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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.4006 of 2014 and
MP.No.1 of 2014

B.S.Saravanan

...Petitioner

Vs.

1. The State of Tamilnadu, rep. by its
The Secretary to Government,
Revenue Department, Fort St.George,
Chennai 600 009
2. The Special Commissioner & Land Reforms,
Chepauk, Chennai 600 005
3. The Competent Authority/Asst.Commissioner,
(Urban Land Ceiling and Urban Land Tax),
Tondiarpet Zone at No.248, E.V.R.High Road,
Aminjikarai, Chennai 600 029
4. The Tahsildar,
Perambur - Purasawalkam Taluk,
Perambur, Chennai 600 011

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings viz., (1) Order issued under Section 9(5) in No.C1/2261/85 dated 27.09.1986 and (2) order issued under Section 11 in No.B1/2261/85 dated 11.03.1991 passed by the third respondent and quash the same as null and void and stands abated in view of Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulations) Repeal Act, 1999 (namely T.N.Act 20 of 1999) and consequently direct the fourth respondent to issue patta in favour of the petitioner in respect of his property viz., the vacant plot of land bearing plot No.6, Block No.3, comprised in Old Survey No.2, Town Survey No.12/part, sub-divided survey No.12/1C and 1D measuring 2686 sq.ft. situated at Sembiam Village, Telephone Colony, Chennai.

For Petitioner	: Mr.K.Premkumar
For Respondents	: Mr.M.R.Gokul Krishnan, Government Advocate



ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings viz., (1) Order issued under Section 9(5) in No.C1/2261/85 dated 27.09.1986 and (2) order issued under Section 11 in No.B1/2261/85 dated 11.03.1991 passed by the third respondent and quash the same as null and void and stands abated in view of Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulations) Repeal Act, 1999 (namely T.N.Act 20 of 1999) and consequently direct the fourth respondent to issue patta in favour of the petitioner in respect of his property viz., the vacant plot of land bearing plot No.6, Block No.3, comprised in Old Survey No.2, Town Survey No.12/part, sub-divided survey No.12/1C and 1D measuring 2686 sq.ft. situated at Sembiam Village, Telephone Colony, Chennai.

2. The case of the petitioner is that the petitioner's land comprised in Old Survey No.2, Sembiam Village to an extent of 23 grounds and 1760 sq.ft originally belong to one M.Subramaniam, having purchased by way of two sale deeds dated 07.11.1968 and 25.11.1968 registered vide document Nos.4103 of 1968 and 4342 of 1968 at the Office of the Sub Registrar, Sembiam. He laid out the same into house plots. One of the house plots was No.6 purchased by one, Gandhamani by the registered sale deed dated 15.06.1981 registered vide document No.2807 of 1981. She died intestate on 13.11.1988 leaving behind her husband, sons, daughter as her legal heirs to succeed her estate. The husband and one daughter have relinquished their right in favour of other two brothers by the release deed dated 19.12.2011 registered vide document No.5261 of 2011. In turn, the petitioner purchased the said property from them by the registered sale deed dated 13.12.2012 registered vide document No.3656 of 2012. In pursuant to the said sale, the petitioner applied for patta for the subject property and he was refused to issue patta for the reason that the said subject property was under the proceedings of the Land Ceiling Act. In fact, other persons who purchased the remaining plots, constructed house and obtained electricity, water and drainage connections and also assessed the property tax by the Corporation of Chennai. Therefore, the petitioner filed his application seeking information under the Right to Information Act.

2.1 The further case of the petitioner is that the second respondent by his reply dated 11.12.2013, furnished the copies of the proceedings initiated under Sections 9 (5) and 7(5) of the Tamilnadu Urban Land (Ceiling & Regulations) Act, 1978 (hereinafter called as 'the Act'). The said proceedings revealed that the proceedings under the Act has been initiated under Section 7 (3) of the Act on 10.08.1981 directing erstwhile owner



of the said property to file his statement in Form-I as required under Section 7(1) of the Act. In fact, the Sub Registrar reported vide Form-I, the sale deeds executed in favour of several persons. The draft statement under Section 9(1) of the Act states that an extent of 3854.7 sq.meters in RS.No.12/1C, 12/1D of Block 3 of Sembiam Village was declared to be in excess of ceiling limits. Notice under Section 9(4) of the Act was issued to the said M.Subramaniam (erstwhile) on 08.11.1983 and the same was returned as unserved. Again fresh notice was sent to him and the same was received on 06.05.1986. On receipt of the same, statutory time limit of 30 days expired on 04.06.1986 determining the extent of the excess land. Thereafter Form VII notice under Section 11(3) of the Act was sent to him. Thereafter, no compensation was paid to him.

