

In the High Court of Judicature at Madras

Dated : 20.1.2020

Coram :

The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No.9661 of 2016

Shanavas Zainul Arab rep.by her
power of attorney R.Rajmohan

...Petitioner

Vs

1.The District Collector-cum-Additional
Secretary (Revenue), Revenue
Complex, Saram, Puducherry.

2.The Deputy Collector, Revenue (North),
Revenue Complex, Saram, Puducherry.

3.The Sub-Registrar,
Oulgaret Sub-Registrar's Office,
Oulgaret, Puducherry.

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Mandamus directing
respondents 1 and 2 to assign the GLR value in respect of the
land comprised in Cadastre No.1122, 1122 bis corresponding to
R.S.No.230/2, Oulgaret Revenue Village and consequently direct
the third respondent to register the land in question within
time limit fixed by this Court.

For Petitioner : Mr.R.Udhayakumar
For Respondents: Ms.N.Mala, AGP

ORDER

This writ petition has been filed seeking to direct
respondents 1 and 2 to assign the guideline register (GLR) value
in respect of the land in Cadastre No.1122, 1122 bis
corresponding to R.S.No.230/2, Oulgaret Revenue Village and for
a consequential direction to the third respondent to register
the sale deed in respect of the said land.

2. The petitioner is stated to have purchased the land in question from one Mr.S.V.Shanmuga Mudaliar represented by his power of attorney agent namely one Mr.S.Balasundaram by sale deed dated 31.3.1998 vide Doc.No. 1518 of 1998 on the file of the Sub-Registrar, Oulgaret, Pondicherry. Ever since the date of purchase, she has been in uninterrupted possession and enjoyment of the land. But, she could not put the land to use, as she was residing abroad. Subsequently, due to financial situation and to meet the medical expenses of her daughter, the petitioner was compelled to sell the property and therefore, she arranged for sale of the same. For such a purpose, she appointed one Mr.R.Rajmohan as her power of attorney agent by general power of attorney dated 25.8.2009 executed before the Assistant Consular Officer, Consulate General of India, Dubai (UAE).

3. It is the case of the petitioner that in spite of the petitioner's power agent taking effective steps to sell the property, she was unable to do so because respondents 1 and 2 had not assigned any GLR value for the property in question and for such a reason, the third respondent is refusing to accept the sale deed for registration. Therefore, the petitioner is before this Court by way of this writ petition for the aforementioned relief.

4. I have heard Mr.R.Udhayakumar, learned counsel for the petitioner and Ms.N.Mala, learned Additional Government Pleader appearing for the respondents.

5. The reason for the third respondent refusing to register the sale deed stated to have been executed by the petitioner represented by her power of attorney agent is on the ground that respondents 1 and 2 had not assigned the GLR value pertaining to the land in question. Therefore, this Court needs to consider as to why respondents 1 and 2 had not assigned the GLR value and if they have not done so, are they justified in refusing to assign the GLR value in respect of the land in question.

6. The original land formed part of a larger extent and proceedings were initiated by the respondents under the provisions of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (hereinafter called the Act). An extent of 3.9961 standard hectares were notified to be the land held in excess of the permissible limit under the Act and was declared as surplus by the authorized officer and a draft statement under Section 9(1) of the Act was published in Gazette No.171 dated 26.8.1977. The above facts have been furnished by the second respondent in the counter affidavit.

7. From the counter affidavit, it is seen that the original land owner namely the assessee had filed objections to the draft statement under Section 9(1) of the Act. It is stated that thereafter, final statement was published under Section 11 of

the Act declaring an extent of 3.9961 standard hectares as surplus in the hands of the original land owner and accordingly, a Notification was issued in Gazette No.112 dated 11.11.1981. It is further stated that the Notification under Section 17(1) of the Act was published in District Gazette No.46 dated 06.5.1982, that the Declaration under Section 17(2) of the Act was issued on 29.5.1982 and that the surplus portion declared namely an extent of 3.9961 standard hectares was taken possession on 14.6.1982.

