IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.01.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 9132 of 2015
and M.P.No.1 of 2015

K. Vasudevan ...Petitioner

-vs-

1. The Competent Authority/Assistant Commissioner,
Urban Land Ceiling,
Urban Land Tax, Tambaram Zone,
At No.153, Karuneegar Street,
Adambakkam, Chennai - 600 083.

2. The Tahsildar,
Tambaram,
Kancheepuram District. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to quash the proceedings of the 1st respondent in proceedings of the Assistant Commissioner Urban Land Tax, Tambaram in Na.Ka.No.2813/1996/C dated 15.9.1996 under Section 9(5), 11(3) notification issued and 11(5) notice issued on 28.01.1998 under the Tamil Nadu Urban Land (Ceiling) and Regulation Act 1978 in respect of possession of the property in S.No.90 of Nemelichery Village, measuring an extent of 70 cents and for consequential relief of Mandamus directing the authorities to restore the lands in S.No.90 of Nemelicherry Village, measuring an extent of 70 cents to the name of the petitioner and family members.

For Petitioner : Mr.P.Seshadri
For Respondents : Ms.A.Sri Jayanthi
Special Government Pleader

ORDER

Heard Mr.P.Seshadri, learned counsel for petitioner and Ms.A.Sri Jayanthi, learned Special Government Pleader for respondents.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed challenging the proceedings initiated by the 1st respondent under the provisions of the Tamil Nadu Urban and Ceiling Act, 1978 (hereinafter referred to as 'the Act) viz., the proceedings initiated under Section 9(5), notification under Section 11(3) and the notice under Section 11(5) of the Act and for a consequential relief to direct the authorities to restore the revenue entries in respect of the land in question in the name of the petitioner and family members.

4. The petitioner is the son of one Krishnappa Naicker. The petitioner's mother Tmt.Thulasiammal had purchased the property in question by registered sale deeds dated 18.08.1952 and 23.07.1953. It is stated that ever since the date of purchase, the petitioner's mother has been in possession and cultivation of the land in question and has been regularly paying the charges and levies to the Government. The petitioner's father passed away on 13.10.1985. Thereafter, the petitioner's mother had applied for grant of patta and she was granted patta on 30.07.1991. After the demise of the petitioner's mother, the petitioner stated to have inherited the property and when he approached the authorities for transfer the patta in his name, the authority refused to do so and later, an inspection was conducted by the Land Ceiling Authorities and during which time, petitioner came to know about that the proceedings were initiated under the Act. Thereafter, the petitioner obtained the documents and filed this writ petition challenging the proceedings initiated under the Act.

5. The petitioner seeks to bring his case under Section 4 of the Repeal Act, 20 of 1999 and would contend that in terms of the Repeal Act, if the possession has not taken over from the petitioner then the entire proceedings initiated under the Act stands abated.

6. Thus, the short question, which has to be considered by this Court is whether the petitioner continues to remain in possession and before that whether the procedure to be followed under the Act have been scrupulously followed by the authorities and if according to the urban land tax authorities possession was taken over, it has to be seen in what manner possession was taken over i.e., what action was initiated after issuance of the notice under Section 11(5) of the Act.

7. Counter affidavit has been filed by the 1st respondent and the learned Special Government Pleader has also produced the original files. From the original files, it is seen that the entire proceedings have been initiated in the name of Kuppu Naicker. According to the learned Special Government Pleader,

the notice was issued in the name of Kuppu Naicker, because in the revenue records his name alone finds place and the petitioner's mother did not mutate her name in the revenue records and therefore, the authorities cannot be faulted. The stand taken by the respondents may be justified, if no patta had been granted in favour of the petitioner's mother. However, in the year 1991, patta has been granted in favour of the petitioner's mother, which has not been denied in the counter affidavit. If that is so, when the authorities initiated proceedings under the Act by issuance of notice under Section 7 (2) on 01.03.1996 as mentioned in the counter affidavit, it should have been served on the petitioner's mother Tmt.Tulasiammal and the counter states that notice under Section 9(1) of the Act was served on the urban land owner's son. The office copy of the notice issued under Section 7(2) of the Act finds place in page No.7 of the original file and receipt of the notice has been acknowledged by one Chakkrapani s/o. Kuppu Naicker and the person who served the same on 12.03.1996 has also signed the office copy of the notice. Thus, even after patta granted in favour of the petitioner's mother, no notice was served on the petitioner's mother. Therefore, there is gross error committed by the authority in the matter of proceedings under the Urban and Ceiling Act.

8. Furthermore, from the statement, which was prepared on 15.03.1997 showing the sub-division in respect of survey No.90, the name of Thualasi Ammal finds place in respect of sub-division 90/1. However, in column 3 of the sub-division register, the name of Tamil Nadu Government has been mentioned. Thus, this document, which is found in page No.99 of the original files, is clearly an indication to say that the urban land Ceiling authorities were aware of the fact that patta has been mutated in the name of the petitioner's mother. Therefore, there is no hesitation to hold that there is violation of the procedure under the Act.

9. In paragraph 4 of the counter affidavit, the 1st respondent has admitted the facts that all proceedings were initiated in the name of Kuppu Naicker and yet with regard to taking over possession is concerned they submitted that excess vacant land was handed over on 20.06.1998 and petitioner has approached this Court after several years and filed the writ petition. Further in the counter affidavit, it is stated that possession has been taken by recording the same in the relevant file because the land is a Government land. Further, the 1st respondent would justify their action by saying that the land, being a Government land, the petitioner should be treated only as a encroacher because any claim of possession after issuance of notification under Section 11(3) and after issuance of notice under Section 11(5) of the Act are encroachments.

10. The 1st respondent, in the counter affidavit, thus, would term the petitioner as an encroacher. As pointed out earlier, even in the year 1997 in the sub-division register, the petitioner's mother's name finds place much earlier in the year 1991 and the petitioner's mother has been granted patta.

11. In such circumstances, after issuance of Section 11(5) notice, if according to the Department, the petitioner is an encroacher then he should be evicted by resorting the proceedings under Section 11(6) of the Act because the petitioner was in actual physical possession of the property. This was not done, as could be seen in page 105 of the original file and mere paper delivery has been recorded and the Deputy Thasildar, Urban Land Tax, Tamabaram and the Revenue Inspector, Alandur Firka, Tambaram Taluk have signed the land delivery receipt. This manner of taking over possession of the property has been deprecated as has been held in several decisions of this Court and the Hon'ble Supreme Court that mere paper possession is not sufficient to contend that the procedure under Section 11 has been completely followed.

12. Thus, for all the above reasons and considering the factual position, the petitioner would be entitled to benefit of the Repeal Act.

13. In the light of the above, the writ petition stands allowed and the impugned proceedings are quashed and the respondents are directed to restore the revenue entries in the name of the petitioner's mother and it is open to the petitioner to seek for mutation of his name in the patta. This direction shall be complied with by the respondents within a period of three(3) months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Competent Authority/Assistant Commissioner,
   Urban Land Ceiling,
   Urban Land Tax, Tambaram Zone,
   At No.153, Karuneegar Street,
   Adambakkam, Chennai - 600 083.

2. The Tahsildar,
   Tambaram,
   Kancheepuram District.

+1cc to Mr.P.Seshadri, Advocate, SR.No.7923.
+1cc to Government Pleader, High Court, Madras SR.No.8117.

W.P.No.9132 of 2015
and M.P.No.1 of 2015

GP(CO)
CSR: 20.03.2020
GMY(14/08/2020)