IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.6 of 2016
and
C.M.P.No.88 of 2016

1.The Secretary to Government,
Revenue Department,
St. George Fort,
Secretariat, Chennai-600 009.
2.The Assistant Commissioner /
Urban Land Ceiling and Urban Land Tax,
No.153, Karuneegar Street,
Adambakkam, Tambaram,
Chennai-600 088.
3.The Competent Authority,
Urban Land Ceiling,
Tambaram.
4.The Tahsildar,
Alandur, Alandur Taluk. .. Appellants/Respondents

Vs.

B.Anand Kumar .. Respondent/Petitioner

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 18.03.2013 passed in W.P. No.34450 of 2012.

WP.No.34450 of 2012:Petition Under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandaus to call for the records of the first respondent in Notification No.VI(1)/ 273/98 dated 4.3.1998 published in No.8 Part-VI Section-1 of the Tamil Nadu Government Gazette and quash the same in view of abatement of acquisition proceedings under Section 3(2) and 4 of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999 (Act 20 of 1999) and consequently direct the respondent to mutate the revenue records and issue patta in respect of petitioner property comprised in Survey No.286/2B admeasuring to an extent of 38 1/2 cents situated in Anagaputhur Village No.128 in Saidapet Taluk Kancheepuram District.

For appellants Mrs.A.Srijayanthi, Spl.G.P.

For respondent Mr.V.Lakshminarayanan
for Mr.B.Vijay

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JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal is preferred by the appellants State against the order dated 18th March, 2013 passed in W.P.No.34450 of 2012.

2 Heard Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the appellants and Mr.V.Lakshminarayanan, learned counsel, representing for Mr.B.Vijay, learned counsel for the respondent herein / writ petitioner. With the consent of the parties, the appeal is taken up for final disposal at the admission stage itself.

3 The writ petitioner / respondent herein preferred the writ petition, seeking quashment of the notification No.VI(1)/ 273/98 dated 4th March, 1998 published in No.8 in Part-VI Section 1 of the Tamil Nadu Government Gazette in view of abatement of acquisition proceedings under Section 3(2) and 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20 of 1999) and seeking for further direction to the respondents therein to mutate the revenue records and issue patta in respect of the subject matter.

4 The facts in brief for the purpose of adjudication are that indisputably, the land in question to an extent of 38 ½ cents was purchased by the respondent herein by way of registered sale on 23rd November, 1988. The respondent herein continued in possession and enjoyment of the said property thereafter. When the respondent herein made a representation for the grant of patta and mutation in revenue records, it was informed that proceedings under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (for short "the Act 1978") had been initiated in respect of the land in question. However, relying on the provisions of the Act 20 of 1999, it was stated that no further proceedings can be initiated for taking possession if the possession remains with the owner. Even possession was not taken over by the authorities under the provisions of the Act 20 of 1999.

5 The learned Single Judge, referring to the judgment in Saraswathi Vs. The Principal Commissioner & Commissioner of Land Reforms[1], came to the conclusion that since possession was never taken over and continued with the owner and thereafter, with the purchaser, the writ petitioner /respondent herein is entitled to benefits under the provisions of Act 20 of 1999 as the proceedings initiated under the Act, 1978 stood abated.

6 The question that arises for our consideration is as to whether possession of the land in question was taken over by the authorities at any point of time after initiation of the proceedings under the provisions of the Act, 1978?

7 The learned counsel appearing for the appellants failed to produce any document in support of the contention that possession was taken over on 30th March 1999. No material was produced before the learned Single Judge as well as before us to establish that apart from paper possession, as recorded in the Government records, there is any other overt act, whereunder the possession of the land in question was taken at any point of time before the provision of the Act 20 of 1999 came into force.

8 The issue as to whether possession is deemed to have been taken, came into consideration in a batch of writ appeals arising from the land acquisition proceedings. A Division Bench of this Court in The Tamil Nadu Housing Board, rep by its Managing Director, No.331, Anna Salai, Nandanam, Chennai-600 034 and another Vs. iGate Global Solutions Limited, and another [W.A.Nos.1101 of 2014, etc batch cases], by judgment dated 26th February, 2016, held as under :

> " 60.The ratio deducible from the aforestated judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the revenue authorities must establish by producing some evidence, i.e., either preparation of panchanama in the presence of the witnesses or some other documents. The transfer certificates subsequently prepared by the revenue authorities for delivering possession of the land in question to the Housing Board in absence of a witness or land owner, will not be sufficient to establish that possession of the lands was taken over from the land owners......"

9 Yet another case in State of Tamil Nadu, rep by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and 3 others Vs. Sumathi Srinivas [W.A.No.1746 of 2014, dated 17th February 2015], it was observed as under :

1 2007 (4) CTC 714

"34.It is to be noted that although the Appellants/Respondents claim that the possession of the land in question was vested with the Government under Section 11(3) of the Act on 18.11.1998 and subsequently handed over on 09.04.1999, the purported possession being handed over on 09.04.1999 in the form of land receipt, in law, is only a symbolic possession and as a matter of fact, actual/real possession was not taken. As such, the resultant possession is either the land owner Lakshmi Kanthammal or anybody for that matter had not handed over the physical possession and also when the Appellants had only taken a symbolic possession and in reality, when the actual/ real possession of the land in issue is in the hands of the Respondent/ Petitioner, the Respondent/Petitioner is entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999."

10 In view of the aforestated legal provisions and also the indisputable facts involved herein, we do not find any infirmity or illegality in the order rendered by the learned Single Judge. There is no merit in the writ appeal. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

vvk

To

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+5 ccs to Mr.B.Vijay Advocate sr.14790
+1 cc to the Government Pleader sr.14947

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