IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29283 of 2013
and
M.P.No.1 of 2013

S.Seeniammal ..Petitioner

vs

1.The Government of Tamilnadu,
Represented by its Principal Secretary,
Revenue Department,
For St.George, Chennai - 600 009.

2.The Principal Commissioner,
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Assistant Commissioner &
Competent Authority,
Urban Land Ceiling,
No.5, Sannadhi Street,
Alandur, Chennai - 600 088. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the proceedings initiated by the 3rd respondent in Na.Ka.No.977/95A including order dated 15.03.1996 passed under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation)Act, 1978 and consequential notice dated 13.11.1997 under Section 11(5) of the Tamilnadu Urban Land (Ceiling & Regulation)Act, 1978 No.2731/96A in respect of petitioner's land comprised in Survey Nos.305/2A at Pallikaranai Village, Saidapet Taluk(now Sholinganallur Taluk), admeasuring 22 cents, as arbitrary, illegal, null and void, unconstitutional, abated consequent to the passing of the Tamil Nadu Urban Land (Ceiling and Regulation)Repeal Act 20 of 1999.

For Petitioner : Mr.D.Saikumaran

For Respondents : Mrs.A.Srijayanthi, Spl GP

O R D E R

The relief sought for in this writ petition is for a declaration, declaring the proceedings initiated by the 3rd respondent in Na.Ka.No.977/95A including order dated 15.03.1996 passed under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation)Act, 1978 and consequential notice dated 13.11.1997 under Section 11(5) of the Tamilnadu Urban Land (Ceiling & Regulation)Act, 1978 No.2731/96A in respect of petitioner's land comprised in Survey Nos.305/2A at Pallikaranai Village, Saidapet Taluk(now Sholinganallur Taluk), admeasuring 22 cents, as arbitrary, illegal, null and void, unconstitutional, abated consequent to the passing of the Tamil Nadu Urban Land (Ceiling and Regulation)Repeal Act 20 of 1999.

2.The learned counsel appearing on behalf of the writ petitioner strenuously contended that the writ petitioner is an absolute owner of the land to an extent of 22 cents comprised in Survey No.305/2A at Pallikaranai Village, Saidapet Taluk. The petitioner had purchased the said land by way of a registered sale deed dated 29.08.1986 from one Mr.Mathew Varghese in registered Document No.2761 of 1986 on the file of SRO, Chennai (South). The petitioner claims that he is in absolute possession and enjoyment of the said property and has fenced the same for protecting them from encroachments. The vendor of the writ petitioner purchased the said property from one Mr.Arumugam and others by way of a registered sale deed dated 29.10.1971 in registered Document No.2650 of 1971 on the file of SRO, Chennai (South). In order to develop the property, the writ petitioner submitted an application before the Tahsildhar, Sholinganallur for grant of patta under the provisions of the Patta Pass-Book Act, 1983. The Tahsildhar, Sholinganallur in letter dated 29.05.2012 stated that the property has been declared as excess vacant lands in the hands of one Mr.Mathew Varghese and therefore, the land belongs to the Government and patta cannot be issued in favour of the writ petitioner. Thereafter, the petitioner collected certain documents and the petitioner came to know that the proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation)Act, 1978(hereinafter referred to as "the Act") had been initiated against his vendor Mr.Mathew Varghese and the land to an extent of 3300 sq.meters were declared as excess vacant lands on 15.03.1996 under Section 9(5) of "the Act". The notice under Section 11(5) of "the Act" had been issued to the vendor of the petitioner, Mr.Mathew Varghese on 13.11.1997 itself.

3.The learned counsel for the petitioner made a submission that the adjacent land owners who purchased the said land from the same vendor Mr.Mathew Varghese, filed a writ petition before this Court in W.P.No.29081 of 2003 and the said writ petition was allowed by this Court on 19.10.2006, quashing all the proceedings. Therefore, the case of the petitioner is also to be considered as it is similar to that of the case in W.P.No.29081 of 2003. The learned counsel for the petitioner cited the judgment in this regard by stating that the Courts have allowed the writ petition in view of the fact that the possession had not been taken by the competent authorities in respect of the lands declared as an excess lands under the provisions of "the Act". In the case of the writ petitioner also, the authorities have not taken possession of the property and therefore, the benefit of the same order to be extended to the writ petitioner also.

