

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.37741 of 2015

P.Abopathan

.. Petitioner

Vs.

1. The Chairman/Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai - 600 035.

2. The Executive Engineer/
Administrative Officer,
Tirunelveli Housing Unit,
Tamil Nadu Housing Board,
Tirunelveli - 627 011.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to issue a No Objection Certificate in favour of the petitioner pertaining to the land bearing Survey No.L5/7-7A to an extent of 0.18.81 and 0.00.797 Ares situated in Vadiveeswaram Village, Agasteeswaram Taluk, Kanyakumari District, pursuant to the letter dated 28.04.2015, made by the petitioner and forwarded by the second respondent by his report in LA/3674/14 dated 01.07.2015 to the first respondent, within a time frame as may be fixed by this Court.

For Petitioner : Mr.S.Subbiah

For Respondents : Mr.V.Anandhamurthy

O R D E R

The petitioner has come forward with this Writ Petition seeking for a mandamus upon the first respondent to issue a No Objection Certificate in favour of the petitioner pertaining to the land bearing Survey No.L5/7-7A measuring an extent of 0.18.81 and 0.00.797 Ares situate in Vadiveeswaram Village, Agasteeswaram Taluk, Kanyakumari District, pursuant to the representation of the petitioner dated 28.04.2015 and forwarded by the second respondent by his report in LA/3674/14 dated 01.07.2015 to the first respondent, within the time frame that may be fixed by this Court.

2. According to the petitioner, the lands measuring an extent of 0.18.81 and 0.00.797 acres, comprised in S.No.15/7-7A, situate in Vadiveeswaram Village, Agasteeswaram Taluk, Kanyakumari District, originally belonged to the petitioner's grand father U.Narayana Perumal, who acquired the same under a registered Partition Deed in the year 1965. During his life time, the petitioner's grand father executed a Will dated 25.9.1970 bequeathing his properties in favour of his sons and in pursuance of which, the above said property was allotted to the share of petitioner's father. After the demise of petitioner's grand father, petitioner's father Ponnusamy became entitled to the said property as per the said Will and he was enjoying the said property by paying kist and other charges in his own name. After the demise of petitioner's father on 13.9.1993, the petitioner and his mother as his only legal heirs acquired the above property. After the death of petitioner's father, the petitioner did not make any serious attempts to change the revenue records in his name, but continued to pay the necessary kist and other charges for the property.

3. When the petitioner and his mother is making efforts to dispose of the property, they came to know that the said land along with other lands were acquired by the Government for Neighbourhood Scheme initially by issuing a Notification in G.O.Ms.No.524, Housing and Urban Development Department dated 19.6.1990 published in Tamilnadu Government Gazette No.27C, Part II Section 2 dated 11.7.1990 issued under Section 4(1) of Land Acquisition Act (Central Act I) of 1894 and later, the Government issued a declaration in G.O.Ms.No.1115, Housing and Urban Development (G) dated 1.8.1991 and published in Tamilnadu Government Gazette No.380 dated 2.8.1991 under Section 6 thereto. Despite the fact the revenue records were transferred from the name of petitioner's grand father to petitioner's father, still, no notice has been issued to his father for an enquiry under section 5-A of the Act and the petitioner and his mother were not aware of any enquiry said to have been conducted under Section 5-A of the act. Further on enquiry, the petitioner came to know that in respect of a portion of the property comprised in T.S.No.15-7B, one P.Pushpam who is none other than the daughter in law of petitioner's paternal uncle, along with her two daughters filed a writ petition before this Court in W.P.No 240 fo 1996 to quash the declaration made under G.O.Ms.No.1115, Housing and urban Development (G) Department dated 1.8.1991 published in Government gazette dated 2.8.1994 pursuant to the notification dated 19.6.1990. This Court by order dated 22.9.1999 allowed the said writ petition and quashed the notification as well as declaration.

4. Thereafter the petitioner and his mother filed a Writ petition in W.P.(MD)No.9072 of 2010 before the Madurai Bench of this Court to quash the said notification as well as the declaration and the above writ petition was allowed setting aside the impugned notification. The said Writ Petition was allowed on 6.6.2014. As against the said order dated 6.6.2014, since the respondents therein nor the Government took up the matter in appeal, the said order has become final.

5. On 24.3.2013, the petitioner's mother died on 24.3.2013 and as the petitioner is the only legal heir to his parents, he alone is entitled to the said property.

6. Further, this Court in the writ petition filed in W.P.No.15685 of 1993 challenging the notification and declaration by one Sivalingam, T.Thirumalai Perumal, Nallathambai and Bhaskaran of Sarakkalvilai the order of interim stay of dispossession of the lands in Survey No.5/7/2(part), 7/5, 7/7 and 7/6 passed in W.P.M.P.No.24238 of 1996 in respect of dispossession, the amount awarded was kept in Revenue Deposit and the award amounts included all the other legal owners including that of the Writ petitioners in W.P.No.240 of 1996.

7. Whiles, when the petitioner applied for transfer of patta from his father's name to his name through a letter dated 9.4.2015, Revenue Divisional Officer, Nagercoil, despite the fact that the revenue records still continued in the name of petitioner's father alone and inspite of the acquisition proceedings having ended in favour of petitioner, and there being no other appeal as against the order dated 06.06.2014, he is still insisting upon getting a No Objection Certificate from the respondents. Hence the petitioner made an application on 28.4.2015 before the second respondent for issuance of No Objection Certificate. Subsequently, the 2nd respondent forwarded the said application to the 1st respondent by his report dated 01.07.2015 and the first respondent, by a Memo in LA5(4)/11594/2011 dated 14.8.2015, had called for further reports from the second respondent on the matters, which had already come to an end and reached finality. Hence, the petitioner, left with no other alternative, has filed the present writ petition.

8. Heard the submissions of learned counsel for petitioner and learned counsel for the respondents.

9. Considering the facts and circumstances of the case, without going into the merits of the claim made by the petitioner, this court directs the petitioner to give a fresh representation for issuance of No Objection Certificate, narrating the entire factual aspects before the 1st respondent within a period of two weeks from the date of receipt of a copy

of this order, and on receipt of such representation, the 1st respondent is directed to pass appropriate orders with regard to issuance of No Objection Certificate on merits and in accordance with law within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion about the merits of the claim made by the petitioner and it is for the 1st respondent to pass orders purely on merits on the claim made by the petitioner.

10. With the above direction, this Writ Petition is disposed of . No costs.

msr

-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Chairman/Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai - 600 035.

2. The Executive Engineer/
Administrative Officer,
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Tamil Nadu Housing Board,
Tirunelveli - 627 011.

+ 1 cc to Mr.S.Subbiah, Advocate SR 9042

+ 1 cc to Mr.V.Anandhamurthy, Advocate SR 8894

vs(co)
prk19/2

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