IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.33509 of 2013
and M.P. No.1 of 2013

S.Chandra Baskara Marthandan ... Petitioner

Vs

1.The Government of Tamil Nadu,
rep. by the Secretary to Government,
Revenue Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner,
Urban Lad Ceiling and Urban Land Tax,
State of Tamil Nadu,
Urban Land Ceiling Office,
Chepauk, Chennai-600 005.

3.The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Poonamallee Division,
No.5, Sannathi Street,
Poonamallee, Chennai-600 056.

4.The Commissioner,
Land Reforms,
State of Tamil Nadu,
Land Reforms Commissioner Office,
Chepauk, Chennai-600 005.
5.The Assistant Commissioner,
Land Reforms,
Villupuram,
Villupuram District.

6.Chandra Sekaran ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 5th respondent in Na.Ka.No.B3/MR.4/488/17-70 Saidapet dated 06.12.1993 and quash the same and direct the respondents to implement G.O. Ms. No.565/Rev. Dept. Dated 26.09.2008 R/W G.O. Ms. No.327/Revenue

Department dated 24.08.2009 by accepting the amount of Rs.54,675/- to regularise the purchase made by the petitioner in respect to the land bearing Plot No.41 & 42 comprised in Old Survey No.23/2 Resurvey No.23/2A of Ayyapakkam Village measuring 2354 sq.ft. under the registered Deed of Sale dated 30.09.1991 registered as Document No.7763 of 1991 at the Office of the Sub Registrar, Ambattur.

For Petitioner : Mr.M.K.Kabir,
Senior Counsel for
Mr.T.Jayaraman

For Respondents: Mr.V.Shanmuga Sundar,
Special Government Pleader
for R1 to 5

No appearance for R6

ORDER

The writ petition has been filed challenging the proceedings bearing Na.Ka.No.B3/MR.4/488/17-70 dated 06.12.1993 issued by the Assistant Commissioner, Land Reforms, Villupuram, the fifth respondent herein and seeking a direction to respondents 1 to 5 to implement G.O. Ms. Nos.565 and 327 Revenue Department dated 26.09.2008 and 24.08.2009 by accepting the amount of Rs.54,675/- to regularise the purchase made by the petitioner in respect of the land bearing Plot Nos.41 & 42 comprised in Old Survey No.23/2 Resurvey No.23/2A situated at Ayyapakkam Village measuring to an extent of 2354 sq.ft. under a Deed of Sale dated 30.09.1991 registered as Document No.7763 of 1991 at the Office of the Sub Registrar, Ambattur.

2.Mr.M.K.Kabir, learned senior counsel appearing for the petitioner would submit that the petitioner purchased Plot Nos.41 & 42 comprised in S.No.23/2 measuring to an extent of 2354 sq.ft. situated at No.73, Ayappakkam Village, Saidapet Taluk, Chengalpet District from one Y.Sambu Prasad, son of Venkanna Chowdry on 30.09.1991 under a Sale Deed registered as Document No.7763 of 1991 on the file of the Sub Registrar, Ambattur. Learned senior counsel would further submit that the said property originally belonged to one Kanniappa Reddiar, who had two sons namely, Elumalai Reddiar and Ulaganatha Reddiar. The said Kanniappa Reddiar was allotted the said property under a deed of partition dated 12.01.1942 registered as Document No.52 of 1942 which was inherited by his son and the same was again inherited by Krishnaveni Ammal and others, who have sold the same through a Deed of Sale dated 24.12.1965 registered as Document No.553 of 1966 on the file of the Sub Registrar, Poonamallee in favour of Rajammal, wife of Venkanna Chowdry.