3. The respondents filed counter and stated that the petitioner is the subsequent purchaser of the subject property and as such he has no locus to question the acquisition proceedings. The present writ petition has been filed only in the year 2014. The original owner of the property i.e. vendor of the subject property did not file any objection to the acquisition proceedings and as such it had attained finality in the year 1991. The petitioner without even perusing the revenue documents, mechanically purchased the subject property with intention to usurp the Government land. On the date of commencement of the Act, the subject property stood in the name of M.Subramaniam. On receipt of the said Form XIII, revealed that original owner sold a portion of the land in favour of one, Sanislaw. He did not file any return as contemplated under Section 7 (1) of the Act. Therefore, the notice under Section 7 (2) of the Act was issued and the same was acknowledged by him on 25.08.1981. Even then, no objections were received from him. Thereafter, other subsequent sales in respect of subject property to one, Kannabiran and Venkatesan were also reported in Form XIII by the concerned Sub Registrar. Therefore, other notice dated 24.09.1982 was issued to the land owner to appear for enquiry, and the same was received by him on 01.10.1982 and on receipt of the same, he did not respond and remained silent.

3.1 Therefore, excess land held by him was determined at 3854.7 sq.mtrs comprised in T.S.No.12/1C and 12/1D of Block No.3 situated at Sembiam Village after allowing 500 sq.mtrs towards entitlement. Accordingly, draft statement under Section 9(1) and notice under Section 9(4) of the Act were issued on 08.11.1983. Both were returned and hence again notices were issued on 27.03.1985. Both were received on 06.05.1986 and he did not file any objections. Therefore, the authority concerned passed order under Section 9(5) of the Act dated 27.09.1986 determining 3854.7 sq.mtrs as excess. Final statement under Section 10(1) of the Act was issued on 30.03.1988 and the same was served to him



on 07.05.1988. Thereafter, the notice under Section 11(1) of the Act was issued on 15.06.1988 and Section 11(3) of the Act was issued on 12.06.1990. It was published in the Tamilnadu Government Gazette on 11.07.1990 and thereafter the subject land vested with the Government with effect from 12.06.1990 free from all encumbrances. Final notice under Section 11 (5) of the Act was issued to him on 11.03.1991 and the same was returned. Thereafter, the possession of the excess vacant land admeasuring 1168 sq.mtrs. in TS.No.12/12 and 2687.7 sq.mtrs in TS.No.12/10 were handed over to the Revenue Inspector of Perambalur on 19.09.1991. Notice under Section 12(7) of the Act was issued to him on 25.04.1992 and the order under Section 12(6) of the Act determining the amount payable for acquiring the land were issued on 13.05.1992.

3.2 In fact, the petitioner encroached the subject property and he was evicted on 30.09.2013. Accordingly, proposal was sent to the Commissioner to allot the land for Civil Supplies Department dated 30.09.2013. Therefore, the petitioner is being the subsequent purchaser filed this writ petition challenging the above said proceedings with regards to the land in survey No.12/1C and 12/1D admeasuring 2686 sq.ft. In fact, after taking possession of the subject property, it was handed over to the revenue authorities on 19.09.1991 and thereafter the revenue records were mutated accordingly. The possession of the subject property was handed over well before the commencement of the Repeal Act and Section 4 of the Repeal Act cannot be applied to this case. When the original land owner, on receipt of final notice issued under Section 11 (5) of the Act and failed to file any objections, the issue of proceedings under Section 11 (6) of the Act was not necessary. After taking possession, notice under Section 12(7) of the Act was issued on 25.04.1992 to determine the amount payable under Section 12 (6) of the Act. Subsequently, orders under Section 12 (6) of the Act was issued on 13.05.1992 determining the amount payable for the acquired land. Therefore, prayed for dismissal of the writ petition.

