



quash the same; and consequently direct the Respondents 3 and 4 not to treat the property bearing Plot Nos.XXXII and XXXIII at Sri Sai Nagar in MMDA Layout approval PPDLO No.179 of 1997 Thoraipakkam Village in S.Nos.17/2 and 18/2B1A within the jurisdiction of SRO, Neelankarai, South Chennai Registration District, as Government property for the purpose of issuing Patta and any other purpose whatsoever so as to enable the registration of Sale Deed/ Sale Certificate executed by the 2nd Respondent herein in favour of the 1st Petitioner herein.

Prayer in W.P.No.31994 of 2019:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 1st Respondent herein culminating the final order dated 17.09.1997 in Na.Ka.1221/97A in so far as it pertains to the property of the Petitioners herein in S.No.17/2 and quash the same; and consequently direct the Respondents 3 and 4 not to treat the property bearing Plot Nos.XXXII and XXXIII at Sri Sai Nagar in MMDA Layout approval PPDLO No.179 of 1988 Thoraipakkam Village in S.Nos.17/2 and 18/2B1 within the jurisdiction of SRO, Neelankarai, South Chennai Registrtion District, as Government property for the purpose of issuing Patta and any other purpose whatsoever so as to enable the registration of Sale Deed/ Sale Certificate executed by the 2nd Respondent herein in favour of the 1st Petitioner herein.

For Petitioners : Mr.J.Ravikumar
in both W.Ps.

For Respondents : Mr.V.Veluchamy, AGP
for R1, 3 & 4 in both W.Ps.

Mr.A. Ilangovan for R2 in both
W.Ps

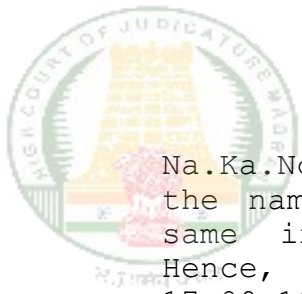
C O M M O N O R D E R

The petitioners have filed these writ petitions seeking for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 1st respondent in Na.Ka.1231/97A dated 16.09.1997 and Na.Ka.1221/97A dated 17.09.1997, in respect of the Petitioners' properties, quash the same and consequently direct the 3rd and 4th respondents not to treat the petitioners' property as Government property, so as to enable the registration of Sale Deed / Sale Certificate executed by the 2nd Respondent in favour of the 1st Petitioner herein.



2. The case of the petitioners is that, 1st petitioner is the husband of the 2nd petitioner. They have purchased a property bearing Plot Nos.XXXII and XXXIII in Sri Nagar Layout, MMDA PPDLO No.179 of 1988, Thoraipakkam Village, in Survey Nos.17/2 and 18/2B1, measuring an extent of 3840 Sq.ft., vide registered Sale Deed dated 28.10.1993 in Doc.No.3926 of 1993 on the file of SRO, Adyar executed by one Ayyakkanu and two others in favour of the 2nd petitioner. Thereafter, the 2nd petitioner obtained the planning permission on 20.04.1994 and put up a construction in the said property and the petitioners resided in the said property and have paid the taxes without any default. Whileso, the petitioners have availed a mortgage loan on 28.02.1994 and the same was repaid and discharged on 05.01.2009. Thereafter, the 2nd petitioner sold the above said property to one Amrit Raj Gnanam, vide registered Sale Deed dated 29.10.2012 in Doc.No.5966 of 2012 on the file of SRO, Neelankarai. Subsequently, the said Amrit Raj Gnanam mortgaged the said property and since he was unable to repay the loan, the said property was brought to auction on 24.01.2018. The 1st petitioner participated in the bidding and being the highest bidder, the 1st petitioner bought the above said properties after paying the entire amount of Rs.1,09,50,000/- to the 2nd respondent and requested the 2nd respondent to register the property in the name of the 1st petitioner, however, the same was not done by the 2nd respondent.

