

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.20460 of 2014
and
M.P.No.1 of 2014

Orders reserved on 04.03.2020	Orders pronounced on 11.03.2020
----------------------------------	------------------------------------

P.Suseela

.. Petitioner

-vs-

1.The Special Commissioner &
Commissioner (Land Administration),
Government of Tamil Nadu,
Chepauk, Chennai-600 005.

2.The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling (Poonamallee),
No.5, Sannadhi Street, 2nd Floor,
Chennai-600 056.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Chennai-600 056.

.. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent dated 24.04.1997, 30.09.1997 and 11.09.1998 under Section 9(5), 10(1) and 11(5) vide Ref. RC. No.931/97D and quash the same in respect of lands in Survey Nos.78/2A & 78/2B measuring 28350 sq.mts. and 3000 sq.mts. respectively of Anaikattuchery Village, Poonamallee Taluk, Thiruvallur District and further direct the 3rd respondent to incorporate the name of the petitioner as owner in all the Government records like patta, chitta and adangal in respect of the lands referred to above.

For Petitioner : Mr.V.Ramesh for Mr.T.Thiyagarajan

For Respondents: Ms.Narmadha Sampath,
Additional Advocate General
:
assisted by
Ms.A.Madhumathi,
Special Government Pleader

ORDER

Heard Mr.V.Ramesh, learned counsel for Mr.T.Thiyagarajan, learned counsel for the petitioner and Ms.Narmadha Sampath, learned Additional Advocate General, assisted by Ms.A.Madhumathi, learned Special Government Pleader for the respondents.

2.The petitioner has filed this writ petition praying for issuance of Writ of Certiorarified Mandamus to quash the proceedings of the second respondent, the Assistant Commissioner/Competent Authority (Urban Land Ceiling) issued under Section 9(5), Section 10(1) and Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978) (hereinafter referred to as "the Act") dated 24.04.1997, 30.09.1997 and 11.09.1998 respectively, in respect of the lands in Survey Nos.78/2A and 78/2B, measuring 28350 square metres and 3000 square metres respectively, of Anaikattuchery Village, Poonamallee Taluk, Thiruvallur District, and to incorporate the petitioner's name as owner of the property in all the records like patta, chitta and adangal.

3.The impugned proceedings are challenged on the ground that till date, the petitioner has not been dispossessed from the lands in question and therefore, the petitioner is entitled to the benefit of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Tamil Nadu Act 20 of 1999) (hereinafter referred to as "the Repeal Act") and all proceedings initiated under the Act have to be quashed and declared to have abated.

4.The subsidiary point raised by the petitioner is with regard to the computation of the retainable extent, which though raised in the writ petition, was not effectively pressed into service by the learned counsel for the petitioner. Therefore, what is required to be decided in this writ petition is whether, the petitioner continues to be in physical possession of the property and whether, entitled to the benefit of the Repeal Act 4 of 1999, which came into effect on 16.06.1999.

5.The learned Additional Advocate General has circulated the original file relating to the land ceiling proceedings as well as the current file. On perusal of the files, the following

factual position emerges. The property in question stood in the name of M/s.Vishnu Priya Brick Works (Veeraraghavan), who is stated to be the partner of the firm. The land owner did not file return under Section 7(1) of the Act. Consequently, a notice under Section 7(2) of the Act was issued on 02.07.1996 in the name of M/s.Vishnu Priya Brick Works and was served on Mr.P.Sreenivasan, Accountant of the firm on 25.05.1996. There was no response to the notice and on 06.11.1996, a draft statement under Section 9(1) of the Act was drawn and notice under Section 9(4) was served and received by one Mr.Kothandaraman. The notice under Section 9(4) of the Act along with the draft statement under Section 9(1) of the Act was served on Tmt.Thulasi, wife of Mr.Kothandaraman. Since there was no response, proceedings under Section 9(5) of the Act was passed on 24.04.1997, and it has been received by one Mr.K.Selvan on 25.06.1997, who is stated to be the watchman in the Brick Works. Thereafter, final statement under Section 10 (1) of the Act was drawn on 30.09.1997, which was served on Mr.Prabakaran, husband of the writ petitioner and one of the partners of Vishnu Priya Brick Works. However, no objections were raised and a notification under Section 11(1) of the Act was issued on 27.02.1998, and published in the Gazette on 19.04.1998. After the issuance of the notification under Section 11(1) of the Act on 27.02.1998, the petitioner's husband Mr.Prabakaran sold the property in favour of the petitioner as an agricultural land by sale deed dated 15.04.1998. The Revenue records were not mutated and the ULC authorities were not aware of the sale and they proceeded to issue notice under Section 11 (3) of the Act on 29.05.1998, and final notice under Section 11 (5) dated 11.09.1998, was attempted to be served, which was refused and possession was taken on 15.06.1999.

6.The petitioner's case rests upon the patta granted in her favour on 04.05.1999 and the relevant entries in the chitta and adangal. Admittedly, till order was passed under Section 11(5) of the Act, patta was not granted in favour of the petitioner. Therefore, the authorities cannot be blamed.

7.One more very vital fact, which would work against the petitioner is the purchase effected by her, and her vendor is her husband, who was the partner of M/s.Vishnu Priya Brick Works, the urban land owner in whose hands, the lands were declared as 'surplus'. The petitioner's husband surreptitiously sold the lands as agricultural lands, despite being aware that the land is an urban land and final statement under Section 10 (1) has been drawn as early as on 30.09.1997. Thus, it is evident that the transaction effected in favour of the petitioner, by her husband, is to get over the ULC proceedings. The petitioner's husband, Mr.Prabakaran, having received the notice under Section 10(1), committed an illegality in selling

the same property to his wife describing it as an agricultural land. In the recitals in the sale deed, the petitioner's husband says there are no land ceiling proceedings, which is a false statement and the petitioner's husband is liable to be proceeded with as a consequence, the petitioner would have no right over the property in question.

