

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 01/10/2015

DATED : 12/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8630 of 2012

and

M.P.No.1 of 2012

Yagna Moorthi ... Petitioner

Vs.

- 1.The Assistant Commissioner and
The competent Authority Constituted under the
Urban Land Ceiling Act at T.Nagar, Chennai.
No.84, Arcot Salai, Kodambakkam, Chennai-24.
- 2.The Tahsildar,
Mambalam-Guindy Taluk,
Near Kasi Theatre,
Ashok Nagar, Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the first respondent as fixed in G.O.Ms.No.98, Revenue Department, dated 01.03.2010, to issue the challan to remit money within 30 days from the date of issue challan by the petitioner and pass appropriate order to the first respondent to pass order to the second respondent within 30 days from the date of remittance of money by the petitioner and direct the second respondent to issue patta within 30 days from the date of order by the first respondent to the second respondent in respect of S.No.672/Part, Velacherry Village, Murugunagar, Chennai.

For Petitioner : Mr.Silambanan, Senior Counsel
For M/s.Profexs Associates

For Respondents : Mr.P.Karthikeyan
Government Advocate

O R D E R

The petitioner has submitted that he is the owner of the property which is situated at Survey No.672/Part in Velachery Village, Chennai. The same has been purchased by sale

deed from one Thiru.P.L.Ramanathan Chettiar through his power agent Thiru.D.Subramaniam. The petitioner acquired right, title and interest over the said property and having been continuously in possession for more than 12 years. Thereafter, for the sake of obtaining patta and including his name in the Permanent Land Survey Register Extract so as to include in the Township Survey Register, he approached the authorities concerned viz., the respondents herein, more particularly, the second respondent herein to include his name in the Town Survey Register by issuing new patta along with sketch. The respondents who are very much aware of the fact that the urban lands covered under the Tamil Nadu Urban Land (Ceiling and Regulations) Act 1978 which came into force during 1978 has lost its legal efficacy during the year 1999 on account of passing of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999 by virtue of which under Section 4 of the Act all the lands which are under proceedings under the said Act became free hold land much less all the proceedings pending before the Courts, Tribunal or other authority stands abated but to the exception of lands possessed by the Government in which case if the State Government had taken possession of the lands, the same gets saved by virtue of Section 3(1)(a) of the said Act is declining / refusing to include his name in the Town Survey Register as the first and second respondent erroneously were under the impression that his land is being attracted by the Urban Land Ceiling Act.

2. The petitioner has further submitted that the respondents who are very much aware of the further fact that his land is not falling within Section 3(1)(a) of the Act vis-a-vis have not taken possession by the appropriate authority viz., the first respondent or is subjected to any sort of Urban Land Acquisition under the Urban Land Ceiling Act is declining to allow his land the details to be entered in the records of Town Survey Register as well as the permanent land survey register and to issue patta. In the instant case, the petitioner is the title holder and he is in absolute physical possession of the aforesaid subject property coupled with the fact that the Repeal Act, 1999 preserves not only his title to the property by virtue of himself being in possession of the same but also forbids the authority to project the Urban Land Ceiling Act as reason for not introducing the urban lands in the Town Survey Register by including the same in the Permanent Land Survey Record (PLR Record) and issue patta in his favour.

3. The petitioner has submitted that the proposition laid in AIR 2000 Supreme court 3415 (Pandit Madhan Swaroop Shortiya Public Charitable Trust Vs. The State of Uttarpradesh and others and the proposition laid down by the Hon'ble apex Court in J.T.2000 (Suppl.1) SC 295 - Supreme Court - in Smt.Angoori Devi Vs. State of Uttarpradesh holds that with the coming into force of the Urban Land (Ceiling and Regulation)

Repeal Act, 1999, the authorities functioning under the erstwhile Principal Act could have no jurisdiction to initiate proceedings of any nature whatsoever. The only exception culled out are those cases where physical possession of the lands having been resumed by the Government prior to coming into force of the Repeal Act, 1999, viz., the deadline in prior to 16.06.1999. The aforesaid proposition having been followed by this Court in 2002(2) CTC 716, 2003 WLR 193 and 2003 WLR 166. Under these circumstances, the petitioner preferred the petition in W.P.No.32876 of 2007 for issuance of Writ of Declaration to declare that the petitioner's land comprised in S.No.672 part of Velachery Village, Chennai admeasuring 2 grounds and 582 sq.ft. does not attract the provisions of Tamil Nadu Urban Land Ceiling Act, 1978 or Section 3(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

