

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.Nos.28004 & 28005 of 2007

K.Srinivas ... Petitioner in both W.Ps.

vs.

1.The Special Commissioner
Land Reforms, Chepauk
Chennai-600 005

2.The Assistant Commissioner
Department of Urban Land Ceiling
Tambaram Division
158, Karuneegar Street
Adambakkam, Chennai-600 008

3.The Tahsildar
Tambaram Taluk
G.S.T.Road, Tambaram
Chennai-600 045

4.The Revenue Inspector
Alandur Firka
M.K.N.Road
Cement Road, Alandur
Chennai-600 016

.... Respondents in both W.Ps.

PRAYER (W.P.No.28004 of 2007): Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the show cause notice, dated 19.01.2007 issued by the fourth respondent purporting to be under the provisions of Section 7 of the Tamil Nadu Act 3 of 1905, quash the same and to direct the respondents to forbear from disturbing the petitioner's possession of his properties at S.No.309/1-A in Kilkattalai Village, Kancheepuram District.

PRAYER (W.P.No.28005 of 2007): Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent, dated 21.11.2006, in his reference PT.No.5658/06-07 rejecting the request of the petitioner for sub-division and issue Patta of his land at S.No.309/1-A in Kilkattalai Village, Kancheepuram District and quash the same and direct third respondent to sub-divide the said land.

For Petitioner : M/s.Rugan & Arya
(in both W.Ps)

For Respondents : Mr.P.Karthikeyan
(in both W.Ps) Govt. Advocate for R1 to R4

C O M M O N O R D E R

Reserved on : 05.10.2015
Pronounced on : 16.11.2015

The prayer in W.P.No.28004 of 2007 is for issuance of a writ of certiorarified mandamus to quash the show-cause notice, dated 19.01.2007, issued by the fourth respondent under Section 7 of the Tamil Nadu Act 3 of 1905 and to direct the respondents to forbear them from disturbing the possession of the petitioner's property in Survey No.309/1-A of Kilkattalai Village, Kancheepuram District.

2. Similarly, the prayer in W.P.No.28005 of 2007 is for issuance of a writ of certiorarified mandamus to quash the impugned order, dated 21.11.2006, in PT.No.5658/06-07, passed by the third respondent, rejecting the request of the petitioner for sub-division of the land in Survey No.309/1-A of Kilkattalai Village, Kancheepuram District and to direct him to issue Patta in the petitioner's name and to sub-divide the said land.

3. The short facts of the case are as follows:

According to petitioner, one Lakshmi Ammal purchased the land comprised in Paimash No.202/10 and R.S.No.309/1 of Kilkattalai Village, measuring about 09.31 Acres, from K.Sundarachai, under a Sale Deed, dated 17.11.1961, and registered as document No.2669 of 1961, in the S.R.O.Pallavaram. Similarly, the said Lakshmi Ammal purchased an extent of 02.50 Acres in Survey No.123/1 of Kivilambakkam Village, from A.K.Govindasamy Reddiyar, under a Sale Deed, dated 09.02.1962, and registered as document No.259 of 1962, in the S.R.O.Pallavaram. The said A.K.Govindasamy Reddiyar got the said land under freedom fighter (political sufferer) quota, as per the orders of the Revenue Board in T.Dis.No.18817/48, dated 27.11.1948 and as per the orders of the District Collector, Chengelpet, in Rc.No.19405/47, dated 09.06.1948.

4. The said Lakshmi Ammal along with her husband S.Vekatachariar sold the said property measuring about 09.31 Acres in Kilkattalai Village and 02.50 Acres in Kovilambakkam Village to Self-Help Industrial Units Pvt. Ltd., under a Sale Deed, dated 12.07.1962, and registered as document No.2127 of 1962, in the S.R.O.Pallavaram. Both these parcels are contiguous to each other and form one stretch of land. By letter, dated 30.10.1962, the Joint Director of Town Planning approved the layout plan submitted by the Managing Director of

Self-Help Industrial Pvt., Ltd., covering both the lands as plan L.P.I./D.T.P.No.6/62 as private industrial estate.

5. The said Self-Help Industrial Units Pvt. Ltd., sold one such plot bearing No.1, measuring about 04 Grounds 832 sq.ft., (covered in Survey No.309/1 of Kilkattalai Village) to Southern Automatic Industries Pvt., Ltd., under a Sale Deed, dated 05.11.1982, and registered as document No.5410 of 1982, in the S.R.O.Pallavaram and the said Southern Automatic Industries Pvt., Ltd., inturn sold the said Plot No.1 to Zodia Bio-Mass Chemicals Pvt., Ltd., under a Sale Deed, dated 07.10.1987, and registered as document No.3304 of 1987 in the S.R.O.Pallavaram. The said Zodia Bio-Mass Chemicals Pvt., Ltd., inturn sold the said Plot No.1 to the petitioner under a Sale Deed, dated 29.01.1990, and registered as document No.238 of 1990, in the S.R.O.Pallavaram. In the said Sale Deed, the vendor has mentioned that they have obtained sanction for the proposed construction of factory shed, measuring about 1200 sq.ft., from Pallavaram Municipality, vide PPA No.81, PPL. No.158 of 88 Fl, dated 24.03.1988.

