

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2018
PRONOUNCED ON : 28.06.2018

CORAM :

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

WA.No.1496 of 2017
and CMP.No.19757 of 2017

1.The Assistant Commissioner,
Urban Land Tax/Competent Authority
Urban Land Ceiling,
No.5, Sannathi Street, Poonamallee,
Chennai-56.

2.The District Collector
Thiruvallore District Collectorate,
Thiruvallore District.

3.The Tahsildar,
Office of the Tahsildar,
Ambathur, Chennai.

4.The Secretary,
Slum Clearance Board,
Kamarajar Salai, Triplicane,
Chennai-5.

... Appellants/Respondents

Vs.

D.Nagarajan

सत्यमेव जयते ... Respondent/Petitioner

PRAYER : Appeal is filed under clause 15 of Letters patent, to set aside the order dated 02.03.2016 made in WP.No.3895 of 2012.

WP.3895 of 2017: Writ petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Certiorarified mandamus to call for the record pertaining to the order Na.Ka.Na.16/86/97 dated 29/10/1991 issued by the 1st respondent and consequently the notification dated 24.09.1998 issued by Government of Tamil Nadu in Government Gazette quash the same and consequently direct the 3rd respondent to issue patta to the petitioner.

For appellants : Mrs.Narmadha Sampath, AAG
<https://hcservices.ecourts.gov.in/hcservices/>
assisted by I.Sathish, AGP.

For respondent : Mr.K.V.Subramanian, Sr. Counsel
for Mr.M.A.Abdul Wahab.

JUDGMENT

Naicker, S.M.Balarama Naicker and S.M.Kothandarama Naicker. During 1954, a partition deed dated 14.10.1954 vide Doc.No.1781 of 1954 was executed between the brothers and the property in question was allotted to S.M.Kothandarama Naicker and individual patta was also granted, during his life time. He was in possession and enjoyment of the land in question till his demise on 10.10.1981.

3. After the death of Kothandarama Naicker, his wife Lakshmi Ammal succeeded to the property and conveyed 80cents of land bearing Plot Nos.106, 107, 108 in Rukmani Nagar, Maduravoyal village, Ambattur in S.No.301/2 and 300/3 to Murugan and Mathivathani. The purchasers have developed the property by forming a layout. On 16.07.1987 and 10.08.1987, they sold two plots to an extent of 6.87cents each to Lakshmi, the daughter of the respondent vide Doc.Nos.2412 and 2712 of 1987. It appears that respondent's daughter Lakshmi died on 24.08.2007 as spinster and after her life time the respondent being the father, succeeded to her estate. The respondent is in possession. The patta stands in the name of the original owner Kothandarama Naicker and subsequently it was transferred in the name of the respondent vide patta No.5457. The Adangal stands in the name of S.M.Kothandarama Naicker and that the land is agricultural land during the fasli 1395 (1985).

4. The land in S.No.300/3 measuring 9500sq.mtr in Maduravoyal village, Ambattur Taluk, Thiruvallur District was registered in the name of S.M.Nataraja Naicker and S.M.Balarama Naicker. The urban land owner did not file any return under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred to as "Act"). Notice under Section 7(2) of the Act was issued on the Urban Land Owner on 18.10.1985 and it was refused. Notice under Section 9(4) along with a draft statement under Section 9(1) of the Act was issued on 30.12.1985 calling for objections, if any, for the proposed acquisition of the excess vacant land. The said notice was refused and hence it was served by way of affixture by the village assistant on 30.07.1989. The land was inspected by the Assistant Commissioner/first appellant on 24.08.1989 and it was found vacant. The order under Section 9(5) of the Act was passed on 29.10.1991 determining 8,500sq.mtr as excess vacant land to be acquired after allowing 1000sq.mtr extent towards entitlement area. The said order was also refused to be received by the urban land owner and hence it was served by way of affixture by the village assistant on 07.11.1991.