4. The learned counsel for the petitioner submitted that the Sub Registrar of Sembiam reported vide Form-I about the sale of subject land to various persons by the original owner, M.Subramaniam even before passing the impugned proceedings. Therefore, the third respondent had knowledge over the sale and purchases of the subject property. Even till today, no compensation was paid to the land owner and the possession has not been taken over from the land owner. The entire proceedings are illegal, without jurisdiction in view of Section 4 of the Repealing Act, 20 of 1999 as on 16.09.1999. The respondents failed to follow the procedures as contemplated under Sections 11 (5) and 11 (6) of the Act. Therefore, the entire proceedings as per Section 24 of the Act must be deemed to have been abated.



4.1 He further submitted that even after vesting of the land under Section 11(3) of the Act, the State has to initiate action for taking possession of the land and as per provision under Section 11 (6) of the Act, the State Government shall issue notice under Section 11(5) to any person who may be in possession to surrender and deliver possession of the land in the event of land owner or person in possession fails to deliver the land and continues to be in possession of such land. The respondents also failed to serve any notice under Section 11 (5) of the Act in the manner known to law and admittedly the notice under Section 11 (5) was issued to the erstwhile owner. It is clear that the petitioner as well as his predecessors in title have not been served notices under Section 9(4), 9(5) and 11(5) of the Act. The subject land never vested with the Government and the possession is continuing with the petitioner and there is absolutely no proof to show that possession has been delivered to them.

5. Heard, K.Premkumar, the learned counsel of the petitioner, and Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents.

6. The petitioner is the subsequent purchaser of the subject property by the registered sale deed dated 13.12.2012 registered vide document No.3656 of 2012 at the Office of the Sub Registrar, Sembiam. Thereafter, he obtained the impugned order in this writ petition through Right to Information Act from the respondents. The proceedings were initiated under the Tamilnadu Urban Land (Ceiling and Regulations) Act, 1978 (TN Act 24 of 1978). It was repealed by the Tamilnadu Urban Land(Ceiling and Regulations) Repeal Act, 1999 (Tamilnadu Act 20 of 1999) (hereinafter called as 'Act and Repeal Act' in short). The Repeal Act came into force on 14.06.1999. The petitioner challenged the impugned orders passed under Section 9 (5) of the Act and 11 (3) of the Act issued by the third respondent herein and for direction directing the fourth respondent to issue patta in favour of the petitioner in respect of the subject property. Admittedly, the property comprised in old survey No.2 to an extent of 23 grounds and 1760 sq.ft originally purchased by one, Subramaniam by the registered sale deed dated 07.11.1968 and 25.11.1968 registered vide document Nos.4103 of 1968 and 4342 of 1968. Thereafter he laid out the subject property and divided into house plots. The house plot No.6, Block No.3 comprised in old survey No.2, Town survey No.12/1C and 12/1D admeasuring 2686 square feet was purchased by one, Ganthamani. After her demise, two of her legal heirs relinquished their right in favour of two other legal heirs. From the two legal heirs, the petitioner purchased the said property by the registered sale deed dated 13.12.2012 vide document No.3656 of 2012.



7. Impugned proceedings under Section 9 (5) of the Act was initiated on 27.09.1986. Before that, notices under Sections 9 (4) and 9(1) of the Act were issued on 27.03.1985. On perusal of the said proceedings revealed that the original land owner was issued notice under Section 9(4) of the Act. Thereafter, Sub Registrar of Sembiam submitted Form-I about the sale of the subject property to various persons by the said M.Subramaniam, original owner before passing the impugned proceedings. Therefore, the third respondent had knowledge about the sale and purchase of the lands by various purchasers.

