

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 31/08/2015

DATED : 22/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.22937 of 2009

and

M.P.No.1 of 2009

Ananthalingam

... Petitioner

Vs.

1.The Special Commissioner and
Commissioner for Urban Land Ceiling and
Urban Land Tax, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner
for Urban Land Tax cum Competent Authority,
Tambaram, at No.153, Karuneegar Street,
Adambakkam, Chennai-600 088. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Declaration to declare that the proceedings initiated by the second respondent in RC.881/89 C, dated 05.05.1989 is abated in view of Section 4 of the Repeal Act, since the physical possession of the land in Survey No.103/1 to an extent of 0.43 acres out of 0.86 acres situated at Tambaram Village and Taluk, Kancheepuram District are with the petitioner.

For Petitioner : Mr.K.Kannaiah

For Respondents : Mr.P.Sanjay Gandhi
Additional Government Pleader

O R D E R

The petitioner has submitted that an extent of 0.86 of land comprised in Survey No.103/1 situated at Tambaram Taluk, Kancheepuram District is owned by 4 persons viz., 1.Meenakshi Memorial Education Trust (measuring to an extent of 0.43 cents), 2. Natarajan (measuring to an extent of 0.14 cents), 3. Jayakumar (measuring to an extent of 0.15 cents) and 4. Usha Rani, measuring to an extent of 0.14 cents. The

petitioner has purchased the entire 0.86 cents of the property from the above said mentioned owner. The petitioner has purchased 0.43 cents out of 0.86 cents from Meenakshi Memorial Educational Trust by a sale deed dated 10.09.2008 and ever since the date of purchase, he is in absolute possession and enjoyment of the property.

2. The petitioner has further submitted that through a sale deed No.4280/09, dated 23.07.2009, he purchased 14 cents from Mr.Jayakumar, legal-heir of the deceased Natarajan by registered sale agreements in document No.6724 of 2008, 6725 of 2008, dated 12.08.2008. The petitioner entered into purchase agreement with Mr.Jayakumar and Usharani for the purchase of 0.15 and 0.14 cents respectively of the property comprised in Survey No.103/1, situated at Tambaram Village and Taluk, Kancheepuram District and from the date of purchase, through an agreement of sale, he is in absolute possession and enjoyment of the property. The petitioner has further submitted that before his purchase of the property, his vendors, viz., Natarajan, Jayakumar and Usha Rani were in absolute possession and enjoyment of the property. The petitioner has further submitted that through the impugned proceedings of the second respondent dated 23.04.2008, the second respondent erroneously held that the entire property of 0.86 cents comprised in Survey No.103/1 situated at Tambaram Village and Taluk, Kancheepuram District belong to M/s.Meenakshi Memorial Educational Trust and declared that an extent of 3500 sq.mts is in excess of the ceiling limit and confirmed the draft statement issued under Section 9(1) of the Act.

3. The petitioner has further submitted that neither the first respondent nor the second respondent issued any proceedings or notice to his vendors under the Act, but proceeded on the basis that M/s.Meenakshi Memorial Educational Trust is the owner of the entire extent of 0.86 cent comprised in Survey No.103/1 situated at Tambaram Village and Taluk, Kancheepuram District. Therefore, the impugned proceedings of the second respondent are vitiated for the reason that no notice under the Act was served on the real owners of the property. The petitioner has further submitted that M/s.Meenakshi Memorial Educational Trust already challenged the impugned proceedings by filing a writ petition No.11186/08 in respect of 0.43 cents out of 0.86 cents comprised in Survey No.103/1 situated at Tambaram Village and Taluk, Kancheepuram District and this Court was pleased to admit the writ petition and also granted interim orders. While, this being so, the petitioner was advised to file this writ petition in respect of the remaining 0.43 cents comprised in Survey No.103/1 situated at Tambaram Village and Taluk, Kancheepuram District. In view of the sale of the entire property of 0.86 cents in his favour, he is in physical possession of the property.

