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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.12415 of 2013

and

M.P.No.1 of 2013

1.G.Janakiraman

2.J.Nirmala

3.J.Senthil Kumar

4.S.Hemalatha

5.S.Kavitha

... Petitioners

Vs

1. The Principal Commissioner and Secretary
of Land Reforms, Chepauk, Chennai - 600 005.

2. The Assistant Commissioner (Urban Land Ceiling)
No.169, Sannadhi Street, Tambaram Office
Adambakkam, Chennai - 600 089.

3. The Tahsildhar,
Sholinganallur Taluk,
Sholinganallur,
Kanchipuram District.

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of declaration to declare that the land comprised in Survey No.722/1 and 722/2 part of Pallikaranai Village, Sholinganallur Taluk, Kancheepuram District belonging to the petitioners acquired under the various provisions of Act 24 of 1978 as null and void so as to enable the third respondent to incorporate the name of the petitioners as owner in the revenue records.

For Petitioners : Mr.V.Ramesh

For Respondents : Mr.Richardson Wilson,
Government Advocate



O R D E R

This writ petition has been filed to issue a Writ of declaration to declare that the land comprised in Survey No.722/1 and 722/2 part of Pallikaranai Village, Sholinganallur Taluk, Kancheepuram District belonging to the petitioners acquired under the various provisions of Act 24 of 1978 as null and void so as to enable the third respondent to incorporate the name of the petitioners as owner in the revenue records.

2. The case of the petitioners is that the petitioners are the owners of the property comprising in Survey No.722/1 Part situated at Pallikaranai Village, by virtue of the five sale deeds tabulated hereunder:

SL. No.	Name of the Petitioners	Date of Sale and Document	Survey No.	Extent
1.	G.Janakiraman	09/01/2012 158 of 2012	722/A part 722/2 part	2400 sq.ft. out of 6 acres 32 cents
2.	J.Nirmala	09/01/2012 159 of 2012	722/1 722/2	2400 sq.ft.
3.	S.Kavitha	12/01/2012 242 of 2012	722/1 722/2	2400 sq.ft.
4.	J.Senthilkumar	30/12/2011 11594/2011	722/2A part	2400 sq.ft. out of 37 cents
5.	S.Hemalatha	12/01/2012	722/1 722/2	2400 sq.ft.

3. The petitioners have purchased the land from one M.S.Mohamed Ibrahim and Amjath Ali who are the legal heirs of M.S.Sulthan Ibrahim. They traced their title by the registered sale deed dated 28.05.1963 vide Document No.1998 of 1963. From the date of their purchase, they are in possession and enjoyment of the subject property.

4. While the petitioners applied for patta, they were informed that the land comprised in Survey No.722/2 has been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act (hereinafter called as "Act") and as such the patta cannot be issued in their favour. Their power of attorney, namely, one V.N.Raja Mohammed obtained information under the Right to Information Act came to understand that the land comprised in Survey No.722/1 has been acquired from one



Mrs.Kamala Sethi. Therefore, the proceedings initiated under the Act declared to be void.

5. The learned counsel for the petitioners would submit that originally the subject land belonged to one M.S.Sulthan Ibrahim by virtue of a sale deed dated 28.05.1963 registered vide Document No.1998 of 1963 and all the revenue records were mutated in his name and patta was also issued in his favour. Therefore, the said Mrs.Kamala Sethi was not the owner of the subject property at any point of time. The subject property originally owned by one Shanmugam Pillai by virtue of a sale deed dated 27.06.1954 registered vide Document No.1499 of 1956 on the file of the Joint Registrar - II, Saidapet. He had three sons and they sold out the land by sale deed dated 30.08.1962 registered vide Document No.4391 of 1962 to one N.P.Mohideen Pichai, who in turn sold out the land in favour of the said M.S.Sulthan Ibrahim.

6. In fact, the reply received under the Right to Information Act clearly shows that no compensation award amount was received by the said Kamala Sethi and no records were available in the name of Kamala Sethi. No notice was served as contemplated under Sections 7(2), 9(1), 9(4), 10(1) and 11(5) of the Act to the petitioners' vendor namely M.S.Sulthan Ibrahim or M.S.Mohamed Ibrahim. Therefore, such an acquisition is in violation of mandatory provisions of Act and Rules and would offend Article 300-A of the Constitution of India.

