In the High Court of Judicature at Madras

Dated : 22.1.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.23535 of 2013 & MP.No.1 of 2013

1.Mr.P.Kalyanasundaram
2.Mr.K.Rajasekar
3.Mr.K.Sivaraj ...Petitioners

Vs

1.The Principal Secretary/Commissioner of Land Reforms, Chepauk, Chennai-5.

2.The Competent Authority, Urban Land Ceiling, Old No.345, New No.84, Arcot Road, Kodambakkam, Chennai-24.

3.The Tahsildar, Mambalam Guindy Taluk, Chennai District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent under Section 9(5) dated 04.8.1979 in Rc.A2/3401/77A, final statement under Section 10(1) dated 09.8.1979 in Rc.3401/77A and notice under Section 11(5) dated 28.10.1991 in Rc.3701/77B under the Tamilnadu Urban Land (Ceiling and Regulation) Act in respect of land in Survey No.230/1 of Velachery Village measuring about 1144.00 sq.mts, quash the same after treating the proceedings of the 2nd respondent 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 revenue records.

For Petitioners : Mr.V.Ramesh

For Respondents : Mrs.A.Sri Jayanthi, Special Government Pleader

ORDER

Petitioners, who are three in number, have challenged the proceedings initiated by the second respondent under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation)

Act, 1978 (the Act for brevity) commencing from the order passed under Section 9(5) of the Act culminating in the notice under Section 11(5) of the Act.

2. The first petitioner is the father of petitioners 2 and 3. The case of the first petitioner is that he purchased an extent of 53 cents of agricultural land from out of the total extent of 1.59 acres in S.F.No.230/1, Velacherry Village by a sale deed dated 15.7.1981 executed by one Smt.Beulah Sheela represented by her power of attorney agent one Mr.R.Palaniswami, registered as Doc.No.2727 of 1981 on the file of Joint Sub-Registrar-II, Saidapet. The case of the first petitioner is that after he purchased the property in question, patta No.403 was granted by the third respondent in his favour during fasli 1398 (1988-89).

3. The first petitioner appears to have settled the property in question in favour of petitioners 2 and 3 by way of a settlement deed dated 03.5.2006 registered as Doc.No.2097 of 2006 on the file of the Sub-Registrar, Velacherry. After the said settlement dated 03.5.2006, petitioners 2 and 3 executed a deed dated 13.7.2007 in favour of the first petitioner, registered as Doc.No.4823 of 2008 on the file of the Sub-Registrar, Velacherry settling half share out of the said 53 cents. Based on that, the first petitioner states that he is the owner of 26.5 cents and petitioners 2 and 3 are the joint owners of the remaining extent of 26.5 cents.

4. The first petitioner would further state that after execution of the settlement deed in the year 2007, the petitioners approached the third respondent to accordingly incorporate the names of the owners indicating correct extent in the patta. It is at that juncture they were informed that the land in S.F.No.230/1 to an extent of 1144 sq.meter has been declared as excess vacant land in the hands of the original land owner under the provisions of the Act. Thereafter, the first petitioner approached the second respondent by submitting a representation dated 27.11.2009. The second respondent, by communication dated 18.12.2009, advised the first petitioner to avail the scheme of 'innocent purchasers' announced by the Government in G.O.Ms.No.649 Revenue Department dated 29.7.1998 and G.O.Ms.No.565/ULC-1/Revenue dated 26.9.2008, agreeing to pay the value of the land as fixed by the Government to regularize their holding. Along with the said letter dated 18.12.2009, the prescribed format was also furnished to the petitioners by the second respondent.

5. Accordingly, the petitioner addressed to the Government to treat them as innocent purchasers. However, the Government did not accept the case of the petitioners as the documents were registered only on 03.12.2008 i.e after issuance of G.O.Ms.No.565 dated 26.9.2008. Once again, the petitioners addressed to the Government stating that the original settlement deed was dated 13.7.2007, much prior to issuance of G.O.Ms.No.565 dated 26.9.2008 and therefore, they should be treated innocent purchasers and extended the benefit of the scheme.

