



W.P.No.28827 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.28827 of 2016

V.S.Muthupandian

. . . Petitioner

Vs.

1.The State of Tamil Nadu

Represented by the Principal Secretary to Government
Revenue Department
Fort St.George,
Chennai-600 009.

2. The State of Tamil Nadu

Represented by the Principal Secretary to Government
Housing & Urban Development Department
Fort St.George,
Chennai-600 009.

3. The Special Commissioner and Commissioner
for Land Reforms, Chepauk, Chennai-600 005.

4. The Assistant Commissioner,
Urban Land Tax, Poonamallee.

. . . Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India,
to issue a writ or order in the nature of writ of Certiorarified Mandamus



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calling for the records pertaining to the impugned order dated 10.05/2016 made in R.C.No.2831/2013 (J3) on the file of 3rd respondent, rejecting the representation dated 03/04/2009 of the petitioner's vendor Mrs.Astalakshmi (since deceased) to regularize the purchase of petitioner schedule property under the innocent purchaser category from the purview of Tamil Nadu Urban Land (Ceiling and Regularization) Act and quash the same consequently directing the respondent-III to regularize the purchase and upheld the same.

For Petitioners : M/s.K.N.Nataraj

For Respondents : Mr.R.P.Murugan Raja,
Government Advocate

ORDER

The present petition has been filed seeking to quash the order impugned in this Writ Petition which was passed by the 3rd respondent/ Special Commissioner and Commissioner for Land Reforms and a direction to the 3rd respondent to regularize the purchase of the schedule mentioned property.



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2. It is the case of the petitioner that he is the subsequent purchaser of the subject property from one Astalakshmi who is the innocent purchaser, vide the sale deed dated 31.07.1987. Even prior to 1987, the said property has been taken over by the Government under Tamil Nadu Urban Land Ceiling Act, 1978 even without issuing any notice to the Urban land owner. However, G.O.Ms.No.649, Revenue Department came to be issued on 29.07.1988 for regularization of plots purchased by the innocent purchasers, pursuant to the aforesaid G.O, said Astalakshmi made an application to regularize the purchase of her plot and the same was not considered which resulted in filing of Writ Petition in W.P.No15152 of 2010 for disposal of the application, in which, an order came to be passed directing the respondents to consider the application made by the petitioner. Pursuant to the said order, the 4th respondent having conducted the enquiry, issued notice to the vendor of the petitioner requesting to appear for enquiry along with update encumbrance certificate for confirming the ownership of the purchased land, pursuant to which, the order impugned in this Writ Petition came to be passed stating that the subject property has been sold in favour of the petitioner during the year 2011 which is after issuance of



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G.O.No.565, Revenue Department dated 26.09.2008, therefore the petitioner will not come under innocent purchaser category and the question of regularization will not arise. Now, after the demise of the innocent purchaser (viz., Astalakshmi), the petitioner being the subsequent purchaser of the said property has come up with this Writ Petition challenging the order passed by the 3rd respondent.

3. The learned counsel appearing for the petitioner submits that admittedly, the piece of land was purchased by the petitioner's vendor in the year 2007 and as soon as she came to know about the Urban Land Ceilings proceedings, she made an application to the 4th Respondent seeking regularization of her plot and continued to hold the same till the year 2011. However, it is pertinent to note that the petitioner had made a fresh representation for regularization based on his vendor's application. Further, the notification issued under Section 11(3) of the Land Acquisition Act and the notice under Section 11(5) of the Act was not issued by the vendor's predecessors in title and therefore, the entire proceedings have to be declared as null and void in the view of the Repeal Act 20 of 1999.



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Accordingly he prays for allowing of this Writ Petition.

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4. Learned Government Advocate appearing for the respondents submitted that the petitioner being a subsequent purchaser of the subject property, has no *locus standii* to question impugned order, in which reference has been made to the regularization under innocent purchaser scheme, as the property has been purchased only after the issuance of G.O.Ms.No.565, Revenue Department dated 26.09.2008 for regularization of the lands which were purchased upto the date of issuance of G.O. Therefore, the benefit of G.O.Ms.565, Revenue Department dated 26.09.2008 cannot be claimed by the petitioner herein and the order impugned in this Writ Petition needs no interference of this Court. For the reasons above stated, this Writ Petition deserves to be dismissed.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and the particulars of dates, which are relevant for deciding the present petition.



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6. A perusal of the materials available on record reveals that notification issued under Section 11(3) of the Land Acquisition Act and the notice under Section 11(5) of the Act was not issued to the earlier purchasers. The main ground on which the petitioner seeks regularization is that, his Vendor had purchased the plot of land prior to the issuance of G.O.Ms.No.565 dated 26.09.2008 and immediately after knowing about the said G.O, she made a representation for regularization, based on which, now the petitioner had made the application. Further, the possession was taken on 15.06.1999 whereas the Act 20/1999 was repealed on 16.06.1999. However, the 3rd Respondent without considering the aforesaid facts and without having knowledge of G.O.No.565 dated 26.09.2008 and without following the procedure contemplated for taking possession under Section 11(5) & 11(6) of the Act, had passed the impugned order.

7. Further it is the specific case of the petitioner that his vendor even prior to the issuance of Government Order had given a representation, on which order has been passed by the respondent, which is still pending on the



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file of the respondents. The representation given by the petitioner is only in continuation of the said representation of the vendor and it is not a fresh representation and the stand of the respondents that the purchase of the petitioner is subsequent to the issuance of the Government Order is wholly erroneous as the purchase made by the vendor and representation given by his vendor to avail the benefit of G.O.565 dated 26.09.2008, will definitely enure to the benefit of the petitioner and further no materials were available before this Court to show that the procedures under 11(5) and 11(6) notice was scrupulously followed before taking possession and further merely claiming that the possession has been taken cannot be countered against the petitioner as there was no materials were produced before this Court for taking possession. In such a backdrop, all the facts have to be taken into consideration by the 3rd respondent while passing the impugned order, however he has passed the impugned order mechanically without any application of mind.

8. In order to take possession, certain procedures are created under the Statute itself and it is relevant to extract Section 11(5) and 11(6) of the



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(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 possession 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 concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

9. A perusal of the above said provision makes it clear that notice in writing has to be issued on the land owner and other interested persons u/s 11 (5) of the Act upon vesting of lands with the State Government by invocation of the Urban Land Ceiling proceedings, ordering any person who may be in possession of such lands to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice.



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10. This Court also hastens to add that proceedings under the Act

was mainly to take over the excess lands from such of those persons, who had held lands over and above the ceiling limit fixed under the Parent Act. The Act was enacted in the year 1978, however, the Legislature thought it fit to repeal the said Act keeping in mind the plight of the land owners to part with their lands, as take over under the Act would not enure any benefit in favour of the land owners. Once the Legislature, in its wisdom, had thought it fit to repeal the parent Act, which was done mainly for the purpose of avoiding further detriment to land owners. Such being the intent of the Government in repealing the Act, any order that would defeat the purpose of the repeal Act would neither be in the interest of justice nor in the interest of the land owners, be it original owners or subsequent purchasers.

11. Hence, the impugned order passed by the 3rd Respondent is without application of mind and it warrants interference of this Court and thereby the impugned order is liable to be set aside. Accordingly, the impugned order dated 10.05.2016 is set aside and the matter is remanded to



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the 3rd Respondent for fresh consideration in terms of G.O.Ms.No.565 dated
26.09.2008.

12. Accordingly, this Writ Petition is allowed in the above terms. No

Costs.

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Index : Yes / No

Internet : Yes / No



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M.DHANDAPANI, J.

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