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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.10211 of 2019

H.A.Eswara

.. Appellant

Versus

- 1.The Government of Tamil Nadu,
Principal Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.
 - 2.The Special Commissioner and
Commissioner of Urban Land Ceiling and
Urban Land Tax, Chepauk, Chennai - 5.
 - 3.The Tahsildar,
Taluk Office, Sholinganallur.
 - 4.The Revenue Divisional Officer,
Revenue Divisional Office,
Guindy, Chennai.
 - 5.Dhanasekaran
 - 6.Rev.Paul Moses
 - 7.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 3.
 - 8.The District Collector,
The Collectorate, No.62, Rajaji Salai,
Chennai - 1.
 - 9.The Assistant Executive Engineer,
O/o.The Assistant Engineer (O&M),
Palavakkam EC Road, Panchayat Office,
Adyar, Chennai - 41.
- .. Respondents
(R7 to R9 are impleaded vide order dated 09/07/2019 made in WMP
No.18783/2019



Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking for issuance of a writ of mandamus to direct the respondents 1 to 4 and 7 to 9 to remove the illegal encroachment and unauthorised construction on the petitioner's land in Survey Nos.8/2 and Survey No.9/8 located at Palavakkam Village, Sholinganallur Taluk, Kancheepuram District, made by the respondents 5 and 6 by considering the Petitioner's representation dated 14.09.2018 and also by considering the letter of the second respondent in Na.Ka.No.1158/2015/G2, dated 27.09.2018.

For Petitioner : Mr.M.Maharaja
for M/s.Thanga Vadhana Balakrishnan

For R1 to R4, R7 &R8 : Mr.A.Selvendran, Spl.GP

For R9 : Mr.K.V.Sajeevkumar, Spl.GP

For R6 : Mr.T.Mohan for Mr.S.Ravichandran

For R5 : Mr.P.T.Perumal

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The petitioner, claiming to be the senior citizen, has filed this writ petition seeking for issuance of a writ of mandamus to direct the official respondents to remove the illegal encroachment and unauthorised construction put up by the respondents 5 and 6 on his land in Survey Nos.8/2 and 9/8 situated at Palavakkam Village, Sholinganallur Taluk, Kancheepuram District, by considering the letter of the second respondent in Na.Ka.No.1158/2015/G2, dated 27.09.2018.

2. Mr.M.Maharaja, learned counsel for the petitioner submitted that the lands covered in Survey Nos.8/2 and 9/8, having an extent of 1150 sq.mtrs. and 2650 sq.mtrs., situated at Palavakkam Village, Sholinganallur taluk, Kancheepuram District, were purchased by his brother/H.Aswath Narayanan in the year 1960. After the death of his brother in the year 2012, the petitioner, being the sole legal heir, had approached the Tahsildar, Mylapore, Triplicane Division, Chennai, and obtained legal heirship certificate on 28.06.2012. Since a portion of the land having an extent of 1 acre was acquired by the Deputy Commissioner of Urban Land Ceiling under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, a writ petition was filed in W.P.No.256 of 2009, whereby this Court, by order dated 06.11.2009, quashing the proceedings dated 19.12.2008 of the first respondent therein, allowed the writ



petition with a direction to the revenue authorities to carry out necessary changes in the revenue records. As against the said order, when the Government filed W.A.No.2654 of 2010, the same was also dismissed by order dated 12.07.2013. Aggrieved thereby, the respondent Government filed Review Application No.166 of 2014, however, the same was also dismissed by order dated 11.12.2014 on the ground that there was no merit in the review application. Thereafter, the first respondent passed G.O.Ms.No.296, Revenue (ULC-I(1)] Department, dated 07.08.2015, directing the second respondent to instruct the concerned Assistant Commissioner (ULT) to comply with the orders passed by the writ Court in W.P.No.256 of 2009, dated 06.11.2009.

