

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12256 of 2006

And

W.P.M.P.No.13826 of 2006

Tvl.P.E.S.Charitable Trust,
Rep. by its trustee Mr.P.S.Sekhar ... Petitioner

Vs.

1.The Assistant Commissioner cum
Competent Authority,
Urban Land Ceiling,
Tambaram Circle,
169, Sannathy Street,
Adambakkam,
Chennai - 600 088.

2.The Secretary to Government,
Department of Revenue,
Fort St.George,
Chennai - 600 009.

3.The Director of Urban Land
Ceiling and Regulations,
Chepauk,
Chennai - 600 005.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in Na.Ka.319/93 dated 10.09.1993 issued under Section 9 (5) and the consequential notice issued in Form VII dated Nil - 5 - 1999, under Section 11 (5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978 and quash the same as illegal, arbitrary and against the provisions of the Act and further direct the respondent to apply the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Repeat Act, 1999 to the lands owned by the petitioner in survey No.46/1, of Pozhichalur village, Saidapet Taluk.

For Petitioner : Mr.K.Soundararajan

For Respondents: Mr.R.Govindasamy for R1 to R3
Special Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in Na.Ka.No.319/93 dated 10.09.1993 issued under Section 9 (5) and the consequential notice issued in Form VII dated Nil - 5 - 1999, under Section 11 (5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978 and to quash the same as illegal, arbitrary and against the provisions of the Act and further direct the respondent to apply the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 to the lands owned by the petitioner in survey No.46/1, of Pozhichalur village, Saidapet Taluk.

2.The case of the petitioner is that the petitioner is a charitable trust and the trust was started in the year 1998 by one P.E.Subramaniam to carry out various objects including the establishment of Schools, Colleges and Educational Institutions without any profit motive. The said trust was registered during the year 2000. In order to establish a School in the area of Pozhichalur village a Memorandum of Understanding was entered into with eight individual owners who were having lands in S.Nos.46/1, 47/2B3 and 47/2B4 of Pozhichalur village, Saidapet Taluk and started the School in that place. The donors of the petitioner purchased the property by way of registered sale deeds from the legal heirs of one Manicka Thambiran during the years 1983, 1985 and 1989, which are registered in the office of the Sub-Registrar, Pallavaram. The donors of the petitioner gifted the land to the petitioner trust during the year 1998 in which the petitioner trust established the School namely, Sri Sarada Eashwar Vidya Mandir after obtaining permission from the Government Authorities for running the School.

3.It is the further case of the petitioner that the donors of the petitioner were not informed about the proposal to acquire the plots under the Tamilnadu Urban Land (Ceiling and Regulation) Act (hereinafter, referred to as 'Act') and hence, the provisions of the said Act will not be applicable to the lands in the survey numbers since the lands were divided into plots and sold to various persons individually long before the proceedings were initiated under the Act. In these circumstances, the petitioner approached the Revenue Authorities seeking issuance of patta, however, the petitioner was informed by the Revenue Authorities that the lands under the said survey numbers are vested with the Government as per the provisions of the Act and hence, patta could not be issued to the petitioner.

4.It is the further case of the petitioner that the petitioner immediately sent a petition on 28.02.2005 to the first respondent requesting to furnish a copy of the proceedings passed under Section (5) and 11 (5) of the Act and the first

respondent vide communication dated 28.04.2005 requested the petitioner to submit the copies of the gift deed. Accordingly, it was informed to the first respondent that the petitioner is having only the Memorandum of Understanding. However, the first respondent informed the petitioner that in the absence of any registered document to show that the lands were gifted, the request of the petitioner will not be feasible. The petitioner therefore filed writ petition in W.P.No.22535 of 2005 and this Court vide order dated 14.07.2005 directed the respondent therein to furnish the documents sought for by the petitioner within a time frame. Thereafter, the respondent furnished the certified copies of the order passed under Section 9 (5) of the Act and the notice issued under Section 11 (5) of the Act in respect of S.No.46/1 of Pozhichalur village.

5.It is the further case of the petitioner that on perusal of the certified copies, it was found that the entire proceedings under the said Act were initiated as against the said Manicka Thambiran who had expired before the year 1983. The legal heirs of the said Manicka Thambiran plotted out the agricultural lands and sold to various persons. The donors of the petitioner trust purchased the lands from the legal heirs of the said Manicka Thambiran. Since the entire proceedings were initiated as against a deceased person and no notice was issued to the petitioner, the entire proceedings are ab initio, void and not enforceable. Hence, the petitioner has filed this writ petition.

