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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.31845 of 2017

G.Mahesh

... Petitioner

-Vs-

1. The State represented by its
The Principal Commissioner,
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai - 600 005.
2. The District Collector,
Tiruvallur.
3. The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Ambattur Region,
No.5, Sannathi Street,
Poonamallee, Chennai - 600 056.
4. The Tasildhar,
Ambattur.

... Respondents

Prayer :- Writ Petition 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 third respondent vide proceeding in Na.Ka.698/2017, dated 21.08.2017 and quash the same and also direct the first to third respondents to reconvey the land in Old No.37, New No.71, New Street, Karruku Main Road, Ambattur, Chennai - 53 measuring an extent of 11 cents divided into two parts Plot No.A and Plot No.B, North side Plot measuring an extent of 2560 sq.ft. and south side Plot B measuring an extent of 2419 sq.ft comprised in Survey No.22/2A Menambedu Village, Thiruvallur to petitioner and his family.

For Petitioner : M/s.Greetha Senthil Kumar and
Mr. J. Sathiaraj

For Respondents: Mr.P.Baladhandayutham
Special Government Pleader.



ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent vide proceeding in Na.Ka.698/2017, dated 21.08.2017 and quash the same and also direct the first to third respondents to reconvey the land in Old No.37, New No.71, New Street, Karukku Main Road, Ambattur, Chennai - 53 measuring an extent of 11 cents divided into two parts Plot No.A and Plot No.B, North side Plot measuring an extent of 2560 sq.ft. and south side Plot B measuring an extent of 2419 sq.ft comprised in Survey No.22/2A Menambedu Village, Thiruvallur to petitioner and his family.

2. The property situated at Old No.37, New No.71, New Street, Karukku Main Road, Ambattur, Chennai - 53, ad-measuring 11 cents divided into two parts Plot No.A and Plot No.B, North side Plot measuring an extent of 2560 sq.ft. and south side Plot B measuring an extent of 2419 sq.ft comprised in Survey No.22/2A Menambedu Village, Thiruvallur District. The said property was derived by the petitioner's father by the registered partition deed, dated 17.09.1964, registered vide Document No.3569 of 1964 in the office of the Sub-Registrar, Sembium. After his demise, the petitioner and other legal heirs derived the title over the property and subsequently other legal heirs executed a release deed in favour of the petitioner, dated 31.12.2014, registered vide Document Nos.18060/2014 and 18061/2014, on the file of the Sub-Registrar, Ambattur. Thereafter, the petitioner and his brother approached the revenue officials for issuance of patta and they came to understand about the acquisition proceedings under Urban Land Ceiling Act, 1978. Therefore, the petitioner made a request for re-conveyance of the subject property in their favour on 27.07.2017 and the same was rejected by an order impugned in this writ petition, dated 21.08.2017.

3. The learned counsel for the petitioner would submit that the petitioner is still in possession and enjoyment of the subject property. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after called as "the Act") was enacted with a view to impose ceiling on vacant land in Urban Agglomerations and to prevent concentration of Urban Land in the hands of a few persons and speculation and profiteering therein. The petitioner's family owned properties in Survey No.165/2 situated at Meenambedu, ad-measuring 1300 sq.ft and the land comprised in Survey No.22/2A situated at Meenambedu, ad-measuring 450 sq.metres, acquired as excess lands. Whereas, the land comprised in Survey No.165/2 is an agricultural land and the land comprised in Survey No.22/2A is a dwelling house.

4. Therefore, as per Section 4 of the Urban Land (Ceiling



and Regulation) Repeal Act, 1999, when the physical possession has not been taken over under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the entire acquisition proceedings have lapsed.

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5. On written instructions from the third respondent, Mr.P.Baladhandayutham, learned Special Government Pleader submitted that father of the petitioner was the owner of the lands comprised in Survey No.22/2A and Survey No.165/2 of Meenambedu Village, ad-measuring 450 sq.metres and 1800 sq.metres respectively, in total 2250 sq.metres. He has not filed returns under Section 7(1) of the Act and as such the notice under Section 7(2) of the Act dated 16.06.1983 was issued to the petitioner's father. The notice under Section 9(4) along with statement under Section 9(1) of the Act was issued on 31.07.1986 and served to one Malliga who is none other than the mother of the petitioner herein on 02.09.1986. Thereafter, the order has been passed under Section 9(5) of the Act and the same was issued on 16.11.1990. The said order was duly served by affixture on 05.02.1991. Thereafter, the notice under Section 11(1) of the Act was issued on 13.09.1991 and published in the Tamil Nadu Government Gazette on 28.09.1994. The notification under Section 11(3) of the Act was issued on 10.02.1995 and published in the Tamil Nadu Government Gazette, dated 15.03.1995. The Final notice under Section 11(5) of the Act was issued on 01.06.1995. The possession of excess vacant land was taken and handed over to the Revenue Authorities on 23.07.1996. The possession of the land was taken and handed over to the Revenue Authorities, well before the commencement of Repeal Act, 20 of 1999, dated 16.06.1999. Therefore, the acquisition of the excess vacant land saved under Clause 3(1)(a) of the Repeal Act 20 of 1999.

