

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition Nos.21905 and 21907 of 2019

W.P.No.21905 of 2019

M.Abdul Kareem

... Petitioner

-Vs-

1 The State Rep. by its Secretary
Government of Tamil Nadu,
Department of Revenue,
Fort St.George Chennai-600 009

2 The Commissioner
Urban Land Ceiling and Land Tax,
Chepauk,
Chennai-600 005

3 The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Poonamallee Zone,
No.5, Sannadhi Street,
Poonamallee, Chennai-600 056.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd Respondent of his proceedings dated 29.08.2018 bearing ref.no.Na.Ka.585/2018/E and quash the same and consequently direct the 3rd Respondent to consider the representation of the Petitioner dated 20.06.2008 made under the Innocent buyer scheme of GO(MS) No.565 dated 26.09.2018 and pass orders on merits for regularisation of land pertaining to the property situated at No. 51, Thirumullaivayal village, Avadi Taluk, Thiruvallur District comprised in Survey Number 218/4A1 measuring an extent of 634 Square feet.

W.P.No.21907 of 2019

M.Abdul Kalam Asadh

... Petitioner

-Vs-

- 1 The State Rep. by its Secretary
Government of Tamil Nadu,
Department of Revenue,
Fort St.George Chennai-600 009
- 2 The Commissioner,
Urban Land Ceiling and Land Tax,
Chepauk, Chennai-600 005
- 3 The Assistant Commissioner
Urban Land Ceiling and Urban Land Tax
Poonamalle Zone, No.5,
Sannadhi Street, Poonamallee,
Chennai-600 056.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd Respondent of his proceedings dated 29.08.2018 bearing ref.no.Na.Ka.585/2018/E and quash the same and consequently direct the 3rd Respondent to consider the representation of the Petitioner dated 20.06.2018 made under the Innocent buyer scheme of GO(MS) No.565 dated 26.09.2008 and pass orders on merits for regularisation of land pertaining to the property situated at Number 51 Thirumullaivayal village, Avadi Taluk, Thiruvallur District comprised in Survey Number 218/4A1 measuring an extent of 653 Square feet.

For Petitioners : M/s.Ganesh and Ganesh
in both W.P.s

For Respondents : Mrs.K.Bhuvaneswari
in both W.P.s Additional Government Pleader

O R D E R

(The case has been heard through video conference)

These Writ Petitions have been filed challenging the order passed by the 3rd respondent rejecting the petitioners applications filed under the Innocent Buyer Scheme, in G.O.Ms.No.565 dated 26.09.2008.

2. According to the petitioners, the land in Survey No.218/4A1, Thirumullaivoyal Village, Avadi taluk, Thiruvallur District, originally belonged to one Srinivasan and others, and they have sold the property to one Mr.A.Mohamed Hanifa. Subsequently, the petitioners' mother Mrs.T.M.Hawaa Beevi, purchased the same on 23.04.1998, through a registered sale deed. Subsequently, the petitioner's mother divided the land into two plots and executed two settlement deeds in respect of

634 sq.ft. and 653 sq.ft. respectively in favour of petitioners, who are her sons. Thereafter, they came to know that the land was subject to urban land ceiling proceedings, and the land was acquired under Tamil Nadu Urban Land Ceiling Act. Hence, the petitioners have made representations to the 3rd respondent seeking to regularise the said property as per G.O.Ms. No.565, dated 26.09.2008, and representations came to be rejected by the 3rd respondent on the ground that, the above said G.O. only applicable for the property sold by sale and it would not be applicable to the cases, where the title was transferred by way of settlement, gift, partition or Will. Since the petitioners have obtained the property by way of settlement deed, it would not come under the purview of the above said G.O. and the cannot sought for regularisation. Challenging the said order, the present Writ Petitions have been filed by the petitioners.

3. The learned counsel appearing for petitioners would submit that originally, the petitioners' mother purchased the property innocently without knowing the fact that the land was subject to urban land ceiling proceedings. Subsequently, she had settled the property in favour of petitioners measuring an extent of 634 sq.ft. and 653 sq.ft. respectively and applied for regularisation under the said G.O., which does not prohibit transfer of title by way of settlement deed, and the 3rd respondent ought not to have rejected the petitioners request for regularisation of their lands. In support of his contentions, the learned counsel has relied upon the order passed by this Court in W.P. No.25319 of 2018, and the relevant portion of the order reads as follows :-

"A careful reading of the Government Order would go to show that it has been issued only to protect the interests of the innocent purchasers who had/have purchased the lands covered under the Urban Land Ceiling Act, 1978. As already stated above, in the instant case, the parents of the petitioner had purchased the house plots in questing in the year 2000 and they had subsequently settled the same in favour of their own son, the petitioner herein. If the parents of the petitioner had died intestate, the petitioner, who is the son of the deceased parents, is entitled to inherit the property can apply for regularisation of land/plot. As already discussed above, the 1st respondent had rejected the application of the petitioner only on the ground that the petitioner had not acquired title by sale. The reason cited by the 1st respondent in his order impugned in this writ petition is untenable as the Government Order contemplates relief to such of those persons, who have purchased small pieces of land being unaware of the fact that the lands were subject matter to Urban Land Ceiling proceedings. In the considered opinion of this court,

the parents of the petitioner were not urban land owners, they were, after all, innocent purchasers. It is not the case of the respondents that in order to avoid the acquisition proceedings under the Urban Land Ceiling Act, the settlement deed came into being. Therefore, the distinction sought to be drawn by the respondent is untenable and has to be rejected."

