IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9080 of 2015

Perur Chettipalayam Ayyasamy
Garden Kudiyruppor Nala Sangam
Rep. by its President
A.Shanmugam ... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary,
Revenue Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk,
Chennai – 600 005.

3.Assistant Commissioner/ Competent Authority ULT,
Collectors Office Compound,
Coimbatore – 641 008.

4.Sub Registrar II,
Sub Registrar Office,
Raja Street,
Coimbatore – 641 001.

5.Special Deputy Tasildhar,
Urban Land Tax,
Coimbatore – 641 018.

6.The Tasildhar (South)
Tasildhar's Office,
Coimbatore – 641 018.

7.The Village Administrative Officer,
Perur Chettipalayam, Perur,
Coimbatore – 641 010. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the members of the petitioner Association shall have full rights as owners in respect of the property purchased and situate in S.F.No.18/2, 18/2A & 18/2C measuring 25452 sq.mt. in total of Perur Chettipalayam Village, Coimbatore Taluk, Coimbatore District dealt with under proceedings in Na.Ka. No.10237/81/1 dated 29.11.1989 under Section 9(5) of the Act and final statement dated 30.11.1989 under Sub Section (1) of Section 10 of the Urban Ceiling Act published in Government Gazette of Government of Tamil Nadu, followed by notice issued under Sec.11(3) in No.vi(1)/1477/90 dated 28.11.1990 followed by the notice dated 23.09.1998 under Section 11(5) of Tamil Nadu Land Reforms (Ceiling on land) Act, 1978 stood abated in view of Section 4 of Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999 (Act 20 of 1999) so as to enable the sixth respondent to correct the revenue records by

including the names of the members of the petitioner Association as owners of its lands purchased by them in S.F.No.18/2, 18/2A and 18/2C of Perur Chettipalayam Village, Coimbatore Taluk, Coimbatore District.

For Petitioner : Mr.C.R.Prasanan
For Respondents : Mr.U.Bharanidharan
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Declaration, declaring the members of the petitioner Association shall have full rights as owners in respect of the property purchased and situate in S.F.No.18/2, 18/2A & 18/2C measuring 25452 sq.mt. in total of Perur Chettipalayam Village, Coimbatore Taluk, Coimbatore District dealt with under proceedings in Na.Ka. No.10237/81/1 dated 29.11.1989 under Section 9(5) of the Act and final statement dated 30.11.1989 under Sub Section (1) of Section 10 of the Urban Ceiling Act published in Government Gazette of Government of Tamil Nadu, followed by notice issued under Sec.11(3) in No.vi(1)/1477/90 dated 28.11.1990 followed by the notice dated

23.09.1998 under Section 11(5) of Tamil Nadu Land Reforms (Ceiling on land) Act, 1978 stood abated in view of Section 4 of Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999 (Act 20 of 1999) so as to enable the sixth respondent to correct the revenue records by including the names of the members of the petitioner Association as owners of its lands purchased by them in S.F.No.18/2, 18/2A and 18/2C of Perur Chettipalayam Village, Coimbatore Taluk, Coimbatore District.

2.The case of the petitioner is that originally the lands in S.F.No.18/2, Perur Chettipalayam Village, Coimbatore Taluk, measuring an extent of 6.66 acres belonged to one Dhandapani and there was a family partition and A – Schedule property measuring an extent of 2.22 Acre was allotted to one Nanjammal, Vasuki Devi and Manimegalai, B – Schedule property measuring an extent of 2.22 Acre was allotted to the said Dhandapani and C – Schedule property measuring an extent of 2.22 Acre was allotted to one Senthil Ganesh.

3.The further case of the petitioner is that thereafter, Dhandapani sold 0.74 acres each to one Velusamy and one

Kumarasamy and retained the remaining extent. The said Senthil Ganesh sold 1.48acres to one Ramalingum and Mylsamy. Thereafter, the said Dhandapani, Kumarasamy and Velusamy jointly formed an approved layout namely Ayyasamy Layout and there are 24 approved sites in the layout. Likewise, Nanjammal, Vasuki Devi, Manimegalai, Ramalingum and Mylsamy formed another approved layout in the same name and there are 50 approved sites in the layout.

