IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 04.12.2017	Date of pronouncing Judgment 13.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Appeal No.1067 of 2017
and
C.M.P.No.14966 of 2017

M/s.Annai Builders Real Estate Private Limited
represented by its Authorized Signatory
Mrs.S.Vedavalli
No.76, Medavakkam Main Road
Madipakkam
Chennai - 600 091. ... APPELLANT

(Cause Title accepted vide order of this Court dated 01.12.2016 made in CMP No.18859 of 2016 in W.A.Sr.No.68113 of 2016)

.. versus ..

1. The Special Commissioner and
Commissioner for Land Ceiling and Land Tax
Chepauk, Chennai - 600 005.

2. The Assistant Commissioner of Urban Land Tax and
Competent Authority of Urban Land Ceiling
Alandur Area, Sannadhi Street
Adambakkam, Chennai - 600 088.

3. The Tahsildar
Sholinganallur Taluk
Sholinganallur
Chennai - 600 119.

4. Mr.S.Kailasanathan ... RESPONDENTS

Writ Appeal has been filed under clause 15 of Letters Patent against the order of this Court dated 09.09.2015 made in W.P.No.3507 of 2014.

WP.NO.3507/2014:

Writ Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 3rd respondent to issue patta in favour of the 2nd petitioner herein by his Application dated 12.7.2013 without insisting the no objection certificate from the 1st and 2nd respondents herein

For Appellant : Ms.G.Thilagavathy, Senior Counsel for Mr.K.Rajasekaran

For Respondents 1 to 3: Mrs.A.Sri Jayanthi Special Government Pleader

Respondent - 4 : Given up

JUDGMENT

P.VELMURUGAN, J.

This Writ Appeal has been filed by the second petitioner in the Writ Petition against the order of the writ Court dated 09.09.2015 made in W.P.No.3507 of 2014.

2. The fourth respondent (as first petitioner) and the appellant (as second petitioner) jointly filed the Writ Petition in W.P.No.3507 of 2014 before this Court praying to issue a writ of mandamus directing the third respondent to issue patta in favour of the appellant pursuant to the Application dated 12.07.2013 without insisting 'No Objection Certificate' from the first and second respondents.

3. The brief facts of the case of the appellants before the Writ Court are as follows:-

(i) The land comprised in Survey No.269/5, to an extent of 2,250 square meters in Vengaivasal Village, then Tambaram Taluk, now at Sholinganallur Taluk, Kancheepuram District originally belonged to one Mr.Swaminathan. The said Mr.Swaminathan purchased the property under a Registered Sale Deed dated 09.07.1968. After the purchase of the property, Mr.Swaminathan was exclusively in possession and enjoyment of the same. Mr.Swaminathan died on 15.10.1994 leaving behind the fourth respondent herein (first petitioner in the Writ Petition), his mother and three sisters and one brother to inherit the estate. After the death of Mr.Swaminathan, his legal heirs were in joint possession and enjoyment of the above said land.

(ii) The second respondent has issued the impugned proceedings in S.R.496/77/77A, dated 30.01.1990 under the Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred to as the Principal Act) and thereby determined the excess vacant land of 1,522 square meters in the name of Mr.Swaminathan. While the facts are so, the legal heirs of Mr.Swaminathan filed a writ petition in W.P.No.32845 of 2003 challenging the above said impugned order and the same was set aside by this Court on 03.04.2013 and thereby, the third respondent - Tahsildar was directed to consider the grievance of the petitioners therein and pass suitable orders.

(iii) The respondents therein or Government have not preferred any Appeal or Review against the said order dated 03.04.2013 passed by this Court in W.P.No.32845 of 2003, and therefore, the said order has become final.

(iv) On 12.07.2013, the appellant herein (second petitioner in the Writ Petition), who is the purchaser from the fourth respondent herein (first petitioner in the Writ Petition), had applied for transfer of patta as per document No.2491 of 2007, dated 09.03.2007 before the third respondent-Tahsildar. The third respondent called upon the appellant/ second petitioner to appear personally on 19.08.2013 at 11.00 a.m. along with all the documents. Even after appearance of the appellant, the third respondent neither passed any order nor took any steps to transfer patta in the name of the appellant.

