IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.7537 of 2013

1.T.K.Lalitha
2.Alok Kumar Gulechha .. Petitioners

Vs.

Assistant Commissioner,
Urban Land Tax Regularization,
No.153, Karuneegar Street,
Alandur,
Chennai. .. Respondent

Prayer: The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Writ, Direction, or Order directing the respondent herein to regularize the land in question measuring to an extent of 4436 sq.ft which bearing Plot No.78 and 79 comprised in S.No.725/1A1 of Pallikaranai Village, Tambaram Taluk, Kancheepuram District by permitting to pay the regularization fee of Rs.2,06,100/- and directing the respondent to accept the same by virtue of G.O.Ms.No.56 Revenue (ULC 1(2)) Department dated 21.02.2011 or passing any other order or orders.

For Petitioners : Mr.Selvaraj
and K.Karthick

For Respondents : Mr.M.S.Ramesh
(Additional Govt. Pleader)

O R D E R

Reserved on : 24.11.2014
Pronounced on : 27.11.2015

The 1st petitioner has submitted that she is the owner of the property and second petitioner is the subsequent purchaser. She submits that she purchased a property measuring to an extent of 4436 sq.ft., bearing Plot Nos.78 and 79 comprised in S.No.725/1A1 of Pallikaranai Village by virtue of sale deed dated 21.06.1993 from one Valliammal and Santhal and the same was registered as Document No.2069/1993 on the file of Joint Sub Registrar - I, Saidapet.

2. She has further submitted that before purchasing the above property, she took reasonable causes to verify the encumbrance on the property which is normally taken by the common public i.e., approaching the Sub-Registrar concerned and accordingly she found that there was no encumbrance on the property. Believing the same, she was under the impression that there was no encumbrance on the property by any means. She has submitted that subsequently she was informed that the land which she has purchased from the vendor namely Valliammai and Santhal was acquired by the respondent herein by virtue of Tamil Nadu Urban Land (Ceiling and Regularization) Act, 1978 as surplus. She has submitted that though the land was acquired by the respondent as surplus lands from the holder of the lands, the possession was not taken over by the land owner therefore the erstwhile owners have sold the same taking advantage of the fact that the land was not effectively on hold by the respondents. In view of the same many prospective buyers have purchased the same.

3. The petitioner has further submitted that subsequently she was informed that the impugned act was repelled and a moratorium was given to the prospective purchaser who has purchased the land from the persons whose land was already acquired under the impugned act. Not withstanding the above, there was a confusion regarding the regularization of the land held by the prospective purchaser and thereby in order to remove the difficulties faced by the prospective purchaser the government has issued a Government Order in M.S.No.56, Revenue (ULC 1(2) Department, dated 21.02.2011.

4. The petitioner has further submitted that through the above said Government Order dated 21.02.2011, the Government has come forward to regularize the lands holding by the purchasers who have inadvertently purchased the acquisition land which was taken over by Impugned Act as surplus. In the said Government Order, the prospective purchasers have been directed to pay the specified amount for regularizing the land. As such, in so far as her land is concerned the Government has fixed Rs.2,06,100/- as regularization fee. And the said Government Order was sent by registered post to the concerned property purchasers. She has submitted that in the said Government Order, the Government has directed the prospective purchasers to pay the regularization fees before the concerned Assistant Commissioner Urban Land Tax within 30 days from the date of receipt of the Government Order. However, she has not received any communication from the Government nor from the concerned Assistant Commissioner Urban Land Tax.

5. The petitioner has further submitted that she was under the impression that a letter requesting her to pay the regularization fee may be communicated by the respondent independently and thereafter she could pay the fee within 30 days from the date of receipt of communication. She has further submitted that in the meantime, she decided to sell the property due to some unforeseen expenses and accordingly she sold the property to the second petitioner herein by executing a conveyance dated 28.02.2011 and the same has been registered as Document No.1837 of 2011 with the office of Joint Sub Register-I, Saidapet. While executing the said sale deed, she has informed the fact that the land was regularized by the Government on condition of payment of fee and he agreed to purchase the property after knowing that the land was regularized and it is released from the Urban Land Ceiling Proceedings. She has submitted that since no communication was received either from the Government and the respondent, she approached the department of Revenue and got a copy of Government Order dated 21.02.2011 wherein her address was wrongly mentioned as Dev Enclave Apartments, F3-First Floor, B8-First Cross Street, Nanganallur, Chennai - 61. The fact remains that she is the permanent resident at No.3, Shivaji Street, T.Nagar, Chennai - 17 and the copy of the Government Order with request to pay the regularization fee was not served on her in time and therefore, she was prevented from paying the regularization fee within 30 days as stipulated in this Government Order.

