

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.17772 of 2019

and W.M.P.No.17180 of 2019

V.Velan

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep by the Secretary,
Revenue Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
Chennai District, Chennai.
- 3.The Competent Authority,
Urban Land Ceiling,
(Assistant Commissioner of ULT),
Mylapore, Chennai - 4.
- 4.The Tahsildar,
Mylapore - Triplicane Taluk, Chennai.
- 5.The Madras Metropolitan Water Supply
and Sewage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.
- 6.Rajiv Rai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents 1 to 3 to implement the G.O.Ms.No.1223 Revenue Department dated 13.07.1983 which is passed in favour of the 5th respondent and consequently direct the respondents 1 to 5 to restore the lands from the 6th respondent in S.No.3957/7 Part and assigned New S.No.3957/8 in Mylapore Village, Mylapore - Triplicane Taluk, Chennai to an extent of 236 sq.mtrs. within a stipulated time.

For Petitioner : Mr.P.N.Vignesh

For Respondents: Mr.A.N.Thambidurai,

Special Government Pleader (R1 to R4

Mr.G.Janakiraman (R5 - MWSSB)

Mr.S.R.Raghunathan (R6)

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The Writ Petition, styled as a Public Interest Litigation, is filed by a resident of Govindasamy Nagar, Raja Annamalai Puram, Chennai - 28 and he came forward to file this Writ Petition stating among other things that the lands in S.No.3957/7 Part and New S.No.3957/8 in Mylapore Village, Mylapore - Triplicane Taluk, Chennai, to an extent of 12 grounds and 646 sq.ft. was said to have been purchased by the father of the 6th respondent through an auction from the Trustees of Sri Kapaleeswarar Devasthanam and a Sale Deed was also executed, vide Document No.2338/70 dated 30.12.1970 on the file of the Sub Registrar, Mylapore. The 3rd respondent having found that the father of the 6th respondent possessed excess land, invoked the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Amendment Act, 1978 (hereinafter referred to as "Urban Land Ceiling Act" and issued notice to the father of the 6th respondent stating that he was entitled to hold only an extent of 2500 sq.mtrs out of the land measuring 2736 sq.mtrs purchased and declared 236 sq.mtrs as excess land and a publication to that effect has also been made in the Tamil Nadu Official Gazette. The petitioner would aver that the Government has deposited the compensation amount of Rs.11,800/- in the 6th respondent's account and it was also duly received and acknowledged by him and possession of the land has also been taken by the Government and thereafter, allotted to the 5th respondent, vide G.O.Ms.No.1223, Revenue Department dated 13.07.1983.

2. Mr.P.N.Vignesh, learned counsel appearing for the petitioner would submit that despite the land having been declared as surplus and compensation has been paid and possession was also taken in terms of the G.O.Ms.No.1223, Revenue Department dated 13.07.1983, no attempts have been made by the 5th respondent to take actual possession of the land in question and also invited the attention of this Court to the order dated 19.12.2008 passed in W.P.No.2086 of 2007 filed by the 6th respondent herein and would submit that one of the contentions put forth on behalf of the official respondents have been taken into consideration by the learned Single Judge, while allowing the Writ Petition with a positive direction. Though the Government filed a Writ Appeal in W.A.No.1369 of 2011 and the said Writ Appeal was also taken up along with batch of Writ Appeals by the Hon'ble First Bench of this Court, the said aspects once again have not been gone into by the said Division Bench and vide common judgment dated 23.07.2012 made in W.A.Nos.137 & 587 of 2009 and batch, all the Writ Appeals came to be dismissed, which was reported in 2012-4-L.W. 289 (DB) [Government of Tamil Nadu and Others v. M/s.Mecca Prime Tannery and Others].

3. It is also pointed out by the learned counsel appearing for the petitioner that Special Leave Petition in S.L.P.(Civil).CC.No.8504 of 2013 preferred against the judgment passed in some of the Writ Appeals came to be dismissed, vide order dated 08.07.2013 and would further add that fraud has been practiced upon by the 6th respondent and his father and therefore, despite the above cited judgment of the Co-ordinate Bench is subsisting, this Court is entitled to ignore the same and direct to comply the G.O.Ms.No.1223, Revenue Department dated 13.07.1983 and take possession of the excess land, which was taken possession from the father of the 6th respondent.

4. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 has invited the attention of this Court to the counter affidavits of the 3rd respondent as well as the 4th respondent and would submit that though a draft counter affidavit was prepared in W.P.No.2086 of 2007, it could not be filed and challenging the order passed in the said Writ Petition filed by the 6th respondent herein, batch of Writ Appeals were filed and all the Writ Appeals were dismissed and against the judgment passed in some of the Writ Appeals, Special Leave Petition in S.L.P.(Civil) C.C.No.8504 of 2013 was filed, which also came to be dismissed by the Hon'ble Supreme Court, vide order dated 08.07.2013.