4. The petitioner has further submitted that since Act 24 of 1978 has been repealed by the State Act 20 of 1999, the respondents have no right to initiate proceedings in the State Act and to acquire the alleged excess land which are in his possession. The petitioner has further submitted that the Act was repealed on larger public interest and also for the reasons that the provisions are ultra vires; though the Act was repealed by State Act 20 of 1999, any irregularities committed or arose may be challenged before the Special Tribunal constituted for the purpose of Urban Land Ceiling, but since the Tribunal was abolished, the petitioner has filed this writ petition before this Court.

5. The learned counsel appearing for the petitioner has submitted that the land to an extent of 0.86 Cents, in Survey No.103/1, situated at Tambaram Village, originally belonged to four persons. The petitioner had purchased 0.43 Cents of land out of the said total extent, under a registered Sale Deed, dated 10.09.2008. The other co-owner had also sold his portion to an extent of 14 Cents to the petitioner. The petitioner had also entered into an agreement with the remaining co-owners for the purchase of their portion to an extent of 0.15 Cents and 0.14 Cents respectively in the same survey number. As such, the petitioner is in absolute possession and enjoyment of 0.86 Cents of land in Survey No.103/1. At the time of alienation as stated above, the vendors had possessed valid title deeds. In such circumstances, the second respondent herein had declared that one of the owners, namely, Meenakshi Memorial Educational Trust had possessed excess lands to an extent of 3,500 sq.mts., and hence acquired the same. The said declaration proceedings, dated 23.04.2008, is an erroneous one.

6. Further, the learned counsel has submitted that the respondents have not issued any notice prior to acquiring the subject land on the ground of excess land. As such, the second respondent's proceedings are not sustainable under law. The said proceedings had been challenged before this Court and this Court admitted the writ petition and granted an order of interim stay. In such circumstances, the petitioner has filed this writ petition seeking the relief as stated above, since he is having civil rights over the said land. Further, the second respondent had acquired the said land under the provisions of Tamil Nadu Urban Land Ceiling Act. Subsequently, the said Act had been repealed during 1999 due to larger public interest. Therefore, the impugned proceedings are not maintainable.

7. The learned Additional Government Pleader appearing for the respondents have submitted that the second respondent had issued notice under Section 7(2) of the Tamil Nadu Urban Land Ceiling Act, 1978, on 31.10.1988. The same was served on

the Chairman, Meenakshi Memorial Educational Trust. Tambaram. He had not filed any statement to the said notice. Subsequently, after observing necessary legal formalities, the subject land had been acquired from the original owner. Therefore, writ petition is not maintainable. Further, if the petitioner is aggrieved by the impugned proceedings, he has to approach the competent appellate authority, namely, Special Commissioner, Land Reforms, Chennai-5. As such, the petitioner cannot invoke Article 226 of the Constitution of India to challenge the impugned proceedings. Hence, for all these reasons, the learned Additional Government Pleader has prayed for dismissal of the writ petition.

8. 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, it is seen that the impugned proceedings has been passed on 05.05.1989 and the petitioner has purchased the subject land from the vendors during 2008. The writ petition has been filed during 2009, after a lapse of around 20 years. Since there is a long delay in filing the writ petition, the same is not maintainable. Besides, at the time of alienation i.e., 10.09.2008, 23.07.2009 and 12.08.2008, the vendors did not have any marketable title deed to alienate the subject land in favour of the petitioner. At that time, the subject land was under the care and maintenance of the second respondent. Therefore, the writ petition does not generate sufficient force to allow it and hence it is liable to be dismissed.

9. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

Sub-Assistant Registrar

r n s / krk
To:

1. The Special Commissioner and
Commissioner for Urban Land Ceiling and
Urban Land Tax, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner
for Urban Land Tax cum Competent Authority,
Tambaram, at No.153, Karuneegar Street,
Adambakkam, Chennai-600 088.

+1 cc Government Pleader SR.NO. 4485/2016

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