

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.NO.6489 OF 2009

- 1.Mr.Sekar
- 2.Mr.Raghuraghavan
- 3.Smt.Bharathi
- 4.Smt.Devika
- 5.Smt.Renuka Devi
- 6.Smt.Gomeshwari
- 7.Smt.Premavathi
- 8.Smt.Gandhimathi
- 9.Smt.B.Sathya

..Petitioners

Vs

- 1.The Special Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai 600 005.
- 2.The Assistant Commissioner/U.L.T.
Competent Authority (Urban Land Ceiling)
Madhavaram Zone
No.2, Vivek Nagar,
Kolathur, Chennai - 99
- 3.The Tahsildar
Ambattur
Chennai.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorirified Mandamus, calling for the records of the respondents, especially the order of the 2nd respondent dated 25.03.1994 in Na.Ka.No.2217/92/D under Section 9(5), and order dated 15.09.1998 in Rc.No.2217/92/D under Section 11 (5) respectively of the Tamil Nadu Urban Land (Ceiling and Regulation), Act, 1978, relating to the land in Survey No.102/1 measuring to an extent of 4050 sq.mt. of Kadirvedu Village, Ambattur Taluk, Thiruvallur District, and quash the same and treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, (Act 20 of 1999) so as to enable the 3rd respondent to incorporate the names

of the Petitioners as owners in all the revenue records.

For Petitioners : Mr.V.Ramesh

For Respondents : Mr.J.Ramesh,
Additional Government Pleader
for R1 to R3.

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 2nd respondent dated 25.03.1994 in Na.Ka.No.2217/92/D under Section 9(5), and order dated 15.09.1998 in Rc.No.2217/92/D under Section 11 (5) of the Tamil Nadu Urban Land (Ceiling and Regulation), Act, 1978, relating to the land in Survey No.102/1 measuring to an extent of 4050 sq.mts. at Kadirvedu Village, Ambattur Taluk, Thiruvallur District, and quash the same.

2. The case of the petitioners is that the petitioners are the owners of the property comprised in Survey No. 102/1, measuring total extent of 4050 sq. mts., situated in Kadirvedu Village, Ambattur Taluk. The land in question is an agricultural land and belonged to the ancestors of the petitioners and covered by patta No. 146.

3. The petitioners in order to develop the said land appointed one K.V.Thirupathiah, as the General Power Agent to promote a layout for total area of about 9.23 acres. Accordingly, he formed a layout and the layout was duly sanctioned by the petitioners. After the sanction, an extent of 10560 sq.mts was reserved for roads in several Survey Nos. referred to in the schedule of the Gift Deed, dated 15.12.1999 bearing document No.5763 of 1999 and duly registered at Sub Registrar Office, Ambattur, gifted to the Commissioner Puzhal Panchayat Union. In the said Deed, an extent of 2782 sq.mts was reserved for park and open area and the same was also gifted to the local body. The total extent of land covered under the layout is 9.23 acres and the total number of plots approved was 137. These 137 plots have been sold to various persons. The layout does not relate to the land in Survey Nos. 66/3D1, 66/4A, 69/1B and 95/1B3 referred to in the impugned order of the 2nd respondent dated 15.07.1992. However, the lands in Survey Nos.98/2A1, 102/1, 2A1, 2A2A, 2A3, 102/3, 102/4A, 102/4B, 103/1, 103/2, 104/1B, 2A, 2B, 105/1A1, 107/1C, ID, 1E, 109/5A1A, 109/5A1B, 5A2, 5B and 109/5C of kadirvedu Village belonging to the petitioners and adjacent owners were covered under the layout.

4. The entire layout had already been sold to the third

parties and the third parties are in possession and enjoyment of the said lands. After sales, the General Power Agent was summoned by the Assistant Commissioner, Urban Land Tax, in respect of lands covered under the layout for an enquiry. On 28.12.2005, he had appeared before the authorities and the 2nd Respondent has passed an order of assessment dated 25.08.2006, levying tax for fasali 1409 to 1414 in respect of lands referred to above. The assessment order of the 2nd respondent refers to the sanction of the layout by CMDA and the gift of road and other public area to the local body vide document dated 15.12.1999. These documents very clearly establish the possession and enjoyment of the lands by the petitioners.

5. While being so, the purchasers who are in possession and enjoyment of the lands were shocked to know that lands in their possession have been inspected by the revenue officials and when enquired, they came to know that the lands have been acquired under the Tamil Nadu Urban Land Ceiling Act 24 of 1978.

6. In the mean time, one of the petitioners had applied for certified copies of the orders passed by the 2nd Respondent and the same was furnished to him. From the certified copies, it is seen that the land in Survey No. 102/1 of Kadirvedu Village, measuring an extent of 4050 sq. mts. was acquired in the name of one Mr. Balasundara Naicker. Thus, the order of the 2nd Respondent acquiring the land under Act 24 of 78 is impugned in this writ petition. No notice has been served either on the erstwhile owners or on the Petitioners before acquiring the land. Therefore, the petitioners left with no other remedy, filed the present writ petition.

7. The learned counsel appearing for the petitioners would submit that Balasundara Naicker died long back and an affidavit was given in this regard to the second respondent on 21.10.1997. He further submitted that the notice dated 15.11.1998 in the name of Balasundara Naicker is obviously against a dead person and therefore, the proceedings of the second respondent requires to be quashed.

8. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that notices were served to the land owner as per the provisions of the Act by affixture since the whereabouts of the land owner was not known to the second respondent.

9. The judgments circulated by the learned counsel for the petitioners clearly held that as per Section 11 (5) of the Act, the competent authority may, by notice, in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government within 30

days of the service of the notice. However, on perusal of the records, no notice have been issued against the petitioners or the land owner viz., Mr.Bala Sundara Naicker of this service only by way of affixure and there is nothing on record to show that the notice was refused or received by the owner.

10. On perusal of the records dated 26.05.1999, paragraph No.87 shows that a symbolic possession had been taken on 26.05.1999 and handed over to the Revenue Inspector on 10.07.1999. The land delivery receipts does not contain the signature of the land owner. However, the Act was repealed on 16.06.1999. It is obviously after repeal of the Act, there is no records to show that the respondents have resorted to Section 11 (6) of the Act.

11. In view of the above facts and considering the repeal of the Act, the present writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Special Commissioner & Commissioner of Land Reforms, Chepauk, Chennai 600 005.
2. The Assistant Commissioner/U.L.T. Competent Authority (Urban Land Ceiling) Madhavaram Zone No.2, Vivek Nagar, Kolathur, Chennai - 99.
3. The Tahsildar Ambattur, Chennai.

+1cc to the Government Pleader, S.R.No.65504

W.P.No.6489 of 2009

VGI (CO)
CS/11/12/2019