

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 31/07/2015

DATED: 27/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.16624 of 2008

K.R.M.Paul

... Petitioner

Vs.

1. The Special Commissioner
and Commissioner of Land Reforms,
Chennai - 600 005.
2. The Commissioner, Urban Land Ceiling and
Regulation, Ezhilagam,
Chennai - 600 005.
3. The Assistant Commissioner,
Urban Land Ceiling and Regulation,
Tambaram, 169, Sannadhi Street,
Adambakkam, Chennai-88.
4. The Tahsildar,
Tambaram Taluk,
Tambaram.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents herein to consider the representation sent by the petitioner dated 30.07.2007 and further direct the respondents to release the acquired excess vacant land and situate at Selaiyur Village in S.No.285/2A, 285/3A and 285/3C to an extent of 5750 sq.meters.

For Petitioner : Mr.D.Sureshkumar

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The petitioner has submitted that the land in question duly comprised in S.Nos.285/2A, 285/3A and 285/3C of Selaiyur Village in all measuring 5750 sq.meters viz., 44 cents had been originally acquired by his father S.R.Harrington (Late) by way of sale deed dated 21.05.1955 and registered as document No.1655/1965 with SRO, Tambaram. Ever since the date of acquirement, the same had been in his peaceful possession and enjoyment. In such circumstances, in the year 1984, the Government of Tamil Nadu had issued a notice through the Competent Authority, Urban Land Ceiling and Assistant Commissioner, ULT, Tambaram in his proceedings No.1066/83, dated 29.08.1984 by claiming that the Government had proposed to acquire an extent of 1200 sq.meters as excess of vacant land and this notice issued in pursuance of draft statement dated 06.09.1981, the Government had sought to acquire an extent of 12 sq.meters of land comprised in the above survey numbers by claiming that the same is the excess land as per ULC Act.

2. The petitioner has further submitted that his father had given a reply asking them to reconsider the same as early as on 27.10.1984. The lands in their possession cannot be labelled as excess land as there is a dwelling house comprised in S.No.285/3A. As per the Rules and Regulations of the Act, an extent of 500 sq.mts of vacant land at the vicinity of the dwelling house and 500 sq.mts of continuous vacant land are entailed to be exempted owing to the existence of dwelling house. Whereas, the petitioner's father's family then comprised of his wife many children and hence, the family is a large family. In such circumstances, the acquisition of the land in all measuring 1200 sq.mts is illegal as the lands cannot be considered as excess vacant land. The petitioner has further submitted that his father had also lodged the objections to such draft statement and the consequent notice dated 29.08.1984 duly issued by the respondent. In his objection, he had claimed that the land in all measuring 404 sq.mts. comprised in S.No.285/3C2 is a strip of land, on which land no building construction is permitted as per the Town Planning Rules and therefore, his father had categorically sought for exemption on the ground that the same is not a vacant land as defined under Section 10 (2) of the ULC Act.

3. The petitioner has further submitted that similarly in S.No.285/3A, a high tension electric line is passing through and hence an extent of more than 20 cents had been covered by the high tension electric line. Hence, the area beneath the high tension electric line cannot be used for any purpose and therefore, the area beneath the high power tension line cannot be provided to any one under the prevailing Electricity Rule and similarly, the Town Planning Rules prohibits such road. Hence, the extent of 820 sq.mts comprised in S.No.285/3A beneath the high power tension line also cannot be labelled as vacant under Section 10(2) of the Act. The petitioner has further submitted that after giving credit to all these lands, the only land in their possession is 1296 sq.mts. and even in respect of

the said land, the area meant for road as per the demarcation made by the Municipal Authorities has to be exempted. In such circumstances, neither land is in excess nor his father had been in possession of the vacant land as set out in the notice given by the Competent Authority ULC and Assistant Commissioner, Tambaram. All these objections had not been considered by the respondents till this date.

4. The petitioner has further submitted that as long as the appeal and objections lodged by his late father and as well as the objections raised by him and his mother, after the death of his father, having not been disposed of till date. Similarly, the land in question is the land in their occupation for long, they acquired the same by way of sale deed by paying sale consideration. Similarly, his Late father had constructed a dwelling house and after his death, the said house had been improved by them by investing huge funds. Further, the lands were sought to be acquired originally in the year 1981 as the draft statement is dated 06.09.1981. Following the draft statement, a communication had been issued to his late father dated 29.08.1984 and the objections were lodged as early as on 27.10.1984 had not been considered till this date. Similarly, the Act itself is not in force as the same had been repealed. The petitioner has further submitted that till date neither the Government dispossessed them nor any communication had been issued to them to deliver the vacant possession. Hence, the petitioner has filed the above writ petition.