5. The final statement under Section 10(1) of the Act was issued on 12.11.1992, and the same was refused and as such, it was served by way of affixture by the Village Administrative Officer on 15.03.1993. Notification under Section 11(1) of the Act was issued on 23.06.1993 and it was published on 23.06.1993. Notification under Section 11(3) of the Act was issued on 24.09.1993 and the land vested with the Government with effect from 01.10.1993 free from all the encumbrances. It was published in the Government Gazettee dated 03.11.1993. The notice under Section 11(5) of the Act issued on 12.08.1994, was refused by the Urban land owner/S.M.Nataraja Naicker and hence it was served by affixture on 20.09.1994. The excess vacant land was handed over to the Revenue Authorities on 19.12.1995 and changes have been made in Village Accounts in TK8A/290/1405. The

under the principal Act when the repeal Act came into force.

6. The prayer sought for in the writ petition was to call for the records pertaining to the order Na.Ka.No.16/86(a) dated 29.10.1991 issued by the first respondent and consequently the notification dated 24.09.1998 issued by the Government of Tamil Nadu in Government Gazettee and to quash the same and consequently direct the 3rd respondent to issue patta to the writ petitioner.

7. The learned single judge allowed the writ petition by directing the Tahsildar to grant transfer of patta in the name of the respondent after causing verification of the records and after issuing notice and an opportunity of personal hearing.

8. Aggrieved against the said order passed by the learned single judge, the competent authority is before this Court by way of present appeal.

9. We have heard the learned Additional Advocate General for the appellant and the learned Senior counsel for the respondent.

10. Originally the land belonged to S.M.Nataraja Naicker, S.M.Balarama Naicker and S.M.Kothandarama Naicker who are the sons of Murugesu Naicker. The brothers executed a registered partition deed dated 14.10.1954 vide Doc.No.1781 of 1954, in and by which, S.M.Kothandarama Naicker was allotted 5 acres of land in Maduravoyal village, Ambathur Taluk in S.Nos.300/3 and 301/2. The said Kothandarama Naicker obtained patta No.18 for the above said lands and cultivated till his death i.e., on 10.10.1981. Thereafter, his wife Lakshmiammal carried on cultivation on the said lands. During 1985, the land was inspected by the competent authority who found that it was kept vacant. In the revenue records, the land was shown as belonging to one S.M.Nataraja Naicker and S.M.Balarama Naicker. The land owners did not file any returns. The notice under Section 7(2) of the Act was issued to the Urban Land owner on 18.10.1985 and it was refused. Notice under Section 9(4) along with a draft statement under Section 9 (1) of the Act was issued on 30.12.1985 calling for objections for the proposed acquisition. The final statement under Section 10(1) was served by way of affixture and Notice under Section 11 (5) of the Act was also served by way of affixture.

11. On a perusal of the original file, it is seen that one Harikrishnan who is said to have been the owner of the lands in S.Nos.300 and 298 sought copy of the orders under sections 9(5), 10(1), and 11(5) for preferring an appeal. The application was submitted along with the death certificate of S.M.Kothandarama Naicker and the Will executed by S.M.Kothandarama Naicker bequeathing the subject land in favour of Harikrishnan and some of the properties to Lakshmiammal wife of Kothandarama Naicker. The said Harikrishnan made representations dated 26.08.2004 and 24.08.2004. In the letter dated 31.07.2000, the said Harikrishnan applied for patta claiming that the Will executed by Kothandarama Naicker stands in his favour and after the death of Kothandarama Naicker on 10.10.1981, he is in possession and enjoyment of the subject land. In the letter dated 24.09.2004, the said Harikrishnan requested the competent authority to pay the compensation for the acquired land under Section 12 of the Act. Further, in the letter dated 10.06.2005 also, the said Harikrishnan called upon the competent authority to pay the

a letter dated 06.12.2004 was given by one N.Ranganathan to the competent authority stating that he is having agricultural land in S.No.300/3 to an extent of 19.50cents in Maduravoyal village and he came to know about the acquisition through the V.A.O. He wanted a copy of the order passed under Sections 9(5), 11(5) and 10(1) for filing an appeal. The said Ranganathan has enclosed a copy of the sale deed executed by Lakshmi, wife of Kothandarama Naicker in favour of Ranganathan vide Doc.No.2686/1986 dated 15.10.1986. The competent authority has also sent a letter to Thiru.Harikrishnan, Ranganathan and Lakshmi for submitting their response and to produce relevant documents for enquiry. The same was served on Harikrishnan and Lakshmi. The acknowledgment is also available in the original file. On 03.10.2005, the said Harikrishnan sent a letter to the Commissioner, Urban land ceiling, by enclosing the copy of the order made in IA.No.351 of 2002 in O.S.No.85 of 2002 in his favour.