6.The respondents have filed counter stating that the land in S.No.46/1 measuring 5200 sq.mts., belonged to one Manicka Thambiran and notice under Section 7(2) of the Act calling upon the land owner to file return under Section 7(1) of the Act was issued by the first respondent and the notice was served on one Deivanai, who is the daughter - in - law of the land owner. Since the land owner did not file the return, draft statement under Section 9(1) of the Act was issued by the first respondent and it was also served on the said Deivanai. Thereafter, since the land owner neither appeared in person nor filed any objection before the first respondent, final notice under

Section 10 (1) of the Act was issued on 31.07.1995 and served by affixture in the presence of Village Administrative Officer, since the land owner has not been residing in the village. The notification under Section 11 (1) of the Act was published in Tamil Nadu Government Gazette 4 dated 03.02.1999 in part VI (1)/178/99 at page 156-157. the notification under Section 11 (3) of the Act was published in Tamil Nadu Government Gazette 13 dated 07.01.1999 in part VI/(1) 634/99 at page 663-664 informing the vesting of the excess vacant land acquired. Thereafter, notice under Section 11 (5) of the Act was issued on 10.05.1999 and since the land owner did not surrender the excess vacant

land, the possession of excess vacant land was taken by the Government and handed over to the Revenue Department.

7.The learned counsel appearing for the petitioner submitted that the lands in question were purchased by the donors of the petitioner during the years 1983, 1985 and 1989 from the legal heirs of one Manicka Thambiran. However, proceedings under the Act were initiated in respect of the lands in question during the year 1992 against the said Manicka Thambiran, which is not applicable to the petitioner. No notice was given either to the legal heirs of the said Manicka Thambiran or to the subsequent purchasers. In the absence of any notice, the proceedings initiated against a person who is not the owner of the land is un-sustainable and the consequential draft notification and proceedings under Section 11 (5) of the Act is non-est in law.

8.The learned counsel appearing for the petitioner further submitted that the physical possession of the land is with the petitioner and the petitioner has constructed the School after obtaining permission from the Education Department as well as Revenue Authorities. Hence, as per Act 20 of 1999, if physical possession is not taken, the proceedings initiated under the Act stands abated. Accordingly, he prayed for allowing the writ petition.

9.The learned Special Government Pleader appearing for the respondents submitted that based on the revenue records, notice was issued to the legal heirs of Manicka Thambiran. Neither his legal heirs nor the subsequent purchasers filed written statement before the Authority explaining the transfer of property in favour of the donors. In the absence of any written statement, the Authority proceeded based on the revenue records after following the due process of law which is sustainable. Accordingly, he prayed for dismissal of the writ petition.

10.Heard the arguments advanced on either side and perused the materials available on record.

11.Admittedly the proceedings under the Act was initiated against Manicka Thambiran and notice under Section 7(2) of the Act calling upon the land owner to file return under Section 7 (1) of the Act was issued by the first respondent and the said notice was served on one Deivanai, who is the daughter - in - law of the land owner. Since the land owner did not file the return, draft statement under Section 9(1) of the Act was issued by the first respondent and it was also served on the said Deivanai. Thereafter, since the land owner neither appeared in person nor filed any objection before the first respondent, final notice under Section 10 (1) of the Act was issued on 31.07.1995 and served by affixture in the presence of Village Administrative Officer. However, the facts remain that the

lands in question were purchased by the donors of the petitioner during the years 1983, 1985 and 1989 from the legal heirs of one Manicka Thambiran and subsequently, the petitioner acquired the property by way of gift.

12. Thereafter, after obtaining permission from the appropriate Authorities, the petitioner has constructed a School. In the absence of any revenue records, it is the duty cast upon the respondents to find out as to whom is the owner of the property.

13. In this background, it is relevant to refer the following decisions:

(i) The decision of this Court reported in 2006 (5) CTC 52 [Vijay Foundation (P) Ltd., represented by its Director, R.Thiagarajan Vs. The Principal Commissioner of Commissioner of Land Reforms], the relevant portion of which reads as follows:

"7. The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Sections 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands have not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents.

8. Admittedly, the possession of the land is with the petitioner ever since the date of purchase continuously and this Court

considering it at the time of admission of this Writ Petition protected the same by issuing interim order, which is also in force till date. Moreover, the above said Act was also repealed on 16.09.1999, hence, it is not open to the respondents to proceed against the petitioner."