6. The petitioner applied for planning permit and building plan and the Pallavaram Municipality, by order dated 26.10.2005, approved the site and accorded permission for construction. He has also paid all the requisite fees. In such circumstances, he applied for Patta with the third respondent Tahsildar. But, the third respondent Tahsildar, by order, dated 21.11.2006, which is impugned in W.P.No.28004 of 2007, rejected the request of the petitioner on the ground that the subject land comes under urban land ceiling and hence Patta cannot be issued. On receipt of the same, he sent a representation, dated 03.01.2007, to the second respondent, seeking no objection certificate. On the basis of the petitioner's representations, dated 03.01.2007, 18.01.2007, the officials from Revenue Department and the District Collector of Kancheepuram, visited the subject land as well as adjacent land and conducted a survey to identify the land belonging to the Government in that area. He showed them all the documents of title pertaining to his property and they informed him that the subject land is not covered under their survey.

7. At this juncture, on 22.01.2007, the subordinates of the third respondent, namely, the fourth respondent, served a show-cause notice, dated 19.01.2007, which is impugned in W.P.No.28005 of 2007, calling the petitioner for enquiry on 02.02.2007 with relevant documents. Accordingly, he went to the third respondent's office along with his counsel, but the third respondent neither received his reply nor gave him personal hearing. Hence, he sent a reply, dated 02.02.2007, to the third respondent under copy to other officers by registered Post. Since there was no reply from the competent authorities, he filed W.P.No.7172 of 2007 seeking direction to the respondents to restrain them from disturbing his peaceful

possession as well as an order of injunction and this Court by Order, dated 27.02.2007, granted an order of interim injunction. Subsequently, the said writ petition was dismissed as withdrawn with liberty to file a fresh writ petition. Accordingly, he has filed the present writ petitions seeking the relief as stated above.

8. The learned counsel for the petitioner has submitted that the provisions of the Tamil Nadu Urban Land Ceiling Act will not be attracted based on the decision of this Court in W.P.No.19845 of 2006, dated 31.07.2006, wherein it has been held that in the absence of the physical possession taken by the competent authority and when the physical possession continues with the owner, the statutory vesting of the land under Section 11(3) of the Tamil Nadu Urban Land Ceiling and Regulation Act is of no relevance at all and further when the authorities take possession under Section 11(6) of the Act, the provision under Section 11(5) of the Act have to be complied with and mere recording of possession by the authorities will not be tantamount to actual taking possession and that the petitioner is entitled to the benefit of the repealed Act. The said proposition has been reiterated in a recent decision of this Court in 2015 (3) LW 640. Both are squarely applicable to the facts of this case.

9. Further, the learned counsel has submitted that the Authorities have issued show-cause notice under Section 7 of the Tamil Nadu Encroachments Act, 1905 and the statutory provisions for initiating proceedings under Section 6 had not been contemplated nor had any action been taken for eviction of the alleged unauthorized occupant. In the absence of following the procedures contemplated under Sections 6 and 7 of the Encroachment Act, the entire proceedings get vitiated. The petitioner being the owner of the land having purchased the same during 1990 has been subjected to humiliation at the hands of the respondents on the premise that the land comes under the purview of Tamil Nadu Urban Land Ceiling Act and also Encroachment Act, which are factually incorrect. Even assuming without admitting the fact that the land is covered under the Land Ceiling Act the authorities ought to have initiated action by pursuing the matter and by inaction on the part of the respondents the entire proceedings in W.P.No.28004 of 2007 gets vitiated on the strength of the Judgments cited supra. The petitioner is in actual physical possession of the subject property.

10. Further, the learned counsel has submitted that when further proceedings have not been initiated as contemplated under Section 6 even after filing the objection by the petitioner, the show-cause notice, impugned in W.P.No.28005 of 2007, has to be quashed and consequently individual Patta has to be issued by subdividing the land. For all the reasons, the learned counsel prayed this Court to allow both the writ petitions.

