

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 24847 of 2009

and M.P. 1 of 2009

1. Vanaja Subramaniam
2. A.Magesh
3. A.L.Arumugam

... Petitioners

Vs.

1. The Commissioner,
Urban Land Ceiling,
Chepauk, Chennai-600 005.
2. The Assistant Commissioner,
Urban Land Ceiling,
No.84, Arcot Road, Kodambakkam,
Chennai-600 024.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent dated 23.10.2009 and made in Na.Ka.No.585/2009-C and quash the order of the 2nd respondent as illegal and without jurisdiction and declare the land comprised in Survey No.69/1-B of Nesapakkam Village, Mambalam-Guindy Taluk, admeasuring 2400 square meters free from Urban Land Ceiling.

For Petitioners : Mr.M.Balasubramanian
For Respondents : Mr.J.Ramesh,
Addl. Govt. Pleader
for R1 & R2

ORDER

This Writ Petition has been filed challenging the impugned order of by the 2nd respondent dated 23.10.2009 and quash the same.

2. The 3rd petitioner is the father of 2nd petitioner and the 2nd petitioner is the son. The petitioners are owners of property comprised in Survey No.69/1B, Nesapakkam Village, K.K.Nagar, Chennai. From the date of purchase, the petitioners have been in actual possession and enjoyment of the property, which was handed over by the Vendors. In fact, the property was notified under the Land Acquisition Act and Government of Tamil Nadu in G.O.Ms.No.952, Housing, dated 07.06.1978 issued declaration under Section 6 of the Land Acquisition Ac, 1894 (hereinafter

called as 'Act') for the same property bearing Survey No.69/1B, Nesapakkam Village, Saidapet Taluk, Chenglepet District. In the said notification, the above said lands are needed for public purpose for new Ramapuram Neighbourhood Scheme. Initially, the vendors of the petitioners have challenged the acquisition proceedings, however, the same was dismissed. Subsequently, the award was passed by the revenue officials. Further, the vendors viz., one Mr.Ramesh Naidu has sold the property to the 1st petitioner and executed sale deed in favour of Vanaja Subramanian during the year 1985, the 1st petitioner herein. Subsequently, she had sold the property to one Mr.A.K.Gangatharan and executed a sale deed in favour of A.Magesh, the 2nd petitioner herein vide document No.3338/2007. Further, one Mr.Thangavelu has sold the property executing three sale deeds in favour of B.Ravikumar, P.Poornachandra Rao and Ramesh Naidu respectively and subsequently, Mr.B.Ravikumar has sold the property to AL. Arumugam, the 3rd petitioner herein and executed a sale deed vide document No.2279 of 1985. After the purchase, for the purpose of obtaining planning permission, the petitioners have approached the 2nd respondent to issue no objection certificate and thereafter, the 2nd respondent passed the impugned order dated 23.10.2009 stating that already the said land owned and possessed by the petitioners were acquired under the Urban Land Ceiling Act, 1978 and the proceedings are still pending. Hence, challenging the said proceedings, the present Writ Petition has been filed by the petitioners.

3. Mr.M.Balasubramanian, learned counsel appearing for the petitioners would submit that the 3rd petitioner, subsequent purchaser has filed the Writ Petition before this Court in W.P.No.28699 of 2014 and this Court has allowed the Writ Petition vide its order dated 08.01.2015 and quashed the notification issued in the year 1975. Hence, the petitioners are the absolute owners of the property and accordingly, the impugned order has to be quashed.

4. Per contra, Mr.J.Ramesh, learned Addl. Government Pleader appearing for the State would submit that the owner of the disputed property is one Thangavelu and against whom the urban land proceedings was initiated. Accordingly, the notice under Sec.7(2) of the Act was issued on 20.12.1985 and thereafter, a draft notice under Sec.9(4) along with the statement under Sec.9(1) of the Act to acquire the excess vacant land of 2400 sq.mts. was issued 27.06.1986. After receipt of it, the landowner Thangavelu sent a letter on 18.08.1986 objecting to the acquisition stating that his family consists of 7 members and he has also sold the entire land vide Sale deed dated 20.11.1985. Thereafter, the said Thangavelu has not appeared before the enquiry officer. Accordingly, the order under Sec.9(5) of the Act was passed on 27.11.1986 declaring an extent

of 2400 sq.mts as excess land to be acquired. The above order was served on 26.03.1987 and after following the procedures, the notification under Sec.11(3) of the Act was issued and the same was published in the Tamil Nadu Government Gazette on 03.06.1992 and subsequently, notice under Sec.11(5) of the Act was issued on 03.06.1992. Thereafter, the possession of the excess land was taken and handed over to the Tahsildar, Mambalam-Guindy Taluk on 31.03.1997. Thereafter, after concluding the award proceedings under Sec.12(6) of the Act, the compensation amount was sent to the landowner, but the landowner did not come forward to receive the amount payable, the same has been kept in revenue deposit. Subsequently, the 1st petitioner has filed a Writ Petition before this Court to declare the petitioner as absolute owner to an extent of 2400 sq.mts. Hence, all the proceedings have been already concluded, but, without challenging the urban land proceedings, the filing of Writ Petition is unsustainable one.