After the demise of Rajammal, her only son Sambu Prasad, who was in continuous possession and enjoyment of the said property, sold an extent of 2354 sq.ft. to the petitioner under the deed of Sale dated 30.09.1991 registered as Document No.7763 of 1991 on the file of the Sub Registrar, Ambattur. Learned senior counsel appearing for the petitioner argued that at the time of purchase, the petitioner was unaware about the acquisition proceedings of the said property and it was not disclosed in the document of sale. Later on, it was found from the proceedings dated 06.12.1993 that 3.72 acres of land belonging to Sambu Prasad was acquired. Out of the said land, an extent of 0.96 acres was assigned to one Chandra Sekaran, who was the sixth respondent herein. When Clause 6 of the Deed of Assignment prohibits the sale of the said property before the expiry of a period of 20 years from the date of assignment or before the payment of the value of the land and buildings and trees thereon, whichever is later and this apart, Clause 9 of the Deed stipulates that the assignee shall engage himself in direct cultivation of the land assigned, violating the said Clauses 6 and 9, the said assignee Chandra Sekaran sold away the land under a sale deed dated 13.09.2001 bearing document No.4596 of 2001 registered on the file of the Sub Registrar, Ambattur.

3.In support of his submission, learned senior counsel, inviting the notice of this Court to encumbrance certificate enclosed at page Nos.67 and 69 of the typed set of papers, demonstrated that Chandrasekaran has executed a Sale Deed dated 31.08.1998, selling a part of the land covered in S.F.No.23/2 in favour of one Mr.Mathioli Prince and again the same assignee Chandrasekaran has sold away the rest of the land covered in S.F. No.23/2 assigned to him to the effect not to sell it for a period of 20 years, by virtue of another Sale Deed dated 13.09.2001 in favour of Kathiroli Manickam and Samuel and the said encumbrance certificate also shows that the said Samuel has sold his part to Kathiroli Manickam and settled the same under a Settlement Deed dated 22.01.2003 in favour of Kathiroli Manickam. Therefore, the learned senior counsel argued that when Clauses 6 and 9 of the assignment order dated 29.04.1994 prohibits the sale of property before the expiry of a period of 20 years from the date of assignment to anyone, the said assignee Chandra Sekaran under the Deeds of sale dated 31.08.1998 and 13.09.2001 sold away the assigned land in favour of Kathiroli Manickam and Samuel and has not cultivated the land, whereas, contrary to the prohibition under Clauses 6 and 8, has sold the property to a third party, defeating the very purpose of the assignment. Therefore, accepting the fact that there has been a violation of the condition imposed under Rule 9, the respondents 1 to 5 took a decision to cancel the assignment order for the reason that the assignee had violated the conditions of the assignment.

4.At this stage, learned Special Government Pleader appearing for respondents 1 to 5 would submit that till date, the assignment given to Chandrasekaran was not cancelled, but, it has been decided to cancel. He has also produced a relevant file, wherein, there has been a mention in the proceedings dated 13.04.2016 to the effect that the assignee Chandra Sekaran has violated the conditions of assignment by selling the land in S.F. No.23/2A to an extent of 4860 sq.ft. to Thiru Mathioli Prince through Document No.3487/98 dated 03.09.1998 and an extent of 16,068 sq.ft. to Thiru Kathiroli Manickam through document No.4596/2001 dated 17.09.2001. It appears that he has also sold the other land in S.F No.13/1 to an extent of 0.48 acre to Thiru Pujay Shri Jaymalji Jain G.Champalal Patheraj Ranka Trust through Document No.1726/2007 dated 14.02.2007.