6. It appears that the matter is still pending consideration and in the meantime, the first petitioner would state that he was advised to file this writ petition challenging the proceedings initiated under the Act as against the original land owner. Based on such advice, the first petitioner is stated to have applied for the certified copies of the orders, which were made available on 08.5.2013 and accordingly, the above writ petition has been filed.

7. Mr.V.Ramesh, learned counsel for the petitioners would submit that the entire proceedings initiated under the Act are thoroughly flawed and are in total violation of the provisions of the Act and that if the dates and events are carefully perused, it will clearly show that in spite of the Department having been aware of the fact that the original land owner through her power agent had sold the property and informed the Department in December 1990 itself and patta also having been granted in favour of the petitioners in the year 1988 itself, possession could not have taken as recorded by the respondents, that mere paper possession will not satisfy the requirement of law and that as the petitioners continued to be in possession of the land in question and the land is being used by Sri Rajalakshmi Matriculation Higher Secondary School, the entire proceedings initiated under the Act stand abated in terms of Section 4 of the Tamilnadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999).

8. Per contra, the learned Special Government Pleader appearing for the respondents, by referring to the counter affidavit filed by the second respondent, states that the procedure contemplated under the Act has been scrupulously followed, that notices were received by the land owner and in fact, the land owner claimed exemption from the provisions of the Act, which request was rejected, that the land owner filed a writ petition before this Court and that was also dismissed and that the first petitioner, who claimed to have purchased the land, cannot have any right over the property since the land has been declared as surplus in the hands of the original owner after scrupulously following the procedure under the Act.

9. The learned Special Government Pleader appearing for the respondents has produced the original file and submits that possession has been taken over through the Revenue Department and hence, the petitioners should not be permitted to challenge the proceedings initiated under the Act and that too, after 21 years after the land was handed over to the Revenue Authorities.

10. I have carefully considered the materials placed on record including the original file, which is produced for perusal.

11. The short question, which falls for consideration, is as to whether the provisions of Section 4 of Tamilnadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) would be applicable to the case of the petitioners.

12. It cannot be denied by the respondents that the first petitioner purchased the land in question by sale deed dated 15.7.1981. This sale was effected by the original land owner - the said Ms.Beulah Sheela represented by her power of attorney agent - the said Mr.R.Palaniswami, who was appointed as the power of attorney agent even in the year 1976 i.e. before the Act came into force i.e 03.8.1976. The land purchased by the first petitioner has been shown to be 53 cents of agricultural land. According to the respondents, as stated in the counter affidavit, proceedings were initiated by issuing a draft statement under Section 9(1) of the Act on 14.5.1979. The original land owner filed objections on 28.4.1979 and 14.6.1979 stating that the lands were agricultural lands and did not fall within the purview of the Act. Those objections appeared to have been rejected and an order under Section 9(5) of the Act was passed on 04.8.1979.

13. It appears that the original land owner received a copy of the order and approached the Government to exempt the lands from the purview of the Act. This request was rejected and the original land owner was also unsuccessful in challenging the said order as the writ petition filed by her was dismissed. It is thereafter the first petitioner purchased the property on 15.7.1981. Thereafter, proceedings were initiated under Section 10(1) of the Act on 09.8.1979, well before the expiry of 30 days' period, which is required to be given. Even thereafter, nothing appeared to have moved till the second respondent issued notice under Section 11(1) of the Act on 12.2.1991.

14. The learned Special Government Pleader appearing for the respondents submits that the Department could not proceed further after 1979 on account of an order of interim stay obtained by the original land owner.