3. Continuing further, learned counsel for the petitioner argued that since the aforesaid Government Order was not complied with, the petitioner filed another writ petition in W.P.No.10569 of 2016 seeking to restore the ownership and possession of the land in question in favour of the petitioner as per the aforesaid Government Order. This Court, by order dated 22.03.2016, while disposing of the said writ petition, directed the Government to implement the order within a period of three months. However, in the meanwhile, the respondents 5 and 6, occupying the land in question illegally, raised unauthorized construction by putting up temporary huts and church, besides claiming the rights through the Civil Court so as to prolong the illegal encroachment. Finally, the Tahsildar, Sholinganallur/third respondent issued a patta under patta No.13647 for the lands covered in Survey No.8/2 having an extent of 1150 sq.mtrs. and in Survey No.9/8 having an extent of 2650 sq.mtrs. Thereafter, the petitioner sent a representation to the third respondent to take action against the unauthorized construction put up by the respondents 5 and 6, because, no planning permission was obtained by the respondents 5 and 6. However, since no action was taken, he sent another representation dated 14.09.2018 to the fourth respondent to remove illegal encroachment and unauthorized constructions. Although the second respondent forwarded the petitioner's representation to the third respondent, no action was taken. Therefore, now, the petitioner, aged about 87 years, left with no other remedy, has filed the present writ petition seeking a direction to the respondents 1 and 2 to take suitable action for unauthorized constructions and the illegal encroachment made by the private respondents.

4. Learned counsel for the petitioner further submitted that the petitioner filed a civil suit in O.S.No.31 of 2019 on the file of Sub-Court, Tambaram, seeking for mandatory injunction directing the defendant/fifth respondent herein to demolish and remove all kinds of encroachment made by him and to deliver vacant possession of the suit schedule property to the plaintiff/petitioner herein. On the other hand, the



defendant/fifth respondent herein has also filed a suit in O.S.No.110 of 2018 on the file of Additional District Munsif Court, Alandur, for permanent injunction against the petitioner herein. The said suit was subsequently transferred by this Court vide order dated 11.06.2019 passed in Tr.C.M.P.No.374 of 2019 to the file of Sub-Court, Tambaram, to try along with O.S.No.31 filed by the petitioner herein. Both suits were listed before the Lok Adalat on 13.11.2019 for amicable settlement. Before the Lok Adalat, the sixth respondent, after verifying the orders passed by the Court and revenue officials and other land records, expressed his desire that it is not fair to run the school with prayer meetings in a property belonging to others. Accordingly, the sixth respondent came forward to hand over the possession to the petitioner and finally, the matter was compromised before the Lok Adalat, Tambaram, on 13.11.2019. The learned Lok Adalat also passed a consent decree to vacate and handover the land in question. However, as there was a delay in handing over the possession even after the compromise decree, which has become final, the petitioner lodged a police complaint against the respondents 5 and 6, whereby the fifth respondent undertook before the police that he will hand over the possession after Christmas and finally, he handed over the possession on 26.12.2019 to the petitioner. Thereafter, the sixth respondent filed C.R.P.No.4299 of 2019 before this Court challenging the award passed in Lok Adalat, Tambaram, dated 13.11.2019. The said civil revision petition was subsequently closed on 24.09.2020. Therefore, nothing survives in the objection raised by the fifth respondent. Moreover, when the sixth respondent has admitted in his counter affidavit that he only inducted fifth respondent and when sixth respondent has come forward with an undertaking that he would handover the physical possession of the property on the basis of the decree passed by the Lok Adalat, Tambaram, action should be taken against the unauthorized construction put up by the respondents 5 and 6 immediately removed, he pleaded.

5. Mr.T.Mohan, learned counsel for the sixth respondent, submitted that the petitioner has no locus-standi to file the present writ petition, as he played fraud upon the Court, for, the death certificate filed by the petitioner shows that his elder brother H.Aswatha Narayana died on 26.12.2007 at the age of 86 years, however, it is unfortunate to note that in the name of said dead person, in the year 2008, W.P.No.24874 of 2008 was filed with fraudulent affidavit seeking to quash the land ceiling proceedings and the said writ petition was allowed by order dated 16.10.2008. It is further argued that when he claims to be the younger brother of Aswatha Narayana, there is no need for him to get relationship certificate, for, mere legal heirship certificate from the revenue authorities is sufficient to prove his claim. Besides, it is argued, since the sixth respondent was not a party to the Lok Adalat proceedings, he



