

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.3943 of 2019

1.M.Swarnalakshmi

(As per Gazette Notification dt.27.11.2006 Pg.1273,
Formerly known as G.M.Jothilakshmi]

2.M.Harish Krushnan

.. Petitioners

Vs.

1. The State of Tamil Nadu
Rep by its Secretary to Government
Revenue and Disaster Management Department
ULC [1(2)] Wing
Secretariat, Fort St.George
Chennai - 600 009.
2. The Special Commissioner
Commissionerate for Urban Land Ceiling & Urban Land Tax
Chepauk
Chennai - 600 005.
3. The Assistant Commissioner
Urban Land Ceiling and Urban Land Tax
Madhavaram Zone
No.2, Vivek Nagar, Kolathur
Chennai - 600 099.

सत्यमेव जयते

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in Lr.No.37378/GLC-I(2)/2018-1 dated 06.12.2018 and to quash the same and consequently directing the respondents to regularize the land, stands in the name of the second petitioner to an extent of 1500 sq.ft. in Plot Nos.76 & 77 in S.No.45/1A, Mathur Village, Madhavaram Taluk, Chennai Urban Agglomeration under innocent purchaser category in terms of G.O.Ms.No.649 Revenue dated 29.07.1998 and G.O.Ms.No.565 Revenue dated 26.09.2008, within a time frame fixed by this Court.

For Petitioners : Mr. G.Sankaran
For Respondents : Mr. M.Elumalai
Government Advocate

ORDER

According to the first petitioner, the land in S.No.45/1 of Mathur Village, Ambattur Taluk (presently Madhavaram Taluk) originally belonged to one Tmt.Pattammal and through subsequent sale, the property was sold to one Thiru.A.George vide registered Document No.274 of 1981, who developed the said land into a layout, and thereafter it was divided into various plots and sold to several persons. The first petitioner has purchased an extent of 4800 sq.ft. in Plot Nos.76 and 77 from one Tmt.J.Punithavathy through a registered sale deed, bearing Document No.3602 of 2000 on 09.08.2000. Thereafter, the first petitioner had settled a portion of the land (northern side) having an extent of 1500 sq.ft. to the second petitioner, who is her son, on 13.02.2008, through settlement deed, bearing document No.1368 of 2008, and the remaining portion of 3300 sq.ft. was owned by her. Therefore, both the petitioners herein are the joint owners of the total extent of land in S.No.45/1A, Mathur Village of Madhavaram Taluk and they are in possession and enjoyment of the same.

2. Learned counsel for the petitioners stated that the lands in S.No.45/1, Mathur Village along with other larger extent of lands was originally subjected to Urban Land Ceiling proceedings under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, and that the petitioners and other purchasers had no knowledge of it, and had purchased the property in the said Survey numbers. Thereafter, the Government have taken a policy decision to regularise those lands purchased by the innocent purchasers, for the sale effected during the period 03.08.1976 to 31.12.1994, upon collection of fees from the innocent purchasers, who had no reference about the Urban Land Ceiling proceedings, and accordingly G.O.Ms.No.649 (Revenue Department), dated 29.07.1998, came to be issued by the Government. Subsequently, the Government have extended the period further, to cover the purchase of lands till 26.09.2008, vide G.O.Ms.No.565 (Revenue Department) dated 26.09.2008. Since, time limit has been extended further by the Government till 26.09.2008, to cover the purchases made by the innocent purchasers upto 26.09.2008, and that the petitioners are entitled to the said benefit of land ceiling proceedings, as per G.O.Ms.No.649 dated 29.07.1998 and G.O.Ms.No.565 dated 26.09.2008, the first petitioner has submitted two independent applications dated 20.02.2008, in the prescribed format, both

for herself and on behalf of her son, the second petitioner herein, who was aged 16 years at that relevant time, seeking to regularise the purchase under the Innocent Buyers Category.

