IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.8091 of 2006

M.Baskar ... Petitioner

Vs.

1.The District Collector,
Kancheepuram District,
Collector Office, Kancheepuram.

2.The Revenue Divisional Officer,
Office of the RDO, Chengalpattu.

3.The Tahsildar,
Tambaram Taluk,
G.S.T. Road, West Tambaram,
Chennai 600 045. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the entire records of the 2nd respondent in his impugned order dated 16.02.2006 in Na.Ka.1141/2006 and quash the same.

For Petitioner : Mr.V.Srikanth
For Respondents : Mr.S.V.Duraisolaimalai,
Additional Government Pleader

O R D E R

Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.S.V.Duraisolaimalai, learned Additional Government pleader appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

> "To issue a writ of Certiorari, to call for the entire records of the 2nd respondent in his impugned order dated 16.02.2006 in Na.Ka.1141/2006 and quash the same."

3. The case of the petitioner is as follows:-

According to the petitioner, he had purchased an extent of 58 cents at Sembakkam Village, Tambaram Taluk, Kancheepuram District, bearing Patta No.155, comprised in Survey No.116/2A by a registered sale deed dated 19.10.2005, registered as Document

Nos.8401, 8402, 8403, 8404 and 8405 of 2005, at the Sub-Registrar Office, Tambaram. After the purchase of the said property, the petitioner had carried out mutation in the revenue records. The Patta and Chitta had been transferred in the name of the petitioner from the vendors. Ever since purchase of the property, the petitioner was lawfully in possession and enjoyment of the same without any interference. While so, some persons who were living adjacent to the property belonging to the petitioner, started disturbing his peaceful possession and enjoyment of his property.

4. The petitioner was therefore, constrained to file O.S.No.11 of 2006, before the District Munsif Court, Tambaram and obtained orders of injunction, restraining the trespassers from interfering into the peaceful possession and enjoyment of his property. According to the petitioner, the injunction granted by the Civil Court is still in force.

5. According to the petitioner, some persons who were envious to the interest of the petitioner, had been representing that the property was a Government property and was acquired under Urban Land Ceiling Act. The representations seemed to have been submitted to the officials concerned. Apprehending threat to his possession, the petitioner had filed yet another O.S.No.39 of 2006, before the District munsif Court, Tambaram, against the respondents, seeking to restrain them from interfering with the peaceful possession of the property. During the course of the said Suit, the petitioner came to know that vide proceedings dated 16.02.2006 of the second respondent that the Patta which was granted in favour of the petitioner was cancelled.

6. According to the petitioner, there was no notice either to his vendor or to him about any proceedings pending before the second respondent and the cancellation of Patta on 16.02.2006, was issued behind back of the petitioner. Therefore, he would submit that the proceedings passed by the second respondent is in violation of the provisions of the Patta Pass Book Act. Since the order of cancellation was passed illegally without following the procedure contemplated in Patta Pass Book Act, the petitioner is before this Court, challenging the order of the second respondent dated 16.02.2006.

7. The learned counsel appearing for the petitioner, at the outset, would submit that the impugned proceedings of the second respondent is liable to be quashed for more than one reason. Firstly, the RDO being the Appellate Authority, has directly intervened in the matter and passed orders to the detriment of the petitioner's interest in the property, by which, the right of appeal of the petitioner had been denied. Secondly, the

second respondent had not issued notice to the petitioner before the impugned cancellation of Patta was issued. The non-issue of notice to the petitioner has not been disputed by the respondents in the counter affidavit. Their statement on record is that the petitioner was not entitled to notice, in view of the fact that the property in question was a Government property.

8. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. The learned Additional Government Pleader would strongly oppose any relief being granted to the petitioner on the ground that the property in question is already taken over under Land Ceiling Act and vested with the Government and the same was being used by the public as play ground. Therefore, according to him, the Patta was wrongly granted to the petitioner and the same was rightly withdrawn by the second respondent in his proceedings dated 16.02.2006. He would submit that since the property belonging to the Government, at the relevant time, the impugned order was issued cancelling the Patta granted in favour of the petitioner. Such action on the part of the second respondent cannot be faulted with.

9. The learned counsel for the petitioner would also draw the attention of this Court to the subsequent development which had taken place during the pendency of the writ petition. According to the learned counsel, vide proceedings dated 22.10.2008, by the Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax, has held that an extent of 2300 sq.metres in Survey No.116/2A of Sembakkam Village, Tambaram Taluk, acquired from the vendors of the petitioner had abated under Section 3(1)(a) read with under Section 4 of the Repeal Act 20/1999, since there was no proof of the possession was taken by the authorities. It is also further held that there was no proper notice to all the co-owners under the erstwhile Act. Therefore, the further action in this case was dropped. The said official by further proceedings dated 22.10.2008, informed the Collector as follows:-

> "Rc.No.12860/2008 (G2), dated 22.10.2008
>
> Sub: Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 - Repeal Act, 20/1999 - Chennai Urban Aggolmeration- Sembakkam Village - S.No.116/2A- 2300 Sq.mts. - Acquired from T.H. Gowrikanthan - Abated u/s 4 of the Repeal Act, 20-1999 - Regarding.
>
> Ref: 1) Petition from Thiru.M.Baskar, dated, 30.09.2008
>
> 2) Report from the Asst.Commr.(ULT) Tambaram, Rc.B/1053/2008, dated 13.10.2008.

