



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.15949 OF 2019

AND

W.M.P.NO.15741 OF 2019

Tamilzharasi Karikalan

... Petitioner

-Vs-

1. The Commissioner of Urban Land
Ceiling & Urban Land Tax,
Chepauk, Chennai - 600 005.
2. The Assistant Commissioner of
Urban Land Ceiling & Urban Land Tax,
Tondiarpet Zone,
No.409, E.V.R.Periyar High Road,
Chennai - 600 029.
3. The Tahsildar,
Perambur Taluk,
Perambur,
Chennai - 600 011.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare the acquisition proceedings initiated by the respondents under the provisions of the Tamil Nadu Urban Land (Ceiling & Regulations) Act, 1978 in respect of the vacant land bearing Plot No.19, comprised in Nanjai Survey No.293/2B, situated at No.31, Kodungaiyur Village, Chennai Corporation Division No.1, situated previously Tondiarpet Taluk, now Perambur Taluk, Chennai District, measuring an extent of 1908 sq.ft., stands abated in view of Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Tamil Nadu Act 20 of 1999) and consequently direct the third respondent to carry out the necessary corrections in the Revenue Records and issue patta in the name of the petitioner for the above said property.



For Petitioner : Mr.K.Premkumar

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

WEB COPY

ORDER

The Writ Petition has been filed to declare the acquisition proceedings initiated by the respondents under the provisions of the Tamil Nadu Urban Land (Ceiling & Regulations) Act, 1978 in respect of the vacant land bearing Plot No.19, comprised in Nanjai Survey No.293/2B, situated at No.31, Kodungaiyur Village, Chennai Corporation Division No.1, situated previously Tondiarpet Taluk, now Perambur Taluk, Chennai District, measuring an extent of 1908 sq.ft., stands abated in view of Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Tamil Nadu Act 20 of 1999) and consequently direct the third respondent to carry out the necessary corrections in the Revenue Records and issue patta in the name of the petitioner for the above said property.

2. The case of the petitioner is that the land comprised in Survey No.293/2B, ad measuring 2.69 acres and the land comprised in Survey No.294/1 ad measuring 1.94 acres in total 4.63 acres situated at Kodungaiyur Village, previously Fort Tondiarpet Taluk, now Perambur Taluk, Chennai District, was originally belonged to one P.Murugesan and he purchased the said properties by way of two sale deeds dated 09.02.1945 and 26.03.1956. Thereafter, he settled the said property in favour of his daughters viz., Indirani and Manonmani by way of Settlement Deed dated 31.08.1981, registered vide document No.4068 of 1981. They formed a layout and divided as house plots and sold out to various persons.

3. The petitioner is one of the purchaser in respect of the plot No.19, comprised in Survey No.293/2B, situated at No.31, Kodungaiyur Village, Chennai, ad measuring 1908 sq.ft., by the registered sale deed dated 08.04.1983. While the petitioner intended to put up construction in the said plot, he approached the third respondent for issuance of patta. Thereafter, the petitioner came to understand that the subject land was already acquired by the Government under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after called as "the Act") as such the petitioner was refused to issue patta.

4. The petitioner obtained information under the Right to Information Act and found that since the urban land owner did not file the statement under Section 7(1) of the Act, the notice under Section 7(2) of the Act was issued on 17.12.1983.



WEB COPY

Thereafter the urban land owner filed a statement before the Assistant Grade Revenue Inspector stating that he had sold the lands in the year 1983 to various persons as plot and he requested time upto 23.01.1984 to file Statement under Section 7 (1) of the Act.

5. Thereafter, the Deputy Tahsildar, (O/o) the Competent Authority/Assistant Commissioner (Urban Land Tax) Madhavaram has reported on 07.05.1984 that the land was laid out as plots and sold to various persons in the year 1983. There are two Mangalore tiled houses in S.No.293/2B and one terraced house in S.No.294/1. He has also stated that the character of the land has been converted to urban. Hence notice under Section 9(4) of the Act along with draft statement under Section 9(1) of the Act was issued on 17.06.1984 by registered post. The same was received by the urban land owner on 23.06.1984.

6. Based on the representation of the urban land owner, the Deputy Tahsildar visited the village on 24.08.1984 and found that the urban land owner is constructing a building in S.No.37/1. Hence, taking into account the above extent, a revised notice under Section 9(1) of the Act along with draft statement was issued on 09.12.1985 through registered post. It was also received by the urban land owner on 27.12.1985. The order under Section 9(5) of the Act was passed on 30.04.1986 declaring an extent of 18034.40 sq.mts., as excess vacant land after allowing 1000 sq.mts., towards entitlement. The same was received by the urban land owner viz., P.Murugesan on 18.12.1987. Final statement under Section 10(1) of the Act was passed on 13.06.1988.

