

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3895 of 2012

D.Nagarajan

... Petitioner

Vs.

1. Assistant Commissioner,
Urban Land Tax/Competent Authority,
Urban Land Ceiling,
5, Sannathi Street, Poonamallee,
Chennai - 600 056,
2. The District Collector of
Thiruvallore District,
Collectorate,
Thiruvallore District,
3. The Tahsildar,
Office of the Tahsildar,
Ambattur, Chennai,
4. Secretary,
Slum Clearance Board,
Kamarajar Salai,
Triplicane, Chennai - 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus to call for the records pertaining to the order Na.Ka.No.16/86(a) dated 29.10.1991 issued by the 1st respondent and consequently the notification dated 24.09.1998 issued by Government of Tamil Nadu in Government Gazette and quash the same and consequetnly direct the 3rd respodnent to issue patta to the petitioner.

For Petitioner : Mr.K.V.Subramanian,
Senior Counsel

For Respondents : Mr.R.Rajeswaran,
Spl.Govt.Pleader

ORDER

This Writ Petition has been filed for issuance of a writ of certiorarified mandamus to quash the notiification issued by the 1st respondent, who is the competent authority under the erstwhile Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and to direct the respondents to issue patta in favour of the petitioners.

2. On account of coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Tamil Nadu Act No.20 of 1999), (hereinafter, referred to as 'the Act'), all that has to be seen is, whether the possession continues with the land owner or whether he has been dispossessed in the manner required to be done under the provisions of the Act. If the petitioner's case succeeds on both these grounds, then the natural consequence that has to follow is that the proceedings under the Act are held to be abated.

3. The case of the petitioner is that the land originally belonged to three persons - S.M.Nataraja Naicker, S.M.Balarama Naicker and S.M.Kothandarama Naicker. In the year 1954, a partition took place among the three brothers by virtue of a registered partition deed dated 14.10.1954 registered as document No.1781 of 1954. In terms of the said partition, the property in question fell to the share of S.M.Kothandarama Naicker. It is stated that S.M.Kothandarama Naicker was granted patta in his individual name during his life time and he was in possession and enjoyment of the land in question till his demise on 10.10.1981, as could be seen from the death certificate issued by the Pallavaram Municipality. The petitioner did not have the copy of the patta issued in favour of the said Kothandarama Naicker. Therefore, he applied for information under the Right to Information Act and obtained information, from which it is seen that patta was granted in the name of Kothandarama Naicker, son of Murugappa Naicker in patta No.18 for Survey No.300/3B1 and 301/2A1A.

4. The further case of the petitioner is that after the demise of the said Kothandarama Naicker, his wife - Lakshmi Ammal succeeded to the property and she conveyed land to the extent of 80 cents bearing plot Nos.106, 107, 108 to an extent of 6000 sq.ft in Rukmani Nagar, Maduravoil village, Ambattur in Survey No.301/2 and 300/3 to Murugan and Mathivathani. The said two purchasers are said to have developed a layout in the said property by layout. On 16.7.1987 and 10.8.1987, under the sale deed document Nos.2412 of 1987 and 2712 of 1987, they sold the property of two plots of an extent of 6.87 cents each to

Lakshmi, the daughter of the petitioner. It appears that the petitioner's daughter died on 24.8.2007 and after her life time, the petitioner, being her father, succeeded to her estate, as on the date of her demise, she was unmarried. With these facts, the petitioner would state that the possession of the land continues to remain with him and patta had been granted in favour of original owner Kothandarama Naicker and subsequently transferred in favour of the petitioner in Patta No.5457 and the Adangal extract in the name of S.M.Kothandarama Naicker showed that the land is agricultural land for the fasli 1395 (1985).

5. Further, the petitioner obtained information under Right to Information Act from the office of the 1st respondent as to how the land has been treated in their records. From the information furnished by the Information Officer attached to the office of the 1st respondent, it came to know that the 1st respondent had examined the issue as to whether the lands could be declared as excess lands under the provisions of the Act and after ascertaining the full facts it was found that the extent of lands held by the entire family in Survey Nos.300/3 and 301/2 of Maduravayal village falls within the family eligibility. This document, which has been obtained by the petitioner under the Right to Information Act is very crucial document to support the case of the petitioner.