5. The learned counsel Mr.D.Sureshkumar appearing for the petitioner submits that the respondents have acquired the subject matter of the lands comprised in Survey Nos.285/2A, 285/3A and 285/3C situated at Selaiyur Village, to an extent of 5750 sq. metres, from her late father. The said property was occupied by her father from date of registered sale deed dated 21.05.1955, without any interference of third parties. Under the circumstances, the competent authorities attached to the Urban Land Tax Department, Tambaram had issued notice dated 29.08.1984 under the Urban Land Ceiling Act, stating that the Government had proposed to acquire an extent of 1200 sq. metres as excess of vacant land. Pursuant to the said notice, draft statement had been issued dated 06.09.1981. The petitioner's father had filed reply dated 27.10.1984 stating that there is dwelling house over the said property and her father was occupying the entire property. Besides, his family consists of wife and many children i.e. a large family. Therefore, the land acquired as excess land is not appropriate.

6. The very competent counsel further submits that a high tension electric line is passing through the land comprised in Survey No.285/3A and it covered more than 20 cents. As such, that land cannot be utilised or considered as excess land. Further, in respect of the said land, the area is meant for road formation and other basic amenities. As such, there is no excess land over the said survey numbers. After the death of the father of the petitioner, the dwelling house had been renovated in a well planned manner after spending a huge amount. As of now, the petitioner is in physical possession and

enjoying the same. Hence, the highly competent counsel entreats the Court to direct the respondents to discharge the acquired excess of vacant lands to the petitioner.

7. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents submits that the third respondent herein, attached to the Urban Land Tax Department had initiated land acquisition proceedings in the year 1984 under the Urban Land Ceiling Act and after observing all legal formalities, the third respondent acquired the said lands in the said survey numbers in the year 1981 itself.

8. After acquiring the said lands, the same was handed over to the revenue authorities. The father of the petitioner had levelled a representation and objected to the said acquisition proceedings. The said representation had been well considered and the claim of the father of the petitioner was rejected. The petitioner, after a lapse of 25 years made a representation dated 30.07.2007 and made similar allegations as her father had already raised. Therefore, the said representation is not maintainable. The writ petition has been filed after a lapse of 28 years. Further, the third respondent acquired the vacant excess land after considering the family members of the petitioner. Hence, the learned Additional Government Pleader prays to dismiss the above writ petition.

9. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed set of papers, it is seen that the third respondent had initiated land acquisition proceedings for acquiring the excess vacant land comprised in the Survey Nos.285/2A, 385/3A and 285/3C situated at Selaiyur Village. After acquiring the said excess vacant lands, the draft statement had been passed on 06.09.1981. The writ petition has been filed in the year 2008, i.e. after a lapse of around 21 years. Therefore, the petitioner has approached before this Court at a very belated stage. Hence, the above writ petition does not generate much force to allow it. Hence, it is dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

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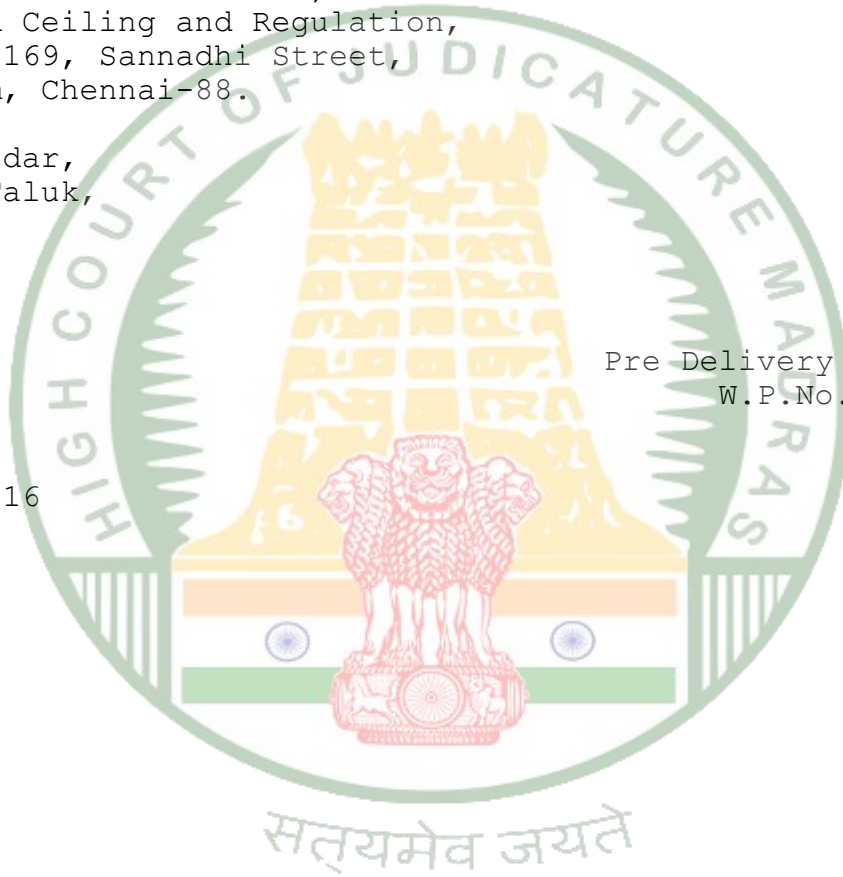
Sub-Assistant Registrar

To

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and Commissioner of Land Reforms,
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RSY(CO)
sd : 15/02/2016

Pre Delivery Order made in
W.P.No.16624 of 2008



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