4. The petitioner has further submitted that during the pendency of the writ petition, the respondent informed that the Government had introduced a scheme called regularization of the purchase of land under innocent buyers category and he was eligible to submit request for the Regularization of the purchase of the land under innocent buyer category. The petitioner was asked to submit his applications as per the orders issued in G.O.Ms.No.649, Revenue, dated 29.07.1998 and G.O.Ms.No.545/ULC/Rev. Department, dated 26.09.2008 to issue patta to his land, which he purchased on 11.06.1999 and of which, he is continuously in possession and enjoying the said land from the date of purchase till now. The ULC Authority also accepted his application on 03.06.2009 and they assured that his application would be processed as per G.O. The authorities also advised him to withdraw the proceeding W.P.No.32876 of 2007 to process his application further as per the Government Order. Hence, the petitioner has submitted a letter on 15.06.2009 to the Registrar to post the matter for withdrawal. Hence, the writ petition had been closed. The petitioner's representative who is in his land had informed him that the Officials from ULC Department came and inspected his property in the month of June 2009. In July 2009, he was asked by the Assistant Commissioner who is the Competent Authority to appear before the Officer at T.Nagar Office. Accordingly, the petitioner appeared and affirmed a statement that he purchased his land vide Document No.616 of 1999 on 26.05.1999 and he assured to remit the necessary amount as fixed by the Government.

5. The petitioner has further submitted that after a month, he met the Assistant Commissioner-ULC/T.Nagar and asked her about the status of his land matter. The Assistant Commissioner replied that the file had been sent to the Director-ULC and so he met the Director Thiru.Illango, I.A.S. and requested him about the status of his applications. The Director told him that the application is under process. As

assured by the Officials, he received the G.O. vide No.98 (Revenue), dated 01.03.2010, posted on 05.03.2010. On receipt of the above G.O., the petitioner met the Director-ULC Thiru.Illango, I.A.S. showed him the G.O. and requested him to give proper guidance and direct him further in this subject matter. The Director-ULC told him that the Department would send a letter along with challan to him in this regard directly by post. As the time stipulated to remit the amount as per the G.O. was specified, the petitioner went and met the Assistant Commissioner-ULC/T.Nagar who is the Competent Authority for this matter in the Second week of March 2010. The Assistant Commissioner-ULC/T.Nagar said that her office was not in receipt of any sort of communication in this regard from the Higher Officials. The petitioner again went and met the Director-ULC at his Office. The Director assured him that the time specified in the G.O. would run only from the date of receipt of the challan for making payment or after due communication from the Assistant Commissioner-ULC/T.Nagar. The petitioner also submitted a request letter in person to the Director-ULC stating that he shifted his residence from a rented house at Mylapore to a rented house at Chintradripet. The Director assured him to record the change of address for further communications.

6. The petitioner has further submitted that however to his shock and surprise, a letter vide No.e/f/vz;/392/09/rp dated 29.03.2010 signed by the Assistant Commissioner on 30.03.2010 and dispatched by the Office on 31.03.2010 was received by him only on 03.04.2010. This kind of act by the Officials at the Assistant Commissioner's Office of T.Nagar is with certain intention and ulterior motive to some how pass the 30 days as stipulated in the G.O. issued in his favour. Thereafter, he went and requested for a challan to remit money into the Government account. But, the Officers of the Assistant Commissioner, T.Nagar stated that they will send the challan by post and thereafter the amount should be paid within 30 days from the date of receipt of challan. However, the petitioner did not receive the challan till date and each time when he went, he received the same reply.

7. The petitioner has further submitted that he requested the first respondent by his letter dated 22.03.2012 to issue challan to him enabling him to make a payment of Rs.25,00,000/- as per G.O. and obtain patta to his property and also include his name in the Permanent Land Survey Register. As his age is advancing the possibilities of availing house loan to build his own house is becoming difficult. However, the petitioner was reliably informed by the Office of the respondents that unless there is order from the Court there will not be any progress in the matter. Hence, the petitioner has filed the above writ petition.

8. The learned senior counsel appearing for the petitioner has submitted that the petitioner is the owner of the land, comprised in Survey No.672/Part of Velachery Village, Chennai. He has purchased the said land from one P.L.Ramanathan Chettiar. From the date of purchase, he is in possession and enjoyment of the said land without any interference. When the petitioner had approached the second respondent for obtaining Patta, he was informed that the State Government has taken possession under the Tamil Nadu Urban Land Ceiling Act and hence his name cannot be included in the Town Survey Land Register. Actually, the land is not falling under the said Act, since it has not been taken by the appropriate authorities.