5. It is an undisputed fact that originally, the property was owned by Thangavelu, against whom, the urban land proceedings were initiated and thereafter, notification under Sec.11(3) of the Act was issued and the same was published in the Tamil Nadu Government Gazette on 03.06.1992 and subsequently, notice under Sec.11(5) of the Act was issued on 03.06.1992. Thereafter, the possession of the excess land was taken and handed over to the Tahsildar, Mambalam-Guindy Taluk on 31.03.1997 and after concluding the award proceedings under Sec.12(6) of the Act, the compensation amount was also granted. It is seen that already, the land ceiling proceedings was initiated against the original owner Thangavelu, however, the same was concluded in the year 1997 itself. Undoubtedly, the petitioners have purchased the property only in the year 1985 and 2007 respectively. However, they have filed the Writ Petition challenging the impugned proceedings dated 23.10.2009, wherein the Assistant Director (Urban Land Ceiling), informed that the said land was already acquired under the Tamil Nadu Urban Land Ceiling Act, 1978. Without challenging the urban land ceiling proceedings, the filing of Writ Petition by the subsequent purchasers is unsustainable and legally impermissible. Hence, I do not find any error in the order passed by the 2nd respondent. Accordingly, the Writ Petition stands dismissed. Further, the interim order already granted by this Court vide order dated 19.01.2015 in M.P. No.1 of 2009 stands vacated. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

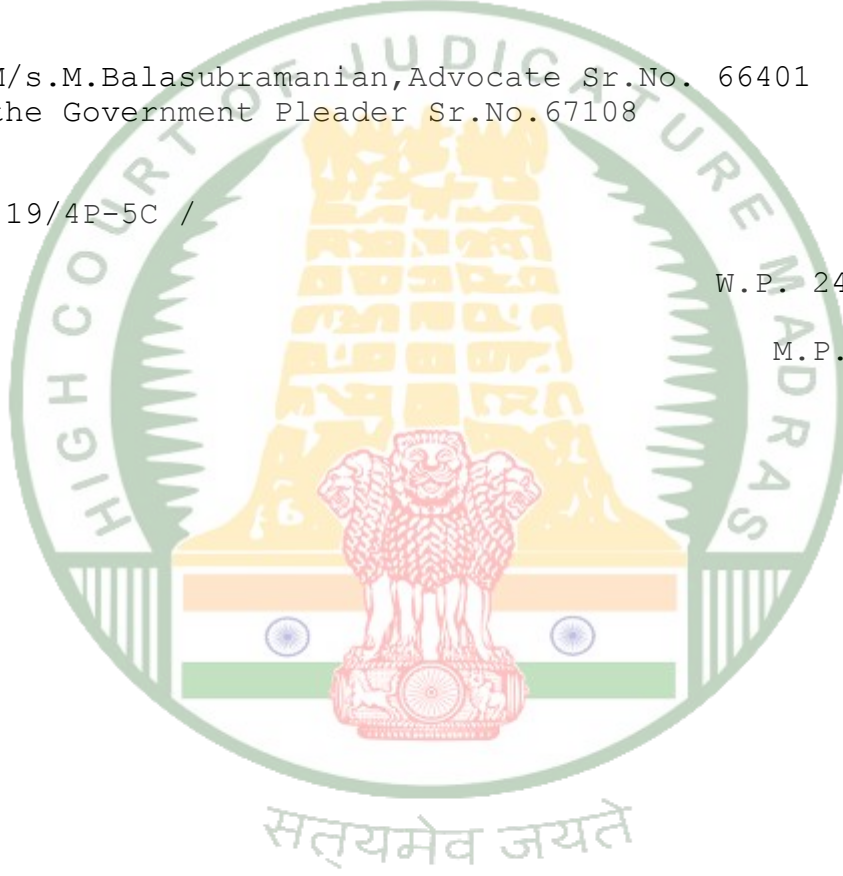
To

1. The Commissioner,
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Chennai-600 005.
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+1 cc to M/s.M.Balasubramanian, Advocate Sr.No. 66401
+1 cc to the Government Pleader Sr.No.67108

AKM/13.09.19/4P-5C /

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