(v) After the enquiry by the third respondent, statement was obtained from the appellant. The third respondent insisted the appellant to obtain 'No Objection Certificate' from the first and second respondents. The act of the third respondent directing to produce 'No Objection Certificate' from the authorities concerned is highly misconceived and is against law, in view of the order passed by this Court as early as on 03.04.2013. Hence, the appellant filed the Writ Petition.

4. The brief facts of the case of the respondents 1 to 3 herein, as averred in the counter affidavit filed before the Writ Court are as follows:-

(a) The Urban Land Owner Thiru.K. Swaminathan filed a return under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976, on 25.02.1977 for 56 cents of vacant land held by him in S.No.269/5 of Vengaivasal Village. He was required to furnish certain details on 10.09.1981 and 21.01.1983. Since he did not furnish the required details, notice under Section 9(4) along with a draft statement under Section 9(1) of the Act were issued on 31.03.1984 and it was served by affixture on 15.06.1981. Thereafter, orders under

Section 9(5) of the Act were passed on 30.01.1990 determining the excess vacant land after allowing 1000 sq.mts as per entitlement. It reads as follows:-

Village	S.No	Total Extent (M^2)	Entitlement (M^2)	Excess Vacant land (M^2)
Rajakilpakkam	147/1 171	272	272	-
Vengaivasal	269/5	2350	728	1522
			1000 M^2	

(b) The final statement under Section 10(1) of the Act was issued on 30.11.1990 and it was served by affixture on 11.12.1990. The notification under Section 11(1) of the Act and notification under Section 11(3) of the Act were issued on 15.12.1990 and 06.03.1991 respectively. The notifications were published in Tamil Nadu Government Gazette dated 31.01.1991 and 09.10.1991 respectively. Finally a notice under Section 11(5) of the Act was issued on 25.11.1991 and it was sent by Registered post. It was returned undelivered with remarks "No such addressee". The excess vacant land measuring an extent of 1522 sq.mts in S.No.269/5B of Vengaivasal Village was acquired and possession was handed over to the Revenue Authorities on 22.07.1992.

(c) Against the above stated acquisition, the legal heirs of Thiru.K.Swaminathan filed a Writ Petition in W.P.No.32845 of 2003 after a lapse of 11 years. The Hon'ble High Court by order dated 03.04.2013 disposed of the Writ Petition. The impugned order was set aside and the matter was remitted for fresh consideration to the Tahsildar, Sholinganallur, who was not impleaded as respondent in the Writ Petition. Since the Act was repealed by Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20/1999, remitting the matter for fresh consideration does not arise. After the receipt of the order, the Government was taking steps to file a Writ Appeal against the above order of the High Court. In the mean time, the present Writ Petition was filed.

(d) All the procedures as contemplated under the Act have been followed correctly and strictly in accordance with the Act. The erstwhile urban land owner has been residing at New Delhi and not resided in the village concerned or in Tamil Nadu. Since in his return filed on 20.02.1977, he has given his address as No.C-30 DD Flats, Malviya Nagar Extension, New Delhi-17, notices/orders have been sent to the said address by RPAD, but they were returned undelivered with the endorsement "No such addressee" by the postal authorities. Thereafter, notices have been served by affixture in the said land, as the competent authority has no other source or information about the change of address. Neither the urban land owner nor his legal heirs were near the land and hence, they were not in possession of the land. Since all the proceedings regarding the acquisition have been completed in 1992 itself, 7 years prior to the commencement of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999 (hereinafter referred to as “the Repeal Act”), the question of abatement of subsequent proceedings does not arise under Section 4 of the Repeal Act.

5. After considering the above facts and upon hearing the arguments of both sides, the learned single Judge was pleased to dismiss the Writ Petition. Aggrieved against the order passed by the learned single Judge, the second petitioner preferred this Writ Appeal.

6. Heard the rival submissions made by the learned counsel on either side.

7. During the course of arguments, We have directed the Special Government Pleader to produce the original files. Accordingly, the Government have produced the original files. We have carefully perused the entire records placed before this Court and also the original files produced by the learned Special Government Pleader.