7. The petitioners are in possession and enjoyment of their respective subject land and even till today, the physical possession has not been taken from the petitioners as per the provisions of Act 20 of 1999 stood repealed the Act with effect from 16.06.1999. Therefore, all the proceedings would abate under Section 4 of Act 20 of 1999. The notice under Section 11 (5) of the Act was not at all served on the petitioners' vendor or to the petitioners. It contemplates that it shall be served on the "person in possession of the property". Therefore, the non compliance of the procedure as contemplated under Section 11 (5) is fatal to the acquisition proceedings.

8. There is no record with the respondents to prove that the possession has been taken after preparing a Panchnama or Memorandum signed by the witnesses from the petitioners. In the absence of all these records, the entire proceedings shall abate under Section 4 of the Act 20 of 1999. It amounts to infringement of Article 300-A of the Constitution of India. So accordingly, no person can be deprived of the property without following the procedure laid down. If the land owner or person fails to surrender the land in his possession, then the power is conferred on the respondents to take possession of the land by



use of force as contemplated under Section 11(6) of the Act. Therefore, no proceedings has been initiated to take forcible possession from the petitioner as contemplated under Section 11 (6) of the Act.

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9. Per contra, the respondents filed counter and stated that all the petitioners are subsequent purchasers of the property and as such they have no locus to challenge the acquisition proceedings under the Act. This writ petition has been filed after the period of 17 years for taking possession of the acquired land. They purchased without verifying the ownership of the subject land and as such the writ petition itself is liable to be dismissed on the ground of laches. The draft statement under Section 9(1) of the Act along with the notice as contemplated under Section 9(4) of the Act were issued to Mrs.Kamala Sethi and two others on 25.04.1984 for the proposed acquisition of excess vacant land admeasuring 25500 sq.mts., in Survey No.722 of Pallikaranai Village after allowing 1500 sq.mts., of land as entitlement area to the Urban Land Owners.

10. On receipt of the same, the Urban Land Owners did not file any objection for the proposed acquisition of excess vacant land. Thereafter, a notice reminding the Urban Land Owner for filing objections for the proposed acquisition was issued on 12.09.1984, since no objections were received from the Urban Land Owner. After issuance of statement under Section 9(1) along with notice under Section 9(4) of the Act, the excess vacant land admeasuring 25500 sq.mts., was acquired in Survey No.722/1 situated at Pallikaranai Village. The Notification as contemplated under Section 11(1) of the Act dated 18.05.1993 was issued under Rule 10(1) published in the Tamil Nadu Government Gazette dated 16.06.1993. It was issued on 28.10.1993 under Section 11(3) of the Act in the Tamil Nadu Government Gazette dated 24.11.1993.

11. The possession of the excess vacant land was handed over to the Revenue Department on 12.12.1995. Then 16900 sq.mts., of land out of 25500 sq.mts., acquired along with 12900 sq.mts., of land acquired in Survey No.722/1 of Pallikaranai Village were allotted to the Tamil Nadu Slum Clearance Board in G.O.Ms.No.463 dated 20.09.2010 for the residential use of Slum Dwellers. In fact, one Satya Nagar Welfare Association has filed a writ petition in W.P.No.7449 of 2009 for allotment of the above land which are not acquired under the Act for its members. In fact, the power agent of M.S.Mohamed Ibrahim filed writ petition in W.P.No.11922 of 2011 challenging the acquisition proceedings. Subsequently, the said writ petition was allowed by an order dated 21.01.2016.



12. Therefore, the writ petitioners have illegally purchased the portions of the land acquired by the Government and filed these writ petitions after 17 years from the date of completion of acquisition. Further it revealed that the said Mrs.Kamala Sethi is the registered Urban Land Owner as on 03.08.1976 and she failed to file her return and as such the Competent Authority initiated action against her and acquired excess vacant land under the Act. The possession of the land was handed over to the Revenue Authorities as early as on 12.12.1995. After following the procedures laid down under the Act.

