008, on the file of Sub Registrar, Kundrathur for a valid sale consideration a sum of Rs.9,00,000/-.

2. The petitioner has further submitted that immediately he has approached the fifth respondent herein and made a request to regularize his land which was acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The fifth respondent herein directed him to present the application towards the regularization of the land under the registration for the regularization of the purchase of the land under innocent buyers category. The said petition forms is applicable only to the innocent buyers who are coming under the purview of the order issued in G.O.Ms.No.649, Revenue, dated 29.07.1998. The petitioner has further submitted his application to consider his request on the light of said G.O. issued by the Government of Tamil Nadu. The petitioner has further submitted that the said application was received by the fifth respondent in file No.850/2008 and thereafter, when he contacted the fifth respondent, they stated that his application was forwarded to the second respondent in the file No.1131/2009. Even the G.O.Ms.No.649, dated 29.07.1998, Revenue Department, was issued by the Government of Tamil Nadu to secure the innocent buyers who purchased the lands, without knowing the said lands was acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Further, in the said G.O., it was clearly stated that the lands which are purchased by the innocent purchasers shall be regularized by receiving appropriate amount towards the regularization of the said land in favour of them. The said G.O. is squarely applicable in his case. In this regard, the petitioner has sent a representation to the first respondent herein on 19.12.2008 requesting the first respondent to issue no objection certificate to him for obtaining patta, chitta and adangal to his landed property.

3. The petitioner has further submitted that in the said representation dated 19.12.2008, he has specifically mentioned and expressed his willingness to pay the appropriate amount which is ordered by the Government of Tamil Nadu to regularize his land. Even then the respondents herein never sent any reply and so far not considered his request. The petitioner has filed a writ petition in W.P.No.20227 of 2009 against the respondents 1, 2 and 5 and this Court, by an order dated 07.10.2009 passed the following order:-

" ... 5. Considering the limited scope of the matter, without expressing any opinion about the merits of the matter or merits of the representation

dated 19.12.2008, I direct the second respondent to dispose of the said representation on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Till such time, the respondents shall not take any recourse against the petitioner for evicting him from the property in question."

The petitioner has further submitted that subsequent to the receipt of the order in W.P.No.20227 of 2009, dated 07.10.2009 passed by this Court, he immediately communicated the same to the first, second and fifth respondents herein through RPAD and in person. But, the said respondents even after receipt of the order copy dated 07.10.2009 passed in W.P.No.20227 of 2009, never complied with the same since specific time was fixed by this Court in the order dated 07.10.2009 to consider his representation dated 19.12.2008 within a period of six weeks. But, even after lapse of two months, the said respondents never sent any reply. Hence, the petitioner issued a notice to the respondents 2 and 5 herein on 06.01.2010 and the same was received and acknowledged by them. The petitioner has further submitted that subsequent to the receipt of lawyer notice dated 06.01.2010 sent by him through his counsel, thereafter, the second respondent passed the impugned order dated 19.01.2010 stating that his request in respect of issuance of no objection certificate could not be considered, since there are writ petitions pending before this Court from innocent purchasers and have not been disposed of and also the allotment was made to the Tamil Nadu Slum Clearance Board who is the third respondent herein. After receipt of the said impugned order dated 19.01.2010 passed by the second respondent, he was very much shocked and surprised since he has not filed any other writ petition, except the said writ petition in W.P.No.20227 of 2009, dated 07.10.2009. Apart from that, he is not aware when the said land was allotted in favour of the third respondent herein.

4. The petitioner has further submitted that the fifth respondent herein communicated about the impugned order dated 19.01.2010 passed by the second respondent through in his letter dated 01.02.2010, immediately, he approached the fifth respondent herein and clearly expressed his willingness that he is very much ready to pay the appropriate amount towards regularization of his land as per the G.O.Ms.No.649, dated 29.07.1998, Revenue Department issued by the Government of Tamil Nadu. But, the fifth respondent refused to accept his request and stated that other writ petitions were filed by the innocent buyers and these are pending on the file of this Court. Further, the petitioner requested the fifth respondent to furnish the details about when the said land was allotted to the third respondent. He made an evasive reply. The petitioner has further submitted that thereafter through one

of his neighbours of said purchased property, he got information about those buyers of their said locality, who filed seven numbers of writ petitions in W.P.Nos.11690, 11691, 11692, 11693, 11694, 12307 and 12230 of 2006, challenging the order passed by the fifth respondent herein who is the second respondent in the said writ petitions dated 31.01.1992 vide Na.Ka.3731/91/D under Section under Section R.C.No.3731/91/A under Section 11(5) of the Tamil Nadu Urban Land Ceiling and Regulation Act 1978 in respect of the lands measuring 5250 sq.mt bearing plot Nos.18, 19 and 20 of Shanmuga Nagar comprised in S.No.36/8 and 36/9 of Noombal Village Poonamalle Taluk, Tiruvallur District. Immediately, he approached information centre of this Court and got the information about the said seven writ petitions. All the said seven writ petitions are pending on the file of this Court. out of the said seven writ petitions, W.P.No.12230 of 2006 came up for hearing on 05.03.2010 and main writ petition was admitted and notice was ordered on the same returnable by four weeks.