8. It appears that the son of the original land owner, who was referred to as the assessee, challenged the procedure adopted by the Authorities by filing W.P.No.10571 of 1984, in which, a direction was issued to conduct a fresh enquiry. According to the second respondent, though a date was fixed for enquiry, the assessee's son did not appear for the enquiry and the matter was being prolonged because several people had to be substituted as they were no more and their legal heirs were to be brought on record. Subsequently, in the year 2008, an amended Form 10 Notification was issued under Section 13(1) of the Act, which was after considering the objections given by the legal heirs of the assessee. It is also stated in the counter affidavit that approval of Form 13 under Section 17(1) of the Act is under process, upon which, the land will be taken possession by the Government after due proclamation.

9. With these facts, the learned Additional Government Pleader would state that in terms of Section 22 of the Act, there is a clear restriction on transfer of the land covered under the Act by any person and in this regard, he has invited the attention of this Court to Section 22(1) of the Act. It is further stated that the assessee and his legal heirs had already sold a major portion of the land covered in the proceedings including the portion notified as surplus in pieces to innocent buyers and in order to prevent any further transactions, the entire lands covered in the proceedings were frozen by the then authorized officer vide circular dated 13.8.2008 and this is the reason as to why the GLR value has not been fixed.

10. It appears that such a problem has arisen in several areas in Puducherry. This is so because several writ petitions were filed before this Court by various persons seeking a direction upon the Authorities to register and release the documents, which have been refused to be entertained on grounds, which are identical to that of the grounds raised in this writ petition. In all those writ petitions namely W.P.No.32472 of 2006 dated 08.3.2007, W.P.No.34046 of 2006 dated 08.3.2011 and W.P.No.18292 of 2015 dated 25.6.2015 were allowed and this Court had an occasion to consider a similar issue in the case of I.Shakila Vs. District Collector [reported in 2015 SCC OnLine

Madras 8166]. In all those cases, a direction was issued to register and release the documents and particularly for the reason that the properties, which were sold, were within the retainable extent of the erstwhile land owner/assessee.

11. In fact, the order in W.P.No.36046 of 2006 dated 08.3.2011 was in respect of the very same survey number where the present writ petition seeks relief. The second respondent, in the counter affidavit, has specifically admitted the fact that the land at Cadastre No.1122, 1122bis corresponding to R.S.No.230/2, Oulgaret Revenue Village falls within the retention portion of the assessee namely Mr.Siva and Mr.Nedunchezian under the Act.

12. The argument of the learned Additional Government Pleader appearing for the respondents is that there is an embargo under Sub-Section (1) of Section 22 of the Act restricting transfer of the land, that until final proceedings are over, transfer cannot be effected and that rightly, the GLR value has not been assigned, as several innocent people have been cheated.

13. This argument of the respondents cannot be countenanced for more than one reason. Firstly, the proceedings initiated under the Act in the year 1977 were proposing to declare an extent of 3.9961 standard hectares as surplus in the hands of the assessee. After objections were received, a final statement was issued under Section 11 of the Act and published in the Gazette on 11.11.1981. Thereafter, the procedure to be followed is under Section 17 of the Act, which deals with acquisition of surplus land. Thus, on and after publication of the final statement under Section 11 of the Act, the entire matter gets crystallized and thereafter the procedure to be followed for taking over possession is to be adopted.

14. It is no doubt true that the legal heirs of the land owner had raised certain objections, that the final statement was sought to be amended by exercise of power under Section 13 (1) of the Act, which has now been forwarded to the Government and that the matter is under consideration in accordance with Section 17(1) of the Act. Though these are the facts stated in the counter affidavit, it is admitted that the land purchased by the petitioner is within the retention portion. If the retention portion stood crystallized on 11.11.1981 in terms of the final statement under Section 11 of the Act, the purchase effected by the petitioner in the year 1998 cannot be stated to be hit by the provisions of Section 22(1) of the Act.

15. The learned Additional Government Pleader has referred to the common judgment of the Hon'ble Division Bench of this Court in W.A.Nos. 875 to 878 of 2012 dated 13.2.2018 [G.Gopalsamy & another Vs. Government of Pondicherry & Others].

16. On a perusal of the said common judgment, it is seen that the Hon'ble Division Bench of this Court has only discussed as

to what is the effect of Section 22(1) of the Act and that there is no discussion with regard to any fact situation similar to the case on hand.