4.The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the facts placed by the writ petitioner before this Court are incorrect. The provisions of "the Act" had been scrupulously followed, while declaring the said land as excess by the competent authorities. The notices were issued to the owners and an appropriate proceedings were issued by the competent authority. In this regard, the learned Special Government Pleader contended that the land in Survey No.305/2A, 2B, 2C1, 2C2, 2D of Pallikaranai Village measuring an extent of 3600 Sq.mts was classified as dry lands and registered in the name of Mr.Mathew Varghese as per the revenue records. Thiru.Mathew varghese, the urban land owner, did not file the return under Section 7(1) of "the Act". Therefore, a notice under Section 7 (2) of "the Act" was issued to him on 30.08.1985. He refused to receive the notice and hence the notice was served by affixture. As no reply was received from Mr.Mathew Varghese, after obtaining a field Inspection Report dated 23.06.1992 from the Deputy Tahsildar, Assistant Commissioner, Urban Land Ceiling Office, a draft statement under Section 9(1) along with a notice under Section 9(4) of "the Act" were issued to him on 31.07.1992 for the proposed acquisition of excess vacant land of 3100 Sq.mts in S.No.305/2A, 2B, 2C1, 2C2 and 2D1 allowing 500 Sq.mts, towards his entitlement in S.No.305/2D2, Pallikaranai Village. This was served by affixture on the land by the Village Assistant as the Urban Land Owner was not residing in the village and no other address of the Urban Land Owner was available in records. The orders under Section 9(5) of "the Act" were passed on 15.03.1995 by the competent authority, Alandur, determining the excess vacant land as 3100 Sq.mts and the same was again served by affixture on the land by the Village Assistant on 03.04.1995 as the urban land owner was not residing in the Village and address not known. The final statement under Section 10(1) of "the Act" was issued on 19.08.1995 and the same was served by affixture on the land on 03.11.1995 as the urban land owner was not residing in the village and address not known.

5.The notification under Sections 11(1) and 11(3) of "the Act" were issued on 08.12.1995 and on 23.06.1997 respectively and were published in the Tamil Nadu Government Gazette on 13.03.1996 and 13.08.1997 respectively. The excess vacant land of 3100 Sq.mts vested with the Government with effect from 01.07.1997. The notice under Section 11(5) of "the Act" was issued to the Urban Land Owner on 13.11.1997 and was served by affixture. Necessary changes were made in Village Accounts in Taluk 8A/602/1407 dated 11.12.1997. Then the possession of the excess vacant land was handed over to the Revenue Inspector of Pallikaranai Firka, Tambaram Taluk on 19.03.1998.

6.The urban land owner had refused to receive the notice under Section 7(2) of "the Act" on 30.08.1985 and thereby avoided filing of return and giving details of the land to the competent authority and subsequently, sold the land to others to evade the Act. Against the above acquisition proceedings, the present writ petition is filed.

7.The learned Special Government Pleader contended that the present writ petition is filed after a lapse of 17 years and therefore, the present writ petition is liable to be rejected on the ground of laches also. In respect of the fact that the possession has already been taken, the counter affidavit filed by the Assistant Commissioner, Urban Land Tax, Alandur, Kancheepuram District, which reads as follows:

> "As per the provisions of the Act, an extent of 3100 sq.mts was declared as excess in S.No.305/2A, 305/2B, 305/2C1, 305/2C2 and 305/2D of Pallikaranai Village from the holdings of Thiru.Mathew Varghese and action taken under Section 9 to 11 of the Act.
>
> The possession of the excess vacant land was handed over to Revenue authorities on 19.03.1998. The purchase of the land by the petitioner is null and void as per Section 6 of the Act and not valid. Hence, the action of the competent authority is as per the provisions of the Act. All notices were served by affixture in the land and if the petitioner is in possession of the land as claimed by her, she would have known about it and taken steps to find out more, file her claims/objections. Hence, the claim of shock and surprise if true, then all other claims of possession, fencing, enjoyment, are all false, as both cannot be true at the same time. The petitioner thus contradicts herself."