5. This Court heard the submissions made by Mr.G.Janakiraman, learned counsel appearing for the 5th respondent also, who adopted the arguments made by Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4.

6. Mr.S.R.Raghunathan, learned counsel appearing for the 6th respondent has invited the attention of this Court to the counter affidavits as well as the typed set of documents and additional typed set of documents and would submit that in the light of the fact that challenge made by the Government to the order dated 19.12.2008 passed in W.P.No.2086 of 2007 came to be dismissed in the common judgment dated 23.07.2012 made in the Writ Appeals in W.A.Nos.137 & 587 of 2009 and batch, reported in 2012-4-L.W. 289 (DB) (cited supra) and that the Special Leave Petition preferred against the judgments in some of the Writ Appeals also came to be dismissed by the Hon'ble Supreme Court and a Contempt Petition was filed after the confirmation of the order passed by the Division Bench and thereafter, mutation of records also took place in the alleged excess land.

7. It is also submitted by the learned counsel appearing for the 6th respondent that the Writ Petitioner has no genuine interest in this litigation for the reason that espousing the cause of the encroachers of the Buckingham Canal, W.P.No.31114 of 2017 was filed restraining the official respondents from evicting them from their properties and Review Application

(Writ) No.58 of 2019 filed to review the order dated 19.02.2018 made in W.P.No.31114 of 2017, was dismissed, vide order dated 23.04.2019. In the light of the matter attaining finality, this Court, being a Co-ordinate Bench, in a collateral proceeding, cannot review the said order and prays for dismissal of the Writ Petition with exemplary costs.

8. This Court paid its best attention to the rival submissions and also perused the materials placed.

9. The 6th respondent filed W.P.No.2086 of 2007 against the Secretary to the Revenue Department, the Competent Authority, Urban Land Ceiling and the Tahsildar, Mylapore - Triplicane Taluk praying for issuance of Writ of Declaration, declaring that all the proceedings initiated under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of all the piece and parcel of the lands owned by the petitioner, measuring 236 sq.mtrs., situated at S.No.3957/7 Part and assigned New S.No.3957/8 are illegal, non est and that in any event have abated consequent upon the passing of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 with a consequential declaration that the petitioner is entitled to deal with the above mentioned lands owned and possessed by him as a full and absolute owner. The Writ Petition was entertained and notices were ordered and however, the official respondents did not file counter. The learned Single Judge, vide order dated 19.12.2008, has allowed the Writ Petition as prayed for. The Official respondents aggrieved by the said order filed a Writ Appeal in W.A.No.1369 of 2011 and also filed other Writ Appeals challenging similar orders and all the Writ Appeals were taken up by the Division Bench of this Court and vide judgment dated 23.07.2012, all the Writ Appeals were dismissed. The official respondents made challenge to some of the judgments passed in the Writ Appeals, especially in W.A.No.1144 of 2012 and the said S.L.P.(Civil)CC.No.8504 of 2013 also came to be dismissed by the Hon'ble Supreme Court of India, vide order dated 08.07.2013.

10. Though it is the vehement and forceful submission of the learned counsel appearing for the petitioner that either in the Writ Petition or in the Writ Appeals, the official respondents had failed to place relevant facts, this Court is unable to come to the aid of the petitioner for the reason that the legal proceedings had attained finality. No doubt, a perusal of the order dated 19.12.2008 in W.P.No.2086 of 2007 and the judgment reported in 2012-4-L.W. 289 (DB) cited supra, would disclose that relevant facts have not been brought to the notice of this Court by the official respondents and the fact remains that the issue had attained finality and this Court, being a Co-ordinate Bench, cannot review the said order especially in the light of the fact that some of the judgments passed in the Writ Appeals were put to challenge in S.L.P. (Civil).CC.No.8504 of 2013, which also came to be dismissed vide order dated 08.07.2013.

11. The learned counsel appearing for the 6th respondent has also brought to the notice of this Court the Conditional Extract from the Town Survey Land Register, C.A.No.1480/2012 dated 20.12.2012 stating that conditional patta was granted incorporating the name of the 6th respondent herein and the Extract from the Town Survey Land Register, C.A.No.93/2013 dated 31.01.2013 in respect of the land in question.

12. In the light of the above facts and circumstances, this Court is unable to come to the aid of the petitioner. In the result, the Writ Petition is dismissed. However, in the above circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

va
To

- 1.The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
Chennai District, Chennai.
- 3.The Competent Authority,
Urban Land Ceiling,
(Assistant Commissioner of ULT),
Mylapore, Chennai - 4.
- 4.The Tahsildar,
Mylapore - Triplicane Taluk, Chennai.
- 5.The Madras Metropolitan Water Supply
and Sewage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.

+1cc to Mr.P.N.Vignesh , Advocate SR.No. 2316
+1cc to M/s.Vaishali , Advocate SR.No. 2455

W.P.No.17772 of 2019
and W.M.P.No.17180 of 2019