4.The further case of the petitioner is that thereafter the sites were sold to various third parties and the members belonging to the petitioner Association purchased the same. Thereafter, they came to know that earlier proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [hereinafter referred to as 'Act'] was initiated against the said Dandapani and since he did not surrender the possession, the third respondent is alleged to have taken possession on 31.05.1999 just 15 days prior to Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999 (Act 20 of 1999) came into force. Hence, inorder to protect the interest of the members of the petitioner Association, this writ petition has been filed.

5.The learned counsel appearing for the petitioner submitted that the petitioner Association sought for information under the RTI Act and perusal of the information received from the competent Authorities reveal that no notice was served on the original owner and it further reveal that the certificate alleged to be the possession certificate would state that possession was taken over by the Special Deputy Tasildhar, Urban Land Tax, Coimbatore on 15.12.2003 and handed over to the Revenue Inspector, which is subsequent to the Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999, coming into force. Hence, without following the procedure contemplated under under Section 11(5) and 11 (6) of the Act, taken over and handing over possession is not sustainable one.

6.The learned Additional Government Pleader, referring to the counter affidavit filed on behalf of the respondents submitted that the urban land owner Dandapani failed to file return under Section 7(1) of the Act and a notice under Section 7(2) of the Act dated 28.06.1989 was issued by the third respondent to the urban land owner and since he refused to receive the same, it was served by way of affixture on the door of the urban land owner's residence on

10.07.1989. Thereafter, notice under Section 9(4) with draft statement under

Section 9(1) of the Act was issued to the urban land owner on 02.09.1989 by the third respondent and it was served by affixture on the door of the urban land owner's residence on 19.09.1989.

7.The learned Additional Government Pleader further submitted that another notice was issued to the urban land owner on 31.10.1989 calling for enquiry on 17.11.1989 and no objection was raised by the urban land owner. Thereafter, order under Section 9 (5) of the Act was passed by the third respondent on 29.11.1989 determining an extent of 25452 sq.mts. of land as excess vacant land and final statement dated 30.11.1989 under Section 10(1) of the Act was issued by the third respondent. Both the order under Section 9 (5) of the Act and final statement under Section 10(1) of the Act was served by affixture on 29.12.1989. Thereafter Notification under Section 11(1) of the Act was issued by the third respondent on 18.10.1990 and the same was published in the Tamil Nadu Government Gazette No.46, dated 28.11.1990.

8.The learned Additional Government Pleader further submitted that Notification under Section 11 (3) of the Act was issued by the third respondent on 19.01.1991 and the same was published in the Tamil Nadu Government Gazette No.39/A, dated 10.09.1991. Thereafter, final notice under Section 11 (5) of the Act was issued to the urban land owner on 23.09.1998 to surrender or deliver the possession of the excess vacant land to the Government and it was served on the urban land owner on 19.04.1999 and since the urban land owner did not come forward to surrender the possession of the excess vacant land finally under Section 11(6) of the Act, the competent Authority (Urban Land Ceiling), Coimbatore had taken over possession on 31.05.1999.

9.The learned Additional Government Pleader further submitted that despite the above facts, the urban land owner sold out the lands in question without the knowledge of the third respondent. Hence, the transactions made by the urban land owner hit Section 6 of the Act and are null and void.

10.The learned Additional Government Pleader further submitted that similarly situated person one Malarkodi filed application for regularization of her purchase measuring an extent of 2100 sq.ft. in

S.F.No.18/2A(pt) of Perurchettipalayam Village and after concurrence from the Government vide G.O.Ms.No.117, Revenue ULC.I(2) Department, dated 11.03.2010, her purchase was regularized by the Director of Urban Land Ceiling and Urban Land Tax. Hence the members of the petitioner Association also can file their application before the third respondent for regularizing their purchases.

11.Heard the arguments advanced on either side and perused the materials available on record.

12.The facts in the present case is not in dispute. The members of the petitioner Association are subsequent purchasers, who purchased the property from the urban land owner.

13.Perusal of the counter affidavit filed on behalf of the respondents reveals that notice under Section 7(2) of the Act dated 28.06.1989 was issued by the third respondent to the urban land owner and notice under Section 9(4) with draft statement under Section 9(1) of the Act was issued to the urban land owner on 02.09.1989 by the third respondent and it was served by affixture on the door of the urban land owner's residence on 19.09.1989. Thereafter another notice was issued to the urban land owner on 31.10.1989 calling for enquiry on 17.11.1989 and no objection was raised by the urban land owner. Thereafter, order under Section 9 (5) of the Act was passed by the third respondent on 29.11.1989 determining an extent of 25452 sq.mts. of land as excess vacant land and final statement dated 30.11.1989 under Section 10(1) of the Act was issued by the third respondent. Both the order under Section 9 (5) of the Act and final statement under Section 10(1) of the Act was served by affixture on 29.12.1989.

