BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11225 of 2014

B.Nazhipunisha .. Petitioner

Vs.

1. The Government of Tamil Nadu,
   represented by its Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai -9.

2. The Assistant Commissioner,
   Urban Land Tax & Competent Authority,
   Trichy Taluk, Trichy District.

3. The Tahsildar,
   K-Abhishegapuram,
   Trichy Taluk,
   Trichy District.

4. The Village Administrative Officer,
   K.B.Abishegapuram Village,
   Trichy Taluk, Trichy District. .. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to restore the legal possession to the petitioner under Section 3(2)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 of the property bearing Plot No.4 of an extent of 2352 sq. ft. in Survey Nos.112/2 and 112/4, in the layout of house sites formed by pooling lands in the name of "National Nagar out of 53 cents in Survey No.112/2 and 24 cents in Survey No.112/4, totally 77 cents in K.Abishegapuram Village, Trichy Taluk and District.

For petitioner : Mr.K.Sukumaran
For respondents : Mr.A.Thiyagarajan,
Government Advocate

ORDER

This writ petition has been filed by the petitioner for issuance of a Writ of Mandamus, to direct the respondents to restore the legal possession of the property bearing Plot No.4 to an extent of 2352 sq. ft. in Survey Nos.112/2 and 112/4, in the layout of house sites formed in the name of "National Nagar" to the petitioner under Section 3(2)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

2. The case of the petitioner is that the lands to an extent of 77 cents in Survey Nos.112/2 and 112/4 originally belonged to one Andi and Savarimuthu and in the year 1976, they sold the same in favour of one one C.J.Chandrabai, who in turn sold the said lands to one Thangamani on 30.09.1981. The said Thangamani divided the said lands into plots and sold Plot No.4 to an extent of 2352 sq. ft. in favour of one Vaitheeswaran, who in turn sold the same in favour of the petitioner. According to the petitioner, he has verified all the documents including the encumbrance certificate and plot approval given in favour of the vendor of the petitioner viz., Vaitheeswaran by the Assistant Commissioner of K.Abishegapuram Division, Tiruchirapalli Corporation dated 08.01.2007. When the petitioner approached for grant of patta, it was refused by the revenue authorities stating that the land of the petitioner has been acquired by the Government as excess land under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as "the Principal Act, 1978).

3. According to the petitioner, before initiation of acquisition proceedings, the vendor of the petitioner by name Vaitheeswaran has purchased the plot No.4 in Survey Nos.112/2 and 112/4 from the title holder of the property viz., Thangamani by way of a registered sale deed dated 27.07.1984. But, without issuing any notice under Section 11(5) of the Act, 1978 to the vendor of the petitioner by name Vaitheeswaran and without following the mandatory procedures contemplated under the Principal Act, 1978 and also without paying due compensation, the respondents had acquired the land. According to the petitioner, though the land in dispute is stated to be acquired by the respondents, the said land has been in continuous possession and enjoyment of the vendor of the petitioner and thereafter, the petitioner. Therefore, as per Section Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proceedings initiated under the Principal Act, 1978 has been abated. Hence, the petitioner is entitled to the relief sought for in this petition.

4. The learned counsel appearing for the petitioner reiterated the above averments made in the petition.

5. The learned Government Advocate appearing for the respondents submitted that notice was issued to the vendor's vendor of the petitioner viz., Thangamani as the revenue records were standing in his name and since the said Thangamani did not

turn up to surrender or deliver the possession of the excess vacant land which was declared as surplus, the 2nd respondent initiated action under Section 11(6) of the Principal Act, 1978 and handed over the possession to the revenue authorities on 13.09.1989 and the compensation amount was deposited in the Treasury. Thus, he prayed to dismiss this petition.

6. Heard the learned counsel appearing for both sides and perused the records carefully.

7. Admittedly, in this case, the acquisition proceedings has been initiated after the purchase made by the vendor of the petitioner viz., Vaitheeswaran. In the counter affidavit in paragraph No.8, the 2nd respondent has fairly admitted that “the land was then inspected by the Deputy Tahsildar and found converted into urban vacant lands by laying out house plots during 1983-84 and sold out to several persons”. From the said statement, it is clear that before initiation of proceedings, the respondents knew about conversion of the lands into house plots and sold out to several persons. When the respondents already knew about selling of plots to several persons, they ought to have verified the records and issued notice to the persons, who purchased the lands subsequently from the said Thangamani. The respondents have failed to issue any mandatory notice contemplated under the Principal Act, 1978 to the persons those who have purchased the plots ie., the vendor of the petitioner and others, before initiation of the acquisition proceedings.