13. On 13.10.2005, Lakshmi sent a letter to the competent authority wherein she has stated that after the death of her husband Kothandarama Naicker, she inherited the properties and due to her inability, she entrusted the properties to one Peter son of Susai along with entire documents for selling the same and further, she was not holding any lands. Pursuant to the said letter, the competent authority sent a letter to Peter, dated 30.11.2005, stating that one Harikrishnan claimed title over the property through a Will executed by Kothandarama Naicker and Lakshmi and called upon him to appear for an enquiry on 19.12.2005 along with the available documents.

14. In the meanwhile, one Renugadevi wife of Harikrishnan has sent a letter dated 06.03.2007 to the Commissioner, Urban land ceiling seeking to settle the compensation at the earliest to her husband for the lands acquired. The said lands were developed as a layout and sold to subsequent purchasers. The copy of the field map, patta, layout sketch and the Document No.1356 of 1986 dated 08.07.1986 executed by Kothandarama Naicker in favour of Renugadevi were also enclosed along with her letter. Thereafter, on 3.5.2007, the said Harikrishnan has sent a letter to the Assistant Commissioner, Urban land ceiling and other officials calling upon them to pay the compensation for the acquired land and he claimed damages of Rs.2,00,000/-.

15. On a perusal of the original file, it is clear that originally 5 acres of land was allotted to Kothandarama Naicker through a partition deed dated 14.10.1954 vide Doc.No.1781 of 1954 in S.No.300/2 and 301/2. The said Kothandarama Naicker obtained patta No.18 for the above said lands and carried on agricultural operations. The said Kothandarama Naicker died intestate on 10.10.1981. In the revenue records the subject land was registered in the name of S.M.Nataraja Naciker and S.M.Balarama Naicker and no returns were filed on behalf of the Urban land owners under Section 7(1) of the Act. One

Harikrishnan claimed that Kothandarama Naicker had executed a Will in his favour and he wanted the compensation to be given to him. One Ranganathan and Renugadevi also claimed that Lakshmi wife of deceased Kothandarama Naicker had executed a Will in their favour and they formed the layout and sold the plots to various persons. The Lakshmi wife of Kothandarama Naicker had stated that due to her inability to maintain the land she handed

over on 19.12.1995. The acquisition proceedings were completed in its entirety well before the Repeal Act. As on the date on which possession was taken, it was a vacant land. The said Renugadevi was well aware of the acquisition proceedings. There are no records to show that her daughter or the writ petitioner or the successors were in physical possession of the subject land. Further, the records would show that Lakshmi wife of Kothandarama Naicker sent a letter dated 13.10.2005 to the competent authority stating that all the lands and the documents was handed over to one Peter son of Susai. The said Peter in his letter dated 19.12.2005 has clearly stated that Lakshmiammal had sold the land and thereafter the land was converted into house sites and many of them had put up construction in the layout. The said Harikrishnan is none else than the brother of Lakshmiammal and the Renugadevi is wife of Harikrishnan and they sold the land to him and in the payment receipt they have signed as witnesses. He also annexed the letters dated 22.6.1997 and 19.3.1987 issued by the competent authority to the individual land owners.

16. According to the respondent, his daughter purchased the property from the power agent of one Murugan and Mathivathani on 16.07.1987 and 10.08.1987 vide Doc.Nos.2412 of 1987 and 2712 of 1987 respectively. The vendors of the respondent purchased the property from the said Lakshmiammal.

