IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.No.31152 of 2018
and
WMP.No.36347 of 2018

M.Mahender Reddy ...Petitioner

Vs.

1.The District Collector
Thiruvallur District Collectorate
1st Floor, Master Plan Complex
NH-205, Thiruvallur - 602 001.

2.The Tahsildar
Maduravoyal Taluk Office
Ganesh Nagar, Porur
Chennai-600 116.

3.The Assistant Commissioner
(Urban Land Tax), Kundrathur
No.15, Karuneegar Street,
Adambakkam, Chennai-600 088. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to issue the petitioner patta for the petitioner property situated at Door No.15, Venkateshwara Avenue, Sabarinagar, Porur, Chennai-600 116, bearing Plot No.15, comprised in Survey No.51/2, measuring an extent of 2220 sq.ft situated in Porur Village, Maduravoyal Taluk, Thiruvallur District, with a consequential prayer directing the 2nd respondent not to insist on obtaining NOC from the 3rd respondent.

For Petitioner : Mr.H.Mubarak Jan

For Respondents: Mr.E.Balamurugan
Special Government Pleader

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O R D E R

The petitioner seeks for a mandamus directing the second respondent to issue patta to his property situated at Door No.15, Venkateshwara Avenue, Sabarinagar, Porur, Chennai-600 116, bearing Plot No.15, comprised in Survey No.51/2, measuring an extent of 2220 sq.ft situated in Porur Village, Maduravoyal Taluk, Thiruvallur District, without insisting for obtaining "No Objection Certificate" from the third respondent.

2. The case of the petitioner is as follows:

The petitioner is the absolute owner of the land and building situated at Door No.15, Venkateshwara Avenue, Sabarinagar, Porur, Chennai-600 116, bearing Plot No.15, comprised in Survey No.51/2, measuring an extent of 2220 sq.ft situated in Porur Village, Maduravoyal Taluk, Thiruvallur District. The petitioner purchased the said property from his vendor viz., one Arvapalli Lakshmi Gayathri, by virtue of a registered sale deed dated 06.01.2006. His vendor had purchased the said property from one N.Elumalai under a registered sale deed dated 19.08.1986, who in turn purchased the said property from one P.Rajendran, by a registered sale deed dated 13.05.1982. The said P.Rajendran received the said property from his father M.K.Perumal by virtue of a registered Deed of Family Partition dated 05.10.1981. The competent authority (Urban Land Ceiling) had passed an order dated 19.02.1996 under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, declaring 4000 sq.ft as excess holding in Survey No.51/2 of Porur Village in the hands of the said Perumal Mudaliyar, who died on 07.03.1987 even before initiation of such proceedings. Subsequently, a notice under Section 11(5) of the said Act dated 30.10.1998 was issued to Late Perumal Mudaliyar by the competent authority, to delivery the possession of the land to Tahsildar, Ambattur. The son of the said Perumal also died on 03.10.1991. The petitioner's predecessor have title, however, did not hand over possession of the said properties in pursuant to the proceedings initiated under the Land Ceiling Act. The said Arvapalli Lakshmi Gayathri along with other owners of individual properties formed an Association and filed an appeal before the Principal Commissioner and Commissioner of Land Reforms, who inturn passed the order dated 22.04.1999, staying further proceedings pending disposal of the appeal. While, the appeal was pending, the Tamil Nadu Urban Land (Ceiling and Regulation) Amendment (Act 20 of 1999) was enacted Repealing Tamil Nadu Act 24 of 1978 with immediate effect. Consequently, it was informed to the petitioner's predecessors that the Appellate Authority has become functus officio because of which, the appeal could not be entertained on merits. The petitioner's vendor along with other owners filed a

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writ petition before this Court in WP.No.21917 of 2003 challenging the order dated 19.02.1996 issued by the competent authority and also for further direction to the Tahsildar, Ambattur, to effect appropriate mutation in the Revenue records. The said writ petition along with connected writ petitions were allowed on 19.03.2013, thereby, quashing the impugned notification issued under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, by giving the benefit of Repeal Act. Even thereafter, the second respondent-Tahsildar, is not granting patta to the petitioner. Hence, the present writ petition is filed with the relief as stated supra.

3. A counter affidavit is filed by the respondents, wherein, it is stated that as against the order passed in WP.No.21917 of 2003, a writ appeal was filed in WA.SR.No.9957 of 2016 and therefore, when the appeal is pending before this Court, the petitioner's claim for grant of patta cannot be considered.