filed C.R.P.(PD).No.4299 of 2019 challenging the order passed by the Lok Adalat, Legal Services Committee, Tambaram, however, the said revision petition was subsequently closed on 24.09.2020. Therefore, it is for the petitioner to file a civil suit for declaration of his alleged right and title to the disputed property through competent Civil Court, but, not by way of filing the present writ petition for eviction. With these submissions, learned counsel prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. The petitioner was issued with relationship certificate dated 28.06.2012 by the Tahsildar, Mylapore, showing that he is the younger brother of H.Aswatha Narayana, who expired on 26.12.2007. Secondly, the lands covered in Survey Nos.9/8A and 8/2 of Palavakkam Village, Kanchipuram District, having an extent of 1 acre, were purchased by his elder brother-H.Aswatha Narayana, through a registered sale deed dated 11.08.1960 bearing Document No.2002/1960 on the file of Sub-Registrar, Saidapet. The said land being an agricultural land used only for agricultural purpose. But, the Government of Tamil Nadu initiated land acquisition proceedings under the Tamilnadu Urban Land (Ceiling and Regulation) Act. Whiles, the petitioner's brother H.Aswatha Narayana filed W.P.No.35835 of 2002 seeking to quash the land ceiling proceedings initiated against his lands under the provisions of the Act and this Court, by order dated 08.10.2002, disposed of the said writ petition with a direction to the authorities to consider the question of Urban Land Ceiling proceedings with reference to repeal of the Act and keeping in view the earlier orders passed by this Court on a similar matter in W.P.No.1616 of 2001, dated 06.06.2002. However, despite the orders passed by this Court, since the Government did not consider the records properly and ignored the fact that the petitioner was in possession of the land and therefore, he was entitled for the benefits of repealing of the Act, he filed another W.P.No.24874 of 2008, seeking to dispose of his representation dated 11.02.1997 and this Court, by order dated 16.01.2008, while disposing of the said writ petition, directed the authorities to dispose of the revision dated 15.02.2007, within a period of four weeks. Subsequently, the second respondent herein, vide proceedings dated 23.10.2008, dropped further action by invoking Section 4 of the Repeal Act, 1999, on the ground that the said land would fall within the exemption granted under Section (p)(1) of the Act and issued an endorsement to that effect and thereby requested the Assistant Commissioner, Alandur Zone, to issue necessary directions to the Tahsildar, Tambaram, to carry out the necessary changes both in the Village and Taluk accounts, after collecting the money if any paid to the land owner towards compensation.



8. However, the first respondent/Government, without issuing any notice to the petitioner, had cancelled the said endorsement issued by the second respondent vide proceedings dated 19.12.2008. Aggrieved by the said action, the petitioner filed W.P.No.256 of 2009 and this Court, by order dated 06.11.2009, allowed the said writ petition directing the Tahsildar, Tambaram, to carry out necessary changes in the Village and Taluk accounts as directed by the the Special Commissioner and Commissioner, Urban Land Ceiling & Urban Land Tax, Chennai, vide proceedings dated 23.10.2008 within a period of four weeks. As against the said order, when W.A.No.2654 of 2010 was filed, learned Division Bench, by order dated 12.08.2013, upheld the order passed by the learned Single Judge. After some time, when Review Application No.166 of 2014 was filed, this Court, while dismissing the said review application on 11.12.2014, observed that the Court, while dealing an application for reviewing an earlier decision, does not sit as an appellate Court over the earlier decision merely because a different view of the materials on record can be taken to review an earlier decision. Subsequently, the first respondent passed an order in G.O.(Ms.) No.296, Revenue [ULC-I(1)] Department, dated 07.08.2015, directing the second respondent to instruct the concerned Assistant Commissioner (ULT) to comply with the order passed by this Court in W.P.No.256 of 2009, dated 06.11.2009.

9. Again, the authorities have not acted upon and therefore, the petitioner has filed another W.P.No.10569 of 2016 seeking to restore the ownership and possession in his favour and this Court, by order dated 22.03.2016, directed the respondent Government to implement its own order within a period of three months. Thereafter, the Tahshildar, Sholinganallur, inspected the place in question and finally granted patta under Patta No.13647 in favour of the petitioner. This order has become final and concluded. Thus, in such view of the matter, it is abundantly clear that the petitioner is the absolute owner of the property in question.