13. Perusal of records would show that no records are produced to show that the Urban Land Owner is Mrs.Kamala Sethi. Whereas the petitioners have purchased their respective house plots from one M.S.Mohamed Ibrahim and Amjath Ali who are the legal heirs of M.S.Sulthan Ibrahim. They traced out the title by the sale deed dated 28.05.1963 registered vide Document No.1998 of 1963. Therefore, nowhere found that the said Mrs.Kamala Sethi was the Urban Land Owner.

14. According to the respondents, they served notice under Section 9(1) along with the notice under Section 9(4) of the Act on 25.04.1984. However, the Urban Land Owner did not file any objection and as such the proposed acquisition was issued on 12.09.1984. Thereafter, the excess vacant land admeasuring 25500 sq.mts., was acquired in Survey No.722/1 situated at Pallikaranai Village. Admittedly, the petitioners are in possession and enjoyment of their respective house plots from the date of their purchase namely 09.01.2012 to 12.01.2012 respectively. There is no record to show that the original Urban Land Owner was served with notice under Section 11(5) of the Act, whereas the counter revealed that the possession of the excess vacant land was handed over to the Revenue Department dated 12.12.1995 and thereafter, the land admeasuring 16900 sq.mts., out of 25500 sq.mts., were allotted to the Tamil Nadu Slum Clearance Board by the G.O.Ms.No.463 dated 20.09.2010 for the residential use of Slum Dwellers.

15. As rightly pointed out by the learned counsel for the petitioners, if the Urban Land Owner failed to surrender the possession of the excess land, the respondents ought to have issue notice under Section 11(6) to take forcible possession. Admittedly, no notice was issued under Section 11(6) of the Act to take forcible possession of the subject property, since the petitioners are in possession and enjoyment of the said property. Though the respondents specifically raised ground that the present writ petition after 17 years from the date of acquisition proceedings and also the petitioners being the subsequent purchasers have no locus-standi to maintain this writ



petition, the acquisition proceedings itself was not initiated as against the erstwhile owners namely the vendors of the petitioners and the entire proceedings were initiated as against one Mrs.Kamala Sethi.

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16. As stated supra, nowhere found that the said Mrs.Kamala Sethi was the Urban Land Owner in respect of the property comprised in Survey No.722/1 situated at Pallikaranai Village. Therefore, the possession of the subject land has not been taken even till today. Therefore, the entire acquisition proceedings have lapsed as per Section 4 of the Act 20 of 1999, since the possession has not been taken even till today. In this regard, the learned counsel for the petitioners relied upon the Judgment of the Hon'ble Division Bench of this Court dated 09.03.2020 in W.A.Nos.970 and 1738 of 2017 The State of Tamil Nadu, Rep. by its Secretary , Revenue Department, Fort St. George, Chennai - 9 and another -vs- Rane Brake Linings Limited Rep. by its Vice President Finance and Secretary Mr.V.Krishnan having its registered Office at "Maithri", No.132, Cathedral Road, Chennai - 600 086, this Court held as follows:

"26. The question of possession and vesting has already been dealt with by us herein above, but the learned Additional Advocate General has come up with three judgments, the first is of the Apex Court in the case of State of U.P. and others v. Adarsh Seva Sahkari Samiti Limited, (2016) 12 SCC 493. It is urged that according to the said judgment a subsequent transferee has no right as his transfer is void ab initio, being in violation of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. The said decision is related to the Urban Land (Ceiling and Regulation) Act, 1976 as applicable in the State of Uttar Pradesh. We may point out that Sections 10(5) and 10(6) of the Central Act as applicable to the State of Uttar Pradesh are pari materia to Sections 11(5) and 11(6) involved herein. The said decision nowhere has dealt with the law laid down in the case of State of Uttar Pradesh Vs. Hari Ram (supra). To the contrary, in paragraph (6), the Apex Court has declined to examine the said question in the following words:

"6. In our opinion, the respondent herein has no locus standi to challenge the inaction on the part of the appellants



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(supra), inasmuch as it has expressly approved of the judgment in the case of State of Assam v. Bhaskar Jyoti Sarma and others, (2015) 5 SCC 321. For this, he has extensively relied on the answer given by the Constitution Bench against Issue No.4, which is the mode of taking possession under the Act of 1894 and paragraph 244 to paragraph 277 and then to paragraph 341 to paragraph 346 and again to paragraph 363 to contend that the mode of taking possession by virtue of the vesting of the land in the present case is full and complete and the Apex Court has rendered the Five Judges Constitution Bench judgment after taking into consideration the judgment in the case of State of Assam v. Bhaskar Jyoti Sarma and others (supra), which was directly in issue in relation to the taking over of surplus land declared in Urban Land Ceiling proceedings. He, therefore, submits that once the land has vested, then this will amount to vesting of possession and title both.