8. A perusal of the records would show that originally the land belonged to Mr.Swaminathan, who purchased the same under a Registered Sale Deed dated 09.07.1968 and after the purchase, he was exclusively in possession and enjoyment of the land. The second respondent has issued the impugned proceedings in S.R.496/77/77A, dated 30.01.1990 under the Principal Act, and thereby determined the excess vacant land of 1,522 square meters in the name of Mr.Swaminathan. Page 13 of the original file produced by the learned Special Government Pleader shows that Mr.K.Swaminathan - original owner of the land has submitted Form-I statement under sub-Section 1 of Section 7 of the Principal Act, wherein he has stated his address as “C-30, D.D.A Flats, Malviya Nagar Extn., New Delhi-17” and the subject matter of the land is also mentioned along with other lands possessed by him and the same was classified as vacant land and he signed the statement on 20.02.1977. Subsequently, the Government has prepared a draft statement under Section 9(1) of the Principal Act. The appropriate authority has sent the notice under Section 9(4) of the Principal Act along with the draft statement to the address mentioned by Mr.K.Swaminathan in Form-I statement filed under 7(1) of the Principal Act, but the same were returned unserved with an endorsement “No such addressee”. The Government has declared 1522 sq.metre of land as excess land after deducting 1000 sq.metre for personal entitlement. Thereafter final statement under Section 10(1) of the Principal Act was also prepared and it was sent to the address given by the said Mr.K.Swaminathan and the same was also returned unserved.

Thereafter, notices under Section 11(1), 11(3) were issued and published in Tamil Nadu Government Gazette dated 31.01.1991 and 09.10.1991 respectively. The said notices were sent to the address stated by Mr.K.Swaminathan in Form-I and the same were also returned unserved.

9. A perusal of the entire files show that since no local address has been given, all the communications were meticulously sent to the address given by Mr.K.Swaminathan in Form-I statement i.e., the last known address, but the same were returned unserved. As notice under Section 11(5) was returned undelivered with remarks "No such addressee" and after 11(3) notification the land vested with the Government, after acquiring the land, possession was taken by the Land Acquisition Officer / Urban Land Department and then it was handed over to the Revenue Department on 22.7.1992. Therefore, all the proceedings have been completed, much earlier to the cut off date under the Repeal Act, 1999. Since the landowner voluntarily submitted Form-I statement under Section 7(1) of the Principal Act, he knew about the proceedings under the Principal Act. Despite knowing the procedures, he never turned up after submitting the return under Section 7(1) of the Principal Act. It shows that he was a silent spectator of all the proceedings.

10. From the original file, an important thing is noted in this case, that after all the acquisition proceedings were completed, the said Mr.K.Swaminathan sent a notice, without any date, through his Advocate Mr.V.Ramesh to The Competent Authority, Urban Land Ceiling, Alandur, seeking to furnish copies of the notices issued in respect of the proceedings under Sections 9(5), 10(1), 11(1) and 11(5) etc. For better understanding, the notice sent by Mr.K.Swaminathan through his Advocate Mr.V.Ramesh is extracted below:-

> "I represent my client Mr.Swaminathan Iyer, who is the owner in respect of land in S.No.269 of Vengaivasal Village. My client states that he is not aware of any urban land ceiling proceedings except when the officials visited the site. My client has not been served with any notices under the Act. Hence, I request your goodself to furnish 9 (5), 10(1), 11(1) and 11(5) etc., I herewith enclose necessary stamp paper and vakalat."

11. From the above, it is clear that Mr.K.Swaminathan sent the above Advocate Notice after completion of all the acquisition proceedings ie., after the possession was handed over to the Revenue Department by the Urban Land Department on 22.07.1992. Mr.K.Swaminathan died on 15.10.1994. During his life time, Mr.K.Swaminathan has not challenged any of the proceedings mentioned in the above Advocate Notice under Section

33 of the Principal Act.

12. A perusal of the records would further show that after the death of Mr.K.Swaminathan on 15.10.1994, the fourth respondent and his family members filed the Writ petition only in the year 2003 in W.P.No.32845 of 2003 and the Writ Petition was disposed of on 03.04.2013. A perusal of the typed set of papers shows that the appellant purchased the subject land only on 09.03.2007 under sale deed No.2491 of 2007 from the fourth respondent and his family members during the pendency of the earlier Writ Petition W.P.No.32845 of 2003 filed by them. The said fact was not brought to the notice of this Court while hearing the earlier Writ Petition in W.P.No.32845/2003. Further the Government officials have also not brought to the knowledge of this Court about the notice sent by the Advocate on behalf of Mr.K.Swaminathan. Before the Writ Court, both the parties in W.P.No.32845 of 2003 have suppressed the material facts and therefore, the Writ Court was under the impression that the Writ Petitioners were in possession of the land and therefore, the proceedings were quashed.