14.Perusal of the counter affidavit further reveals that Notification under Section 11(1) of the Act was issued by the third respondent on 18.10.1990 and the same was published in the Tamil Nadu Government Gazette No.46, dated 28.11.1990. Notification under Section 11 (3) of the Act was issued by the third respondent on 19.01.1991 and the same was published in the Tamil Nadu

Government Gazette No.39/A, dated 10.09.1991. Thereafter, final notice under Section 11 (5) of the Act was issued to the urban land owner on 23.09.1998 to surrender or deliver the possession of the excess vacant land to the Government and it was served on the urban land owner on 19.04.1999 and since the urban land owner did not come forward to surrender the possession of the excess vacant land finally under Section 11(6) of the Act, the competent Authority (Urban Land Ceiling), Coimbatore, had taken over possession on 31.05.1999.

15.Though the respondents claim that notice under Section 11 (5) of the Act was issued to the urban land owner on 23.09.1998 to surrender or deliver the possession of the excess vacant land to the Government, the delay in serving the same to the urban land owner on 19.04.1999, which is nearly seven months is not properly explained by the respondents.

16.It is appropriate to extract Rule 8 (1) and 8 (2) of the Urban Land Ceiling Rules, 1978, hereunder:

"8.Particulars to be contained in

draft statement as regards vacant land and manner of service of the same.-

(1)Every draft statement prepared under sub-section (1) of section 9 shall contain the particulars specified in Form III.

(2)(a)The draft statement together with the notice referred to in sub-section (4) of section 9 shall be served on -

(i) the holder of the vacant lands, and

(ii) all other persons, so far may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned -

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance to sub-section (1) of section 7, and

(ii) in the case of other persons, at their last known addresses.

(b) Where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person referred to in clause (a), in the manner specified in that clause are not successful for reasons other than the reason

referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain."

17.Perusal of the above Rule makes it clear that service of notice should be effected only by way of RPAD and if not serving through RPAD, have to serve in person and if not serving in person has to serve notice by way of affixture with two witnessess.

18.In the present case, all the notices were served on the urban land owner only by way of affixture and notice under Section 11 (5) of the Act is alleged to have been served on the urban land owner on

19.04.1999, however, taken over possession was also not done immediately and possession was taken over only on 31.05.1999, just 15 days prior to the introduction of Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999 (Act 20 of 1999).

19.Further, the petitioner produced taken over and handing over records for perusal of this Court, which reveal that possession was taken over only during the year 2003, which is subsequent to the Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999, coming into force.

20.Further, it is admitted in the counter affidavit that one Malarkodi filed application for regularization of her purchase measuring an extent of 2100 sq.ft. in S.F.No.18/2A(pt) of Perurchettipalayam Village and after concurrence from the Government vide G.O.Ms.No.117, Revenue ULC.I(2) Department, dated 11.03.2010, her purchase was regularized by the Director of Urban Land Ceiling and Urban Land Tax.

21.This Court also perused the original files and the original files reflect that service on the urban land owner was effected only by way of affixture and the files also did not disclose taken over and handing over of possession prior to Repeal Act.

22.For all the aforesaid reasons, this Court is inclined to grant the relief sought for in this writ petition. The writ petition is allowed. The impugned Urban Land Ceiling proceedings are quashed. No costs.

18.10.2022

pri
Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No
To

1.The Secretary,
Revenue Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai – 600 005.

3.Assistant Commissioner/ Competent Authority ULT,
Collectors Office Compound,
Coimbatore – 641 008.

4.Sub Registrar II,
Sub Registrar Office,
Raja Street,
Coimbatore – 641 001.

5.Special Deputy Tasildhar,

Urban Land Tax,
Coimbatore – 641 018.

6.The Tasildhar (South)
Tasildhar's Office,
Coimbatore – 641 018.

7.The Village Administrative Officer,
Perur Chettipalayam, Perur,
Coimbatore – 641 010.

M.DHANDAPANI,J.
pri

W.P.No.9080 of 2015

18.10.2022