4. The learned Additional Government Pleader appearing for respondents would vehemently submit that, the said G.O. is applicable only in respect of transfer of property by way of sale and it would not cover the title transferred by way of settlement, gift or will. Hence, the 3rd respondent has rightly rejected the petitioners representations.

5. I have considered the rival submissions and perused the records carefully.

6. The issue involved in this Writ Petition has already been decided by this Court in W.P.No. 25319 of 2018, dated 09.10.2018. The above order has also been followed in other Writ Petitions viz., W.P.Nos.7777 of 2019 and 3943 of 2019. In the above circumstances, even the transfer of properties made by way of Settlement or Will, also come under the purview of G.O.Ms. No.565, and the respondents cannot refuse to regularise the same on the ground that the property was transferred by way of settlement. In the said circumstances, the impugned order passed by the 3rd respondent is set aside and the respondents are directed to regularise the petitioners plots under G.O.Ms.No.565, if the applications are otherwise in order within a period of twelve weeks from the date of receipt of the copy of this order. Accordingly, these Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rpp

To

- 1 The Secretary
Government of Tamil Nadu,
Department of Revenue,
Fort St.George Chennai-600 009

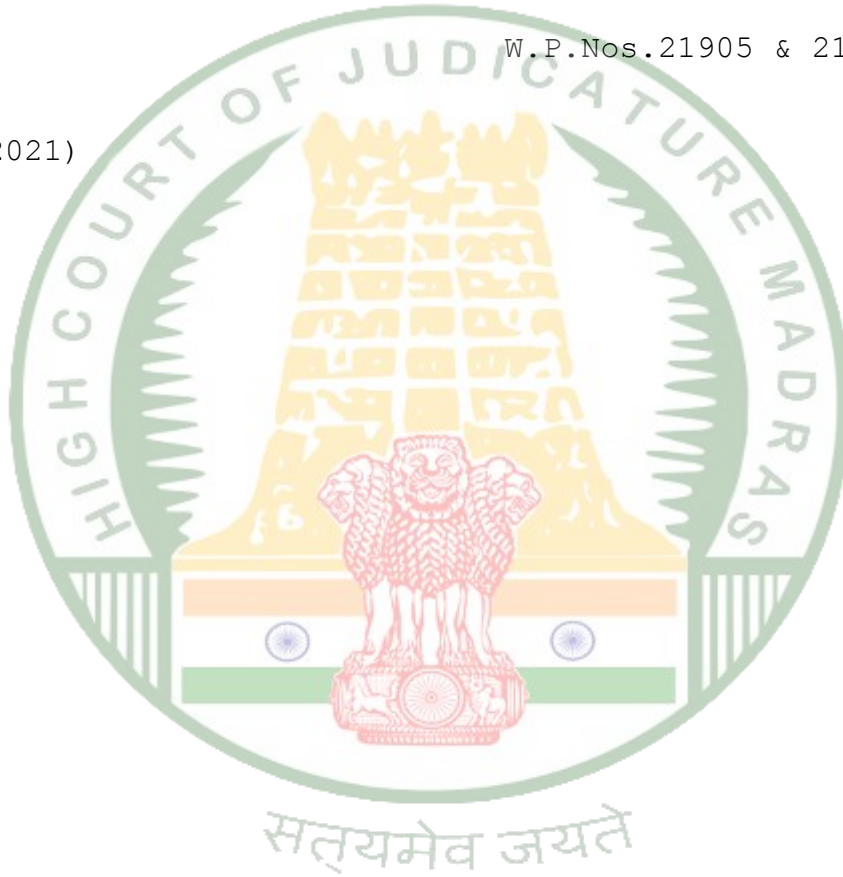
WEB COPY

- 2 The Commissioner,
Urban Land Ceiling and Land Tax,
Chepauk, Chennai-600 005
- 3 The Assistant Commissioner
Urban Land Ceiling and Urban Land Tax
Poonamalle Zone, No.5,
Sannadhi Street, Poonamallee,
Chennai-600 056.

+1cc to M/s.Ganesh & Ganesh, Advocate, S.R.No.26578
+1cc to the Government Pleader, S.R.No.27074

W.P.Nos.21905 & 21907 of 2019

BR(CO)
CB(12/07/2021)



WEB COPY