3. On receipt of applications from the petitioners, the Assistant Commissioner, Urban Land Ceiling and Urban Land Tax, Madhavaram Zone, Chennai-600 099, the third respondent herein, had issued notices to the petitioners dated 14.03.2008 and 19.3.2008, calling the petitioners herein to appear for enquiry on 4.4.2008 and 11.4.2008 respectively at 11.00 a.m. along with relevant documents. The petitioners have also participated in the enquiry and produced the documents as required by the officials, and they have also given in writing that they agreed to pay the amount fixed by the Government. Thereafter, no response was forthcoming from the respondents. Sometime in the year '2015, the third respondent had issued notice to the petitioners dated 12.03.2015, calling them to appear for personal hearing on 17.03.2015, along with necessary documents, which are required by the second respondent herein, in considering the claim of the petitioner, and the same was duly complied by the petitioners and the documents too were verified by the officials, during enquiry. Thereafter, the respondents were silent for more than 1½ years and in '2016, the third respondent again issued notices dated 27.09.2016 and 08.12.2016 to the petitioners respectively, requiring them to appear in person and to produce certain additional documents, to consider their claim, within 15 days from the date of receipt of said notices. Pursuant to the said notices, the petitioners appeared in person on 08.02.2017 and produced the documents sought by the officials and the said documents were also verified by them. However, no orders were passed by the respondents in regularising the lands, inspite of the above Government Orders were passed as early as '2008.

4. It is also contended by the learned counsel for the petitioners that despite the third respondent repeatedly sending notices and holding enquiries on three occasions, and there is no lapse on the petitioners in attending the enquiries as and when called by the respondents, and also they have not defaulted in making the requisite fee as prescribed by the officials concerned, but the respondents have failed to pass any order and hence, the petitioners on an earlier occasion, had approached this Court in W.P.No.14101 of 2018, to issue a Mandamus to the respondents to pass appropriate orders, based on the application submitted by the petitioners for regularisation of lands under Innocent Purchaser Category, and this Court also vide order dated 12.06.2018, upon referring to the entire facts and circumstances of the case, as well as the enquiry conducted by

the third respondent, granted four weeks time to the Enquiry Officer to submit a report and thereafter, four weeks time was granted to the Government to pass appropriate orders.

5. Pursuant to the order of this Court dated 12.06.2018 in WP.No.14101 of 2018, the first respondent vide letter No.44172/ULC-I(2)/2017-I dated 10.01.2019, by referring to G.O.Ms.No.565 dated 26.09.2008, has passed an order regularising the lands purchased by the first petitioner only to an extent of 3300 sq.ft. in Survey No.45/1, Mathur Village, Madhavaram Zone, Chennai Urban Agglomeration, under the Innocent Purchaser Scheme, on collecting necessary requisite amount, but, however, rejected the proposal submitted by the second petitioner herein, viz., Mr.Harish Krushnan, with regard to his land in the same survey number as stated above, having an extent of 1500 sq.ft., on the ground that the claim of the second petitioner is not coming under the purview of Innocent Purchaser Scheme, as the said property was not purchased by him as per the regulations covered in G.O.Ms.No.565 dated 26.09.2008, but got through settlement deed.

6. Heard Mr.G.Sankaran, learned counsel appearing for the petitioners and Mr. M.Elumalai, learned Government Advocate appearing for the respondents.

7. The contention now raised by the petitioners is that admittedly, a total extent of 4800 sq.ft. in S.No.45/1A, Mathur Village of Madhavaram Taluk, was purchased by the first petitioner vide registered sale deed Document No.3602 of 2000, of which, 1500 sq.ft. was settled to her son, the second petitioner herein, by way of settlement deed vide Document No.1368 of 2008, on 13.02.2008, and in view of the policy decision of the Government to regularize the lands of the innocent purchaser, is only in case of sale/purchase of land and not through any other transactions, it is applicable to both the petitioners, that the first petitioner, being the mother of second petitioner, had transferred a portion of property to her son, which she had purchased in the year '2000 through a sale transaction and that when she is covered under the benefit as contemplated in G.O.Ms.No.649 dated 29.07.1998 and G.O.Ms.No.565 dated 26.09.2008, and her proposal was considered by the Government under the Urban Land Ceiling Act, but whereas the proposal submitted by her son with regard to 1500 sq.ft. of the said property was rejected vide impugned order dated 06.12.2018 in Letter No.37378/ULC-I(2)/2018-1, is illegal and challenging the same, the petitioners have come forward to file the present writ petition.

