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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.19946 of 2005
and
W.M.P.No.21727 of 2005

1. The Cosmopolitan Sports Club,
Represented by its Secretary,
S.Baskaran (Deceased),
Tamil Sangam Road,
Salem - 636 007.
2. The Cosmopolitan Sports Club,
Represented by its Secretary,
T.Kasirajan,
Tamil Sangam Road,
Salem - 636 007.

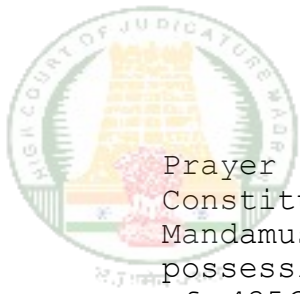
(P2 - Substituted as LR of deceased
P1 S.Baskaran, as per order dated
08.11.2017, by this Court in
W.M.P.No.25950 of 2017
in W.P.No.19946 of 2005)

... Petitioners

-Vs-

1. The Competent Authority,
Urban Land Ceiling cum-Assistant
Commissioner, Urban Land Tax,
Salem.
Now merged with the Assistant Commissioner,
Land Reforms and Urban Land Tax,
54, Thanga Perumal Street,
Sri.Ambal Thirumana Mandapam (Upstairs)
Erode 636 001.
2. The Special Commissioner and
Commissioner, Urban Land Ceiling,
And Urban Land Tax,
Ezhilagam, Chepauk,
Chennai - 600 005.

... Respondents



Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to forbear from taking possession of the lands belonging to the petitioner of an extent of 4356 sq.ft in T.S.No.15/2, 10668 sq.ft in T.S.No.20/2A and 12535 sq.ft in T.S.No.20/4B in Block 17, Ward B, Komarasampatty Village, Salem Town in view of Sections 3 and 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Tamil Nadu Act 20 of 1999).

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.Richardson Wilson
Government Advocate.

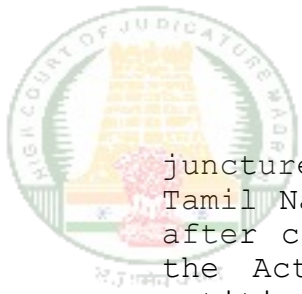
ORDER

This Writ Petition has been filed to issue a Writ of Mandamus, directing the respondents to forbear from taking possession of the lands belonging to the petitioner to an extent of 4356 sq.ft in T.S.No.15/2, 10668 sq.ft in T.S.No.20/2A and 12535 sq.ft in T.S.No.20/4B in Block 17, Ward B, Komarasampatty Village, Salem Town, in view of Sections 3 and 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Tamil Nadu Act 20 of 1999).

2. Heard Mr.P.Jagadeesan, learned counsel appearing for the petitioner and Mr.Richardson Wilson, learned Government Advocate appearing for the respondents.

3. The case of the petitioner is that it is a club registered under the Tamil Nadu Societies Registration Act, 1965. It had purchased one acre of agricultural land in R.S.No.15, 20/2, 20/4 in Ward-B, Block-17, under a registered Sale Deed dated 19.02.1978. Thereafter, they constructed the Sports Club buildings and Tennis Courts. The total extent of the property ad-measuring 8702 sq.ft is for construction. In the remaining area, two Tennis Courts were formed on the northern side ad-measuring 14,278 sq.ft and the Sport Club buildings in an area of 20,664 sq.ft. Therefore, the area ad-measuring 34,942 sq.ft has been utilized for Sports Club for the club purpose with a compound wall on all four sides. There is no vacant land available with the petitioner's club.

4. The petitioner is in continuous possession and enjoyment of the land from the date of purchase. At that



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juncture, the respondent had initiated the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after called "The Act") and issued notice under Section 7(2) of the Act on 30.09.1988 and the same was duly served on the petitioner in 13.10.1988. On receipt of the same, the petitioner did not file any objection as contemplated under Section 7(1) of the Act. Thereafter, the notice under Section 9(4) of the Act along with draft statement under Section 9(1) was issued. It was also served on the petitioner on 04.12.1989. Accordingly, they declared the extent of 2549 sq.metre of land as excess out of the total extent of 4049 sq.metre after deducting eligible holding of 1500 sq.metre. Therefore, the petitioner filed an appeal under Section 33 of the Act, before the first respondent as against the notice issued under Section 9(5) of the Act. It was dismissed and the petitioner was not served with any proceedings thereafter. Therefore, the petitioner was under the impression that the proceedings were dropped.

