

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27778 of 2017

K.Vannimuthu

.. Petitioner

-vs-

1.The Assistant Commissioner,
Urban Land Ceiling and Urban Land
Tax Office, Tondiarpet Zone,
No.409, E.V.R.Periyar High Road,
Aminjikarai, Chennai-600 029.

2.The Assistant Commissioner
(Head Quarters),
Urban Land Ceiling and Urban Land
Tax Departments,
Chepauk, Chennai-600 005.

3.The Tahsildar,
Perambur Taluk,
Perambur, Chennai-600 011.

... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records comprised in and leading to the impugned order of the third respondent issued on 03.06.2016 in No. Oo.Mo.TR.264/2016 and quash the said impugned order as being illegal and arbitrary and direct the respondents to issue new patta and effect necessary name transfer in the petitioner's name namely K.Vannimuthu, in the said patta in respect of the above said property.

For Petitioner : Mr.M.Venkatakrisnan

For Respondents : Mr.N.Srinivasan,
Additional Government Pleader

ORDER

Heard Mr.M.Venkatakrishnan, learned counsel for the petitioner and Mr.N.Srinivasan, learned Additional Government Pleader appearing for the respondents.

2.With consent on either side, this writ petition is taken up for final disposal.

3.The short issue, which falls for consideration in this writ petition, is regards the validity of an endorsement made by the Tahsildar, Perambur Taluk in the application made by the petitioner for grant of patta. The petitioner seeks for setting aside such endorsement which states that patta cannot be granted because, it has been mentioned in the official records that the land has been declared as surplus under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as "the Act").

4.The petitioner's daughter, Tmt.Maya Devi, settled two plots in an approved layout measuring an extent of 3080 sq.ft. in favour of the petitioner by a settlement deed registered as Document No.605/2014 on the file of Sub Registrar, Madavaram. The petitioner's daughter had purchased those two properties which were forming part of an approved layout from one Smt.Pankajakshiamma by sale deeds dated 06.03.2002, registered as Document Nos.1594 and 1595 of 2003 on the file of Sub Registrar, Sembium.

5.The question is whether this property could have been entered in the official record as property declared as surplus under the provisions of the said Act. This question has to be answered in favour of the petitioner and against the respondents for the following reasons:

6.From the averments set out in the counter affidavit filed by the Assistant Commissioner, Urban Land Ceiling and Urban Land Tax Department, it is seen that proceedings have been initiated under the Act against the original land owner one Ethirajulu, who has sold the property in question in favour of Pankajakshiamma during the year 1980.

7.It is the submission of the learned Additional Government Pleader that any transaction done by the Urban Land owner after coming into force of the Act in the year 1976 is null and void and unforceable. Therefore, the entry made in the Government record stating that it is a Government property is correct.

8.This Court has to test the correctness of the stand taken by the respondents. Admittedly, the proceedings under the Act were initiated against Ethirajulu and when notices were issued in the year 2003, the urban land owner was not in possession of the property, as the property had been divided into a housing layout much prior to coming into force of the Act, as the layout had been approved in the year 1975. Further, all proceedings initiated under the said Act were all ex-parte proceedings. The respondents would contend that the acquisition is saved under Section 3(1)(a) of the repeal Act. However, when actual physical possession of the property vests with the petitioner's daughter, prior to that with her vendor, recording the symbolic possession or recording "paper possession" in the records will not save the acquisition proceedings. Taking over of actual physical possession has to be recorded, which has not been done.

9.It is admitted that the amount, which is payable as compensation, has not been paid to the urban land owner. It has not been stated as to what happened to the said amount whether it is lying in revenue deposit or elsewhere. Above all, the layout having been approved much prior to coming into force of the Act, the provisions of the Act cannot be extended. In fact, this has been precisely stated in an information furnished under the Right to Information Act, to one Tmt.V.Malathi stating that the provisions of the Act will not apply to lands, which have been approved as layout prior to 03.08.1975. From the copy of the approved layout plan, which was secured by the petitioner under the Right to Information Act, it is seen that the approval was granted in the year 1975 in L.P.D.M. No. 25/75.

DDT&CP

Therefore, the provisions of the Act cannot be applied. Hence, the entry made in the Government record showing that the land is a surplus land/ Government land has to be necessarily deleted.

10.For all the above reasons, this writ petition is allowed, the impugned communication dated 03.06.2016, is set aside and consequently, the respondents are directed to delete the entry made in the records showing as if the land is a Government land declared as a surplus under the Act and consequently, consider the petitioner's application and issue patta in his name by taking note of the settlement deed executed by his daughter Tmt. Maya Devi within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

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Tax Office, Tondiarpet Zone,
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3.The Tahsildar,
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Perambur, Chennai-600 011.

+lcc to M/s.M.Venkatakrishnan, Advocate SR.100528
+lcc to the Government pleader SR.100718

W.P.No.27778 of 2017

CP(CO)
CB(07/02/2020)



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