IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02 /09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8657 of 2009 &
M.P.No.2 of 2009

M.Baskar ... Petitioner

Vs.

1.The Principal Secretary /
Commissioner of Land Reforms,
O/o - Director of Urban Land Ceiling &
Urban Land Tax,
Chepauk, Chennai - 600 005.

2.The Assistant Commissioner,
(Urban Land Tax), Tambaram Zone,
Chennai - 600 088. ... Respondents

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 impugned order dated 29.01.2009 in Proceedings No.Rc.No.12860/2008/G2 passed by the first respondent herein and quash the same.

For Petitioner : Mr.V.Srikanth
For Respondents : Mr.P. Sanjay Gandhi
Addl. Govt. Pleader for R1 and R2

O R D E R

The petitioner submits that he is the absolute owner of the property of an extent of 56 cents (2300 sq.mts) comprised in S.No.116/2A, situated in Sembakkam Village, Tambaram Taluk, Kancheepuram District, having purchased the same from one M/s.T.H.Mahalakshmi, D/o.Harihara Iyer and one M/s.T.H.Venkitambal @ Chithra W/o.Gowri Kanthan (son of T.H.Harihara Iyer) under six different sale deeds dated 19.10.2005 and registered as Document Nos.8400 of 2005 to 8405 of 2005, on the file of Sub Registrar, Tambaram. The petitioner further submits that his vendors were in possession and enjoyment of the entire extent of 56 cents and now, he is having possession and enjoyment of the property as absolute owner from the date of purchase i.e., from 19.10.2005. The petitioner further submits that the father of the above first vendor and father-in-law of the second vendor, Late Mr.Harihara Iyer was the absolute / original owner of the property and he died

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leaving behind 1.Mrs.Bharathi Hariharan, his wife, 2.T.H.Mahalakshmi, his daughter, and 3.Mr.T.H.Gowri Kanthan, his son as his legal-heirs. The said Gowri Kanthan died leaving behind 1.Venkitambal, his wife and 2.Bharathi Hariharan, his mother as his legal-heirs. Subsequently, Bharathi Hariharan also died leaving behind the first vendor as her only legal-heir. Thus, the first and second vendors became absolute owners to the property. The petitioner further submits that according to the first respondent herein, the acquisition proceedings have been initiated by the second respondent under the TNUL (Ceiling & Regulation) Act, 1978, herein referred to as Act 24 of 1978, against Thiru.T.H.Gowri Kanthan by declaring the said property as excess land. He further submits that the entire proceedings of the second respondent is illegal because, it was initiated against only one of the co-owners, when the property is jointly owned by Smt.Bharathi Hariharan and T.H.Mahalakshmi apart from T.H.Gowri Kanthan.

2. The petitioner further submits that the mutation entries in the revenue records were in the name of one of his vendors as per patta No.155 and they have also paid tax for the property on 10.10.2005. He has verified all these documents and genuinely purchased the property after exercising due diligence. Subsequently, revenue records were mutated in his name. He further submits that the patta was issued in his name by the Tahsildar, Tambaram in patta No.155 and that A Register also reflected his name which is a clear admission on the part of the respondents that the physical possession and ownership continued to be with his previous vendors and subsequently with him. This being the fact, the then Revenue Divisional Officer, Chengalpattu, on a complaint made by some miscreants who made failed attempts to extract money from him, has cancelled the pattas issued in favour of one of his vendors and him by her order Na.Ka.No.1141/2006, dated 16.02.2006 without making due enquiry. Aggrieved by the order, the petitioner preferred a writ petition in W.P.No.8091 of 2006 challenging the said order and this Court was pleased to grant interim stay in W.M.P.No.9030 of 2006 and ordered notice to the respondents on 24.03.2006. The petitioner further submits that subsequently on 30.09.2008, he made an application before the Special Commissioner and Commissioner, Urban Land Ceiling and Urban Land Tax, Chepauk, Chennai-5 stating all these facts and to drop further action in the above matter in view of the Repeal Act 20 of 1999 and the said authority after due enquiry passed an endorsement vide Rc.No.12860/2008 (G2), dated 22.10.2008 declaring the entire land of 2300 square metres in S.No.116/2A of Sembakkam Village is free from the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and Repeal Act, 20 of 1999.

3. The petitioner further submits that three months after the order dated 30.10.2008, dropping further action under the Act 24 of 1978, the Principal Secretary being the in-charge Commissioner of Land Reforms has passed an order cancelling the earlier order dated 22.10.2008. The first respondent herein by his order dated 29.01.2009 has suo moto cancelled the earlier order dated 22.10.2008 mainly on the ground that the said land was

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allegedly acquired before the Repeal Act 20 of 1999 and part payment under Section 12(6) was purportedly paid. The petitioner further submits that possession was with his vendors and is still with him as the pattas issued in their favour would clearly prove. Moreover, the entire acquisition proceedings itself is invalid as it was not initiated against all the co-owners.

