IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.4107 of 2018

J.K.Pushpalatha .. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. By its Chief Secretary to Government
Revenue Department,
Fort St. George, Chennai - 1.

2.The Chief Secretary to Govt. cum Commissioner,
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai - 5.

3.The Assistant Director of Survey & Land Records,
Kancheepuram District.

4.The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Tambaram Zone, Alandur,
Chennai - 16.

5.The Tahsildar,
Tambaram Taluk,
Kancheepuram District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the second respondent dated 13.11.2017 made in Na.Ka.No.8364/2017/E2 and quash the same and direct the respondents to regularise and receive payments from the petitioner as per the G.O.No.565, dated 26.09.2008 passed by the first respondent under the Innocent Buyers Category for the land measuring an extent of 8.25 cent in S.No.60 in Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District, morefully described in the petition schedule.

For petitioner : Mr.P.Gunaraj

For Respondents : Mr.M.Elumalai, GA

ORDER

It is submitted by the learned counsel for the petitioner that she is the owner of the land to an extent of 8 ¼ cents in S.No.60, Plot No.77, Gokul Nagar 4th street, Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District. The said property was initially purchased by her father through a registered sale deed dated 05.01.1983 on the file of the Sub Registrar Office, Tambaram, for a valuable consideration. Subsequently, her father had executed a settlement deed dated 28.12.1995 in her favour. Whileso, on 17.08.2015, she had approached the fifth respondent/the Tahsildar, Tambaram Taluk, Kancheepuram District, seeking for issuance of a patta in her name, but, she was directed to get No Objection Certificate (NOC) from the fourth respondent/the Assistant Commissioner, Urban Land Ceiling and Urban Land Tax, Tambaram Zone, Chennai. Based on the said advise, she had also approached the said Authority, but, unfortunately, the fourth respondent, vide proceedings dated 17.08.2015, refused to issue NOC stating that the said property was acquired under the Urban Land and Ceiling Act, 1978, prior to the year 1980.

2. Continuing his arguments, learned counsel for the petitioner, drawing the notice of this Court to a G.O.Ms.No.565, Revenue ULC 1 (1) Department dated 26.09.2008, submitted that in the said Government Order, the Government, while deciding to regularize the purchase of lands by the Innocent Buyers covered under Urban Land Ceiling Act for the places in T. Nagar, Ambattur, Kundrathur, Poonamallee, Tambaram, Alandur, Egmore, Madavaram, Tondiarpet in Chennai City and other Cities such as Triuchirappalli, Salem, Coimbature, Madurai and Triunelveli, determined the price of the lands per ground. Although, earlier, the extent of land permissible for regularisation under the Scheme was only one ground, now, in the above said G.O, they have categorically stated that the said G.O. would be extended to all the Innocent Purchasers as on the date of issuance of G.O. It is also brought to the notice of this Court that the Government, vide G.O.Ms.No.174, Revenue (ULC 1 (2) Department, dated 20.5.2011, had regularized the lands belonging to 21 persons. Therefore, by citing the said G.O., it is contended that when the Government have regularised the lands purchased by the similarly persons, they cannot now refuse to extend the said benefit to the petitioner, as admittedly, her father had purchased the above said property on 05.01.1983 itself, hence, the present impugned proceedings of the second respondent denying to issue patta on the ground that the petitioner was only a settlee under the settlement deed, not the original owner, cannot be sustained.

3. In support of his submissions, he has also relied on a judgment passed by this Court in W.P.No.25319 of 2018, dated 09.10.2018, to contend that since the parents of the petitioner purchased the land and subsequently settled the same in favour of the petitioner, merely because the transfer in the name of the petitioner was not by way of sale, the respondent cannot arbitrarily deny the benefit of G.O.Ms.No.565, dated 26.09.2008, extending the benefit of regularisation as on the date of issuance of the said G.O. to those Innocent Purchasers.

4. Learned Government Advocate appearing for the respondents, by filing a counter affidavit, submitted that the petitioner's father had purchased the property in question on 05.01.1983 and thereafter, he had settled the said property in favour of her daughter/petitioner herein on 28.12.1995. But, in the meanwhile, an extent of 2550 sq.mtrs. was declared as excess land in S.No.60 and the said land was handed over to the Revenue Department on 17.11.1997 and thus, the owner for the said land is Government, hence, any transaction effected after 03.08.1976 is void as per Section 6 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978. In view thereof, the purchase of the land in question by the petitioner's father initially on 05.01.1983 and that subsequent settlement in favour of the petitioner on 28.12.1995 cannot accepted as it is not a valid purchase. Hence, he pleaded, the petitioner is not entitled to have the benefit of G.O.Ms.No.565, dated 26.09.2008.