5.Common counter affidavit filed on behalf of respondents 1 to 5 would show that a separate action will be taken under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 to cancel his assignment under 9(2) of the Rules, 1965 and to resume the land to the Government. Therefore, when it is a clear case of violation of conditions 3, 6 and 9 of the assignment order dated 29.04.1994 and as per conditions imposed under 9(1)(i) of the Rules, the sixth respondent shall not sell the land within the conditional period of 20 years, the petitioner has lost the benefit of assignment order. Moreover, the land belonging to the original owner has been taken by applying the provisions of the Urban Land Ceiling Act and the same has been given to the landless labourers so that they can use the land to eke their livelihood. Otherwise, the very purpose of acquisition proceedings initiated against the land owner and the giving away the property to the landless labourers would be defeated and be construed meaningless. In the present case, the petitioner has sold away the land. The petitioner being a bonafide purchaser has purchased the land without being aware of the acquisition proceedings at any point of time. Admittedly, the mistake has been committed by the original owner, but, the petitioner being a bonafide purchaser, became a victim of the unknown circumstances. Realising the same, the Government also, on receipt of various representations from the bonafide purchaser, has come forward to regularise all those beneficiaries. In this regard, G.O. Ms. Nos.649 and 565 Revenue [ULC 1(1)] Department dated 29.07.1998 and 26.09.2008 have been issued giving the benefit of regularisation to the bonafide purchasers and for regularising the fixing the land value.

6.Learned senior counsel appearing for the petitioner pleaded that a proceeding bearing R.C. No.11408/2007/E2 dated 10.06.2009 has been issued by the Government regularising the excess vacant land purchased by the innocent purchasers, in which, the name of the petitioner has been shown as one of the beneficiaries at Sl.No.69 and the amount payable by the petitioner at Rs.54,675/- and the benefit of regularisation has not been given to the petitioner alone, but, it has been extended to two other persons, namely, one K.J.Augastain and K.Selvi, whose names have been shown at Sl.Nos.66 and 70 as innocent purchasers from the same land and they were informed to pay a sum of Rs.37,275/- and Rs.28,450/-. Therefore, the benefit of regularisation has been given to the above three persons, who have been identified as bonafide purchasers of the land covered in S.No.23/2. When a letter was issued to the petitioner dated 16.12.2011 sent by the Commissioner (ULC and ULT) calling upon the petitioner to come forward for remitting the amount of Rs.54,675/- as fixed in G.O. Ms. No.565 Revenue Department dated 26.09.2008 to regularise his purchase made to an extent of 2354 sq.ft. in S.No.23/2 situated at Ayappakkam Village vide Office letter dated 08.09.2009 despatched on 11.09.2009, the same was not served upon the petitioner and it was returned by the postal authorities and as a result, the petitioner was not able to approach respondents 1 to 5. Had the petitioner received the said letter informing him to come with Rs.54,675/- to be paid for regularisation, he would not have come to this Court and no necessity would have arisen to make out any such petition before this Court. Since the said letter has not been served upon him for remitting the amount of Rs.54,675/-, he has come to this Court. Therefore, the stand taken by the respondents 1 to 5 that the petitioner is a bonafide purchaser cannot be lost sight of.

7.When it is an admitted fact that the petitioner is a bonafide purchaser as could be evidenced from the Proceedings dated 10.06.2009 prepared by the Director of Urban Land Ceiling and Urban Land Tax, Chepauk, Chennai addressed to the Principal Secretary to Government, Revenue Department, Secretary, Chennai and there has been a violation of Clauses 3, 6 and 9 of the assignment order dated 29.04.1994 by the assignee Chandra Sekaran and the counter affidavit also made it clear that the action would be taken for cancellation of the same, the writ petition be allowed directing the respondents 1 to 5 to extend the benefit of regularisation as provided under G.O. Ms. No.565 Revenue [ULC 1(1)] Department dated 26.09.2008.

8.Learned Special Government Pleader opposing the above prayer, heavily contended that the petitioner is not entitled to get the benefit of regularisation. However, the petitioner has not purchased the land as a bonafide purchaser from the original land owner against whom the Proceedings were initiated and on the other hand, since he has purchased the land only from Sambu Prasad and for the reason that no proceedings initiated against the Sambu Prasad, the petitioner cannot come to this Court on the ground that he is also one of the innocent purchasers. Again referring to the plea made by the learned senior counsel appearing for the petitioner to the effect that the respondents 1 to 5 have themselves identified the petitioner as one among 345 beneficiaries, learned Special Government Pleader would submit that the respondents 1 to 5 cannot deny the extension of benefit of regularisation to the petitioner, as the said proceedings have been erroneously prepared. Therefore, after realising the mistake that the petitioner has been wrongly identified as an innocent purchaser, the petitioner was issued with the notice dated 16.12.2011, but, he has not even made use of the opportunity and he has failed to come and make the deposit of Rs.54,675/- even after receipt of the same. When the petitioner has not made his claim on the notice dated 16.12.2011 calling upon him to come and make deposit of Rs.54,675/-, taking the benefit of regualarisation provided under G.O. Ms. No.565 Revenue [ULC 1(1)] dated 26.09.2008 to regularise his purchase, he cannot come to this Court.