4. The petitioner further submits that the above said impugned order passed by the first respondent dated 29.01.2009 which is sought to be challenged before this Court is not served on the petitioner. The petitioner came to know that such an order has been passed from reliable sources and got the xerox copy of the order. The petitioner had been making many representations before the Office of the Directorate to serve him his copy of the order, but they are deliberately avoiding to serve him for the reasons best known to them. The petitioner further submits that he came to know from the xerox copy of the order that his address in it was wrongly typed and so, he sent a letter by registered post on 23.03.2009 to the Office of the Directorate of Urban Land Ceiling and Urban Tax stating the correct address and requested them to send the copy to the correct address. The said letter was received by the first respondent on 25.03.2009. But, still they have neither sent the copy nor given any reply. The petitioner further submits that on 21.04.2009, he gave a reminder to the first respondent about the order copy, but still he has not received the same. Hence, the petitioner has filed the above writ petition.

5. The highly competent counsel Mr.V.Srikanth appearing for the petitioner submits that the petitioner is the absolute owner of the property comprised in S.No.116/2A, Sembakkam Village, Tambaram Taluk, Kancheepuram District to an extent of 2300 sq.mts. The petitioner had purchased the said landed property under 6 different sale deeds dated 19.10.2005 through document bearing Nos.8400 of 2005 to 8405 of 2005, on the file of Sub Registrar, Tambaram. At the time of purchase, his vendors, viz., Mrs.Mahalakshmi, Mrs.Chitra were in possession and enjoyment. After purchase of the said property, the petitioner is in physical possession and enjoyment of the said property. Both the vendors have become absolute owners to the property being legal-heirs of the erstwhile owners. As per the first respondent's proceedings, the second respondent had initiated acquisition proceeding under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 against Mr.Gowri Kanthan, by declaring that the subject land has excess land. At the time of initiating the said acquisition proceedings, the land belonged to Mrs.Bharathi Hariharan, Mahalakshmi and Gowri Kanthan. As such, the acquisition proceedings initiated against Mr.Gowrikanthan is not valid since the property is a joint owners property. Therefore, the second respondent's proceedings has become vitiated and cannot be executed against the petitioner or erstwhile owners.

6. The highly competent counsel appearing for the petitioner further submits that before purchasing the said property, the petitioner had scrutinized the title deeds of the

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erstwhile owners. As such, the patta bearing No.155 was standing in the name of erstwhile vendors and they have also paid mandatory taxes to the statutory authorities. The last payment of tax for the said property had been remitted on 10.10.2005. Therefore, the erstwhile vendors had possessed marketable title deeds over the said property. Hence, the petitioner had purchased said property under registered sale deeds after paying the entire sale consideration. Thereafter, the revenue records were mutated in the name of the petitioner. Subsequently, the Tahsildar, who is attached to the Tambaram Revenue Taluk Office had issued patta in the name of the petitioner. The Taluk Tahsildar, who is the competent, authorized and recognized person to issue patta had issued patta in the name of the petitioner and this clearly proves that the petitioner is in possession and owns the property. Therefore, the earlier acquisition proceedings under the Urban Land Ceiling Act is not valid.

7. The highly competent counsel appearing for the petitioner further submits that the chitta, adangal and tax receipts all were standing in the name of erstwhile owners. Subsequently, the same had been transferred in the name of the petitioner. The highly competent counsel further submits that the petitioner is in physical possession from the date of purchase, without any interference for about more than 10 years. Further, the respondent had not furnished a detailed report regarding date of initiation of acquisition proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Subsequently, the details as to when the proceedings were completed, when the compensation had been paid, to whom it was paid, what is the quantum of compensation and mode of compensation, when the property had been taken from the erstwhile owners and handed over to the Revenue Department are not furnished. As such, the invalid proceedings cannot be operated upon over the said property. Some of the local persons who had failed to extract money from him had made false complaints before the Revenue Divisional Officer for their personal gain and the same was not paid. Hence, the said complaint had been levelled. However, the Revenue Divisional Officer had cancelled the patta in his proceedings dated 16.02.2006 which is an arbitrary order, since there is no comprehensive enquiry on that issue.

8. The highly competent counsel appearing for the petitioner further submits that the petitioner had levelled an application before the Special Commissioner, Urban Land Ceiling, who had conducted a detailed enquiry in the presence of the petitioner and his subordinates and also scrutinized the relevant records pertaining to the subject landed properties and passed orders in his proceedings dated 22.10.2008 and declared that the entire land, to an extent of 2300 sq. mts. comprised in Survey No.116/2A, Sembakkam Village is free from the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and Repeal Act, 20 of 1999, which has become final and upheld. Under the circumstances, the Principal Secretary attached to the State Government had issued an order dated 29.01.2009 and suo moto cancelled the earlier meritorious order dated 22.10.2008 passed by the Special

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Commissioner, Urban Land Ceiling. Further, in the said order passed by the first respondent, it has been mentioned that part payment has been paid under Section 12(6). It also clearly proves that the entire compensation has not been made and even the person to whom the part payment has been made has not been shown, which is an inconsistent statement given by the first respondent in his order. Further, the petitioner came into the picture from 19.10.2005 and he obtained a favourable order from the Commissioner, Urban Land Ceiling on 22.10.2008. As such, the petitioner is entitled to receive the impugned order passed by the first respondent, but the same was not furnished. Therefore, the first respondent's order is not fit to be operated upon any further. Hence, the highly competent counsel entreats the Court to set-aside the impugned order of the first respondent.

