



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.1482 of 2011
M.P.Nos.1 & 2 of 2011

Sagaya Mary

...Petitioner

-Vs-

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Competent Authority (ULC)
Tambaram.

3.The Assistant Commissioner (ULT)
Tambaram Zone,
No.163, Karuneeekar Road,
Adambakkam,
Chennai - 600 088.

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records culminating in the passing of the impugned order proceedings in Na.Ka.1818/87C dt. 27.01.1997, on the file of the second respondent herein, quash the same and consequently forbear the respondents herein from in any manner interfering with the peaceful possession, enjoyment and occupation of the petitioner property comprised in S.No.6/3B, Patta No.2273, Tambaram Village, New No.133, Saidapet Taluk, Chengai - Anna District, measuring an extent of 27 cents. (Prayer amended as per order of this court dated 26.06.2014 made in M.P.No.1 of 2014 in W.P.No.1482 of 2011)

For Petitioner : Mr.M.Venkatakkrishnan
For Mr.M.Kempraj

For Respondents : Mr.A.Selvendran
Special Government Pleader



ORDER

The Writ Petition has been filed to call for the entire records culminating in the passing of the impugned order proceedings in Na.Ka.1818/87C dt. 27.01.1997, on the file of the second respondent herein, quash the same and consequently forbear the respondents herein from in any manner interfering with the peaceful possession, enjoyment and occupation of the petitioner property comprised in S.No.6/3B, Patta No.2273, Tambaram Village, New No.133, Saidapet Taluk, Chengai - Anna District, measuring an extent of 27 cents.

2. The case of the petitioner is that the property originally belonged to one Raji Chowdhury and the petitioner's father viz., S.A.Swaminathan Padyachi and one T.Kothandan Naicker had jointly purchased the property comprised in S.No.6/3, ad measuring 1.26 acres, situated at Village No.166, Tambaram, Saidapet Taluk, Chengalpattu District, by the Sale Deed dated 28.12.1962 registered vide document No.3506 of 1962. Thereafter, the said T.Kothandan Naicker sold out his share to the petitioner's father by the Sale Deed dated 20.08.1968 registered vide document No.3490 of 1968. Therefore, the petitioner's father has become absolute owner of the total extent of 1.26 acres and he was in possession and enjoyment of the same. Thereafter, the petitioner's father settled the above said property amongst the petitioner & her three brothers & three sisters by the Settlement Deed dated 05.06.1991 registered vide document No.2842 of 1992, and each daughter got 27 cents. From the date of the settlement deed, the petitioner is in possession and enjoyment of the said property.

3. While being so, the petitioner came to understand that on 07.09.1985, the second and third respondents invoked the provisions under Sections 7(1) and 7(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, (hereinafter referred to as "the Act"). However the notices were affixed in the vacant land by tying it around a wooden stick and planted it in the property. In pursuant to that, on 26.03.1987 objections were called for under Section 9(1) & 9(5) of the Act and the said notices were also affixed in the same manner. Thereafter, since no objections were raised by the petitioner, the second respondent issued notice under Section 10(1) of the Act. Therefore, no notice was issued to the petitioner and no physical possession of the land has been taken over. Till date, the petitioner is still in possession and enjoyment of the property.

4. Heard Mr.M.Venkatakkrishnan, learned counsel appearing for the petitioner, Mr. A.Selvendran, learned Special Government Pleader appearing for the respondents.



5. On perusal of the counter filed by the second respondent revealed that the land comprised in S.No.6/3 ad measuring 22 grounds 2086 sq.ft., situated at Tambaram Village was registered in the name of one Saminatha Padayatchi. Since the urban land owner failed to file his return under Section 7(1) of the Act, notice under Section 7(2) of the Act was issued on 17.09.1985. It was served only by affixture. Since the urban land owner failed to file any objection or reply, the draft statement under Section 9(1) of the Act with the notice under Section 9(4) of the Act was issued on 26.03.1987. Before that, the Deputy Tahsildar-(II) of the office of the Competent Authority had inspected the property on 23.03.1987 and found that the subject land is vacant land. Since no reply was received from the urban land owner, notice under Section 9(5) of the Act was issued to the urban land owner to acquire the excess land ad measuring 4600 sq.mt. The final statement under Section 10(1) of the Act was issued on 26.12.1997 and the said notice was also served by affixture.

6. Therefore, the respondents did not follow the procedure laid down under the The Urban Land (Ceiling And Regulation) Rules, 1976 (hereinafter referred to as "the Rules"). According to the Rules, the respondents ought to have served the notice only by registered post. If the notices are returned as refused by the addressee or the notices could not be served for any other reasons, the question of affixture would arise. Whereas in the case on hand, admittedly, no notice was served to the petitioner or her father through registered post with acknowledgment.

7. That apart, the notice under Section 11(5) of the Act was issued to the urban land owner on 30.10.1998, to deliver the possession of the excess vacant land to the government. However, the possession of the excess vacant land was taken over on 20.08.1998 and the same was handed over to the Revenue Inspector, Tambaram on 28.04.1999. There is absolutely no records to show that the notice under Section 11(5) of the Act were served to the urban land owner or to the petitioner herein.

8. In fact, on 05.06.1991 itself, the property was settled in favour of the petitioner by her father. However, the said notices neither served to the petitioner nor to her father. Admittedly, the petitioner is still in possession and enjoyment of the said property. When the notice under Section 11(5) of the Act was issued on 30.10.1998, there is absolutely not possible to take possession of the subject property even prior to that viz., on 20.08.1998. It shows that the respondents only had taken possession by paper and all are desk work. Even till today, the petitioner is in possession and enjoyment of the property. Further if the physical possession had not been taken



over, as per the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and Repeal Act 20/99, the entire proceeding has become lapse.

9. In view of the above discussions, the impugned order dated 27.01.1997, passed by the second respondent in proceedings Na.Ka.1818/87C, is hereby set aside. The concerned Tashildar is directed to mutate all the revenue records in respect of the subject property in favour of the petitioner and issue patta within a period of six weeks from the date of the receipt of a copy of this Order.

10. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

rts

To

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Competent Authority (ULC)
Tambaram.
- 3.The Assistant Commissioner (ULT)
Tambaram Zone,
No.163, Karuneeekar Road,
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+2ccs to Mr.M.Kempuraj, Advocate SR.No.62917

+1cc to the Government Pleader, SR.No.63026

W.P.No.1482 of 2011
M.P.Nos.1 & 2 of 2011

SV(CO)
RVM(03/01/2022)