11. The learned counsel appearing for the petitioner has submitted that the petitioner is the owner of the subject matter of land purchased by him under a Sale Deed, dated 29.01.1990. The subject matter of land has been approved by the Director of Town Planning. He has put up a superstructure thereon after obtaining necessary permission from the competent authority. He applied for Patta with the third respondent, who had rejected the request of the petitioner on the ground that the subject matter of land comes under urban land ceiling and hence Patta cannot be issued. Immediately, he sent a representation to the second respondent herein seeking no objection certificate, since the subject matter of land has not been covered under the Urban Land Ceiling Act. In such circumstances, the fourth respondent had issued a show-cause notice, dated 19.01.2007, to the petitioner calling upon him for enquiry scheduled to be conducted on 02.02.2007.

12. Further, the learned counsel has submitted that the petitioner is in possession of the subject matter of land from the date of purchase. As per Section 4 of the Repeal Act, 1999, all the proceedings initiated under the Urban Land Ceiling Act would stand abated and as such the petitioner is entitled to receive such a benefit envisaged under the Repeal Act.

13. The learned counsel has also filed a written submissions stating that the respondents have not chosen to file counter affidavit. This Court, by Order, dated 31.07.2006, in W.P.No.19845 of 2006, has held that in the absence of physical possession taken by the competent authority and when the physical possession continues with the owner, the statutory vesting of the land under Section 11(3) of the Tamil Nadu Urban Land Ceiling and Regulation Act is of no relevance at all and further when the authorities take possession under Section 11(6) of the Act, the provision under Section 11(5) of the Act has to be complied with and a mere recording of possession by the authorities will not be tantamount to actual taking possession and that the petitioner is entitled to the benefit of the repeal Act. The said provision has been reiterated by this Court in 2015 (3) LW 640. Both these decisions are squarely applicable to the present case and the provisions of the Tamil Nadu Urban Land Ceiling Act will not be attracted to the present case.

14. Further, the learned counsel has submitted that the authorities have issued a show-cause notice to the petitioner, under Section 7 of the Tamil Nadu Encroachment Act, 1905. But, neither the statutory provisions for initiating proceedings under Section 6 of the Tamil Nadu Encroachment Act had been contemplated nor action had been taken for eviction of alleged unauthorized occupant. In the absence of following the procedures contemplated under Sections 6 and 7 of the Encroachment Act, the entire proceedings got vitiated. The petitioner, being the owner of the subject matter of land, has

been subjected to humiliation at the hands of the respondents on the premise that the subject matter of land comes under the purview of Tamil Nadu Urban Land Ceiling Act and also Encroachment Act, which are factually incorrect. Even assuming without admitting the fact that the subject matter of land is covered under the Land Ceiling Act, the respondents ought to have initiated action by pursuing the matter and by the inaction on their part the entire proceedings, in W.P.No.28004 of 2007, have got vitiated on the strength of the decisions cited supra. In such circumstances, when further proceedings have not been initiated as contemplated under Section 6 of the Tamil Nadu Encroachment Act, even after filing of the objection by the petitioner, the show-cause notice, dated 19.01.2007, has to be quashed and consequently the petitioner is entitled to an individual Patta in respect of the subject matter of land.

15. The learned Government Advocate appearing for the respondents has submitted that the subject matter of land has been acquired under the Tamil Nadu Urban Land Ceiling Act, after observing all the required legal formalities. The petitioner's possession is an unlawful one and hence he is not entitled to obtain Patta. Further, the subject matter of land stands in the name of the Government and as such the petitioner cannot claim civil rights over the said land on the strength of the Sale Deed, dated 29.01.1990. Besides, the erstwhile owner did not have marketable title deeds over the said property. As such, the said Sale Deed is not valid under law and the said document is a sham and nominal. Therefore, the petitioner is not entitled to receive Patta. If the Town and Country Planning Department has given permission, it is not sustainable under law and the same had been granted in an erroneous manner. The Taluk Tahsildar had sent a detailed reply stating that the property was acquired under Urban Land Ceiling Act. Hence, the learned Government Advocate has prayed for dismissal of the writ petition.

16. 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 respondents 3 and 4 have informed the petitioner, vide their respective proceedings, that the subject matter of land has been acquired under Tamil Nadu Land Ceiling Act. Both the respondents are competent authorities attached to the Government and they have given reply, based on the substantial documents maintained by them. Besides, the fourth respondent has called the petitioner for enquiry and directed him to submit a written submission with regard to his claim. As such, the said notice is a preliminary notice and not a final order. In such circumstances, both the writ petitions do not generate sufficient force to allow them and hence they are liable to be dismissed.

17. In the result, both the writ petitions are dismissed.
No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1.The Special Commissioner,
Land Reforms, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner,
Department of Urban Land Ceiling,
Tambaram Division,
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4.The Revenue Inspector,
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M.K.N.Road,
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Chennai-600 016.

+ 2 ccs to Mr.Rugan & Arya, Advocate SR.61885 & 61884

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W.P.Nos.28004 & 28005 of 2007

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