8. To decide the points raised by the petitioner, it is necessary to extract Section 11 of the Act and Sections 3 and 4 of the Repeal Act hereunder:

"(1) As soon as may be after the service of the final statement under section 10 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(i) such vacant land is to be acquired by the State Government ; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Tamil Nadu Government Gazette, and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent W.A.Nos.970 and 1738 of 2017 authority in pursuance of the notification published under sub-section (I), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (I) the competent authority may, by notification in the Tamil Nadu Government Gazette, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such



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declaration, such land shall be deemed to have vested absolutely in the State Government free from all with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3):

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary."

Repeal Act, Section 3 and 4 read as under:-

"3. Savings.— (1) The repeal of the principal Act shall not affect—

(a) the vesting of any vacant land under sub-section (3) of section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 21 or any action taken thereunder.

(2) Where— (a) any land is deemed to have vested in the State Government under sub-section (3) of section 11 of the principal Act but possession of which has not been taken over by the



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State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings.— All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or any authority shall abate: Provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

9. In this regard, the Hon'ble Division Bench of this Court in writ appeal Nos.970 and 1738 of 2017 relied upon the judgment of the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh Vs. Hari Ram reported in (2013) 4 SCC 280. In the said case, the Hon'ble Supreme Court of India held that though Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1978, which is para-materia to Section 11(3) of the Ceiling Act, the vacant land is deemed to be acquired, it does not mean that the possession of the land has been taken over. The procedure contained under sub section 5 and 6 of the Central Act must be scrupulously followed. Section 10 (5) of the Central Act which is para-materia to Section 11(5) of the Ceiling Act stipulates that any vacant land even if vested in the State under sub section (3), the competent authority has to by notice on writing or any person who may be in possession of it to surrender or deliver possession of the land to the State Government within thirty days of the service of the notice. If the land owner failed to do, then the State Government has to follow the procedure under sub section (6) of Section 10 or Section 11 as the case may be, and take forcible possession.

10. In the case on hand, the subject land was in possession of the petitioner and his vendor, when the repeal act came in to force even if the sale deed in their favour is treated to be void, being in contravention of Section 6 of the Act. Therefore, the physical possession of the subject property was never taken over by the Government. Since it was mandatory on the part of the Government to take actual physical possession from the land



owner as contemplated under Sections 11 (5) and 11 (6) of the Act, mere vesting under Section 11 (3) does not amount to taking over of possession. Therefore, the procedure as contemplated under Sections 11 (5) and 11(6) of the Act has not been followed by the respondents. It is also not the case of the respondents that they took recourse to Section 11 (6) for taking possession forcibly from the occupier. On perusal of the counter and documents, it would show that only paper possession or symbolic possession was taken by the authorities, whereas physical possession was not at all taken from the petitioner in occupation of the subject property at any point of time. 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 Ceiling Act.

11. The Hon'ble Division Bench of this Court also observed that the Act was an Act of confiscation of land being excess and surplus area, over and above that prescribed therein, but when the Repeal Act came, the very purpose of the Repeal Act was to save the land of which possession had not been taken. In the case on hand, admittedly even though the subject land has been declared surplus, it had not been handed over to any third party or to any authority concerned, and to the contrary, possession has been retained by the petitioner and the request for issuance of patta is pending with the authority concerned. Therefore, the impugned proceedings cannot be sustained and are liable to be quashed.

12. In the result, the writ petition is allowed, and the impugned proceedings are quashed. The petitioner is entitled to claim patta for the subject land from the authority concerned. Accordingly, the fourth respondent is directed to issue patta in favour of the petitioner in respect of the vacant plot of land bearing plot No.6, Block No.3, comprised in Old Survey No.2, Town Survey No.12/part, sub-divided survey No.12/1C and 1D measuring 2686 sq.ft. situated at Sembiam Village, Telephone Colony, Chennai and also pass orders to mutate the revenue records in his favour. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

lok/drm



To

1. The Secretary to Government,
The State of Tamilnadu,
Revenue Department, Fort St.George,
Chennai 600 009
2. The Special Commissioner & Land Reforms,
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4. The Tahsildar,
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Perambur, Chennai 600 011

+1CC to Mr.K.Premkumar, Advocate, Sr.No.43444
+1CC to Government Pleader, Sr.No.43643

WP.No.4006 of 2014

PCH (CO)
K.RK. (23.09.2021)