17. In the judgment of Hon'ble Division Bench of this Court in the case of S.Vaitheeswaran & Others Vs. Union of India & Others [reported in 2016 (4) LW 512] relied upon by the learned counsel for the petitioner, it has been held that Sections 22(1) and 22(2)(a) of the Act have to be harmoniously read and if done so, it revealed that while there is a restriction on transfer in terms of Section 22(1) of the Act, if and when such a transfer takes place, Section 22(2)(a) of the Act provides the manner, in which, the property should be recovered from such persons namely the transferor and if there is no such property, then only it should be recovered from the transferee.

18. In the instant case, we need not travel thus far to go into the aspect of recovery of property because the final statement having been published on 11.11.1981 and the petitioner having purchased the land in the year 1998 after the final statement and before the so called amendment made on 12.6.2008 by invoking the power under Section 13(1) of the Act, the transaction effected by the petitioner cannot be faulted. Apart from the above, the proceedings under the Act have been inordinately delayed. The Act came into effect in 1973 and the proceedings against the petitioner's vendor's vendor namely the assessee was initiated in the year 1977 and it is yet to attain finality. Having found that the petitioner cannot be penalized nor her transaction can be stated to be barred under Section 22 (1) of the Act, the petitioner is entitled to seek fixation of the GLR value.

19. In the light of the above, the writ petition is allowed and respondents 1 and 2 are directed to fix the GLR value in respect of the land in question within a period of four months from the date of receipt of a copy of this order. On fixation of the GLR value, it is open to the petitioner to present any document for registration before the third respondent subject to fulfillment of other conditions such as filing of declaration in Form-16. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector-cum-Additional Secretary (Revenue),
Revenue Complex, Saram, Puducherry.

2.The Deputy Collector, Revenue (North), Revenue Complex, Saram,
Puducherry.

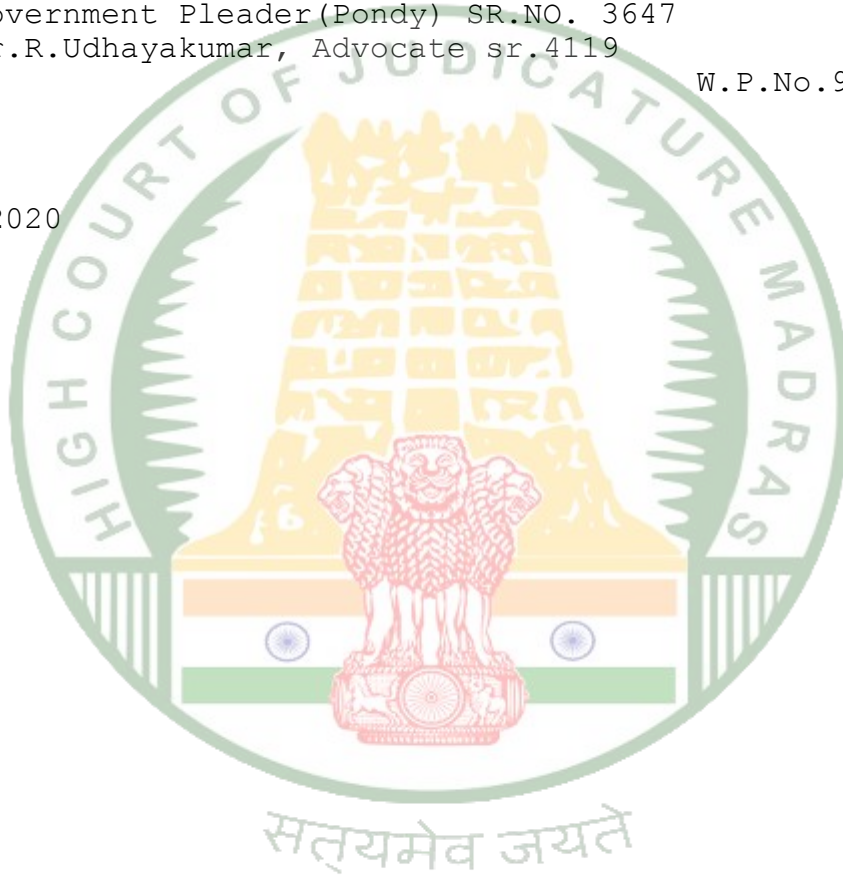
3.The Sub-Registrar,
Oulgaret Sub-Registrar's Office,
Oulgaret, Puducherry.

+lcc to Government Pleader(Pondy) SR.NO. 3647

+lcc to Mr.R.Udhayakumar, Advocate sr.4119

W.P.No.9661 of 2016

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