13. The records would show that neither the fourth respondent herein (first petitioner in the Writ Petition) nor the appellant herein (second petitioner in the Writ Petition) have produced any record to show the mutation of revenue records/ transfer from the original owner Mr.K.Swaminathan to his legal heirs. As pointed out earlier, in the Form-I statement filed by the original owner Mr.K.Swaminathan under Section 7(1) of the Act, classification of the land was shown only as a vacant land and his residential address was shown as New Delhi. When 11(5) notice was issued, the same was returned unserved and therefore, it was affixed in the land. There was no resistance for taking possession by the Government and under the said circumstances, the question of taking forcible possession by invoking Section 11(6) of the Act does not arise. After Section 11(3) notification, the land stood vested with the Government. Since it was a vacant land, no tax was paid. Since the subject land was a vacant land and the original owner was also not in physical possession, the competent authority has taken possession after 11(5) notice was returned and thereafter, it was handed over to the Revenue Authority. The Revenue Department mutated the revenue records in the name of the Government.

14. The Repeal Act came into force only in the year 1999. Even before the Repeal Act coming into force, the original owner Mr.K.Swaminathan sent the notice through his Advocate for getting all the proceedings with a view to challenge the same. The Advocate Notice also shows that immediately after 11(5) proceedings were over in the year 1992, and during the lifetime of the original owner Mr.K.Swaminathan, he was aware of all the acquisition proceedings under the Principal Act. However, he has

not challenged the same during his lifetime. It is also not the case of the appellant that during the lifetime, the original owner was not aware of the above proceedings. It is also not the case of the appellant that Mr.K.Swaminathan filed petitions/objections under any of the provisions under the Principal Act and during the pendency of such proceedings, he died and therefore, his legal heirs have continued those proceedings.

15. During the pendency of the Writ petition in W.P.No.32845 of 2003, the legal heirs of Mr.Swaminathan sold the property to the appellant herein. The said fact was also not brought to the notice of the Writ Court in the earlier proceedings. The Writ Petitioners suppressed the material facts. Moreover, in the Writ Petition in W.P.No.32845 of 2003, the appellant herein was not impleaded.

16. From the records, it is clear that the acquisition proceedings under the Principal Act were completed in the year 1992 itself. However the landowner, who had knowledge of the proceedings, had not challenged the acquisition proceedings before the Appellate Authority under Section 33 of the Principal Act. Therefore, after the lifetime of the original owner Mr.K.Swaminathan, his legal heirs and the appellant herein have no right to challenge the proceedings. Moreover, possession of the land has been taken by the Government. There are no documents to show that after the life time of Mr.K.Swaminathan, the legal heirs have taken possession of the excess/acquired land. The legal heirs of Mr.K.Swaminathan have not filed any document to show that they have delivered the possession of the land to the appellant. Hence, the appellant and the 4th respondent have no locus standi to file the Writ Petition in W.P.No.3507 of 2014. The sale made by the fourth respondent and his family members to the appellant/second petitioner is not binding on the respondents 1 to 3. As per the Repeal Act, if any proceedings under the Principal Act regarding acquisition was pending on the date of Repeal Act coming into force, then only the said proceedings will be abated. Whereas in this case no proceedings were pending on the date of the Repeal Act coming into force. Further, the sale deed itself was executed only after the Repeal Act coming into force and possession was also taken by the second respondent before the enactment of the Repeal Act. On the date of sale, the legal heirs of Mr.K.Swaminathan have no title over the property and they have not been in physical possession of the subject land. Therefore, they are not entitled to the relief as prayed for.

17. In the light of the above discussion, we are of the view that there is no merit in the Appeal and therefore, the Writ Appeal deserves to be dismissed. The writ appeal is accordingly,

dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

mra/tar

1. The Special Commissioner and
Commissioner for Land Ceiling and Land Tax
Chepauk
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+1cc to Mr.K.Rajasekaran, Advocate sr.no.10920

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kgk(co)
nr 27/02/2018