

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2019

Pronounced on : 26.09.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.3260 of 2019

and WMP.Nos.3528 & 3532 of 2019

Ravi

... Petitioner

.Vs.

- 1.The Additional Chief Secretary/
Commissioner of Land Administration
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai 600 005.
- 2.The District Collector and District Revenue Officer,
Chennai District, Chennai 600 001.
- 3.The Commissioner,
Adi Dravida and Tribal Welfare,
1st Floor, Singaravelar Maaligai,
Chennaio 600 001.
- 4.M.S.Govindaraj
- 5.The Assistant Commissioner/Competent Authority,
Urban Land Tax and Urban Land Ceiling (T.Nagar),
No.349, Arcot Road, Kodambakkam,
Chennai 600 024.
- 6.Chennai Metropolitan Development Authority,
Rep.by its Member Secretary No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
7. Greater Corporation of Chennai,
Rep.by its Commissioner,
Ripon Buildings, Chennai 600 003.

(R5 to R7 are impleaded vide order dated 23/07/2019
made in WMP.No.17375/19 in w.P.No.3260/19)

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records in proceedings dated 29.11.2011 passed in J5/39667/08 on the file of the 2nd respondent confirmed by the 1st respondent in proceedings No.T1/25242/2012 dated 04.02.2016 and quash the same and direct the respondents 1 and 2 to remove the encroachment made by the 4th respondent in respect of property comprised in Town Survey No.7/13 and 7/14, Block No.14, Adyar Village, Mambalam, Guindy Taluk, Chennai District in accordance with the Tamil Nadu Land Encroachment Act, 1905.

For Petitioner : Mr.B.Barath Kumar for
M/s.Hasan Mohammed Jinnah

For R1 to R3 : Mr.V.Jayaprakash Narayanan
Government Pleader.

For R4 : Mr.V.Ramesh for
Mr.T.Thiyagarajan

For R5 : Mr.s.Kamalesh Kannan
Government Advocate

For R6 : Mr.P.S.Ganesh

For R7 : Mr.V.C.Selvasekaran

O R D E R

C.SARAVANAN, J.

The present writ petition has been filed challenging the order of the 1st respondent, dated 04.02.2016 bearing No. T1/25242/2012 and for a consequential direction to the respondents 1 and 2 to remove the encroachment made by the 4th respondent.

2. By the impugned order dated 4.2.2016 bearing reference T1/25242/2002, the 1st respondent has confirmed the order passed by the 2nd respondent on 29.11.2011 by the proceeding bearing reference J5/39667/2008.

3. The petitioner is an assignee of land under an Assignment Order dated 25.02.1997 bearing reference No.D.DIS.No.2140.

4. The land in question originally belonged to one Pyari Ammal. Vide order No.Na.Ka.No.A2.6357/88 dated 31.03.1994, the name of Pyari Ammal was removed and substituted with the names of Baby Ammal @ Pushpavathi Ammal and Sakkubai Ammal. As per the letter of the Tahsildar, the said land was no longer in the name of Pyari Ammal.

5. The 4th respondent claimed to have purchased a portion of land from the buyer of the land of Pyari Ammal. The 4th respondent had therefore filed a suit for specific performance viz., O.S.No.3588 of 2004 before the XVI Assistant Judge, City Civil Court to direct the defendants therein to execute a Sale Deed in favour of him in respect of suit schedule property or in the alternative with a prayer to the court to execute a sale deed of the schedule property and for pay the cost of the suit. It is in respect of the said land which the petition is seeking right of path way.

6. The said suit was later decreed on 14.02.2006. Meanwhile, the 4th respondent filed W.P.No.5324 of 2005 to quash the orders passed under Section 11(5) of Tamil Nadu Urban Land Ceiling and Regulation Act, 1978 in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999 which came into force on 16.09.1999.