9.Admittedly, the petitioner has purchased the land in question covered in S.No.23/2 situated at Ayappakkam Village and the same was the subject matter of the Urban Land Ceiling Act initiated against the land owner. After acquiring the land from the original land owner, Mr.Chandra Sekaran was identified as one of the beneficiaries and he was issued with the assignment order with a specific condition that he shall not alienate the property for a period of 20 years from the date of assignment order. As per Clause 6, the land assigned shall not be sold or otherwise alienated before the expiry of a period of twenty years from the date of assignment or before the payment of the value of the land and buildings and trees thereon, whichever is later. Clause 9 of the assignment order stipulates that the assignee shall engage himself in direct cultivation of the land assigned and as per Clause 8, subject to the conditions of the deed, the land will vest absolutely in the assignee only after the value of the land, buildings and trees thereon are paid in full or after the expiry of a period of twenty years from the date of assignment, whichever is later. It is necessary to extract the relevant clauses as under:

> '6.The land assigned shall not be sold or otherwise alienated before the expiry of a period of twenty years from the date of assignment or before the payment of the value of the land and buildings and trees thereon in full, whichever is later and not even thereafter in respect of lands assigned to a member of Scheduled Castes or to a member of Scheduled Tribes except to other members of the Scheduled Castes or to the other members of the Scheduled Tribes as the case may be:
>
> 8.Subject to the conditions of this deed, the land will vest absolutely in the assignee only after the value of

the land, buildings and trees thereon is paid in full or after the expiry of a period of twenty years from the date of assignment, whichever is later. ...
9.The assignee shall engage himself in direct cultivation of the land assigned:
....'

10.In the present case, all the aforementioned conditions have been violated and this could be easily culled out in the Encumbrance Certificate enclosed by the respondents 1 to 5 in the typed set of papers. The relevant portion is extracted as under:

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18 S.F.No.23/2 31/08/1988 Sale deed (E)re;jpu nrfud; nf/
1871 3487
S.F.No.23/2B 03/09/1998 Rs.252720 (C)kjpxsp gphpd;!;
1 1998

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சொத்தின் தன்மை
HOUSE SITE

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21 S.F.No.23/2 13/09/2001 Sale deed (E)re;jpunrfud; (Kjy;th;)
J.K 2225 4596
S.F.No.23/2/B 17/09/2001 Rs.498000 (E)k';fsk;
v!;uh (Mangalam 73 2001
Ezra) (gth; Vb$z;l;)
(C)Kathiroli Manickam
(C)rhKnty;(Samuel) J

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சொத்தின் தன்மை :
HOUSE SITE

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22 S.F.No.:23/2 22/01/2003 Settlement (E)rhKnty; b$
222
S.F.No.:23/2B 22/01/2003 Rs.150000 (C) fjpnuhyp
khzpf;fk; (Kathiroli
Manickam) 2003

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சொத்தின் தன்மை :
HOUSE SITE

11.Therefore, when respondents 1 to 5 have produced the documents to show that the assignee Chandra Sekaran has violated the conditions namely, 3, 6 and 9 as mentioned above, it goes without saying that the Chandra Sekaran sixth respondent, having obtained the assignment order, has violated the conditions imposed under Rule 9(1)(i) and it has been accepted by the respondents 1 to 5 in the proceedings dated 13.04.2016. Hence, It is necessary to extract the relevant portion as under:

