

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.35781 of 2003

Mrs.J.Jayalakshmi

.. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by the Secretary,
Revenue Department,
Fort St.George,
Chennai-9.
 2. The Special Commissioner &
Commissioner of Land Reforms,
Ezhilagam,
Chepauk, Chennai-5.
 3. The Asst. Commissioner (ULT),
Competent Authority (ULC),
Thiruvallur District,
Poonamallee, Chennai-56.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the third respondent in Na.Ka.S.R.800/95, dated 15.11.1995 under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act and quash the same.

For Petitioner: Mr.AR.L.Sundaresan, Senior Counsel for
Mr.S.Rajendran

For Respondents: Mr.N.Srinivasan, Addl.G.P.

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari to call for the records on the file of the third respondent in Na.Ka.S.R.800/95, dated 15.11.1995 under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act and quash the same.

2. The case of the petitioner is that the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 came into effect with effect from 03.08.1976. The petitioner has purchased the property in question from one D.Sarojini Ammal in the year 1982 and she has purchased the property in 1963. Since the owner (Lakshmana Reddy) of the land did not file return as per Section 7(1) of the said Act, notice under Section 7(2) of the said Act was issued to the land owner Lakshmana Reddy on 04.09.1992 after ten years from the date of purchase of the property by the petitioner. The said notice was not issued to the petitioner and it has been issued in the name of one Lakshmana Reddy. Even though various proceedings have been initiated and proceeded under Sections 9, 10 and 11 of the said Act from 1995 till the Notification under Section 11(1) was published in the Tamil Nadu Government Gazette on 30.04.1997 and Notification under Section 11(3) was published in the Tamil Nadu Government Gazette on 14.01.1998, vesting the property with the Government under the provisions of the said Act, the possession was not taken and there was affixture of notice under Section 11(5) on 27.02.1998 and no steps have been taken under Section 11(6) of the Act after the said date. Finally, possession was handed over to the Revenue Authorities on 06.10.1998. Mere vesting of possession on the alleged date, namely 06.10.1998, is not suffice and even though the respondents stated that they have complied with the mandatory provisions of the said Act including Sections 11 and 12, learned counsel for the petitioner submitted that since the physical possession was not taken earlier, the property vested with the petitioner and the entire proceedings impugned in this Writ Petition are liable to be quashed.

3. The contention of the respondents is that as per the records, the said Lakshmana Reddy is the owner of the entire property and based on the Revenue Records, initially, the proceedings for not filing the return under Section 7(1) of the Act, have been initiated in 1976 against the original land owner and there was no mutation of records by the petitioner after his purchase and based on the Revenue Records available, the original owner has been issued with the notice(s) under the said Act. When the affixture of notice was made, the petitioner is aware of the above facts, and he has not objected to the same and when once the property had been vested with the Government in terms of Section 11, more particularly, in terms of Section 11(5) of the said Act, the petitioner cannot contend that no proceedings can be continued on the ground that the Act has been repealed on 16.06.1999. As the acquisition proceedings have been initiated under the said Act and the Rules made thereunder, and that there was no objection by one one much less the petitioner, and that notice has been given to the original owner as per the records, and the petitioner cannot have any grievance.

4. Heard both sides and perused the materials available on record.

5. It is not in dispute that the property in question has been purchased by the petitioner on 30.01.1982 and when the petitioner has become the owner of the property, it is the duty cast upon the respondents to serve notice on the present owner of the property, ie. the petitioner and the respondents emphasise in the impugned order that the owner has not objected to the proceedings initiated under the said Act of 1978. The respondents insisted and stressed upon the words @epy cilikahsh;@, in the impugned order, which means the land owner. The word @cilikahsh;@ is different from @chpikahsh;@. Putting it in a different terminology, they are one and the same and are synonymous to each other. The intention of the third respondent while passing the impugned order using the said Tamil word @epy cilikahsh;@ is clear that the person who is residing there in the property, has not objected to the proceedings initiated under the said 1978 Act. Admittedly, the petitioner was in possession of the property in question. No steps have been taken by the respondents to verify the records from the office of the Sub-Registrar with whom the property had been registered either in its entirety or partially, either before issuance of the proceedings under the 1978 Act or immediately thereafter. If the respondents have verified the records, it would have come to light that the said Lakshmana Reddy was not the owner of the property on the date of issuance of the acquisition proceedings under the 1978 Act and that the petitioner was the owner of the property as on that date. For the lapse committed by the respondents, the petitioner shall not be put to hardship.