17. The fact remains that none of the original owners or the subsequent purchasers have filed their returns. There was no objection recorded by the competent authority. The section 7(2) notice was sent only to S.M.Nataraja Naicker and S.M.Balarama Naicker and not to S.M.Kothandarama Naicker. The said S.M.Nataraja Naicker and S.M.Balarama Naicker have not intimated the fact that the subject land belongs to Kothandarama Naicker. After his death, no mutation has been effected in the revenue records either in the name of Harikrishnan or in the name of Lakshmiammal wife of deceased Kothandarama Naicker. The subject land also remained vacant. Thus the competent authority was not in a position to decide as to who was original owner of the subject land. Notice under Section 11(5) of the Act dated 12.08.1994 was issued to Nataraja Naicker and possession of the excess vacant land to an extent of 8500sq.ft was taken over by the competent authority. Subsequently, the acquired land was handed over to Tamil Nadu Slum Clearance Board.

18. The land owners were aware of the acquisition proceedings even in the year 2004 itself and they have filed the present writ petition only in the year 2016.

19. In view of the above reasoning, the writ appeal is allowed by setting aside the order dated 02.03.2016 in W.P.No.3895 of 2012. No costs. Consequently, connected miscellaneous petition is closed.

<https://hcservices.ecourts.gov.in/hcservices/>

Sd/-
Assistant Registrar(CS IX)

To

1.The Assistant Commissioner,
Urban Land Tax/Competent Authority
Urban Land Ceiling,
No.5, Sannathi Street, Poonamallee,
Chennai-56.

2.The District Collector
Thiruvallore District Collectorate,
Thiruvallore District.

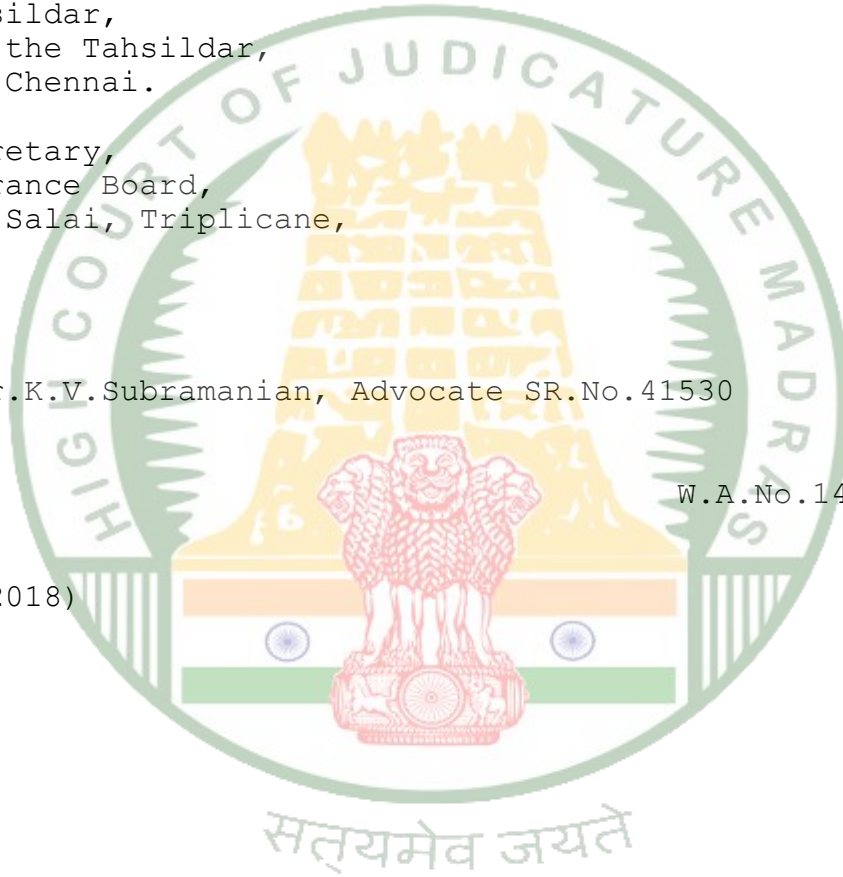
3.The Tahsildar,
Office of the Tahsildar,
Ambathur, Chennai.

4.The Secretary,
Slum Clearance Board,
Kamarajar Salai, Triplicane,
Chennai-5.

+1cc to Mr.K.V.Subramanian, Advocate SR.No.41530

W.A.No.1496 of 2017

VGII (CO)
GN(09/07/2018)



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