8. The learned counsel appearing for the petitioners would submit that a similar issue has been dealt with by this Court in W.P.No.25319 of 2018 [M.Suresh Vs. The Special Commissioner/Land Reforms Commissioner, Chepauk, Chennai & Others] and this Court, has passed an order dated 09.10.2018, wherein it has held that if the innocent purchaser is a father or mother, who had purchased the property during the relevant period i.e., 03.08.1976 to 26.09.2008, as per G.O.Ms.No.649 dated 29.07.1998 and G.O.Ms.No.565 dated 26.09.2008, and the parent being a purchaser, had settled the property to the legal successor by way of settlement deed, the benefit of these Government Orders should be given to the settlees also. Therefore, the distinction sought to be made by the respondents, in case of the settlor and settlee, in view of the above said G.Os., is without any justification.

9. Following the same, I have also passed an order in WP.No.7777 of 2019, dated 20.03.2019, holding that if the purchase is covered under the above mentioned G.O.Ms. No.649 dated 29.07.1998, mentioning the date of purchase/sale is between 03.08.1976 to 26.09.2008, and another G.O.Ms.No.565 dated 26.09.2008, extending the time limit till 26.09.2008, it is not only applicable to the persons who had purchased the land, but even to the persons in whose favour the innocent purchasers had settled the property, and that the settlee is also entitled to get the benefit of the said Government Orders. Therefore, the respondents are directed to extend the benefit of the "innocent purchaser scheme" as per the above mentioned G.Os to the second petitioner, M.Harish Krushnan, who is the son of the first petitioner namely M.Swarnalakshmi, who after purchase of the land, having an extent of 4800 sq.ft., in Plot Nos.76 & 77 in S.No.45/1A, Mathur Village, Madhavaram Taluk, under sale deed Document No.3602 of 2000 dated 09.08.2000, had executed a settlement of 1500 sq.ft. of land in Plot No.76 (northern portion) vide settlement deed document No.1368 of 2008 to the second petitioner on 13.02.2008. Further, the sale deed dated 09.08.2000, executed in favour of the first petitioner by her vendor was in the name of G.M.Jothilakshmi, who now, under Gazette Notification dated 27.11.2006 Page 1273, has notified her name as M.Swarnalakshmi and thereafter a portion of her property in the said Survey Number, say, an extent of 1500 sq.ft had been settled in favour of her son.

10. Therefore, the request of the petitioners for regularisation of the land in question cannot be denied on the ground that since the transfer of property in the name of the second petitioner was not by way of sale, and as per the aforementioned Government Orders, powers were given to the first

respondent only to regularise the lands purchased/sold by the innocent purchasers and not by transfer of property or by any other transactions. It is seen that the sale/purchase of the land in question has taken place during the relevant period prescribed by the Government, during which time, the lands that were sold/purchased without reference to the Urban Land Ceiling proceedings, are exempted from being acquired by the Government, in view of G.O.Ms. No.649 dated 29.07.1998 and G.O.Ms.No.565 dated 26.09.2008, that came to be passed under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, on collection of requisite charges, and subsequent to it, the settlement has been effected during the said exemption period. Hence, in the considered opinion of this Court, the said settlement effected by the first petitioner in favour of the second petitioner vide settlement deed dated 13.02.2008, has to be accepted by the respondents.

11. In that view of the matter, this writ petition is allowed, setting aside the impugned order and the respondents are directed to consider and pass orders in accordance with law, by regularizing the lands of the second petitioner herein viz., M.Harish Krushnan, having an extent 1500 sq.ft. in Plot Nos.76 & 77 in S.No.45/1A, Mathur Village, Madhavaram Taluk, Chennai Urban Agglomeration under "Innocent Purchaser Category" in terms of G.O.Ms.No.649 Revenue dated 29.07.1998 and G.O.Ms.No.565 Revenue dated 26.09.2008, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

ds

To:

1. The Secretary to Government,
The State of Tamil Nadu
Revenue and Disaster Management Department
ULC [1(2)] Wing
Secretariat, Fort St.George
Chennai - 600 009.

2. The Special Commissioner
Commissionerate for Urban Land Ceiling & Urban Land Tax
Chepauk
Chennai - 600 005.

3. The Assistant Commissioner
Urban Land Ceiling and Urban Land Tax
Madhavaram Zone
No.2, Vivek Nagar, Kolathur
Chennai - 600 099.

+4 ccs to M/s.G.Sankaran, Advocate, S.R.No.30200 to 30282

WP. No.3943 of 2019

KAN(CO)
SSM(04/06/2019)



WEB COPY