6. This Court comes to the conclusion that no land acquisition proceedings notice had been issued to the petitioner who is the owner of the property. The contention of the respondents that there is no mutation of records by the petitioner, and hence, he is not entitled to agitate the issue and challenge the impugned order, cannot be accepted. When once there is a sale deed, it is for the Sub-Registrar to communicate the factum of sale to the concerned Department(s)/authorities and he shall ensure that there is mutation of records by taking steps. The person who has purchased the land, is liable to pay the charges on demand by the authorities for mutation of records. Though the petitioner should have taken steps for mutation of records, nothing prevented the respondents from carrying out the mutation of records, and that it is the duty cast upon the authorities to do so. The respondents have failed to comply with the provisions of Section 11, more particularly, Section 11(6) of the said Act of 1978, while taking acquisition proceedings, in that, the notice has not been served on the petitioner, rather it had been served on the erstwhile owner,

which vitiates the land acquisition proceedings. De-hors the service of notice under Section 11(6) of the said Act, as no notice has been served on the petitioner with regard to the initiation of the acquisition proceedings, on that ground, the impugned order is liable to be interfered with. Even though it has been vehemently contended on the side of the respondents that there was affixture of notice and that the petitioner would have known the affixture, it cannot be a ground to dismiss the Writ Petition, as there is no other manner other than the affixture by which the respondents are trying to serve the notice on a party.

7. In this case, the respondents have not followed Section 11(6) of the said Act. In this regard, it is useful to refer a Division Bench decision of this Court reported in 2012 (6) MLJ 273 (Government of Tamil Nadu Vs. Mecca Prima Tannery), wherein it was observed as follows:

"35. However, there are cases where although the competent authority issued the notice under Section 11 (5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands."

8. In view of the above decision of the Division Bench of this Court and for the above reasons, the Writ Petition is allowed. The impugned order is quashed. No costs.

9. The Inspector General of Registration, Santhome, Chennai, is directed to issue circular to the concerned Departments/authorities stating that when once a document is registered, it should be communicated by the registering authority to the Departments/authorities concerned so that necessary mutation of records will take place.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

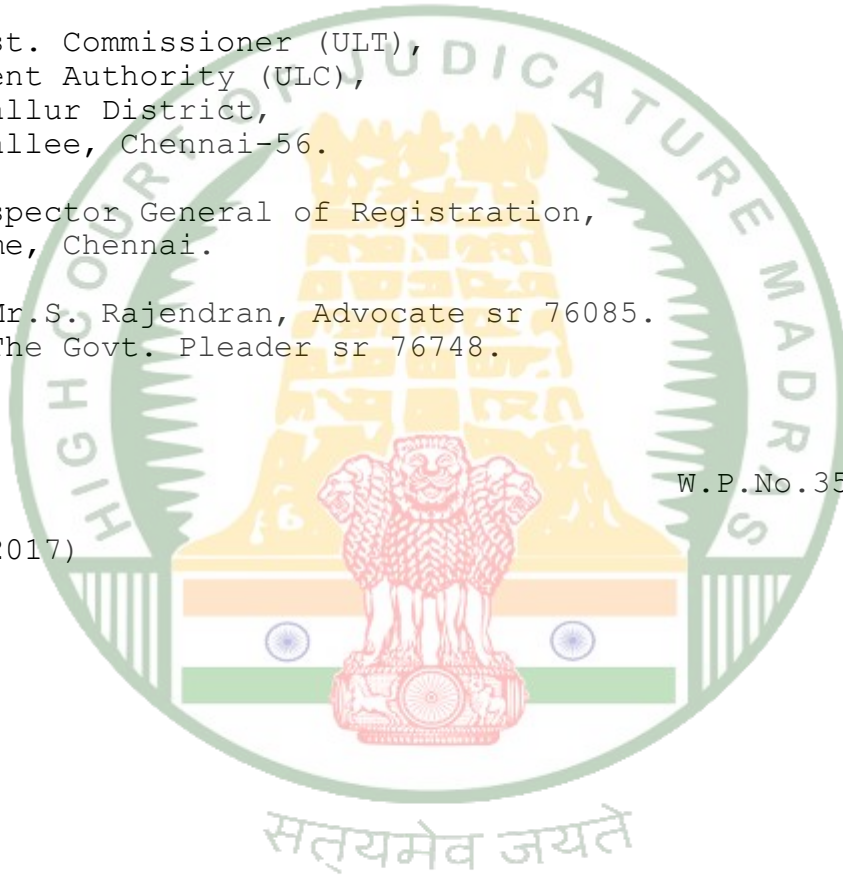
CS

To

1. The Secretary,
Revenue Department,
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Chennai-9.
 2. The Special Commissioner &
Commissioner of Land Reforms,
Ezhilagam,
Chepauk, Chennai-5.
 3. The Asst. Commissioner (ULT),
Competent Authority (ULC),
Thiruvallur District,
Poonamallee, Chennai-56.
 4. The Inspector General of Registration,
Santhome, Chennai.
- +1 CC to Mr.S. Rajendran, Advocate sr 76085.
+1 Cc to The Govt. Pleader sr 76748.

SP(23/11/2017)

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