9. Further, the learned senior counsel has submitted that the petitioner had filed W.P.No.32876 of 2007, before this Court, seeking a writ of declaration to declare that the said land does not attract the provisions of Tamil Nadu Urban Land Ceiling Act, 1978 or Section 3(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. At the time of enquiry, the respondents had informed the petitioner that the Government has introduced a scheme called regularization of the purchase of land under innocent buyers category. Accordingly, the petitioner had submitted an application before the respondents and claimed regularization under G.O.Ms.No.649, Revenue Department, dated 29.07.1998. On receipt of the said application, the respondents assured the petitioner that his application would be processed as per the said Government Order. Therefore, the petitioner had withdrawn the said W.P.No.32876 of 2007. In such circumstances, the officials attached to the Urban Land Ceiling Department had inspected the subject land during June, 2009 and they had directed him to approach the competent authority. Accordingly, he approached the competent authority at T.Nagar Office, wherein he was informed to remit the admissible amount as fixed by the Government.

10. The learned senior counsel has further submitted that the petitioner has been continuously approaching the competent authority to obtain regularization pertaining to the subject land. The Assistant Commissioner, Urban Land Ceiling, had informed the petitioner that there is no communication from his higher officials with regard to this issue. Therefore, the petitioner submitted a letter in person to the Director, Urban Land Ceiling. In the meantime, the petitioner had shifted his residence and furnished the present address. The Assistant Commissioner, vide proceedings dated 29.03.2010, informed the petitioner to comply with certain conditions within the specified period. The petitioner had requested the first respondent to issue a challan to enable him to make payment of a sum of Rs.25,00,000/-. But, the first respondent informed the petitioner that unless there is an order from the Court, there will not be any progress in the matter. Therefore, the learned

senior counsel has prayed this Court to give direction to the first respondent to issue challan in order to remit regularization charges.

11. The learned Government Advocate appearing for the respondents has submitted that the first respondent had issued an order, dated 29.03.2010, and informed the petitioner to remit a sum of Rs.25,00,000/- at State Bank of India, Thousand Lights Branch, after obtaining a challan from this office. The petitioner was further directed to produce the encumbrance certificate along with the regularization fees. The petitioner has not complied with the conditions imposed on him by the first respondent. As per G.O.Ms.No.98, dated 01.03.2010, the petitioner and ten other members were directed to remit the admissible regularization charges along with encumbrance certificate pertaining to the said property. The same was not complied with by the petitioner within the stipulated period. As such, the petitioner has committed breach of conditions imposed by the first respondent and hence he is not entitled to receive concession as per the impugned order. Therefore, for all the reasons, the learned Government Advocate has prayed for dismissal of the writ petition.

12. 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 petitioner has continuously approached the first respondent seeking regularization. Subsequently, he was constrained to file a writ petition, in W.P.No.32876 of 2007, before this Court, seeking a writ of declaration to declare that he is the absolute owner of the subject land. At the time of hearing, on behalf of the Government, the Government Pleader informed the Court that the Government has issued G.O.Ms.No.649, Revenue Department, dated 27.09.1998, for regularization on the purchase of land under innocent buyers category. Hence, the said writ petition was withdrawn subsequently. Thereafter, the petitioner made representations to the respondents in order to receive relief. Subsequently, the Government had issued G.O.Ms.No.98, dated 01.03.2010, wherein eleven persons including the petitioner were permitted for regularization. As per the said proceedings, the petitioner has to remit a sum of Rs.25,00,000/- along with an encumbrance certificate pertaining to the said land from the date of purchase till the date of application to the first respondent. Pursuant to the said Government Order, the first respondent had sent a communication to the petitioner, on 29.03.2010, and asked him to comply with the above mentioned conditions. In the meantime, the petitioner had shifted his residence and therefore the said communication had not been delivered to the petitioner. The inadvertent delay is neither wilful nor wanton on the part of the petitioner. In such circumstances, the petitioner is now at liberty to remit

the regularization charges of Rs.25,00,000/-, with encumbrance certificate to the first respondent, as required by him after receipt of challan, within a period of thirty days from date of receipt of a copy of this Order. The first respondent is directed to accept the petitioner's application with the required charges along with encumbrance certificate and grant relief subject to adherence of conditions by the petitioner.

13. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Assistant Commissioner and
The competent Authority Constituted under the
Urban Land Ceiling Act at T.Nagar, Chennai.
No.84, Arcot Salai, Kodambakkam, Chennai-24.
- 2.The Tahsildar,
Mambalam-Guindy Taluk,
Near Kasi Theatre,
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rsy(CO)
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