10. Thirdly, the petitioner has also filed a civil suit in O.S.No.31 of 2019 on the file of Sub-Court, Tambaram, seeking for eviction; and on the other hand, fifth respondent also filed a civil suit in O.S.No.110 of 2018 on the file of Additional District Munsif Court, Alandur, seeking for injunction. Subsequently, the petitioner filed a transfer application in Tr.CMP.No.374 of 2019 seeking to transfer the case filed by the fifth respondent to the file of Sub-Court, Tambaram, to try both cases at one Court. This Court, by order dated 11.06.2019, transferred O.S.No.110 of 2018 filed by the fifth respondent to the file of Sub-Court, Tambaram. On such transfer, based on the Joint Compromise Memo filed by the petitioner and the fifth respondent herein, the matter was settled in Lok Adalat, Legal



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Services Committee, Tambaram, on 13.11.2019. For better appreciation, relevant portion of the terms and conditions of joint compromise memo is extracted below:-

1. The defendant herein who is the plaintiff in O.S.No.110 of 2018 has agreed to settle to Lok Adalat his case filed in O.S.No.110 of 2018 before the Additional District Munsif Court at Alandur which is now transferred to this Hon'ble Court and renumbered as O.S.No.403 of 2019.

2. The defendant herein accepts the title of the plaintiff and he has given submits to decree in the above suit in O.S.No.31 of 2019 in favour of the plaintiff and further the defendant running the church in suit schedule property through his friend Mr. Paul Moses, and the same is agreed to vacate within 20 days from the date of the submit to the decree and agreed to deliver possession to the plaintiff.

3. The defendant accepted and agreed that the defendant, his men and agent or in any manner not to interfere with the plaintiff's possession and enjoyment of the suit schedule property and defendant shall have no right over the suit property and defendant should not make any claim in respect of the suit schedule property.

4. The plaintiff and defendant submit that the suit may be decreed in favour of the plaintiff as part and parcel of this compromise memo....."

From the above said joint compromise memo entered between the plaintiff/petitioner herein and the defendant/fifth respondent herein, it is abundantly clear that the fifth respondent has given consent to decree the suit in favour of the petitioner herein and he has also agreed to vacate from the land in question within 20 days from the date of decree and this apart, the defendant has also agreed that the defendant, his men or his agent will not interfere with the petitioner's peaceful possession and enjoyment of the land in question in any manner, therefore, this sixth respondent has no locus or legal right to contest this case.

11. Fourthly, the said decree granted in Lok Adalat, Legal Services Committee, Sub-Court, Tambaram, on 13.11.2019, as per the settled legal position, is not appealable, as it has become final. Nonetheless, the sixth respondent filed C.R.P.(PD) No.4299 of 2019 questioning the decree granted by the Lok Adalat, whereby learned counsel for the sixth respondent sought permission to close the revision petition and therefore, by



recording the said submission, the revision petition was closed on 24.09.2020. Therefore, when the fifth respondent himself has entered into joint compromise memo and handed over the possession to the petitioner, the sixth respondent being a tenant of the fifth respondent has no locus standi to question the right over the subject property of the petitioner. Moreover, it is to be noted that the fifth respondent has not produced any document, such as title deed, patta, etc. to substantiate that he is the absolute owner of the property in question. Besides, there is no planning permission obtained by him. The suit filed by the sixth respondent for bare injunction against the petitioner cannot have any bearing on the petitioner as he is the absolute owner of the property.

12. Therefore, for the reasons stated above, this Court is unable to find any substance in the objection raised by the sixth respondent. In fine, the writ petition stands allowed and the official respondents are directed to remove the unauthorized construction put up by the fifth respondent without planning permission, within a period of four weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

- 1.The Government of Tamil Nadu,
Principal Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.
- 2.The Special Commissioner and
Commissioner of Urban Land Ceiling and
Urban Land Tax, Chepauk, Chennai - 5.
- 3.The Tahsildar,
Taluk Office, Sholinganallur.
- 4.The Revenue Divisional Officer,
Revenue Divisional Office,
Guindy, Chennai.



- 5.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
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- 6.The District Collector,
The Collectorate, No.62, Rajaji Salai,
Chennai - 1.
- 7.The Assistant Executive Engineer,
O/o.The Assistant Engineer (O&M),
Palavakkam EC Road, Panchayat Office,
Adyar, Chennai - 41.

+2ccs to M/s.Thanga Vadhana Balakrishnan, Advocate SR.No.30224

+1cc to Mr.R.Gopinath, Advocate SR.No.30291

+1cc to Mr.S.Ravichandran, Advocate SR.No.30488

W.P.No.10211 of 2019

SPD(CO)
GMY(30/05/2022)