8. Though the 2nd respondent has stated in the counter affidavit that notice has been sent to Thangamani, as the revenue records were standing in his name, this Court is not inclined to accept the same for the reason that the encumbrance certificate which has been obtained by the petitioner even in the year 2007 does not say about the acquisition of the land. In fact, after verification of revenue records, the Assistant Commissioner of the Tiruchirapalli Corporation has also given plot approval to the land in dispute on 08.01.2007. On the other hand, it would go to show that the acquisition has been made by the respondents without even verifying their own revenue records. If the respondents verified their own records, they could have seen that the land in dispute was owned by the vendor of the petitioner and then, they could have initiated proceedings on the original owner of the land in dispute ie., vendor of the petitioner. Thus, it is clear that the respondents have acquired the land without following the provisions of sections 7 to 12 of the Principal Act, 1978.

9. According to the petitioner, the land in dispute has been in continuous possession and enjoyment of the vendor of the petitioner and thereafter, the petitioner. According to the respondents, the possession has already been taken over by them. As stated above, since the possession has been taken without

following the procedures contemplated under Sections 7 to 12 of the Principal Act, 1978, the subsequent repealing Act would abate all proceedings under the Principal Act and accordingly, the entire acquisition proceedings has become abated.

10. In similar circumstances, in the decision in **S.Nasira Anjum and others Vs. State of Tamil Nadu**, reported in **2009 6 MLJ 1102**, a learned Single Judge of this Court has held in paragraph Nos.11 and 12 as follows:

> "11.Even under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, when excess lands are acquired, it was held that unless the procedures under Sections 7 to 12 are followed, it cannot be presumed that possession of lands have been taken and even if possession has been taken without following the procedures, the proceedings would stand abated. That was the view in Vijay Foundation (P) Ltd., rep. by its Director R.Thiagarajan v. Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai (supra).
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> 12.The Supreme Court in similar circumstances in Angroori Devi Smt. v. State of U.P. and others JT (2000) Supp. 1 (SC) 295 held that when it is proved that possession under the principal Act was not taken in accordance with law, the subsequent repealing Act would abate all proceedings under the old Act. I have held in S.Sivaparamam v. State of Tamil Nadu rep. by its Secretary, Revenue Department, Chennai (2007) 6 MLJ 1279 that in the absence of anything on record to show that physical possession of lands has been taken over by the Government, it is not possible to hold that the vesting has taken place even before the repeal Act coming into effect. That is also the view taken subsequently in V.Gurunathan v. Assistant Commissioner of Urban Land Tax and Ceiling, Tambaram Area, Sannadhi Street, Adambakkam, Chennai 28 and others (supra) and T.Audikesavan and others v. Government of Tamil Nadu rep. by its Secretary, Revenue Department, Chennai and others (2008) 3 MLJ 252."

11. The Hon'ble Supreme Court in the decision in **Ganjanan Kamlya Patil Vs. Additional Collector and Competent Authority (ULC) and others** reported in **2014 (12) SCC 523** has categorically held that if the possession has not been taken in accordance with the procedures, it is only a de jure possession and it cannot give any right and when it is not proved regarding the possession before the Repealing Act, the entire proceedings lapses.

12. The above decisions are squarely applicable to the facts of this case. Here, in this case also, the respondents have acquired the land in dispute without complying with the procedures contemplated under Sections 7 to 12 of the Principal Act, 1978 and therefore, the subsequent repealing Act would abate all proceedings under the Principal Act. Even if it is stated that possession has already been taken, it would be only a de jure possession and it cannot give any right. Therefore, this Court is of the view that the petitioner is entitled to get the relief sought for in this petition.

13. In view of the above, the respondents are directed to restore the legal possession to the petitioner in respect of the property bearing Plot No.4 (to an extent of 2352 sq. ft.) in Survey Nos.112/2 and 112/4 in the layout of house sites formed in the name of National Nagar, situated at K.Abishegapuram Village, Trichy Taluk and District forthwith.

14. This writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai -9.
2. The Assistant Commissioner,
   Urban Land Tax & Competent Authority,
   Trichy Taluk, Trichy District.
3. The Tahsildar,
   K-Abhishegapuram,
   Trichy Taluk,
   Trichy District.
4. The Village Administrative Officer,
   K.B.Abishegapuram Village,
   Trichy Taluk, Trichy District.

+ 1 CC TO Mr.K.SUKUMAR, ADVOCATE IN SR No. 90902

GCG
TE/PM/SAR-4 : 16/11/2018 : 5P/6C

Order made in
W.P(MD)No.11225 of 2014
12.10.2018