6. Thereafter, the notice under Section 12(7) of the Act was issued on 31.08.1998. Under Section 12(6) of the Act, the order was passed and issued on 27.06.1999. The certificate copies of the acquisition proceedings, dated 24.03.2017 and duly received on 07.04.2017. The petitioner and his brother filed an application before the first respondent, requesting to release the subject land and issue patta to them. The third respondent by the letter, dated 21.08.2017 has given reply to the petitioner stating that the subject land cannot be reverted back to the Urban Land Owner or his legal heirs.

7. Heard M/s.Greethasenthil Kumar and Mr. J. Sathiaraj, learned counsels appearing for the petitioner, Mr.P.Baladhandayutham, learned Special Government Pleader appearing for the respondents.

8. The father of the petitioner owned the subject property



and after his demise, the petitioner and his brother have become the absolute owner of the property. Since, the petitioner failed to file any return as contemplated under Section 7(1) of the Act, the notice under Section 7(2) of the Act was issued on 16.06.1983 and the same was served to the petitioner's father. However, the notice under Section 9(4) along with statement under Section 9(1) of the Act was issued on 31.07.1986 and served to one Malliga on 02.09.1986. The order under Section 9(5) of the Act was issued on 16.11.1990 and the same was served only by affixture on 05.02.1991. Further, the final statement under Section 10(1) of the Act was also served only by affixture.

9. Admittedly, no orders were served on the petitioner or his other family members. All the family members are residing in the subject property. Thereafter, the notifications under Sections 11(1) and 11(3) of the Act were also not served to the petitioner or his family members. Finally, the notice under Section 11(5) of the Act was issued on 01.06.1995 was also not served to the petitioner or his family members. If the notice under Section 11(5) of the Act and the physical possession was handed over by the respective land owner, there is no need of any notice under Section 11(6) of the Act to take possession of the subject property by force. Whereas, in the case on hand, no notice was served on the petitioner or his family members under Section 11(5) of the Act. Therefore, there is no question of handing over the vacant possession of the subject property.

10. That apart, even according to the third respondent, the possession of the excess vacant land was taken and handed over to the Revenue Authorities only on 23.07.1996. When the notice under Section 11(5) of the Act, dated 01.06.1995 issued and even assuming that the same was served, the physical possession of the subject property has not been taken over even till today. The petitioner has also produced the electricity service connection and property tax receipts and other revenue documents to prove his possession and enjoyment of the subject property. Therefore, the physical possession and other proceedings are only done by the respondents in the desk of the office.

11. Thus, it is clear that the possession of the subject property has not been taken over even till today and the petitioner is in possession and enjoyment of the subject property. In view of the Repeal Act 20 of 1999, came into force on 16.06.1999, when the physical possession has not been taken over, the entire acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, have lapsed.

12. In view of the above, the impugned order cannot be



sustained as against the petitioner and it is liable to be set aside. Accordingly, the proceedings in Na.Ka.No.698/2017, dated 21.08.2017 is hereby quashed.

13. The Fourth respondent is directed to mutate the revenue records in favour of the petitioner and other legal heirs if any and issue patta in favour of the petitioner in respect of the subject property comprised in Old No.37, New No.71, New Street, Karruku Main Road, Ambattur, Chennai - 53 measuring an extent of 11 cents divided into two parts Plot No.A and Plot No.B, North side Plot measuring an extent of 2560 sq.ft. and south side Plot B measuring an extent of 2419 sq.ft comprised in Survey No.22/2A Menambedu Village, Thiruvallur.

14. With the above directions, this writ petition stands allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner,
The State of Tamil Nadu,
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai - 600 005.
2. The District Collector,
Tiruvallur.
3. The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Ambattur Region,
No.5, Sannathi Street,
Poonamallee, Chennai - 600 056.
4. The Tasildhar,
Ambattur.

+1cc to Mr.Greetha Senthil Kumar, Advocate, S.R.No.64701
+1cc to the Government Pleader, S.R.No.64802

W.P.No.31845 of 2017

SR(CO)
SB(09/12/2021)