8.A writ petition filed by one Tmt.Sudandarakani, adjacent land owner, in W.P.No.29081 of 2003 before the High Court of Madras against the acquisition proceedings of the competent authority pertaining to 22 cents in S.No.305/2D which forms a part of the above acquired land of 3100 Sq.mts. This writ petition was allowed by this Court on 19.10.2006 only to an extent of those 22 cents. The entire process was not quashed, nor orders connected with the rest of the acquisition set aside. Against the judgment, a Writ Appeal was dismissed due to delay in filing and not on merits on 12.11.2013 in W.A.SR NO.51610 of 2013.

9.The learned Special Government Pleader appearing on behalf of the respondents stated that the writ appeal was not decided on merits and the entire facts and circumstances were not placed and considered by the Hon'ble Division Bench in the Writ Appeal and the writ appeal was rejected on the ground of delay in filing and therefore, the contentions raised by the writ petitioner in this regard deserves to be rejected.

10.Today, when the matter was taken up for hearing, Mr.E.Rajagopal, Junior Assistant, Office of the Assistant Commissioner, Urban Land Tax, Alandur Zone, who was serving in the office of the Assistant Commissioner is present before this Court along with the original files. The original files in relation to the property in question has been submitted. In page No.75 of the original files, the land delivery receipt has been enclosed.

11.On a perusal of the same, the land was delivered to the Revenue Department by taking possession. The land delivery receipt also has been recorded in the original files. Further, the notices sent to the original land owner, Mr.Mathew Varghese had not been responded by him on many occasions. It was recorded by the officials that he was not residing in that Village and his address was also not known to the authorities. The notices were served by way of an affixture and there was no response from the original owners. Under these circumstances, the Court is bound to draw a factual inference that the original land owner, who evaded the receipt of notice and submit his objections/explanations to the authorities concerned, not received the notices sent by the authorities and executed the sale deed in favour of the writ petitioner and an adjacent owner. When the original land owner executed the sale deed in favour of some third parties, when the proceedings under “the Act” was initiated. Thus, the conduct of the original owner is under doubt and if at all, the writ petitioner and the adjacent owner are aggrieved, they are at liberty to prosecute the original vendor, who executed the sale deed, knowing the fact that the proceedings under “the Act” has already been initiated and notices were served to him. None of the notices issued to the said Mr.Mathew Varghese were responded and the said Mr.Mathew Varghese had not submitted any objections or defence before the authorities competent. Contrarily, he executed a sale deed in favour of the writ petitioner. Therefore, the entire facts and circumstances in respect of the execution of the sale deed in favour of the writ petitioner itself is to be scrutinised by the competent authorities. The genuinity or otherwise of these documents are to be verified even before the Sub-Registrar office and if necessary by the investigating authorities.

12.This Court is of an opinion that the land ceiling proceedings were initiated well before the execution of the sale deed in the year 1985. The sale deeds were executed in the year 1986. Thus, there is a possibility of knowledge of the initiation of proceedings under “the Act” and thereafter, the sale deed were executed. Under these circumstances, there is every reason to believe that there is a possibility of irregularity or illegality in respect of the execution of the sale deed by the respective parties, which all are to be investigated and the truth behind the entire episode to be culled out from the competent authorities.

13.This Court is of an opinion that the present writ petition has been filed on 23rd October 2013, challenging the proceedings issued by the third respondent under Section 9(5) of “the Act” dated 15.03.1996. There is an enormous delay of about 17 years even in filing the writ petition, challenging the said notice. The said notice was issued to Mr.Mathew Varghese. The copy of the said notice was not served on the writ petitioner. Under these circumstances, this Court is unable to understand through whom the said notice was handed over to the writ petitioner. When the copy of the impugned notice itself was not served to the writ petitioner, the writ petition is filed by securing the copy of the same from Mr.Mathew Varghese or from some other persons.

14.The learned counsel for the petitioner now states that the said copy has been taken out from the writ petition, filed by the adjacent owner.

