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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NOS.2838, 2839 OF 2013

AND

M.P.NOS.1, 2 OF 2013

Mounammal ... Petitioner in W.P.No.2838
of 2013

Thirumalai ... Petitioner in W.P.No.2839
of 2013

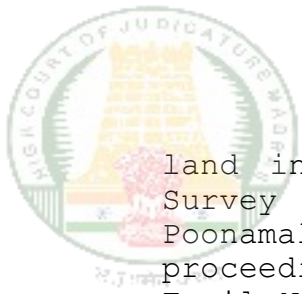
.Vs.

1. The Principal Secretary and Commissioner,
Land Reforms, Chepauk,
Chennai- 600 005.
2. The Assistant Commissioner (U.L.T),
Competant Authority,
Urban Land Ceiling,
Poonamallee Zone,
No.5, Sannathi Street,
II Floor, Poonamallee,
Chennai - 600 056.
3. The Tahsildar,
Poonamallee Taluk,
Poonamallee,
Chennai - 600 05.

... Respondents in
both WP's

Prayer in W.P.No.2838 of 2013:-

Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 2nd respondent under Section 9(5) dated 19.08.1996 Vide Na.Ka.No.2327/96/D, final statement under Section 10(1) dated 10.02.1997 Vide Rc.2327/96/D and Notice under Section 11(5) dated 30.09.1997 Vide Rc.2327/96/D of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of excess vacant



land in Survey No.13 measuring an extent of 3000 Sq.Mts and Survey No.18/1A1B4 measuring 600 Sq.mts of Amudurmedu Village, Poonamallee Taluk and quash the same thereby treating the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban land (Ceiling & Regulation) Repeal Act (Act 20 of 1999), and direct the 3rd respondent herein, to correct the entries in the revenue records by incorporating the name of the Petitioner as owner of the lands referred to above.

Prayer in W.P.No.2839 of 2013:-

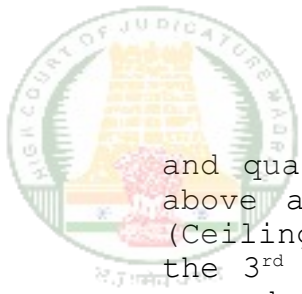
Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 2nd respondent under Section 9(5) dated 19.08.1996 vide Na.Ka.No.2327/96D, final statement under Section 10(1) dated 10.02.1997 Vide RC.2327/96D and Notice under Section 11(5) dated 30.09.1997 vide RC.2327/96D of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of excess vacant land in Survey No.18/1B1B2 measuring an extent of 1550 Sq.Mts. of Amudur Medu Village, Poonamallee Taluk and quash the same thereby treating the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) and direct the 3rd respondent herein, to correct the entries in the revenue records by incorporating the name of the Petitioner as owner of the land in the Survey No.18/1B1B2 measuring 37 cents or 1550 Sq.Mts. of Amudur Medu Village, Poonamallee Taluk.

For Petitioner : Mr.V.Ramesh
in both WP's

For Respondents : Mr.M.R.Gokul Krishnan
in both WP's Government Advocate

C O M M O N O R D E R

The W.P.No.2838 of 2013 is filed to issue Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 2nd respondent under Section 9(5) dated 19.08.1996 Vide Na.Ka.No.2327/96/D, final statement under Section 10(1) dated 10.02.1997 Vide Rc.2327/96/D and Notice under Section 11(5) dated 30.09.1997 Vide Rc.2327/96/D of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of excess vacant land in Survey No.13 measuring an extent of 3000 Sq.Mts and Survey No.18/1A1B4 measuring 600 Sq.mts of Amudurmedu Village, Poonamallee Taluk



and quash the same thereby treating the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999), and direct the 3rd respondent herein, to correct the entries in the revenue records by incorporating the name of the Petitioner as owner of the lands referred to above.

2. The W.P.No.2839 of 2013 is filed to issue Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 2nd respondent under Section 9(5) dated 19.08.1996 vide Na.Ka.No.2327/96D, final statement under Section 10(1) dated 10.02.1997 Vide RC.2327/96D and Notice under Section 11(5) dated 30.09.1997 vide RC.2327/96D of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of excess vacant land in Survey No.18/1B1B2 measuring an extent of 1550 Sq.Mts. of Amudur Medu Village, Poonamallee Taluk and quash the same thereby treating the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) and direct the 3rd respondent herein, to correct the entries in the revenue records by incorporating the name of the Petitioner as owner of the land in the Survey No.18/1B1B2 measuring 37 cents or 1550 Sq.Mts. of Amudur Medu Village, Poonamallee Taluk.

3. The case of the petitioner in W.P.No.2838 of 2013 is that the petitioner claimed the property comprised in Survey No.13 to an extent of 74 cents and in Suvey No.18/1A1B4 to an extent of 15 cents situated at Amudurmedu Village, Poonamallee Taluk originally owned by one Murugesu Naicker. Thereafter, he settled the properties in favour of his wife and two daughters by the settlement deed dated 26.03.1987 registered vide Document No.6918 of 1988.

4. Likewise, the petitioner in W.P.No.2839 of 2013 claimed the property comprised in Survey No.18/1B1/B2 admeasuring to an extent of 37 cents originally belong to his father Jayarama Naicker. These properties herein called after subject property bearing under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 24 of 1978.

5. Heard Mr.V.Ramesh, the learned counsel for the petitioner and Mr.M.R.Gokul Krishnan, Government Advocate for the respondents in both writ petitions.

