IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.01.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27229 of 2013
and
M.P.No.1 of 2013

Mrs.Kumari Kannan,
W/o.Rajiv Kannan .. Petitioner

-vs-

1.The Special Commissioner
and Commissioner Urban Land
Ceiling and Urban Land Tax,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Assistant Commissioner for
Urban Land Tax,
Ambattur, Chennai-600 029. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring that the proceedings initiated by the second respondent in his S.R.Rc.No.1/87 B1 and Rc.2546/89 dated 26.12.1990 is abated in view of Section 4 of the Repeal Act, since the physical possession of the House site bearing Plot No.8 comprised in Survey No.30/1 to an extent of 2852 square feet situated at Kunnoor Village, Perambur Purasaiwakkam Taluk, Chennai District is the exclusive land of the petitioner.

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

ORDER

This writ petition has been filed by the petitioner to declare the proceedings initiated against the petitioner in S.R.Rc.No.1/87 B1 and Rc.2546/89 dated 26.12.1990, as abated in view of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “the Repeal Act”).

2.The short question which falls for consideration is whether actual physical possession has been taken over by the respondents so as to escape from the rigor of the Repeal Act.

3.On a perusal of the counter affidavit, the position is very clear that the urban land ceiling proceedings were initiated much after the purchase made by the petitioner, without notice to the petitioner.

4.The fact that actual physical possession was not taken over by the respondents is evident from the counter affidavit more particularly, in paragraph 7 of the counter affidavit, wherein, the respondents have admitted that possession of the excess vacant land was handed over to the Revenue Authorities on 04.08.1997, making necessary changes in the Village Accounts, which has been consistently held that taking over of possession by making entries in the Village Accounts is not sufficient, in other words, it was pointed out that paper possession is not sufficient to escape from the rigor of the Repeal Act. Consequently, in paragraph 5 of the counter affidavit, the respondents have admitted that the petitioner has been treated as a person, an innocent buyer, in terms of G.O.Ms.565, Revenue Department, dated 26.09.2008. This is a clear indication to show that the respondent Department was aware of the fact that the petitioner is in possession of the property having purchased the same from the original owner or their successors in title.

5.The decisions of the Division Bench of this Court in V.Somasundaram and two others vs. Secretary to Government and two others, reported in 2007-2-L.W.109 and M/s.Sree Jayalakshmi Brick Industries vs. The Special Commissioner and Secretary to Government and three others, reported in 2009-4-L.W.819 clearly support the case of the petitioner.

6.The learned Special Government Pleader argued that there was no building in the property when the possession was taken over by the respondents by making necessary changes in the Village Accounts. This argument of the respondents is disputed by the petitioner. The petitioner has made a specific statement stating that they have constructed the house in the year 1983 and the property has been assessed to property tax. In any event, the legal issue having been settled by a catena of decision of the Hon'ble Supreme Court, the relief sought for by the petitioner is required to be granted.

7.The Hon'ble Supreme Court in Raghbir Singh Sehrawat vs. State of Haryana, reported in AIR 2012 SC 468, has held that actual physical possession has to be taken and paper possession is not sufficient for the land to vest in the State.

8.As noticed above, in the counter affidavit, it has been stated that possession has been handed over to the Revenue Authorities by making necessary changes in Village Accounts, which clearly show that it is a paper possession, which is not valid in the eye of law to escape from the application of the Repeal Act.

9.For all the above reasons, this writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

abr
To

1. The Special Commissioner
and Commissioner Urban Land
Ceiling and Urban Land Tax,
Ezhilagam, Chepauk, Chennai-600 005.

2. The Assistant Commissioner for
Urban Land Tax,
Ambattur, Chennai-600 029.

+1 CC to The Govt. Pleader sr 3496.
+1 CC to Mr.A.Ramu, Advocate sr 3010.

W.P.No.27229 of 2013

SSD(CO)
SP(28/02/2020)