(ii) The decision of this Court reported in 2016 (3) CTC 668 [The Secretary to Government, Revenue Department v. B. Anand Kumar], the relevant portion of which reads as follows:

"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 Anr v. iGate Global Solutions Limited and Anr, 2016 (2) CTC 241 (DB) [W.A.Nos.1101 of 2014, etc. batch cases], by Judgment dated 26th February, 2016, held as under:

"60. The ratio deducible from the aforesaid 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 Landowner, will not be sufficient to establish that possession of the lands was taken over from the Landowners..."

(iii) The decision of this Court rendered in the case of State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and 3 Ors v. Sumathi Srinivas in W.A. No.1746 of 2014, dated 17th February, 2015, the relevant portion of which reads as follows:

"34. It is to be noted that although the Appellant/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 Landowner-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."

14.However, the entire proceedings have been initiated against a person who is not the owner of the property. Admittedly, the possession is with the petitioner and as per Act 20 of 1999, if possession was not taken the proceedings initiated under the Act would stand abated. In view of the above, I am inclined to quash the impugned orders. Further, the decision of this Court reported in 2006 (5) CTC 52 [Vijay Foundation (P) Ltd., represented by its Director, R.Thiagarajan Vs. The Principal Commissioner of Commissioner of Land Reforms], squarely applies to the present case on hand. Hence, the impugned orders are set aside and the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Assistant Commissioner cum
Competent Authority,
Urban Land Ceiling,
Tambaram Circle,
169, Sannathy Street,
Adambakkam,
Chennai - 600 088.

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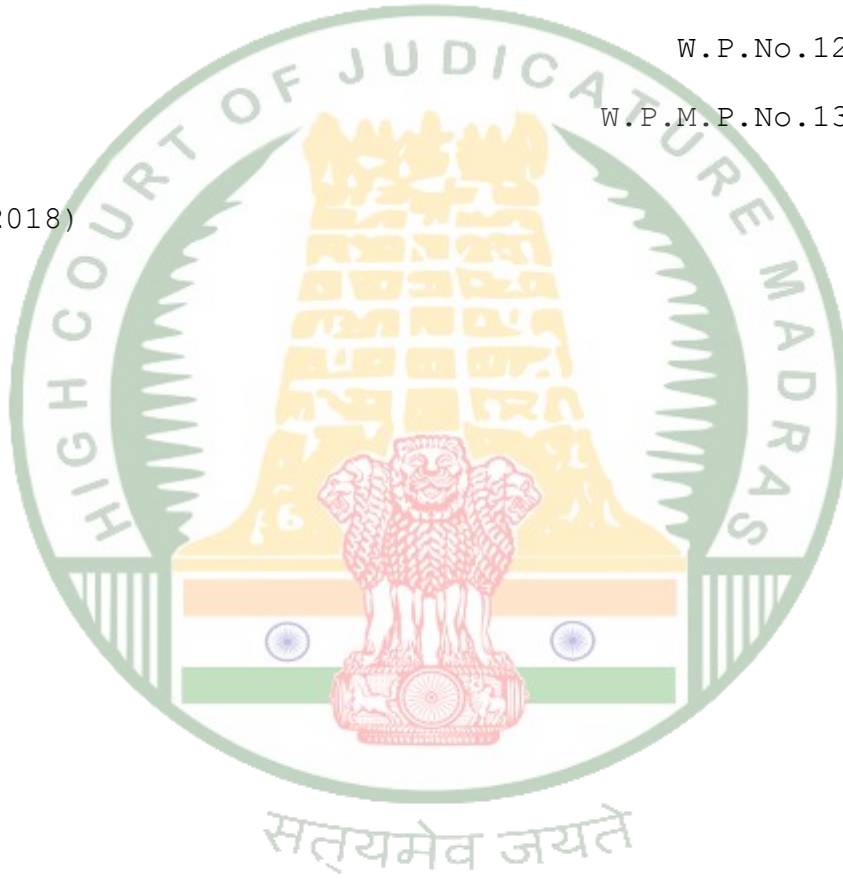
2.The Secretary to Government,
Department of Revenue,
Fort St.George,
Chennai - 600 009.

3.The Director of Urban Land Ceiling and Regulations,
Chepauk, Chennai - 600 005.

+ 1 cc to M/s. K. Soundararajan, Advocate Sr.43921
+ 1 cc to MR. Government Pleader Sr.44058

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And
W.P.M.P.No.13826 of 2006

(CS-VI)
EU(03/08/2018)



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