5. This Court is unable to find any substance in the above said submissions. Initially, the Government had issued a G.O.Ms.No.649, dated 29.07.1998, making it clear that if any purchase has been made to an extent 1 ½ ground during the period from 03.08.1976 till 31.12.1994, the same should be regularised under the Innocent Buyers Category on payment of the value of the land. Subsequently, the Government had also issued one more Government Order in G.O.Ms.No.565, dated 26.09.2008, whereby, the Government, while determining the price of the lands per ground, extended the benefit of regularization to all the Innocent Buyers as on the date of issuance of the said Government Order. Therefore, since the petitioner's father had admittedly purchased the land in question on 05.01.1983 itself, the respondent cannot refuse to extend the benefit given in the above said Government Order stating that petitioner was only a settlee, not the original purchaser.

6. While dealing with a similar issue, this Court, vide order dated 09.10.2018, passed in W.P.No.25319 of 2018, allowed the prayer for regularsation of a house plot under the Innocent Buyers Category. For better appreciation, paragraph No.7 thereof is extracted below:-

"7. A careful reading of the Government Order would go to show that it has been issued only to protect the interests of the innocent purchasers who had/have purchased the lands covered under the Urban Land Ceiling Act, 1978. As already stated above, in the instant case, the parents of the petitioner had purchased the house plots in question in the year 2000 and they had subsequently settled the same in favour of their own son, the petitioner herein. If the parents of the petitioner had died intestate, the petitioner, who is the son of the deceased parents, is entitled to inherit the property can apply for regularization of land/plot. As already discussed above, the 1st respondent had rejected the application of the petitioner only on the ground that the petitioner had not acquired title by sale. The reason cited by the 1st respondent in his order impugned in this writ petition is untenable as the Government Order contemplates relief to such of those persons, who have purchased small pieces of land being unaware of the fact that the lands were subject matter to Urban Land Ceiling proceedings. In the considered opinion of this court, the parents of the petitioner were not urban land owners, they were, after all, innocent purchasers. It is not the case of the respondents that in order to avoid the acquisition proceedings under the Urban Land Ceiling Act, the settlement deed came into being. Therefore, the distinction sought to be drawn by the respondent is untenable and has to be rejected."

In the above said case, the petitioner's parents had purchased a house plot in the year 2000 and thereafter, they have settled the said property in favour of the petitioner therein in the year 2001, however, like, in the present case, the request of the petitioner therein for regularization was rejected stating that the petitioner therein was not an Innocent Purchaser. This Court, by quashing the impugned rejection order therein, held that merely because the transfer in the name of the petitioner was not by way of sale, the respondent cannot arbitrarily deny the benefit of G.O.Ms.No.565, dated 26.09.2008, extending the benefit of regularisation as on the date of issuance of G.O. to those Innocent Purchasers.

7. In the light of the above, since the petitioner's father had initially purchased the land in question on 05.01.1983 and thereafter, a settlement was executed in favour of his own daughter/petitioner herein on 28.12.1995, the impugned proceeding dated 13.11.2017 of the second respondent refusing to extend the benefit of G.O.Ms.No.565, dated 26.09.2008, on the ground that the petitioner was only a settlee, not the original purchaser cannot be legally sustained and the said reasons are contrary to the said Government Order.

8. Therefore, for the reasons stated above, the impugned order is set aside and the writ petition is allowed. Consequently, the respondents are directed to regularize the land in question by receiving necessary fees from the petitioner as per G.O.Ms.No.565, dated 26.09.2008, under the Innocent Buyers Category. No Costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Chief Secretary,
Revenue Department,
Fort St. George, Chennai - 1.

2.The Chief Secretary to Govt. cum Commissioner,
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai - 5.

3.The Assistant Director of Survey & Land Records,
Kancheepuram District.

4.The Assistant Commissioner,
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Tambaram Zone, Alandur,
Chennai - 16.

5.The Tahsildar,
Tambaram Taluk,
Kancheepuram District.

+1 CC to Govt. Pleader sr 33409.
+1 CC to Mr.P.Gunaraj, Advocate sr 31847.

W.P.No.4107 of 2018

SP(14/05/2019)