15. However, from the counter, it is seen that the writ petition filed by the original land owner was dismissed in the year 1983 itself. Even going by the said said submission, after 1983, only in the year 1991 proceedings were initiated when notice under Section 11(1) of the Act was issued on 12.2.1991. No objections were filed by the original land owner obviously for the reason that she had already parted with the possession in the year 1981 itself. The fact that the Department was aware of the same is admitted in the counter affidavit and more particularly in paragraph 12 of the counter wherein the second respondent would admit that the power of attorney agent Mr.R.Palaniswami, by letter dated 17.12.1990, informed the second respondent about the same and also gave the names of the petitioners and had also taken a stand that the sale should be recognized and if it is done, since the first petitioner's family is consisting of three members, the extent would fall within the retainable extent. Despite this fact being brought to the notice of the Department, they ignored the same and did not make any endeavor to ascertain as to what is the effect of the sale in favour of the first petitioner.

16. What is important to note is that in the year 1988 itself, patta was granted in patta No.403 and the patta shows that the land is an agricultural land. Therefore, to state that the Department will proceed only against the erstwhile land owner namely the said Ms.Beulah Sheela is not sustainable because on and after the Authorities having come to know about the same, transfer of the land and usage by a third party, when proceedings are initiated under Section 11 of the Act for acquisition of the vacant land, obviously the petitioners or persons interested should have been put on notice. However, the second respondent proceeded as such and a notice under Section 11(5) of the Act was passed on 28.10.1991.

17. The crucial question arises is as to whether the land owner surrendered possession of the land to the Department. The file shows that there was no response to the notice issued under Section 11(5) of the Act. Conspicuously, the postal acknowledgment card does not find place in the original file to show that the notice under Section 11(5) of the Act was served on the erstwhile land owner. In fact, the manner of dispatch itself is not clear on perusal of page 319 of the original file. From the communication of the second respondent to the Tahsildar, Saidapet dated 13.12.1991, which is found at page 331 of the original file, it is seen that the land owner did not come forward to surrender possession.

18. In such circumstances, it has to be seen as to what is the procedure to be followed. What was followed by the Department is to record paper possession by the Revenue Authorities to the second respondent. However, this could not have been done because the petitioners were in possession of the property and necessarily, the notice under Section 11(6) of the

Act ought to have been given. At page 343 of the original file, the survey sketch prepared on 08.12.1990 finds place i.e the sketch prepared prior to issuance of the notice under Section 11 (1) of the Act. In the sketch, there is a clear indication by pencil mark showing the word 'school'. Thus, the Authorities were well aware that the petitioners were in possession of the land in question.

19. That apart, the second respondent was also aware of the fact that the petitioners were in possession of the property and precisely for such a reason, the second respondent, on 18.12.2009, advised the petitioners to apply under innocent purchaser category. Above all, in the counter affidavit, the second respondent admitted that the land has been assigned to the original land owner with effect from the fasli 1385 (01.7.1975) and the urban land tax has been paid by the petitioners. It is evidently clear that on the date when the Tamilnadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) came into force, the petitioners were in possession of the land and the Department was aware of the said fact. Merely because the original land owner was unsuccessful in her attempt to retain the land or because of the fact that the layout approval sought for by the land owner was not granted, it will, in no manner, improve the case of the respondents to wriggle out from the effect of the provisions of the Tamilnadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999).

20. For the above reasons, it has to be held that the impugned proceedings cannot be put against the petitioners and that the entire proceedings initiated by the second respondent under the Act stand abated under Section 4 of the Tamilnadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999). Having held so, it goes without saying that necessary entries shall be made in the revenue records reflecting the names of the petitioners as the owners/purchasers of the property in question.

21. In the light of the above, the writ petition is allowed and the impugned proceedings are quashed. There will be a direction to the third respondent to restore the names of the petitioners in the revenue records and issue a computerized fresh patta within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Principal Secretary/Commissioner of Land Reforms,
Chepauk, Ch-5.

2.The Competent Authority,
Urban Land Ceiling, Old No.345, New No.84,
Arcot Road, Kodambakkam, Chennai-24.

3.The Tahsildar,
Mambalam Guindy Taluk,
Chennai District.

+1cc to the Government Pleader, S.R.No. 4771

WP.No.23535 of 2013
and MP.No.1 of 2013

RR(CO)
GN(25/02/2020)