



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.25548 OF 2012

Mrs.A.Thilagam

... Petitioner

Vs.

1. The Government of Tamilnadu,
Represented by its Principal Secretary,
Revenue Department,
Fort St.George, Chennai 600 009.
2. The Principal Commissioner,
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai 600 005.
3. The Assistant Commissioner &
Competent Authority,
Urban Land Ceiling,
No.5, Sannadhi Street,
Alandur, Chennai 600 008.
4. The Tahsildar,
Sholinganallur Taluk,
Sholinganallur, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration directing the proceedings initiated by the 3rd respondent in NA.KA.No.977/95A including order dated 15.03.1996 passed under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and consequential notice dated 13.11.1997 under Section 11(5) of the Tamilnadu Urban Land (Ceiling & Regulation) Act, 1978 in R.C.No.977/95A in respect of petitioner's land comprised in Survey Nos.305/2C1 and 305/2C2 at Pallikaranai Village, Saidapet Taluk (now Sholinganallur Taluk), admeasuring 22 cents, as arbitrary, illegal, unconstitutional, abated consequent to the passing of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999 and consequently direct the 4th respondent to issue patta in favour of the petitioner.



For Petitioner

: Mr.D.Saikumaran

For Respondents

: Mr.M.Murali,
Government Advocate

WEB COPY

O R D E R

The petitioner has filed the writ petition seeking to direct the proceedings initiated by the 3rd respondent and notice dated 13.11.1997 and to direct the 4th respondent to issue patta in favour of the petitioner.

2.The case of the petitioner is that she is the owner of the property comprised in Survey Nos.305/2C1 and 305/2C2, which was purchased from one Mr.Mathew Varghese by way of a registered sale deed dated 29.08.1986 on the file of SRO, Chennai (South) and the vendor of the petitioner had purchased the property from one Mr.Arumugam and others. While so, the 3rd respondent initiated proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 against the vendor of the petitioner and an extent of 3300 sq. mtrs of land was declared as excess vacant lands by order dated 15.03.1996. Thereafter, the proceedings under Section 11(5) of the ULC Act came to be issued. However, according to the petitioner, all these notices were only issued to the said Mathew Verghese, who was her predecessor-in-title. Since, the petitioner is all along in possession and enjoyment of the property and in order to develop the same, she made an application for issuance of patta for the said land. However, the same was rejected by the 4th respondent on the ground that already the land was acquired by the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Challenging the same, the Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that the ULC Act itself was repealed by the Tamil Nadu Act 20 of 1999 and by virtue of Section 4 of the Repeal Act, all the proceedings initiated by the authorities immediately before the commencement of the Repeal Act shall abate. As per Section 3 of the Repeal Act, the repeal of the Principal Act shall not affect the vesting of any vacant land under sub-section 3 of Section 11 of the ULC Act, possession of which has been taken over by the State Government or any person duly authorised by the person in this behalf or by the competent authority. He further submitted that the same acquisition proceedings were also challenged by a purchaser of the very same survey number and the same was allowed by this Court.



4. The learned Government Advocate appearing for the respondents did not dispute the fact submitted by the learned counsel for the petitioner. However, the land was acquired much earlier by the proceedings under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Hence, the decision rendered by this Court in respect of other purchaser of the said property cannot be extended to the petitioner.

5. The proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 were initiated against the vendor of the petitioner, one Mathew Verghese and the same was challenged before this Court in W.P.No.29081 of 2003 in which this Court passed the following order:

"8. This Court perused the original records produced by the learned Government Advocate. It is seen from the records that notice under Section 7(2) of the ULC Act has been sent only to Mathew Verghese on 30.08.1985 and there is no proof to show that the letter was sent to the address given by the land owner. On the contrary, an endorsement has been made in the notice stating that since the owner of the land refused to receive the same, a stick was planted in the land and it was affixed on the stick thereby effecting service by affixture. Similarly, in respect of notice dated 15.03.1995 under Section 9(5) of the ULC Act, an endorsement has been made stating that since the address of the land owner is not available, it was served by affixture on a stick. This endorsement is obviously contrary to the record because even in the notice dated 30.06.1985 issued under Section 7(2) of the ULC Act, the address of Mathew Verghese is shown as 624 MKN Road, Madras-32. In the same way, in the notification issued under Section 11(1) of the ULC Act, the name of the petitioner was not found. The final notice of the predecessor-in-title alone is found. The final notice under Form VII was also served only by affixture on the ground that the address of the land owner was not known to the authorities.

9. These records can never be believed as neither the petitioner nor the predecessor-in-title have been served with proper notices in terms of the Act and the Rules made thereunder. When valuable lands are sought to be taken over by a statutory enactment, it is incumbent on the part of the authorities to scrupulously follow the rules prescribed thereunder. The mode of affixture cannot be resorted to as a matter of course and attempt should have been made to send the notice by Registered Post as contemplated under the



WEB COPY

Rules. If this process is resorted to by the respondents, any land can be taken over without even notice to the land owners by not complying with the mandatory provisions of the Rules. There are also no records to show that physical possession has been taken over from the petitioner, who is the purchaser of the land even as early from 29.08.1986. In any event, there are no records to indicate that physical possession has been taken over from the petitioner and in the absence of the same, the petitioner is entitled to have the benefit of Section 4 of the Repeal Act 20 of 1999.

10. This Court in its judgement reported in (2006) 2 M.L.J. 664 [SOSAMMA THAMPY vs. THE ASSISTANT COMMISSIONER (ULT) - CUM - COMPETENT AUTHORITY (ULC)], has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC Act and nothing in the file that symbolic possession is taken cannot be accepted as taking of physical possession. This Court is in complete agreement with the ratio laid down in the aforesaid decision which also squarely applies to the facts and circumstances of the case.

11. In the light of the above, the Writ Petition stands allowed and the impugned proceedings are quashed. Interim stay granted on 16.10.2003 in W.P.M.P.No.35490 of 2003 shall stand closed. However, the parties are allowed to bear their own costs."

6. In view of the above decision of this Court, the notification pertaining to the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 were already quashed and therefore, the stand of the respondent in rejecting the request of the petitioner is wholly unsustainable. Hence, this Court is inclined to extend the same benefit to the petitioner in terms with the order passed by this Court in W.P.No.29081 of 2003.

7. Accordingly, this Writ Petition is allowed. No Costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

anu



To

1. The Principal Secretary,
The Government of Tamilnadu,
Revenue Department,
Fort St.George, Chennai 600 009.
2. The Principal Commissioner,
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai 600 005.
3. The Assistant Commissioner &
Competent Authority,
Urban Land Ceiling,
No.5, Sannadhi Street,
Alandur, Chennai 600 008.
4. The Tahsildar,
Sholinganallur Taluk,
Sholinganallur, Chennai.

+lcc to Mr.D.Saikumaran, Advocate, S.R.No.8696
+lcc to the Government Pleader, S.R.No.9243

W.P.No.25548 of 2012

PMK (CO)
PM/07/03/2022