5. In the meanwhile, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Tamil Nadu Act 20 of 1999) with effect from 16.06.1999. As per Section 4 of the Repealing Act, all proceedings initiated under the principal Act shall stand abated, provided, the possession of the land has not been taken over by the Government. Therefore, in view of the repealing Act, all the proceedings initiated under the Act shall stand abated.

6. A perusal of the counter and the learned counsel appearing on either side submitted that after issuance of notice under Section 9(4) of the Act along with draft statement under Section 9(1) of the Act and the same was duly served on 04.12.1989. However, the petitioner did not file any objection on receipt of the notice. Therefore, the order has been passed under Section 9(5) of the Act, to acquire the excess land of 2549 sq.metre after allowing the family entitlement of 1500 sq.metre. Thereafter, the final statement under Section 10(1) of the Act was issued on 28.01.1991. A notification under Sections 11(1) and 11(3) were issued and duly published in the Tamil Nadu Government Gazette dated 24.06.1992 and 09.09.1992 respectively. The notice under Section 11(5) of the Act was sent by Registered Post with Acknowledgment Card to the land owner on 20.10.1992. However, it was returned as "not claimed" and after a lapse of two years, the possession of the excess vacant land ad-measuring 2549 sq.metre was handed over to the Deputy Tahsildar, Urban Land Tax, Salem Taluk on 13.04.1994.

7. On the request of the Director of Tamil Nadu Fire Service and Rescue Department, the subject land was handed over



for construction of permanent building for Divisional Office and Dwelling units to the officials and staffs as recommended by the Government, to allot in favour of the Tamil Nadu Fire Service and Rescue Department by G.O.Ms.No.140, dated 20.02.1998.

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8. The learned counsel for the petitioner submitted that in the year 2000 by the proceedings dated 29.08.2000, the petitioner was issued patta, in respect of the entire property, which was purchased by the petitioner. In fact, on receipt of the notice under Section 9(5) of the Act, the petitioner filed an appeal on 23.05.1990 and the same was dismissed. Therefore, it cannot be said that the petitioner never raised any objections against the notice under Section 9(5) issued by the respondents. After issuance of patta, the respondents and other revenue officials attempted to take physical possession of the property. Therefore, the petitioner filed a suit in O.S.No.444 of 2005 for permanent injunction. In the said suit, on the request of the petitioner, an advocate commissioner was appointed and he inspected the suit property. By the Advocate Commissioner's report dated 01.06.2005, it has been categorically mentioned that the entire properties were in possession and enjoyment of the petitioner. There are three rooms in the first floor of the main building and there is a hall having two entrances facing towards East. The total extent of the suit property is nearly one acre. He further produced the report with plan and rough sketch, which mentioned that the entire building was covered with compound wall to a height of ten feet and there is a Table Tennis Court in the hall.

9. He also produced the receipt of property tax, which was being paid by the petitioner regularly even till today. The petitioner also produced so many documents to prove their possession and enjoyment of the subject property. Therefore, the physical possession of the subject land is very much with the petitioner even till today. Insofar as the compensation is concerned, the petitioner was never paid any compensation for the alleged acquisition of excess land. In fact, the Tamil Nadu Fire Service and Rescue Department, had issued No Objection Certificate for the petitioner dated 14.10.2014, for the club activities and the indoor stadium for sports activities. Therefore, he contended that when the stand of the respondents is taken into account i.e., the alleged excess land was already allotted to the Tamil Nadu Fire Service and Rescue Department for construction of Divisional office and Dwelling units to the officials and staffs and the Tamil Nadu Fire Service and Rescue Department would not have issued No Objection Certificate, that too after thorough inspection of the petitioner premises. After issuance of notice under Section 9(5) of the Act, the petitioner preferred an appeal on 23.05.1990 before the first respondent and objected the acquisition of excess land on the ground that



there is no vacant land available in the petitioner's club.