15.May that it be. We are not on the point of the receipt of notice. However, the fact remains that the notice was issued under the provisions of “the Act” in proceedings dated 15.03.1996 and the present writ petition has been filed on 23rd October 2018, after a lapse of about 17 years from the date of issuance of the said proceedings. Thus, the writ petition itself is liable to be dismissed on the ground of laches also.

16.The learned counsel for the petitioner cited the judgment dated 23.08.2017 passed in W.A.No.1003 of 2017, the learned counsel referred paragraphs 5 and 6 of the judgment which reads as under:

> 5. A Single Bench of this Court in the decision reported in 2007 [4] LW 361 [cited supra], after going through the files, had found that there are no other record to show that the owner of the property had handed over the physical possession to the respondents therein and taken either from the petitioners or from their vendor in conformity with section 11[6] of the Principal Act and also placed reliance upon the earlier decisions rendered by this Court reported in 2002 [2] CTC 716 [Allind Metal Fabricators Pvt. Ltd., Madras V. The Secretary to Government, Revenue Department, Government of Tamil Nadu, Madras] as well as the decision rendered by the Hon'ble Apex Court of India reported in JT 2000 [Suppl.1] SC 295 [Smt.Angoori Devi V. State of U.P. and others] and found that the petitioners therein continue to be in physical possession in the property in dispute and therefore, the Repealing Act would come to their aid and allowed the http://www.judis.nic.in 5 writ petition. It is pertinent to point out at this juncture that the said decision came to be rendered as early as on 18.07.2007 and it is the submission of the learned Additional Government Pleader appearing for the appellants/official respondents that challenge is being made to the said order nearly after 11 years from the date of the said decision.
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> 6. This Court is of the considered view that in respect of the lands located in the very same survey number, the Single Bench of this Court, in the above cited decision has held that the proceedings initiated under the Urban Land Ceiling Act deemed to have been lapsed in the light of the Repealing Act, 1999. Admittedly, the land of the writ petitioner / respondent herein is located in the very same survey number, viz., S.No.649, bearing Plot No.12 and as such, he is entitled to the benefit and the learned Judge has rightly reached the conclusion.

17.On a perusal of the said findings of the Hon'ble Division Bench, this Court is of an opinion that in the said case, the possession has not been taken by the respondents either from the writ petitioners or from their vendor in conformity with section 11[6] of the Principal Act. The Hon'ble Division Bench has recorded the fact that the possession had not handed over to the competent authorities pursuant to the proceedings under “the Act”. However, in the present case, the originals produced shows that the delivery receipt is recorded and the land had already been handed over to the revenue officials under the provisions of “the Act” in the year 1998 itself. When such is the factum of this case and the original records are also produced before this Court, showing that the possession had already taken, there is no reason to follow the ratio laid down by the judgment cited by the learned counsel for the petitioner.

18.In respect of the genuinity of the documents, the third respondent/Assistant Commissioner is directed to verify the genuinity of the sale deeds executed in favour of the writ petitioner and the adjacent owner before the Sub-Registrar office concerned and in the event of any discrepency or doubtful circumstances, then appropriate complaint may be filed before the concerned Police for further investigation to ascertain the genuinity or otherwise of the sale deed executed by the respective parties. The said exercise is to be done within a period of four weeks from the date of receipt of a copy of this order.

19.However, in respect of the relief as such sought for in the present writ petition, this Court is of an opinion that the writ petition itself has been filed after a lapse of 17 years from the date of passing of the proceedings under the provisions of "the Act" and therefore, the writ petition is liable to be dismissed both on the ground of latches and on merits.

20.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
The Government of Tamilnadu,
Revenue Department,
For St.George, Chennai - 600 009.

2.The Principal Commissioner,
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Assistant Commissioner &
Competent Authority,
Urban Land Ceiling,
No.5, Sannadhi Street,
Alandur, Chennai - 600 088.

+1cc to Mr.D.Saikumaran, Advocate SR.No.46005
+1cc to Government Pleader SR.No.46587

W.P.No.29283 of 2013

NMI(CO)
GN(25/07/2018)