7. The said writ petition was allowed by this Court on 25.11.2005 as only a symbolic possession of the property declared as surplus was taken by the appropriate authority before the repeal Act was passed.

8. The petitioner herein along with others assignees had earlier filed W.P.No.16699 of 2008 to consider their representation dated 06.04.2008 for right of pathway to the Adiyar river through the said land which was purchased by the 4th respondent. The said writ petition was disposed without going into the merits with a direction to the Tahsildar, Mambalam to pass an appropriate order on the representation of the petitioner and 17 others.

9. Meanwhile, the petitioner filed a Petition under the Right to Information Act, 2005, on 19.04.2010. The Assistant Commissioner (Urban Land Tax and Urban Land Ceiling) T.Nagar, has also confirmed that the excess waste lands in S.No.7/13, 7/14 in part 14 of Adyar village having acquired remain as lands of the Government.

10. Under these circumstances, the petitioner had filed W.P.No.7248 of 2010 to forbear the first respondent viz., Principal Commissioner and Secretary Land Reforms and Urban Land Ceiling, Chepauk, Chennai to not to transfer any right to any third party in respect of the property in S.Nos.7/13 and 7/14 Kotturpuram Village, Chennai measuring 20 feet breadth and 108 feet length and to take appropriate action to restore the said property to its original position by demolishing the offending construction of compound wall in the said property put up by the 4th respondent.

11. By an order dated 16.07.2010, the said writ petition was disposed with the following observations in para 4 which is reproduced below:

" 4. The parties have produced voluminous documents in respect of their respective contentions. When we expressed our opinion that the issue involved herein cannot be decided in writ proceedings, the learned counsel appearing for the petitioner submitted that the petitioner would be satisfied in case liberty is given to him to approach the District Collector with a representation for appropriate orders."

12. Thus, liberty was given to the petitioner and the 4th respondent to approach the District Collector, the second respondent herein with their respective representations along with documents and in the event of their making any such representations within a period of four weeks from the date of receipt of a copy of the order, the District Collector was directed to consider the same and pass appropriate orders in accordance with law and on merits within eight weeks thereafter. It was made clear that merits were not considered by the Court and it is for the District Collector to dispose of the matter in accordance with law and on merits.

13. In the proceeding bearing reference J5/39667/2008 dated 29.11.2011 rejected by the 2nd respondent, the request of the petitioner on the ground that the 4th respondent had purchased the property on the strength of a decree passed in O.S.No.3588 of 2004 and E.P.No. 3045 of 2006 and further as per the revenue

records as per the Town Survey Land Register the classification of the land was " Ryotwari Manai" and therefore removal of alleged encroachment by the 4th respondent cannot be considered for formation of common pathway.

14. By an order dated 29.11.2011 bearing reference J5/39667/2008, the District Collector of Chennai passed the following order:

" In the reference 2nd cited, you had requested to evict the encroachment made by Thiru.M.S.Govindaraj in the Adi Dravidar land in S.No.7/13 and 7/14, Block No.14 and to form common pathway for public use.

In this regard, the Tahsildar, Mambalam- Guindy Taluk had been instructed to send a detailed report vide this office letter dated 12.10.2011 cited in the 5th reference for passing orders on your representation and to evict the encroachment in S.No.7/13 and 7/14 after following the due procedures under Land Encroachment Act, 1905.

The Tahsildar has reported that Thiru.M.S.Govindarajan has purchased property in Block No.14, T.S.No.7/13 and 7/14 admeasuring 4 grounds and 0694 sq.ft. through document No.1209/2008 of Sub Registrar's Office, Adyar, Chennai on 09.07.2008. Thiru.M.S.Govindarajan had purchased the property on the strength of a decree in O.S.No.3588/2004 and E.P.No.3045 of 2006 pronounced by IX Assistant Judge, City Civil Court, Chennai. This can be verified at any time from this office.

