IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.17611 of 2012

Murugan Nagar Makkal Pothunala Sangam,
registered Society,
Rep by its President Devaraj,
Site No.58, Murugan Nagar,
Chinnavedampatti Post,
Coimbatore 641 049. ... Petitioner

Vs

1.The Assistant Commissioner of Urban
Land Ceiling and Urban Land Tax,
Collectorate Complex,
Coimbatore 641 018.

2.The Tahsildar,
Coimbatore North Taluk,
Coimbatore 641 018.

3.The Sub Registrar,
Sanganoor Road,
Ganapathy,
Coimbatore 641 006. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to delete the wrong entry pertaining to the said land as "Government surplus lands" and restore the status of the said lands as freehold and consequently, direct the respondents to issue patta to the members of the petitioner Society, in respect of their lands situated in S.F.No.31/4, 43/4 and 43/5 in Chinnavedampatti Village, Coimbatore Taluk.

For Petitioner : Mr.PL.Narayanan

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.PL.Narayanan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

> "To issue a Writ of Mandamus, to direct the respondents to delete the wrong entry pertaining to the said land as "Government surplus lands" and restore the status of the said lands as freehold and consequently, direct the respondents to issue patta to the members of the petitioner Society, in respect of their lands situated in S.F.No.31/4, 43/4 and 43/5 in Chinnavedampatti Village, Coimbatore Taluk."

3. The case of the petitioner is as follows:-

The petitioner is a registered Society and having its Office at Site No.58, Murugan Nagar, Chinnavedampatti Post, Coimbatore-641 049. The Society represents the interest of the residents of Murugan Nagar, Chinnavedampatti Post, Coimbatore. Originally the land was belonging to one M.Kandasamy Gounder and 11 others. The original owners of the land executed several sale deeds in favour of various persons. One Mr.K.Moidhu, purchased the land to an extent of 0.70 acres comprised in S.F.No.31/4, 43/4 and 43/5 under a registered sale deed dated 20.04.1987, bearing No.1583/1987. The remaining portion of the land was also sold to various others. A layout was carved out for the said land and the house sites were sold to various individual purchasers in the said Murugan Nagar, before coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

4. The individual purchasers of the house sites had also obtained permission from the authorities concerned for putting up house construction on the land. The layout has been provided with streetlights, drainage, roads and drinking water by Chinnavedampatti Town Panchayat. Over a period of time, the ownership of the some of the house sites also transferred to various other persons by means of registered sale deed. All the owners of various house sites of Murugan Nagar, today, have valid sale deeds in their favour. The residents have been paying property tax, water tax and electricity charges to the local authorities in respect of individual holdings.

5. While matter stood thus, it appears that some revenue authorities had visited Murugan Nagar in 1999 and started taking measurements of the land. On enquiry, it was found that the lands comprised in S.F.No.31/4, measuring an extent of 0.87.0 hectares and S.F.No.43/5B, measuring an extent of 0.14.5 hectares have been vested with the Government under the provisions of Tamil Nadu Land (Ceiling and Regulation) Act, 1978. According to the members of the petitioner Society, till 1999, when the inspection was conducted, there was no objection from any other authorities to the occupation and enjoyment of the subject property by the residents.

6. Since the action initiated by the revenue official was detriment to the title interest of the members of the petitioner Society, the Society filed a writ petition in W.P.No. 16610 of 1999, challenging the acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. This Court allowed the writ petition on 02.09.2003, by recording the submissions made on behalf of the respondents that possession was not taken by the first respondent. After the disposal of the writ petition, the members of the petitioner Society approached the third respondent for registration and the same was refused by the third respondent stating that the document cannot be accepted for registration, since the subject lands were taken over by the Government under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and consequently, the second respondent also refused to issue patta to the respective owners of Murugan Nagar.

7. In the above circumstances, the Society submitted a representation and in response to the same, the second respondent appears to have sent a letter on 07.02.2006, to the third respondent advising the third respondent not to take any further proceedings in the matter. The members of the Society have been repeatedly made several verbal and written representations to the respondents on various dates. In this regard, a petition was also submitted to the District Collector on 22.08.2011 and a copy of which was also marked to the first respondent. Since no tangible action was forthcoming, the petitioner Society submitted an other representation on 20.02.2012. Inspite of repeated representations addressed to various authorities concerned, no action was taken by the third respondent. The third respondent did not take any action, in view of the fact that in the revenue records, the subject lands were shown as Government surplus lands. In view of such description in the revenue records, the members of the petitioner Society unable to deal with the property as they liked.

8. According to the petitioner Society, admittedly no physical possession has been taken by the respondents and no notice was ever served on the members of the petitioner Society before resorting to acquisition under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. In any event, according to the petitioner Society, the Act has been repealed by Repeal Act (Act 20 of 1999). In the absence of taking over the lands, the acquisition is deemed to have abated. According to the petitioner Society, the lands were not taken over in terms of the original Act and in such event, as law declared by the Hon'ble Supreme Court of India, the acquisition was no more valid in the eye of law after the Repeal Act, 1999. Despite the legal justification in favour of the petitioner Society, no

action initiated to change the description in the revenue records and not allowed the members of the petitioner Society to deal with their property as they deemed fit. Therefore, the petitioner Society has approached this Court for issue a Writ of Mandamus.

9. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

10. In the counter affidavit, it is seen that all the averments contained in the affidavit filed in support of the writ petition are practically admitted and the facts and circumstances as narrated above have been endorsed and accepted. However, the only ground on which the prayer of the writ petition is resisted is because of the description of the subject lands in the revenue records as Government surplus lands.

11. The learned counsel for the petitioner Society would submit that because of wrong description of the subject lands in the revenue records, the character of the land cannot be changed, particularly, in view of the fact that admittedly the possession was not taken in the manner known to law and as such even assuming there was acquisition under the Land Acquisition Act, the same is deemed to have lapsed after the Repeal Act, 1999. In the said circumstances, it is imperative on the part of the authority to effect necessary changes in the revenue records and allow the members of the Society to deal with the properties as they wish. Such inaction on the part of the authorities cannot result in negation of valuable right to the property of the petitioners.

12. As stated above, except stating that wrong description in the revenue records, there is no other ground raised in the counter affidavit for denying the relief as prayed by the petitioner Society. That being the case, this Court does not see any justification as to why the right of the petitioners to deal with the properties as per their own wish, should be denied.

13. The learned counsel for the petitioner Society would also submit that the issue is also covered by the decision of this Court passed in W.P.No.21002 of 2004 dated 23.07.2009. The learned Judge of this Court in respect of the similar relief prayed for in the writ petition, has allowed the writ petition. The operative portion of the order of the learned Judge is found in paragraph No.7 and 8 which are reproduced below:-

> "7. Sufficient opportunity was given to the respondents/authorities to produce the records, however, no records were produced before this Court.

Except the revenue records which show the changes made in 1997, there is no record of the proceedings under Act 24/1978. The provisions of the Act, provides for a following certain procedure before the excess land is declared, acquired and possession taken over. If such a procedure is not followed, then the plea that the excess land has been acquired under Act 24/1978 and the possession has been taken over from the land owner in the counter affidavit cannot be accepted. The said plea is not tenable in the absence of the material records. The petitioner has clearly established his possession of the property based on documents like, building plan, layout approval, tax receipts and patta issued in his favour.

8. In such circumstances, the provisions of Section 4 of the Repeal Act 20/1999 will come into operation, even assuming that proceedings have been initiated under the Tamil Nadu Urban Land Ceiling Act 24/1978. Since the possession of the land has not been taken over in the manner known to law, the provisions of Section 4 of the Repeal Act is attracted. Hence, even if any proceedings has been initiated under Act 24 of 1978, the entire proceedings abates. Consequently, the petitioner is entitled to correct the wrong entry in the revenue records to read as free hold land. This writ petition is ordered in the above terms. No costs."

14. The learned counsel for the petitioner Society would also submit that the order was taken on appeal by the State in W.A.No.167 of 2013 and the learned Division Bench of this Court vide order dated 05.07.2016, dismissed the appeal by confirming the order passed by the learned Single Judge. The learned counsel for the petitioner Society would also draw the attention of this Court to the other order passed by the learned Judge on 02.09.2003 in W.P.No.16610 of 1999, wherein the learned Judge as held that once the possession have not been taken, no further proceedings could be continued after the Repeal Act, 1999. While observing so, the learned Judge allowed the writ petition, stating that no further proceedings could be continued in respect of the lands belonging to the petitioner therein. Therefore, the learned counsel would submit that in all fours, the petitioner Society made out a strong case for grant of relief.

15. This Court has considered the rival submissions of the learned counsel appearing for the petitioner and the respondents and is of the considered view that the various contentions put forth by the learned counsel for the petitioner have valid and sound basis and as stated by the learned counsel, the petitioner Society made out a clear case for grant of relief. Moreover, the

counter affidavit does not contain any valid and worthwhile reasons for denying the relief to the petitioner Society. But, on the other hand, it practically accepted the case of the petitioners quite fairly. That being the case, this Court does not find any iota of justification as to why the members of the petitioner Society should be denied of their valuable right to property and deal with the same as per their wish. In such circumstances, this Court has no hesitation in allowing the writ petition as prayed for.

16. In the above circumstances, there shall be direction to the respondents to delete the wrong entry in the revenue records of the subject lands as Government surplus lands and restore the status of the lands as freehold lands and with a direction to the respondents to consider the representation of the members of the Society for grant of patta in respect of the individual holding in the subject land. The direction of this Court shall be complied with by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

17. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Assistant Commissioner of Urban
Land Ceiling and Urban Land Tax,
Collectorate Complex,
Coimbatore 641 018.

2.The Tahsildar,
Coimbatore North Taluk,
Coimbatore 641 018.

3.The Sub Registrar,
Sanganoor Road,
Ganapathy,
Coimbatore 641 006.

+1cc to Mr.PL.Narayanan Advocate, S.R.No.11198

W.P.No.17611 of 2012

RRK(13/02/2018)