29. We have perused the relevant paragraphs pointed out by Shri Pandian and we do not find any consideration of paragraphs 41 and 42 of the judgment in the case of State of Uttar Pradesh Vs. Hari Ram (supra) having been dealt with or having been overruled by the Constitution Bench. We may also point out that the Five Judges Constitution Bench has extracted the ratio of the judgment in the case of State of Assam v. Bhaskar Jyoti Sarma and others (supra) contained in paragraphs 15 to 17 thereof, that has been quoted in paragraph 341. The said quotation even though refers to the case of State of Uttar Pradesh Vs. Hari Ram (supra), it appears that it was only the word "may" that was taken into consideration for interpreting an exercise of a discretion by the Competent Authority to issue notice or otherwise. It was also clearly stated in State of Assam v. Bhaskar Jyoti Sarma and others (supra) that the question whether the breach of the provisions vitiate the act of dispossession itself or render it non-est in the eye of law had not fallen for consideration in the case of State of Uttar



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Pradesh Vs. Hari Ram (supra). Thus, it was on that distinction that the Apex Court proceeded to deliver the judgment in the case of State of Assam v. Bhaskar Jyoti Sarma and others (supra). The decision of the Five-Judges Bench in the case of Indore Development Authority v. Manoharlal and others, etc. (supra), therefore, in our opinion, cannot be read as a judgment overruling the ratio in the case of State of Uttar Pradesh Vs. Hari Ram (supra). Thus, paragraphs 41 and 42 of the judgment in the case of State of Uttar Pradesh Vs. Hari Ram (supra), for the present purpose, still hold the field and consequently, the argument raised by Shri Pandian deserves to be rejected."

17. The Hon'ble Division Bench of this Court held that the Act of vesting has to be followed by taking over possession and is not simultaneous. There is no deemed actual physical possession, which has to be accomplished later on either through Section 11(5) or Section 11(6) of the Act. The Tamil Nadu Urban Land (Ceiling and Regulation) Act as confiscation of land being excess and surplus area in order to above that prescribed therein, but when the repeal Act came the very purpose of the repeal act of sale the land of which possession has not been taken.

18. Therefore, even though the subject land had been declared as surplus and it had been handed over to the Slum Clearance Board, the possession of the subject land is very much with the petitioners. The respondents contended that the petitioners are being the subsequent purchasers, they cannot challenge the acquisition proceedings, since they have no locus-standi. When the respondents are not able to produce any records to show that the acquisition proceedings are vitiated in respect of the subject properties which were purchased by the petitioners from legal heirs of M.S.Sulthan Ibrahim who traced out the title by the registered sale deed dated 28.05.1963 vide Document No.1998 of 1963. Therefore, the contention raised by the respondents cannot be considered.

19. In view of the above, that the land comprised in Survey No.722/1 and 722/2 part of Pallikaranai Village, Sholinganallur Taluk, Kancheepuram District belonging to the petitioners acquired under the various provisions of Act 24 of 1978 declared as null and void. The third respondent is directed to mutate the Revenue records in the name of the



petitioners for their respective properties in the Revenue records and issue patta in their favour as per their respective sale deed within a period of eight weeks from the date of receipt of a copy of this order.

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20. With the above directions, this writ petition is allowed. No order as to costs. Consequently, the connected M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Principal Commissioner and Secretary
of Land Reforms, Chepauk, Chennai - 600 005.
2. The Assistant Commissioner (Urban Land Ceiling)
No.169, Sannadhi Street, Tambaram Office
Adambakkam, Chennai - 600 089.
3. The Tahsildhar,
Sholinganallur Taluk,
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and M.P.No.1 of 2013

SSD(CO)
SU(01/12/2021)