4. The learned counsel for the petitioner, after inviting this Court's attention to the order passed by this Court in WP.No.21917 of 2003 dated 19.03.2013, submitted that the said order is still in force and not stayed by the Appellate Court and therefore, the second respondent is not justified in not granting patta, merely, by stating that a Writ Appeal was filed and the same is pending in SR stage itself. He has also invited this Court's attention to the communication issued by the Registrar (Administration), High Court, Madras, dated 26.07.2018, as a response to the RTI application filed by the petitioner, stating that WA.SR.No.9957 of 2016 presented on 08.02.2016 was returned by the Registry on 14.06.2016 for rectification of certain defects and the same was taken by the counsel on 20.06.2016 and not yet represented. Therefore, he contended that as on date, nothing is pending against the order passed by the Writ Court and consequently, there is no impediment for the second respondent to grant patta.

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5. On the other hand, the learned Special Government Pleader for the respondents reiterated the contention raised in the counter affidavit and submitted that the order passed by the writ Court is being challenged in WA.SR.No.9957 of 2016 and therefore, the second respondent is not in a position to consider the relief of grant of patta.

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6. Heard both sides.

7. It is seen that the petitioner has purchased the subject matter property from his vendor viz., Arvapalli Lakshmi Gayathri, by way of registered sale deed dated 06.01.2006. It is further seen that in respect of the very same land along with

other lands, proceedings were initiated under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, as early as in the year 1996 and those proceedings were challenged before this Court by the petitioner's vendor and other owners by filing the writ petitions, out of which, WP.No.21917 of 2003 is the writ petition filed by the petitioner's vendor viz., Arvapalli Lakshmi Gayathri. It is further seen that the writ Court, by a common order dated 19.03.2013, allowed all the writ petitions, thereby, quashing the proceedings issued under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, by granting the benefit of Repeal Act. The writ Court has specifically found that the land continues to be in the name of the registered owner and possession is not shown to be that of the State Government and that the respondents have not produced any record in proof of the stand that physical possession of the land was taken. Further, it is seen that the prayer sought for in WP.No.21917 of 2003 is not only for quashing the Urban Land proceedings, but also for a direction to the third respondent therein viz., the Tahsildar, to effect appropriate mutation in the Revenue records. When the writ petition was allowed and the impugned proceedings are quashed, the Tahsildar, being the third respondent in the said writ petition, is bound by the said order, in the absence of any interim stay granted as against the said order so far. Consequently, he ought to have mutated the Revenue records, by considering the request of the petitioner for grant of patta. But, it is seen that the Tahsildar, has not done so. The only reason stated for not complying the said order is that the order of the writ Court was put to challenge in WA.SR.No.9957 of 2016 and the same is pending.

8. I do not think that the respondents are entitled to make such submission before this Court, when admittedly, Writ Appeal seems to have been filed after a period of 13 years in WA.SR.No.9957 of 2016, was already returned by the Registry as early as on 14.06.2016 and the learned counsel for the appellant has also taken the papers on 20.06.2016 from the Registry and not represented the same as on 26.07.2018. Therefore, the fact remains that no papers are pending before the Registry as on 26.07.2018, to contend as if the writ appeal is pending before this Court. Even otherwise, it is to be noted that mere filing of the appeal with delay and getting SR number itself cannot be shown as a reason in not complying with the order of the writ Court so long as the order passed by the writ Court is not stayed by the Appellate Court. Even in the counter affidavit, it is not stated anywhere, as to whether the papers returned by the Registry as early as on 14.06.2016 were represented till the date of filing the counter i.e. 12.03.2019. Therefore, I find that the appeal papers were not at all represented even as on date and therefore, the respondents are not justified in harping upon the appeal

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presented in WA.SR.No.9957 of 2016 as the only reason to reject the claim of the petitioner.

9. Accordingly, this Writ Petition is allowed and the second respondent is directed to consider the claim of the petitioner for grant of patta without insisting for obtaining "No Objection Certificate" from the third respondent and pass appropriate orders. Such exercise shall be done by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector
Thiruvallur District Collectorate
1st Floor, Master Plan Complex
NH-205, Thiruvallur - 602 001.

2.The Tahsildar
Maduravoyal Taluk Office
Ganesh Nagar, Porur
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3.The Assistant Commissioner
(Urban Land Tax), Kundrathur
No.15, Karuneegar Street,
Adambakkam, Chennai-600 088.

+1cc to Government Pleader sr.no.24735

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