6. The case of the petitioner, as could be seen from the counter affidavit, is that the registered owners of the property are S.M.Nataraja Naicker and S.M.Balarama Naicker. This is stated based on the revenue records. Further, it is stated that the urban land owner did not file returns under Section 7(1) of the Act and hence notice was issued to the Urban Land owner on 18.10.1985 and it was refused. In the counter affidavit, it is not stated as to in whose name the notice was issued when the respondents stated in the counter that there were two land owners. Further, it is stated that notice under Section 9(4) along with a draft statement under Section 9(1) of the Act was issued on 30.12.1985 calling for objections for the proposed acquisition of the excess vacant land of 9000 sq.mts in S.No.300/3 in Maduravoyal village after allowing 500 Sq.mts towards entitlement. At this juncture also, the respondents do not disclose as to under what basis the excess land was computed, who are the family members, etc., Further, it is submitted that the notice under Section 9(4) along with the draft statement under Section 9(1) was refused to be received. Hence, it was affixed by the Village Assistant on 30.7.1989. The counter affidavit is silent as to which land owner refused the notice. The entire case of the respondents appears to be resting on alleged inspection by the Assistant Commissioner - 1st respondent on 24.8.1989 in which it was found that the land has

been plotted into lay out and therefore it is an urban land. Based on this, orders were passed under Section 9(5) of the Act on 29.10.1991 determining 8,500 Sq.mts as excess vacant land and allowing 1,000 Sq.mts towards entitlement area. The basis for re-determining the extent from that of the original proposal under the draft statement is not clearly mentioned in the counter affidavit. Once again, it is stated that this order dated 29.10.1991 was refused to be received by the urban land owner without mentioning the name of the person, who is alleged to have refused. Thus, the final statement under Section 10(1) was stated to have been issued on 12.11.1992 and affixed as it was refused. Thereafter, notification under Section 11(1) of the Act was published on 23.6.1993 and it is stated that the land vested with the Government on and from 1.10.1993. Thereafter, it is stated that notice under Section 11(5) was issued to hand over vacant possession of excess land, but it was refused to be received by the urban land owner S.M.Nataraja Naicker. Hence, it was affixed on 20.9.1994. It is further stated that the possession of the excess vacant land was handed over to the revenue authorities on 19.12.1995 and necessary changes have been made in village Accounts and subsequently the Government has issued order allotting the land to the Tamil Nadu Slum Clearance Board. It is further stated that the compensation payable was determined and notice under Section 12(6) of the Act was issued on 7.3.2001 and this was served on Manicka Naicker on 16.3.2001. Even as per the counter affidavit, the lands stood registered in the name of S.M.Nataraja Naicker and S.M.Balarama Naicker. The contention that notice under Section 12(6) was served on Manicka Naicker would show that the notices were not served on the actual land owner.

7. The petitioner has been able to establish that in the year 1954, the land was divided by metes and bounds and the property in question fell to the share of Kothandarama Naicker. The patta granted shows that he is in possession of the said land. As pointed out earlier, the proceedings of the 1st respondent 22.6.1987 addressed to the Executive Officer of Maduravoyal Town Panchayat is a very crucial document and the petitioner has been able to obtain the same under the provisions of the Right to Information Act and at this stage, it would be necessary to refer to the stand taken by the 1st respondent in the said proceedings:

''.... It is now brought to notice that Thiru.T.Murugesan, Tmt.T.Saraswathi, G.Raja and Tmt.Kalavathi have purchased an extent of 0.30 acres jointly in S.No.301/2 of Maduravoyal under Doct. No.1353/ dt.8.7.86 and Tmt.H.Renuga, Tvl. K.Subramaniam, M.Veerasundaram and Ranga Mannar have purchased an extent of 0.29 acres in

S.No.301/2 of Maduravoyal village jointly under Doct. No.1354/dt.8.7.86. Even if the above extent of 0.59 acres (0.30 + 0.29) in S.No.301/2 of Maduravoyal is taken into account of the above individuals the total extent held by them is within their family eligibility and the extent held by them in S.No.300/3 and S.No.301/2 of Maduravoyal village will not attract the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978''

8. From the above proceedings, it is evident that as on 22.6.1987, the lands were within the family eligibility of the persons whose names find place. Therefore, the proceedings, which were commenced earlier (as per the counter affidavit) from 1985 is absolutely on a wrong premise that the land was a vacant land/urban vacant land. In the counter affidavit, the respondents are not in a position to controvert the stand taken by the then Officer, who was heading the 1st respondent Department. This piece of information, which has come to light now, is definitely a document, which would go to show that the proceedings initiated by the 1st respondent under the provisions of the Act were clearly unsustainable in law. This coupled with the fact that patta was granted in favour of Kothandarama Naicker in patta No.18 to show that it is an agricultural land also clinches the fact that the proceedings under Urban Land Ceiling Act was not sustainable. Added to these factors, possession of the land was not taken over from the person who purchased the land since after 1987 the land has been plotted out and sold to several persons. This precisely appears to be the reason as to why the 1st respondent has addressed to the Executive Officer of the Maduravoyal Town Panchayat regarding the extents purchased by several persons. Thus, factually, it is evidently clear that the persons, who have purchased the lands, have not been dispossessed in the manner known to law. The counter affidavit is also silent as regards the steps taken under Section 11(5).

