

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 15342 of 2007 and M.P.No.1 of 2007

C.S.Vijayathimala

...Petitioner

Versus

1.The Competent Authority (ULC),
192, Mount Road,
Saidapet,
Chennai-600 015.

2.The Tahsildar,
Mambalam-Guindy Taluk,
Guindy,
Chennai-600 032

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the first respondent from in any manner interfering with my right, possession and enjoyment of the land of an extent of 300 sq.mts., in T.S.No.12, R.S.No.96/3, Block No.5, Maduvangarai, Velacherry Village, Chennai, in the light of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999 and consequentially direct the second respondent to issue patta for the said land in my name.

For Petitioner : Ms.Nithya
for Mr.V.Kuberan

For Respondents : Mr. K.Ravikumar, AGP

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O R D E R

The petitioner has filed the Writ Petition seeking issuance of mandamus forbearing the first respondent from in any manner interfering with her right, possession and enjoyment of the land to an extent of 300 sq.mts., in T.S.No.12, R.S.No.96/3, Block No.5, Maduvangarai, Velacherry Village, Chennai, and for consequential relief.

2 The case of the petitioner is that, the petitioner's father-in-law had acquired a larger extent at Velachery Village in O.S.No.12, R.S.No.96/3, Block No.5 under a registered sale deed dated 04.07.1947. After the demise of her father-in-law, her husband had inherited the said property and was in possession and enjoyment of the land. While so, during 1974-75, he had sold a major portion of the said lands to various persons on account of his family circumstances. Thereafter, the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 (Tamil Nadu Act 24 of 1978) came into force with effect from 03.08.1976. Pursuant to coming into force of the said act, her husband made a declaration, declaring the ownership and possession of the remaining lands in his hands and requested the first respondent to grant exemption to hold the small extent of land through a letter dated 08.02.1980. However, proceedings were continued under Act 1978 and notices were issued, wherein 300 sq.mts was found to be excess. The petitioner's husband had passed away on 31.08.1995. According to the petitioner, till the death of her husband, she is unaware of the affairs relating to the aforesaid property also about the Urban Land Ceiling proceedings. According to the petitioner, though the excess land was declared as per notification and the same was vested in favour of the Government, the actual physical possession of the land was continued to be with the petitioner and the same was not taken over by the State Government. The petitioner living in the particular land surrounded by a compound wall and the said property was in physical possession and enjoyment of the petitioner. Thereafter, the said act was Repeal by Act No.20 of 1999, which was published on 16.06.1999. Aggrieved against the same, the petitioner has filed this present Writ Petition with the aforesaid prayer.

3 Heard both sides.

4 The learned counsel for the petitioner would submit that the vesting of any vacant land under Sub Section 3 of Section 11, the possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent Authority. Admittedly, the petitioner has taken the land in the manner known to law. However, the physical possession of land is continued to be with the petitioner.

5 This Court while entertaining the Writ Petition, no interim order is granted in favour of the petitioner. However, the respondent has filed a counter, wherein inter alia stated that admittedly, one C.S.Sabarathan was the owner of the land ad-measuring 8 grounds and 713 Sq.ft and he has filed return under Section 7(1) of the Act on 14.9.1978 and sent a letter to the urban land owner requesting him to appear for an enquiry. Subsequently, the Urban Land Owner has applied to Government to

exempt the excess vacant land. However, the said request was rejected on 1979 by the State Government. Therefore, notice dated 24.12.1979 under Section 9(4) and the statement under Section 9(1) was sent through RPAD and the same was acknowledged. Thereafter, the urban land owners filed objection addressed to the Government with a copy marked to the Competent Authority and the Authority has passed an order dated 19.02.1980, to acquire an extent of 300 Sq.mts. of excess vacant land under section 9(5) of the Act. Thereafter, a final statement under section 10(1) of the Act was issued on 17.06.1980. The said final statement was also acknowledged by the urban land owner and he filed a petition objecting to carryout the excess vacant land and the said objection was over ruled by the Assistant Commissioner on 07.07.1980. Thereafter, notification was issued under Section 11(1) of the Act on 17.07.1980 and the same was published on 24.12.1980 and notification under Section 11(3) of the Act was also published in the Government Gazette and a notice dated 21.04.1981 under section 11(5) of the Act was also sent to the urban land owner through RPAD requesting him to surrender the excess vacant land and the urban land owner has acknowledge receipt of the same. Accordingly, after following due process of law, the possession was taken by the Government and handed over to the Revenue Department on 06.07.1981. A notice under section 12(7) of the Act towards payment was sent to the urban land owner by RPAD, which was undelivered stating that the urban land owner has left. Hence, the compensation amount was kept in the Revenue Deposit. Thereafter, the acquired land was allotted to Tamil Nadu Housing Police Housing Corporation vide G.O.Ms.No.252, Revenue dated 21.02.1984. Now, the petitioner has filed this writ petitioner after 26 years against the acquisition of excess vacant land is unsustainable one.

6 In the present case, the petitioner's prayer cannot be granted on a simple manner, since the Urban Land Ceiling & Regulation Authorities have acquired the land after following due process of law. Unless, the petitioner challenges the Urban Land (Ceiling & Regulation) proceedings before the appropriate forum in the manner known to law, the present prayer cannot be considered. It is relevant to mention that C.S.Sabarinathan, urban land owner was well aware of the proceedings and the notice was also served and the exemption claimed by one urban land owner was also rejected. Therefore, the entire land was allotted to Police Department without challenging the proceedings, the writ petition filed is unsustainable.

7 Since the respondent filed a detailed counter and clearly stated that the procedure after following due process of law, the said land was acquired and handed over to the Police Department vide G.O.Ms.No.252, Revenue dated 21.02.1984. In the counter, it further averred that on enquiry, it was learnt that

one B.S.Moorthy was the encroacher and after investigation, it is revealed that the then Tahsildar, Mambalam-Guindy Taluk by an order dated 09.03.1987 levied FCR against five persons imposing certain conditions and stipulations for a total extent of 3000 sq.ft in T.S.No.12/2 and in view of the above the writ petition filed by the petitioner deserves to be dismissed.

8 Since the possession of the land was handed over to the Police Department and the writ petition was filed after 26 years, the relief sought by the petitioner cannot be granted. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Competent Authority (ULC),
192, Mount Road,
Saidapet,
Chennai-600 015.

2.The Tahsildar,
Mambalam-Guindy Taluk,
Guindy,
Chennai-600 032

+1 CC to M/s. Rank Associates sr 42400.

सत्यमेव जयते

W.P. No. 15342 of 2007
and M.P.No.1 of 2007

NRI (CO)
SP(30/07/2018)

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