10. The respondents without even any inspection and without even measuring the land, fixed the area ad-measuring 2549 sq.metre is excess vacant land in Survey Nos. 15 part, 20/2, 20/4. However, the said appeal was dismissed. It shows that the petitioner raised objections under Section 9(5) of the Act. However, the enquiry was conducted and the notice was issued under Section 10(1) of the Act on 28.01.1991. The notification under Sections 11(1) and 11(3) were also issued and published in the Tamil Nadu Government Gazette dated 24.06.1992 and 09.09.1992 respectively. The crucial portion of the issue is that the notice under Section 11(5) of the Act, whether issued to the petitioner or not.

11. According to the respondent on 20.10.1992, the said notice was sent to the petitioner by Registered Post with Acknowledgment Card and it was returned as "not claimed". After a lapse of two years, the possession of the excess land ad-measuring 2549 sq.metre was handed over to the Deputy Tahsildar, Urban Land Tax, Salem Taluk on 13.04.1994. As stated supra, the petitioner has produced a volume of documents to prove their possession and enjoyment even till today. Though the petitioner filed a suit in O.S.No.444 of 2005 for permanent injunction on the file of the I Additional District Munsif Court, Salem and subsequently it was withdrawn by the petitioner. Pending suit, the Advocate Commissioner was appointed and on perusal of his report revealed that the petitioner is in possession and enjoyment of the entire property by putting up compound wall to the height of ten feet. In fact, the petitioner was also issued patta for the entire extent of the property which was purchased by the petitioner under the Sale Deed dated 19.02.1978. Only on 26.05.2004, the revenue officials cancelled the patta issued in favour of the petitioner and thereafter ordered to mutate the revenue records in favour of the authorities concerned.

12. The Director of Tamil Nadu Fire Service and Rescue Department had requested to allot the said land for construction of building for Divisional office and Dwelling units to the officials and staffs and accordingly the committee decided to recommend the subject property for allotment in favour of the Tamil Nadu Fire Service and Rescue Department, at free of cost as per G.O.Ms.No.140, dated 20.02.1998. However, the possession is very much with the petitioner and the petitioner was issued patta by an order dated 29.08.2000. Thereafter, on 14.10.2014, the petitioner was issued No Objection Certificate by the District Fire Service and Rescue Department, Salem. If at all the subject land was taken possession from the petitioner and handed over to the authorities concerned, the District Fire Service and Rescue Department would not have issued patta in



favour of the petitioner for the very same property. Thus, it is clear that the possession and enjoyment of the property is very much with the petitioner.

13. The Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 was repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Tamil Nadu Act 20 of 1999) with effect from 16.06.1999. If the possession of the land which was acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978, shall had not been taken, the proceedings initiated under the principal Act shall stand abated. Insofar as the compensation is concerned, on perusal of the counter, nothing whispered about the payment of compensation in favour of the petitioner. Therefore, the entire proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 shall stand abated as per Section 4 of the repealing Act.

14. The respondents are directed to effect mutation of revenue records in favour of the petitioner and order to issue patta in favour of the petitioner in respect of the property comprised in R.S.No.15, 20/2, 20/4 in Ward - B, Block - 17 within a period of four weeks from the date of receipt of a copy of this order.

15. In the result, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Lpp/mn

To

1. The Competent Authority,
Urban Land Ceiling cum-Assistant
Commissioner, Urban Land Tax,
Salem.
Now merged with the Assistant Commissioner,
Land Reforms and Urban Land Tax,
54, Thanga Perumal Street,
Sri.Ambal Thirumana Mandapam (Upstairs)
Erode 636 001.



2. The Special Commissioner and
Commissioner, Urban Land Ceiling,
And Urban Land Tax,
Ezhilagam, Chepauk,
Chennai - 600 005.

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+1cc to Mr.P.Jegadeesan, Advocate, S.R.No.51807

W.P.No.19946 of 2005
and
W.M.P.No.21727 of 2005

BR(CO)
SU(02/11/2021)