IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.7.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.Nos.975 to 978 of 2015
and
M.P.No.1 of 2015 &
M.P.Nos.2 of 2015 (3 cases)

1. The State of Tamilnadu,
   rep. by its Secretary to Government,
   Revenue Department, Secretariat,
   Fort St. George, Chennai 600 009.

2. The Commissioner,
   Urban Land Ceiling & Tax,
   Chepauk, Chennai 600 005.

3. The Assistant Commissioner,
   Urban Land Tax, Alandur, Chennai.

4. The Tahsildar,
   Office of the Taluk Office,
   St. Thomas Mount/Alandur,
   Chennai. ... Appellants in all the 4 cases/ Respondent in all the WPs

Versus

Dr.P.Samudram ... Respondent in WA 975/15/Petitioner
M.Dhanalakshmi ... Respondent in WA 976/15/Petitioner
M.Nirmala ... Respondent in WA 977/15/Petitioner
S.AyyaduraiI ... Respondent in WA 978/15/Petitioner

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Prayer: Writ Appeals filed filed under Clause 15 of the Letters Patent against the order dated 14.2.2014 passed in W.P.No.2856 to 2859 of 2014 on the file of this court.

W.P.No.2856 to 2859 of 2014 : These Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to issue patta in respect of the lands covered in Plot No.21, 14, 11 and 8 in S.No.174/2 Part situate in Madipakkam Village, Kancheepuram District, measuring about 2760, 2400, 2400 and 2400 sq.feets and consequently to make an entry in the revenue records maintained

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by the Revenue Department to the effect that the petitioner is the owner of the land situated at Plot No.21, 14, 11 and 8 covered in S.No.174/2 Part Situate in Madipakkam Village, Kancheepuram District.

For appellants : Mrs.A.Srijayanthi,
Special Government Pleader

For Respondents : Mr.R.Muthukumarasamy,
Senior Counsel
for Mr.A.Jenasenan

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. The writ appeal is filed challenging the order of the learned Single Judge directing the appellants herein to consider for grant of patta to the respondents herein.

3. The factual matrix behind these writ appeals is as under:-

The lands, for which the respondents herein seek patta, originally belonged to one K.C.Murugesa Naicker, who obtained sanction for a lay out of his lands in the year 1974. Out of the same, some plots reached the respondents, they being the successive purchasers. The Urban Land Ceiling and Regulation Act came into force on 17.5.1978 whereupon, proceedings were initiated under the said Act against the original owner viz., Murugesa Naicker. Since the original owner had already sold all the plots to third parties and he had no interest over the same, he had not responded to the notice issued by the authorities. On 16.6.1999, Repeal Act for the above said Act came into force, according to which, if possession had not been taken in terms of the original Act, all the proceedings under the old Act shall stand abated. In this scenario, persons similarly placed like the petitioners have approached this court by filing W.P.No.13863 of 2001 seeking a direction for issuance of patta in their names and got an order dated 25.6.2010 in their favour. Whileso, the request of the respondents herein for issuance of patta was not considered by the authorities and hence, they were constrained to file the present writ petitions.

4. It appears that the appellants herein took a stand before the learned Single Judge that a writ appeal had been filed against the order passed in W.P.No.13863 of 2001 with a petition to condone the delay and therefore, present petitioners had to wait till the decision in the appeal.

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5. The learned Single Judge, after elaborately considering all the above facts and circumstances and by holding that there is no impediment for the appellants herein to consider issuance of patta in favour of the respondents herein since there is no interim stay of operation of the order passed in W.P.No.13863 of 2001 and the appeal itself had been filed with a delay of three years and it has not even been taken on file, directed the authorities to consider issuance of patta in favour of the respondents herein. Aggrieved against this order, the present writ appeal has been filed.

6. It appears that the writ petition filed by the similarly placed persons in W.P.No.13863 of 2001 was disposed of by order dated 25.6.2010, though it came to be filed in the year 2001 itself. What transpires from the said order is that as per the provisions of the Urban Land Ceiling Act, proceedings has been initiated vide order of the Assistant Commissioner of Urban Land Tax, dated 31.10.1986, as against the original owner of the lands in question declaring some area as excess land which were already sold in favour of the petitioners in the present writ petitions and the petitioners in W.P.No.13863 of 2001. On 16.6.1999, the Repeal Act came into force. Further, it is to be noted in that though the writ petition was filed subsequent to the Repeal Act came into force, challenging the validity of the order of the Assistant Commissioner, the order was passed after referring to various decisions of this court passed earlier and referring to various stages of implementation of the Urban Land Ceiling Act viz., passing of order, service of notice, taking possession, etc.

7. It is to be further noted that in W.P.No.13863 of 2001, the learned Judge, after relying the decisions of two Division Benches and distinguishing a decision of another Division Bench on facts, has held that since no notice was served on any of the petitioners therein under Section 11(5) of the Act, the so-called possession said to have been taken by the Government is non-est in the eye of law and therefore, the benefit of repealing Act should surely enure in favour of the petitioners.

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8. In the case on hand also, the provisions of section 11(5) of the Land Ceiling Act have not been complied with, that is to say that no notice was issued, in these cases, on the writ petitioners. Therefore, the proceedings is half complete as on the date when the Repeal Act came into force for want of formalities like declaration, issuance of notice, taking of possession, etc. Such being the case, the very decision taken by the learned Single Judge in directing the respondent-authorities to consider for issuance of patta in favour of the petitioners cannot be said to be bad in law. Furthermore, in the earlier order passed by this court in W.P.No.13863 of 2001

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which came to be disposed of on 25.6.2010, the learned Judge has clearly made out that notice under section 11(5) was not issued and no further action was taken. Therefore, no illegality has been committed by the learned Single Judge in directing the State to issue patta in favour of the respondents herein.

9. Accordingly, the writ appeals filed by the State are devoid of merits and the same are dismissed. No costs. The connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssk

To:

1. The Secretary to Government,
   State of Tamilnadu,
   Revenue Department, Secretariat,
   Fort St. George, Chennai 600 009.

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4. The Tahsildar,
   Office of the Taluk Office,
   St. Thomas Mount/Alandur,
   Chennai.

सत्यमेव जयते
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+4cc's to Mr.A.Jenasenan, Advocate, S.R.No.42533
+1cc to the Government Pleader, S.R.No.42072

W.A.Nos.975 to 978 of 2015

RSI(CO)
CA(24/08/2016)

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