9. The Slum Clearance Board, which has been impleaded as respondent No.4, has not filed counter nor they have taken a stand that they have taken over the land or commenced the project. Thus, the possession, having not been taken over, at best, the delivery said to have been recorded, is only a paper delivery and in this regard, the petitioner's case is supported by the decision of the Division Bench of this Court in A.N.Visalakshi Vs, The Special Commissioner, Urban Land Ceiling and Land Reforms ((2015(5) CTC 823). At this stage, it would be beneficial to refer a recent decision of the Honourable Supreme Court in the case of Vipinchandra Vadilal Bavishi (died) by L.Rs

and another Vs. State of Gujarat and others, ((2016) 1 MLJ 759 (SC)), wherein the Honourable Supreme Court, after referring to the earlier decision in the case of State of Uttar Pradesh Vs. Hari Ram ((2012) 3 MLJ 408), pointed out that mere vesting of the land under sub-section 3 of Section 10 (Central Act) would not confer any right on the State Governemnt to have de facto possession of the vacant land unless there has been a voluntary surrender of the vacant land. It was further pointed out that the State has to establish that there has been a voluntary surrender of the vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 4 of the Repeal Act.

10. The facts of the present case are also identical and there is nothing on record to show that after the issuance of notice under Section 9(5) forceful possession has been taken over when it is not the case of the petitioner that the petitioner made any voluntary surrender. In the light of the above, the petitioner is entilted to succeed.

11. Accordingly, the writ petition is allowed as prayed for and there will be a direction to the 3rd respondent to grant transfer patta in the name of the petitioner after causing verification of the records and after issuing notice to the petitioner and affording an opportunity of personal hearing. This direction shall be complied with by the 3rd respondent within a period of four months from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Assistant Commissioner,
Urban Land Tax/Competent Authority,
Urban Land Ceiling,
5, Sannathi Street, Poonamallee,
Chennai - 600 056,

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2. The District Collector of
Thiruvallore District,
Collectorate,
Thiruvallore District,

3. The Tahsildar,
Office of the Tahsildar,
Ambattur, Chennai,

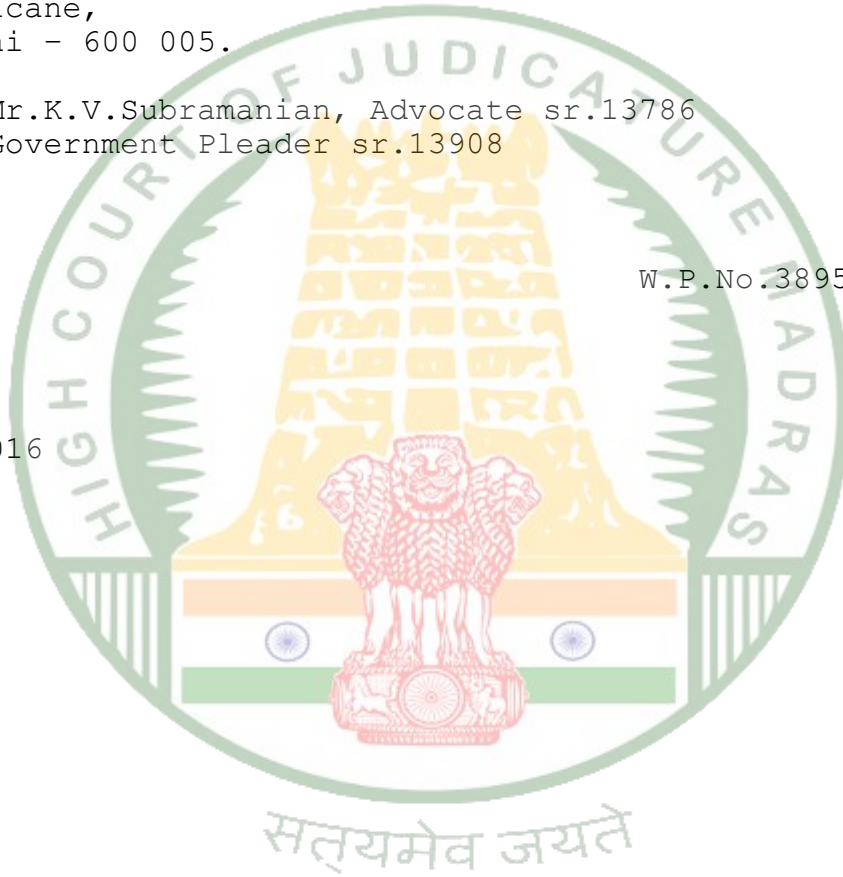
4. Secretary,
Slum Clearance Board,
Kamarajar Salai,
Triplicane,
Chennai - 600 005.

+1 cc to Mr.K.V.Subramanian, Advocate sr.13786

+1 cc to Government Pleader sr.13908

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