3) Proceedings of the RDO, Chengalpattu Dist. Rc.1141/2006(D), dated 16.02.2006

4) Tahsildar Tambaram Ir.594/2006 (A5), dated 22.02.2008 addressed to the Collector, Kancheepuram Dist.

5) This office endorsement Rc.12860/2008 (G2), dated 22.10.2008.

I invite your attention to the references cited, in which the patta already issued to M.Baskar was cancelled and incorporated as 'Government of Tamil Nadu' in the village and Taluk accounts of Sembakkam Village. In the reference 5th cited an endorsement has been issued to the effect that entire acquisition proceedings gets abated u/s 3(1) (a) of 4 of Repeal Act 20/1999.

I, therefore, request that the patta for the above land be restored in the name of the present land owner."

10. The said official also addressed his proceedings to the Principal Secretary to Government, Revenue Department, Secretariat, informing that the entire action for acquiring excess land had abated. It appears that subsequent to the proceedings of the Special Commissioner and Commissioner, Urban Land Ceiling and Urban Land Tax, dated 22.10.2008, an other proceedings was issued on 29.01.2009, by the Director of Urban Land Ceiling and Urban Land Tax, cancelling the proceedings dated 22.10.2008, which was in favour of the petitioner herein. However, while cancelling the said proceedings, the petitioner was advised to seek remedy under "Innocent Purchasers" Scheme, as per G.O.Ms.No.565, Revenue Department dated 26.09.2008.

11. The learned counsel for the petitioner would submit that the said proceedings dated 29.01.2009, was challenged before this Court in W.P.No.8657 of 2009, dated 02.09.2015. The learned Judge of this Court, vide order dated 02.09.2015, allowed the writ petition by quashing the proceedings dated 29.01.2009, against which, till date no appeal has been filed. Therefore, the learned counsel would submit that in view of the quashing of the cancellation order dated 29.01.2009, the original proceedings dated 22.10.2008, had been restored and in which event, the petitioner is entitled to the relief as prayed for in the writ petition.

12. This Court has considered the rival submissions of the learned counsel appearing for the parties and perused the materials and pleadings placed on record. This Court is of the considered view that the non-issue of notice to the petitioner before cancelling the Patta, granted in favour of the petitioner vide proceedings dated 16.02.2006, cannot be sustained in law.

As rightly contended by the learned counsel for the petitioner, the proceedings is a violation of the provisions of the Patta Pass Book Act and also the same is violation of the established principles of natural justice.

13. Moreover, the RDO, being an Appellate Authority, cannot issue proceedings directly as to take away the right of appeal which is provided for under the rules to the petitioner. Therefore, even on this count, the impugned order is liable to be interfered with. Further, this Court has to take into account the subsequent development which has taken place during the pendency of the present writ petition. The Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax, by his proceedings dated 22.10.2008, addressed to all the authorities concerned, has held that the action under Urban Land Ceiling Act had abated. In view of the reasons said forth in the proceedings, it is also observed that the Patta was required to be restored to the petitioner forthwith. Though the said proceedings was cancelled by order dated 29.01.2009, subsequently, but, the cancellation had been challenged successfully by the petitioner and this Court has quashed the proceedings dated 29.01.2009 as aforesaid.

14. In view of the above development, this Court is of the view that the petitioner has made out a case for relief. In the said circumstances, this Court has no hesitation in setting aside the impugned order dated 16.02.2006 in Na.Ka.1141/2006 of the second respondent. Since there is a strong protest on the part of the Government that the land belongs to Government and therefore, the petitioner had no title or ownership to the same, this Court, therefore, remands the matter back to the third respondent to conduct an enquiry and pass orders on merits and in accordance with law. Needless to mention that the third respondent has to take into consideration the proceedings of the Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax dated 22.10.2008, into consideration. The third respondent is also directed to afford opportunity of personal hearing to the petitioner and shall pass considered order thereafter. The direction shall be complied with by the third respondent, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kancheepuram District,
Collector Office, Kancheepuram.

2.The Revenue Divisional Officer,
Office of the RDO, Chengalpattu.

3.The Tahsildar,
Tambaram Taluk,
G.S.T. Road, West Tambaram,
Chennai 600 045.

+1cc to Mr.V.SRIKANTH, Advocate, S.R.No. 88351
+1cc to the Government Pleader, S.R.No. 88097

W.P.No.8091 of 2006

NRK(CO)
TR(29/01/2018)