7. Further, the notification under Section 11(1) was issued on 27.03.1991 and it was published in the Tamil Nadu Government Gazette, dated 21.08.1991. Thereafter, the notification under Section 11(3) of the Act was issued on 30.09.1991 and published in Tamil Nadu Government Gazette on 11.12.1991. The land stands vested with the Government with effect from 1st October, 1991. Final notice under Section 11(5) directed the land owner to surrender possession of the land was issued on 30.12.1991. However, the possession of the said land has not been taken over and the petitioner is very much in possession and enjoyment of the subject property. Therefore, the petitioner filed this Writ Petition with the above said prayer.

8. The learned counsel appearing for the petitioner would submit that when the petitioner is in possession and enjoyment of the subject property, in view of the Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act 20 of 1999) (herein after referred to as "the Repeal Act"), the entire acquisition proceedings had abated. Even according to the



respondents, they issued notice under Section 11(5) of the Act and the urban land owner failed to hand over the excess land. If it is so, the second respondent ought to have resorted to take steps enumerated under Section 11(6) of the Act. But the second respondent failed to take any steps under Section 11(6) of the Act, as such the entire proceedings are liable to be declared as lapsed.

9. Heard Mr.K.Permkumar, learned counsel appearing for the petitioner and Mr.P.Balathandayutham, learned Special Government Pleader appearing for the respondents.

10. On perusal of the counter affidavit filed by the second respondent revealed that the notice under Section 11(5) of the Act was issued on 30.12.1991, to the urban land owner to surrender the possession of the land and it was duly acknowledged by the son of the urban land owner viz., M.Sagajanandha on 23.01.1992. However, the urban land owner failed to surrender the possession of the excess vacant land. Therefore, the second respondent had taken possession of the said property and handed over to the Revenue Authorities on 12.11.1996. However, on perusal of the records, there is absolutely no evidence to show that the respondents issued notice under Section 11(6) of the Act and the procedures are duly followed to take possession of the subject property.

11. In fact, on 31.08.1981 itself, the urban land owner settled the property in favour of his two daughters viz., M.Indrani and M.Manonmani. Further on 08.04.1983 itself, the petitioner had purchased the subject property from the daughters of the urban land owner. Admittedly, no notice were issued to the daughters of the urban land owner and no notice was served in the name of the petitioner herein, though the petitioner purchased the subject property on 08.04.1983 itself. In fact, like the petitioner, there are so many purchasers purchased the house plots from the layout put up by the daughters of the urban land owner.

12. In this regard, the learned counsel appearing for the petitioner relied upon the order dated 27.08.2021 passed by this Court in W.P.No.4006 of 2014 in the case of B.S.Saravanan Vs. The State of Tamilnadu and ors., which held as follows :-

"9. In this regard, the Hon'ble Division Bench of this Court in writ appeal Nos.970 and 1738 of 2017 relied upon the judgment of the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh Vs. Hari Ram reported in (2013) 4 SCC 280. In the said case, the Hon'ble Supreme Court of India held that though Section 10(3) of the Urban Land (Ceiling



WEB COPY

and Regulation) Act, 1978, which is para-materia to Section 11(3) of the Ceiling Act, the vacant land is deemed to be acquired, it does not mean that the possession of the land has been taken over. The procedure contained under sub section 5 and 6 of the Central Act must be scrupulously followed. Section 10 (5) of the Central Act which is para-materia to Section 11(5) of the Ceiling Act stipulates that any vacant land even if vested in the State under sub section (3), the competent authority has to by notice on writing or any person who may be in possession of it to surrender or deliver possession of the land to the State Government within thirty days of the service of the notice. If the land owner failed to do, then the State Government has to follow the procedure under sub section (6) of Section 10 or Section 11 as the case may be, and take forcible possession."

Therefore, the respondents have not taken physical possession of the subject property as such, in view of the Section 4 of the Repeal Act, the entire proceedings shall stand abated.

13. Accordingly, the entire proceedings initiated by the respondents under the Act, in respect of the vacant land comprised in Survey No.293/2B ad measuring 1908 sq.ft., situated at Plot No.19, No.31, Kodungaiyur Village, Chennai, are hereby quashed. The third respondent is directed to issue patta in favour of the petitioner within a period of four weeks from the date of receipt of a copy of this Order.

14. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Commissioner of Urban Land
Ceiling & Urban Land Tax,
Chepauk, Chennai - 600 005.



WEB COPY

2. The Assistant Commissioner of
Urban Land Ceiling & Urban Land Tax,
Tondiarpet Zone,
No.409, E.V.R.Periyar High Road,
Chennai - 600 029.

3. The Tahsildar,
Perambur Taluk,
Perambur,
Chennai - 600 011.

+4ccs to Mr.K.Premkumar, Advocate, S.R.No.2849
+1cc to the Government Pleader, S.R.No.3048

W.P.NO.15949 OF 2019 AND
W.M.P.NO.15741 OF 2019

PL(CO)
PBS/07/02/2022