9. The highly competent Additional Government Pleader Mr.Sanjay Gandhi appearing for the respondents submits that the acquisition proceedings had been initiated under the Urban Land (Ceiling and Regulation) Act, 1978 by the second respondent herein. The acquisition proceedings had been completed in the year 1991 and compensation had been paid to the erstwhile owner of the said land to an extent of 2300 sq. mts. Subsequently, the petitioner had purchased the said land from the erstwhile owner in the year 2005, which is not sustainable under law and hence, the said sale deeds have become null and void. However, the Taluk Tahsildar had issued patta in the name of the petitioner, but the same was challenged before the Revenue Divisional Officer by the third parties in the public interest. The Revenue Divisional Officer had conducted a comprehensive enquiry and on perusing the relevant records pertaining to the said lands and also scrutinizing the acquisition proceedings, which had been initiated by the second respondent and had come to a conclusion that the said subject lands are under the care and custody of the respondents. Hence, the patta issued by the Tahsildar dated 27.12.2005 was cancelled. The said order had been passed on the strength of documentary facts. The first respondent had also passed this impugned order which is valid since he is the topmost officer of the State and Appellate Authority. Therefore, there is no impediment in the said impugned order. Further, the Repeal Act had come into existence in the year 1999, but the acquisition proceedings had been completed in the year 1991. Therefore, the petitioner cannot claim the said property under the Repeal Act. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

10. From the above discussions, this Court is of the view that:-

(i) The impugned order reveals that a part payment was paid under Section 12(6) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The first respondent has failed to furnish more required particulars regarding date of initiation of land acquisition proceedings and date of completing the same. Besides the impugned order reveals that the acquired property has been handed over to the Revenue Department on 06.09.1989 itself. If such are the facts, it is not understandable as to how the Revenue

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Tahsildar, Tambaram had issued a patta in the name of the petitioner by his proceedings dated 27.12.2005. Therefore, it is crystal clear that the possession allegedly handed over to the Revenue Department is only theoretical but and does not have supporting documents to prove the same.

(ii) The subject matter of the lands originally belonged to Mr.Harihara Iyer at the time of initiating acquisition proceedings under the said Act. After his death, the legal-heirs 1)Mrs.Bharathi Hariharan, 2)T.H.Mahalakshmi and 3)Mr.T.H.Gowri Kanthan, are the legal-heirs of the deceased Harihara Iyer, but the above said joint landowners have not been brought into records in the acquisition proceedings.

(iii) As per the respondents records, the acquisition proceedings have been completed in the year 1989 and the possession was handed over to the Revenue Department on 06.09.1989, but the same has not been maintained and taken care of and no indication such as, sign board, fencing, personal security or marking stones have been provided.

(iv) The first respondent has given an option that if he is an innocent purchaser, then he could seek remedy from the Revenue Department under G.O.Ms.No.565, dated 26.09.2008. In the instant case, the petitioner had purchased the subject lands under 6 different sale deeds bearing document Nos.8400 of 2005 to 8405 of 2005, on the file of Sub Registrar, Tambaram, dated 19.10.2005. As such, he seems an innocent purchaser since the relevant documents viz., patta, chitta, adangal, tax receipts and encumbrance certificate including other revenue records were showing the name of the erstwhile owners.

(v) The property has been allegedly acquired in the year 1989 and as such, after a lapse of around 27 years, the property had not been utilized by the Government, which indicates that there was no solemn intention of the Government in making use of the property. However, the petitioner occupied the said property from the date of purchase. Therefore, the respondents are restrained from interfering with the peaceful possession of the petitioner's property, without due process of law.

11. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers and the views of this Court as expressed above (i) to (v), the above writ petition is allowed. Consequently, the impugned order dated 29.01.2009 in Proceedings No.Rc.No.12860/2008/G2 passed by the first respondent herein is quashed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.The Principal Secretary /
Commissioner of Land Reforms,
O/o - Director of Urban Land Ceiling &
Urban Land Tax,
Chepauk, Chennai - 600 005.

2.The Assistant Commissioner,
(Urban Land Tax), Tambaram Zone,
Chennai - 600 088.

+1cc to Mr.V. Srikanth, Advocate, S.R.No.47827

+1cc to the Government Pleader, S.R.No.47594

GJ(CO)
EU(25/09/2015)

W.P.No.8657 of 2009 &
M.P.No.2 of 2009

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