5. The person who purchased the part of the land comprised in Survey Nos.11/2, 11/5 the same proceedings from the said Jayarama Naicker challenge the acquisition proceedings before this Court in W.P.No.36751 of 2007. On the very same ground, the present writ petitions have been filed by the petitioners. This Court allowed the writ petition and quashed the acquisition



proceedings by an order dated 06.12.2012 and the same also confirmed by the Hon'ble Division Bench of this Court in Writ Appeal in W.A.No.488 of 2016 by an order dated 25.04.2016.

6. The relevant portions of the order in W.P.No.36751 of 2007 hereby extracted hereunder:

"9. Records were perused. It is seen that notice was sent to Jayarama Naicker. The records do not reveal the service of notice either on Jayarama Naicker or on the petitioner. Since the petitioner is the owner of the property and he is in possession of the property, he should have been issued notice. Non-service of notice on the owner or the persons in possession has to surrender the possession within 30 days from the date of the service of the notice. Therefore, the service of notice is mandatory. In the absence of service of notice either on the petitioner or on the Jayarama Naicker, vendor of the petitioner, it cannot be said that the respondent took possession on 14.06.1999. Though, it has been categorically stated in the counter that Section 7(2) notice was received by Tmt.Ponniammal wife of Jayarama Naicker on 03.01.1996 and the proceedings under Section 9(5) dated 19.08.1996 was received by Selvi J.Valli daughter of Jayarama Naicker dated 22.01.1997 and a final statement under Section 10(1) of the Act dated 25.02.1997 was received by Arachelvi daughter of the owner of urban land, on 26.04.1997, no details of name, as to whom Section 11(5) notice was served upon, was given. The counter affidavit merely states that notice under Section 11(5) of Principal Act was issued on 29.12.1998. There is no statement with regard to service of notice. Therefore, Section 11(5) of the Act is not complied with. In view of the fact that the petitioner remains in possession and the respondent could not have taken possession on 14.06.1999. Moreover, there is no proof for having taken possession. Therefore, the alleged possession is only a paper possession. Actual possession as per procedure contemplated under the Act has to be taken. The issue is covered by a number of judgments including the Division Bench judgment of this Court in G.Krishnamoorthy and others vs. Government of Tamil Nadu, rep. by its Secretary, Revenue Department, Chennai and others reported



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in (2009) 8 MLJ 85, wherein it has been stated that notice under Section 11(5) of the Act is mandatory. In the absence of that, the entire proceedings is vitiated. The taking over of possession is completed only land owner signed in the land delivery receipt while delivering the excess land pursuant to the notice under Section 11(5) of the Act. In the absence of service of Section 11(5) notice, it must be held that possession was not taken by the Government. In this case, as stated above, the records do not reveal that service of notice on the owner or the person in possession was effected and there is no land delivery receipt signed by the owner for having delivered the excess land.

10. The other judgments are in K.Lakshmanan and 72 others vs. State of Tamil Nadu and others reported in 2010-4-L.W.124 and in Tmt.K.C.Anathammal vs. The Principal Commissioner and Commissioner of Land Reforms, Chepauk reported in 2010-1-L.W.892. The mandatory provision under Section 11(5) was not complied with and the possession remains with the petitioner. In that event the petitioner is entitled to benefit under Section 4 of the repealing Act. Therefore, the writ petition is allowed as prayed for. No costs. Consequently, the connected M.P.No.1 of 2007 is closed."

7. Aggrieved by the same, the respondents challenged the W.A.No.488 of 2016 of the Hon'ble Division Bench of this Court held as follows:

"6. As rightly held by the learned Single Judge, there is no material available to establish the issuance of notice under Section 11 (5) of the Act to the land owner or the respondent and taking physical possession of the property from them. In the above circumstances and in the absence of any evidence for taking physical possession, the respondent/writ petitioner is entitled to the benefit under Section 4 of the repealing Act viz., Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20/1989, repealing the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976. In the above circumstances, there is no infirmity or irregularity in the order passed by the learned Single Judge and we do not find any reason to



interfere with the order of the learned Single Judge. Hence, the writ appeal fails and consequently, the same is dismissed. No costs. The connected miscellaneous petition is closed."

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8. The writ petitioners raised the same grounds under the same proceedings initiated under the New Act. In view of the above, the order of the 2nd respondent under Section 9(5) dated 19.08.1996 Vide Na.Ka.No.2327/96/D, final statement under Section 10(1) dated 10.02.1997 Vide Rc.2327/96/D and Notice under Section 11(5) dated 30.09.1997 Vide Rc.2327/96/D of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of excess vacant land in Survey No.13 measuring an extent of 3000 Sq.Mts and Survey No.18/1A1B4 measuring 600 Sq.mts and in Survey No.18/1B1B2 measuring an extent of 1550 sq.mts. of Amudurmedu Village, Poonamallee Taluk set aside. The third respondent is directed to restore the entries in the Revenue Records by incorporating the name of the petitioner as owner of the lands in the said Survey Numbers within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, these writ petitions are allowed. Consequently, the connected miscellaneous petitions are also closed. No order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rna

To

1. The Principal Secretary and Commissioner,
Land Reforms, Chepauk,
Chennai- 600 005.
2. The Assistant Commissioner (U.L.T),
Competant Authority,
Urban Land Ceiling,
Poonamallee Zone,
No.5, Sannathi Street,
II Floor, Poonamallee,
Chennai - 600 056.



3. The Tahsildar,
Poonamallee Taluk,
Poonamallee,
Chennai - 600 05.

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+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.42358
+1cc to the Government Pleader, S.R.No.42690

W.P.NOS.2838, 2839 OF 2013 AND
M.P.NOS.1, 2 OF 2013

KG (CO)
PBS/22/09/2021