Further, from the Revenue records as per Town Survey Land Register, the classification of the land is " Ryotwari Manai" and as such the ownership of Thiru.M.S.Govindarajan for the above property is well established. Hence, the removal of encroachment sought for in your petition 2nd cited could not be considered and

the question of formation of common pathway also does not arise."

15. Aggrieved by the said order, the petitioner filed W.P.No.3881 of 2012. The said writ petition was dismissed on the ground that the petitioner has an appellate remedy before the Commissioner of Land Administration.

16. Pursuant to the said order, the petitioner had filed an appeal before the Principal Commissioner. The petitioner thereafter filed W.P.No.29626 of 2013. Though the said writ petition was dismissed, the relief claimed by the petitioner was granted by directing the Principal Commissioner to consider the appeal filed by the petitioner on 19.04.2012 on merits and pass appropriate orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and communicate the same to the parties concerned.

17. The 1st respondent vide order dated 4.2.2016 bearing reference T1/25242/2002 has dismissed the appeal on the ground that contention of the 4th respondent had been accepted by an order dated 25.11.2005 in W.P.No.5324 of 2004 and that the said order had not been challenged before a competent authority and therefore the case of the petitioner cannot be considered.

18. We have given an anxious consideration the issue. Petitioner is an assignee of the land along with others in the same area where the 4th respondent has perfected his title. According to the petitioner, the 4th respondent has encroached on the property of the government which was meant for access to the banks of Adyar river for persons engaged in washing clothes in whose favour the Government had assigned rights.

19. The basis of the rejection on the request of the petitioner for a common pathway to the Adyar river appears to be decree passed on 14.02.2006 in O.S.No.3588 of 2004 in favour of the 4th respondent and an order passed by this court on 25.11.2005 in W.P.No.5324 of 2005. In both the proceedings, the petitioner was not a party.

20. O.S.No.3588 of 2004 was filed by the 4th respondent against his vendor for a specific performance of an agreement for execution sale deed in his favour which came to be decreed on 14.2.2006. These transactions were entered into perhaps to take advantage of the repeal of the Tamil Nadu Urban Land Ceiling and Regulation Act, 1978 under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999.

21. W.P.No.5324 of 2005 was filed by the 4th respondent on the premise that the 4th respondent was in possession of the property. The respondents therein, the Special Commissioner And Commissioner of Land Reforms and the Assistant Commissioner/Competent Authority, (Urban Land Tax and Urban Land Ceiling) T.Nagar, conceded the case in favour of the 4th respondent on the ground that no physical possession was taken and only a symbolic possession was taken and therefore the proceedings initiated under the Urban Land Ceiling Act, 1978 lapsed in view of repeal of the Act 1978 enactment under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999.

22. Therefore, these proceedings in which the petitioner was not a party cannot bind the petitioner. At the same time since a finality has been arrived in favour of the 4th respondent vide order dated 25.11.2005 in W.P.No.5324 of 2005, we cannot open those issues now and come to the rescue of the petitioner in the present writ petition. Therefore, we do not find any merit in the present writ petition. We however leave it open to the petitioner to take appropriate steps to jeopardise the rights conferred in favour of the 4th respondent in W.P.No.5324 of 2005 in an appropriate proceeding in accordance with law.

23. We therefore dismiss the present writ petition with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

- 1.The Additional Chief Secretary/
Commissioner of Land Administration
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai 600 005.
- 2.The District Collector and District Revenue Officer,
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Egmore, Chennai 600 008.
6. The Commissioner,
Greater Corporation of Chennai,
Ripon Buildings, Chennai 600 003.

+lcc to Mr.A.Damotharan, Advocate Sr.82759
+lcc to Mr.L.Thyagarajan, Advocate Sr.87563
+lcc to Mr.P.S.Ganesh, Advocate Sr.83122
+lcc to the Government Pleader Sr.82916

W.P.No.3260 of 2019 and
WMP.Nos.3528 & 3532 of 2019

rsv[co]

srg 18/10/2019