8.The trump card of the petitioner is a reply given under the Right to Information Act (RTI Act) and by relying upon the same, the petitioner states that there are no land ceiling proceedings. The records show that proceedings have been initiated and proper procedure has been followed. Therefore, the reply given under the RTI Act is wrong and if at all action has to be initiated, it can be done against the officer, who gave the reply without referring to the records.

9.The above facts are sufficient to dismiss the writ petition filed by the petitioner. That apart, there is gross delay and laches on the part of the petitioner to approach this Court by way of this writ petition. The lands in question were taken over on 15.06.1999, and the writ petition has been filed in 2014. This is also one of the grounds to dismiss the writ petition.

10.The petitioner claims that she is in possession of the subject property. The said submission if to accepted, then the petitioner shall be termed as a rank "trespasser of government property". The petitioner cannot take advantage of a fraudulent transaction done by her husband, who with full knowledge of the ULC proceedings, sold the property as an agricultural property and affirmed that there are no ULC proceedings or acquisitions. Thus, on and after the commencement of the proceedings under the Act, if any transaction done by the urban land owner is to defeat the proceedings under the Act, those have to be termed as 'null and void'. In this regard, it would be beneficial to refer to the decision in the case of Ritesh Tewari and another vs. State of Uttar Pradesh and others, (2010) 10 SCC 677. The partner, Veeraraghavan, was in the scene and subsequently, he moved out and the petitioner's husband, Prabakaran had come in, who had executed the sale deed.

11.The learned counsel for the petitioner has referred to the documents, which have been filed in the typed set of papers and additional typed set, which apart from containing proceedings under the ULC Act, also contains copies of adangal, chitta, kist receipts, licences obtained by the firm, etc.

12.The question would be as to how the petitioner came into possession of all the records pertaining to the ULC proceedings especially when, a stand is taken that the firm was not aware of

any of the actions. The answer can be found from the original file. It is the petitioner, who had submitted a letter to the ULC authorities on 06.07.2006, which finds place in page no.93 of the file, requesting copies of all the proceedings under the Act and it is she who had given the copy of the sale deed and the copy of the patta. It is not known as to how the Zonal Deputy Tahsildar, Poonamalle, had issued patta in favour of the petitioner in 1999, when already proceedings under the Act had reached the stage of Section 11(5) and steps were being taken to take over possession of property, which was done on 15.06.1999. Thus, the contention of the petitioner that she is in actual physical possession of the property cannot be accepted and if it is so, she can be treated only as an 'encroacher'. The facts set out in the preceding paragraph clearly disentitles the petitioner to any relief in this writ petition.

13. For all the above reasons, the writ petition, being devoid of merits, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1. The Special Commissioner &
Commissioner (Land Administration),
Government of Tamil Nadu,
Chepauk, Chennai-600 005.

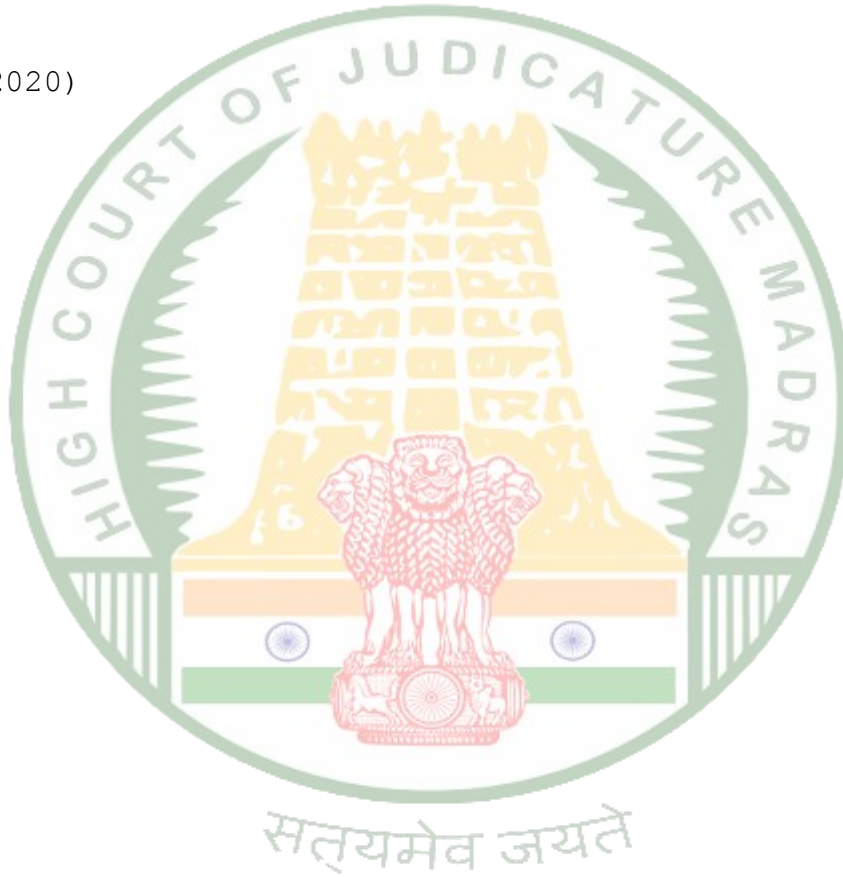
2. The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling (Poonamallee),
No.5, Sannadhi Street, 2nd Floor,
Chennai-600 056.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Chennai-600 056.

+1cc to Mr.R.Thiyagarajan, Advocate, Sr.No.21349

Writ Petition No.20460 of 2014

SJ(CO)
GS(27/05/2020)



WEB COPY