6. The petitioner has further submitted that though she has sold the property to the second petitioner on 28.02.2011, at the instance of the second petitioner, she went to the respondent office and requested them to permit her to pay the regularization fee by providing the challan which contains the appropriate account number. However, the subordinates attached to the respondent declined to provide the challan for payment of the regularization fee with its account number. The second petitioner also went to the office of the respondent and requested to permit him to pay the regularization fee on behalf of her and his efforts had also gone in vain. She has submitted that for the reason best known to the respondent, they declined to supply the concerned challan for payment of regularization fee and she was prevented from paying the regularization fee and she will be in peril since it is her bounden duty to perfect the title of the prospective purchaser i.e. the second petitioner as contemplated under the Transfer of Property Act. She has further submitted that the respondent did not permit her to pay the regularization fee as stipulated in G.O.No.56, dated 21.02.2011. Therefore, she has no other alternative and efficacious remedy except to approach this Court to invoke the extraordinary powers conferred under Article 226 of Constitution of India to issue a Writ of Mandamus directing the respondent to regularize the land measuring to an extent of 4436 sq.ft., which bearing plot No.78 and 79 comprised in

S.No.725/1A1 of Pallikaranai Village, Tambaram Taluk, Kancheepuram District by virtue of G.O.Ms.No.56(Revenue (ULC 1 (2)) Department, dated 21.02.2011. Hence, the petitioners have filed the present writ petition.

7. The learned counsel appearing for the petitioners has submitted that the first petitioner had purchased the land, comprised in Survey No.725/1A1 of Pallikkaranai Village, measuring about 4436 sq.ft., from Valliammal and Santhal, under a registered Sale Deed, after due verification of Encumbrance Certificate. Subsequently, she sold the said land to and in favour of the second petitioner. In the meantime, she was informed that the said land had been acquired by the respondent under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, as surplus. However, possession had not been taken by the respondent.

8. Further, the learned counsel has submitted that as per G.O.Ms.No.56, dated 21.02.2011, on payment, the purchase can be regularized since the alienation had been taken inadvertently. The Government has also fixed Rs.2,06,100/- as regularization fee. The Government has directed the prospective purchasers to pay the regularization fee before the concerned Assistant Commissioner, Urban Land Tax, within a period of thirty days from the date of receipt of a copy of that Government Order. Since the first petitioner's address was wrongly mentioned, the copy of the Government Order was not served on her. Hence, she had approached the respondent and sought permission to pay the regularization fee. But, the respondent had not permitted her to remit the regularization fee. Therefore, the learned counsel has prayed this Court to permit the first petitioner to remit the regularization fee.

9. The learned Additional Government Pleader appearing for the respondent has submitted that the respondent had acquired lands, measuring about 15,900 sq.meters, from one Pattammal, under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, after allowing 1000 sq.meters to the erstwhile owner. The acquired vacant land had been handed over to the Revenue Authorities on 11.12.1997 and subsequently all the relevant records have been mutated in the name of the Revenue Authorities. In such circumstances, the respondent has no authority to permit the first petitioner to remit the regularization fee. The first petitioner had not remitted the regularization amount with in the stipulated time, but sold the subject land to the second petitioner. Now, the innocent purchaser is the second petitioner. Further, the Government had passed the G.O.Ms.No.56, on 21.02.2011 and the first petitioner sold the subject land to the second petitioner on 28.02.2011. The said scheme was put on hold during January, 2012. Therefore, the respondent had refused to give challan to the first petitioner, since the scheme had expired at that time. Further, after reopening of the Scheme, the first petitioner will be issued with a challan

for remitting the regularization fee.

10. 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 first petitioner had not paid the regularization fee within the stipulated time and hence the respondent had refused to issue challan to her. Further, the respondent has stated in the counter affidavit that the first petitioner's request will be considered at the time of reopening of the said Scheme. Further, the second petitioner has to file a separate affidavit stating that he has not claimed any similar relief as claimed by the first petitioner. In the absence of the same, the writ petition is liable to be dismissed.

11. In the result, the writ petition fails and it is dismissed. No costs.

ub / krk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

The Assistant Commissioner,
Urban Land Tax Regularization,
No.153, Karuneegar Street,
Alandur, Chennai.

+ 1 cc to The Govt.Pleader, Sr 65208.
+1cc to M/S.Karthick, Advocate sr.65025[22/12/2015]

SAI/CO
KR/15/12