5. The petitioner has further submitted that in respect of the allotment of the said land in favour of the third respondent herein, the petitioner approached the third respondent and requested certain information under the RTI Act. The petitioner has further submitted that the representation dated 27.10.2009 was addressed to the Public Information Officer, Tamil Nadu Slum Clearance Board. Thereafter, the petitioner was directed to pay a sum of Rs.5/- towards obtaining the said information from the Board. In this regard, the third respondent sent a reply letter to him on 16.02.2010. Immediately, he has approached the third respondent and made a payment of Rs.5/- to the third respondent and received acknowledgment receipt. The petitioner has further submitted that he has also sent a representation on 08.03.2010 to the third respondent herein. Thereafter, he received information on 05.04.2010 from the Public Information Officer of third respondent Department. In that it was clearly said that land in S.No.36/7A, 36/8A, 36/9 to an extent of 15,800 sq.m of Noombal Village, Tiruverkadu was allotted to their Board in the year of 1996 through the Revenue Department on 30.09.1996 and he has purchased the said land through a valid sale deed on 28.05.2008 and erstwhile owners of said land purchased the same more fully in the year 1990. Hence, the said G.O.Ms.No.649 dated 29.07.1998 is squarely applicable to his case. Hence, the petitioner entreats the Court to allow the above writ petition.

6. The learned counsel appearing for the petitioner has submitted that the petitioner has purchased the subject matter of land, to an extent of 3600 sq.ft., from one Harini and is in possession and enjoyment of the same. Subsequently, he has put up a superstructure thereon and obtained electricity service connection, besides he has been remitting

mandatory property tax to Thiruverkadu Municipality. In such circumstances, the subordinates, attached to the fifth respondent, came to the petitioner's premises and informed him that the said land has been acquired under the Tamil Nadu Urban Land Ceiling Act and directed him to vacate and hand over the possession of the premises to them. The petitioner made a representation to the fifth respondent to regularize the irregularity in the purchase of land as an innocent purchaser. He is entitled to avail such remedy as per G.O.Ms.No.349, dated 29.07.1998. The fifth respondent had forwarded the same to the second respondent, besides the petitioner had also sent a representation to the first respondent. The second respondent had directed the fifth respondent to take necessary action on the petitioner's representation. The petitioner is also ready to pay necessary admissible amount for regularization.

7. Further, the learned counsel has submitted that since the respondents remained silent, after receipt of the said representation, silent, the petitioner had filed a writ petition before this Court, in W.P.No.20227 of 2009, and this Court, by order, dated 07.10.2009, directed the respondents herein to dispose the petitioner's representation on merits within a specified period. Pursuant to the said direction, the second respondent has passed the impugned order and negatived the request of the petitioner. The petitioner is in enjoyment of the subject land for about seven years and therefore, the learned counsel has prayed this Court to direct the respondents to issue a no objection certificate, which would enable to regularize his civil rights.

8. The learned counsel appearing for the third respondent has submitted that the subject land has been allotted to Tamil Nadu Slum Clearance Board. Further, the said land is absolutely required for the Slum Clearance Board in order to provide houses and house sites to the poor downtrodden people. Therefore, the writ petition is not maintainable.

9. The learned counsel appearing for the respondents 1, 2, 4 to 6 has submitted that surplus lands have been acquired from the original owners under the Tamil Nadu Urban Land Ceiling Act. After acquiring the said lands, the possession of the same were handed over to the respondents 1 and 2, who in turn allotted the same to Tamil Nadu Slum Clearance Board. Further, valid reasons have been assigned in the impugned order and hence the learned Government Advocate has prayed this Court to dismiss the writ petition.

10. On considering the facts and circumstances of the case and the submissions of the learned counsel on either side and on perusing the typed set of papers, it is seen that

the subject land has been allotted to Tamil Nadu Housing Board and on the strength of the allotment order, the Slum Clearance Board is maintaining the subject land. In such circumstances, the respondents cannot entertain the petitioner's request. As such, the writ petition does not generate sufficient force to allow it and the same is liable to be dismissed.

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

sd/-

Assistant Registrar(Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

r n s / krk

To

- 1.The Secretary to Government,
Revenue Department, Secretariat,
State Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
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CO-SV

JD 29/01/2016