> '4.The Assignee Thiru K.Chandrasekaran has violated the conditions of assignment by selling the land in SF No.23/2A to an extent of 4860 sq.ft. To Thiru Mathioli Prince through document No.3487/98 dated 03.09.1998 and an extent of 16,068 sq.ft. To Thiru Kathiroli Manickam through document No.4596/2001 dated 17.09.2001. He also sold the other land in SF No.13/1 to an extent of 0.48 acre to Thiru Pujay Shri Jaymalji Jain G.Champalal Patheraj Ranka Trust through document No.1726/2007 dated 14.02.2007.
>
> 5.In respect of SF No.23/2A, one Thiru K.Chandra Baskara Marthandam filed WP No.33509 of 2013 praying for a mandamus to quash the proceedings of the Assistant Commissioner (Land Reforms), Villupuram dated 6.12.1993 and in respect of SF No.13/1, the purchaser of land from the assignee Tvgl.Pujay Shri Jaymalji Jain G.Champalal Patheraj Ranka Trust filed WP No.11825/2012 and both these cases are pending disposal before the Hon'ble Court. In both the counter affidavits, a mention has been made that action will be taken separately under the Rules, 1965 to cancel the assignment and the resume the lands to Government. Therefore it is imperative to cancel the assignment made to Thiru K.Chandrasekaran immediately.
>
> 6.I therefore request you to kindly take necessary action under the rules to cancel the assignment made to Thiru K.Chandrasekaran and resume the land in SF No.23/2A and 13/1 to the Government by following the procedures laid down under rule 9(2) of the Rules, 1962 and after ascertaining whether any stay ordered by the Hon'ble High Court in the above said cases.'

12.It is evidently seen that under a sale deed dated 30.09.1991 registered as document No.4596 of 2001 at the office of the Sub Registrar, Ambattur, the said Chandrasekaran has sold away the property before the expiry of the period of 20 years. Even the recitals in the said deed would reveal that Chandrasekaran executed the power of attorney in favour of Ms.Mangalam Ezra on 31.08.1998, which was registered as Document No.1110 of 1998 on the file of the Sub Registrar, Ambattur. Noting that there is a violation of conditions imposed under Rule 9(1)(i), the respondents also agreed that action to be taken under Rule 9(2) of the Rules so as to receive the land of the Government. Thereafter, the office of the Commissioner of Urban Land Ceiling and Urban Land Tax, has recognised the petitioner as innocent purchaser and has prepared the list of innocent purchasers on 08.09.2009 and in the said list, the name of the petitioner also has been shown as innocent purchaser and thereupon, notice calling upon the petitioner to pay a sum of Rs.54,675/- has been issued. However, the said notice has not reached the petitioner.

13.In the light of the above, this Court finds no impediment to accept the case of the petitioner since the petitioner has purchased the land as one of the innocent purchasers without aware of the land acquisition proceedings and the benefit of regularisation extended by the Government in G.O. Ms.565 Revenue [ULC 1(1)] dated 26.09.2008 needs to be given to the petitioner. Accordingly, the impugned order is set aside and the writ petition stands allowed and respondents 1 to 5 are directed to cancel the assignment order forthwith and extend the benefit of regularisation to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected M.P. is closed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Urban Lad Ceiling and Urban Land Tax,
State of Tamil Nadu,
Urban Land Ceiling Office,
Chepauk, Chennai-600 005.

3.The Assistant Commissioner,
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4.The Commissioner,
Land Reforms,
State of Tamil Nadu,
Land Reforms Commissioner Office,
Chepauk, Chennai-600 005.

5.The Assistant Commissioner,
Land Reforms,
Villupuram,
Villupuram District.

+6 CCS to Mr.T.Jayaraman, Advocate sr 99770.
+1 CC to The Govt. Pleader sr 99939.

W.P. No.33509 of 2013
and M.P. No.1 of 2013

NMI(CO)
SP(11/02/2020)