3. It is the further case of the petitioners that, after enquiry, the 1st petitioner came to know that the said Amrit Raj Gnanam did not have patta in his name, thereby, the 2nd respondent approached the 3rd respondent to issue patta, however, the 3rd respondent vide communication dated 13.07.2018 in RPT 2018/ 0105/ 03/ 134095 stated that the said property is shown as Government land under Urban Land Ceiling (in short 'ULC'). Thereafter, the 1st petitioner filed a petition under RTI Act to the 1st respondent seeking information about the land ceiling proceedings under Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (in short 'Act') in respect of the above said properties and the 1st respondent, vide reply dated 16.07.2019 in No.L.DIS 726/2019/B, furnished the copy of the notice and orders in respect of the above said properties. Upon perusal of the same, the petitioners came to know that, the 1st respondent initiated proceedings under the said Act against one Govindammal in respect of property comprised in Survey No.18/2B1 and passed a final order dated 16.09.1997 in Na.Ka.No.1231/97A and declared the above said land standing in the name of said Govindammal as surplus lands and acquired the same including the property purchased by the petitioners, and further proceedings were initiated under the said Act as against one Ayyakannu in respect of the property comprised in S.No.17/2 and final order dated 17.09.1997 was passed by the 1st respondent in



Na.Ka.No.1221/97A and declared the above said land standing in the name of said Ayyakannu as surplus lands and acquired the same including the property purchased by the petitioners. Hence, challenging the above said orders dated 16.09.1997 and 17.09.1997 passed by the 1st respondent in Na.Ka.No.1231/97A and Na.Ka.No.1221/97A respectively, the present Writ petitions are filed.

4. Learned counsel appearing for the petitioners submitted that the petitioners have purchased the above said properties from Ayyakannu and two others on 28.10.1993 and after the said purchase, the petitioners have obtained the planning approval on 20.04.1994 and put up a construction and resided in the said property. He further submitted that, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was extended to Oggiam Thoraipakkam Village only from 09.08.1995 as per G.O.Ms.No.679 Revenue dated 17.07.1995, however, the petitioners have purchased the above said properties in the year 1993 and the land ceiling proceedings were initiated in the year 1997 and even the same was initiated as against the petitioners' vendors. He furthermore submitted that, the petitioners were in absolute possession and enjoyment of the said properties, when the land ceiling proceedings were initiated in respect of the above said properties and no notice was served on the petitioners and the 1st respondent has mechanically passed the present impugned orders, without following the due process of law contemplated in the said Act. He further relied upon the Section 4 of the Repeal Act 20/1999 and same is extracted as follows:

The Urban Land (Ceiling and Regulation) Repeal Act, 1999

All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate: Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

4.1 It is the further submission of the learned counsel



that the physical possession of the above said property was not taken over by the 1st respondent. In such circumstances, the learned counsel sought for quashment of the orders under challenge as arbitrary in nature.

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5. Learned Additional Government Pleader appearing on behalf of the respondents submitted that, the land ceiling proceedings were initiated after following the provisions contemplated in the said Act, as against the respective land owners as per revenue records. The notices and orders have been issued and served by affixture in the said lands by the Village Administrative Officer in the presence of witness as the residential address of the land owners were not known and the possession of the excess vacant land was handed over to the Revenue Authorities on 03.11.1998 and 01.06.1999 respectively and the necessary changes have been made in the revenue records also. He further submitted that, any sale or purchase made after 03.09.1976 is null and void as per Section 6 of the said Act. Further, the petitioners have filed these Writ petitions after a lapse of twenty years from the date of taking over possession, which is not sustainable. Hence, he prayed for dismissal of these Writ petitions.

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

7. The disputed property has been purchased by the petitioners on 28.10.1993 and they have obtained planning permission on 20.04.1994 and put up construction in the said property and the petitioners resided in the said property. Subsequently, the 2nd petitioner sold the above said property to one Amrit Raj Gnanam on 29.10.2012 and the said Amrit Raj Gnanam mortgaged the said property and since he was unable to repay the loan, the said property was brought to auction on 24.01.2018 and the same was bought by the 1st petitioner after paying the entire amount of Rs.1,09,50,000/- to the 2nd respondent.

8. The grievance of the petitioners is that, the petitioners came to know about the entire land ceiling proceedings under Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 in respect of the above said properties, vide reply of the 1st respondent dated 16.07.2019 in No.L.DIS 726/2019/B for the petition filed by the 1st petitioner under RTI Act. Though the petitioners were in absolute possession of the above said property at the time of initiation of land ceiling proceedings, no notices were served on the petitioners.

9. Notice before taking possession of the property is mandatory as per the provisions of the Act. A perusal of the materials available on record reveals that the 1st respondent initiated proceedings under the said Act against the



petitioners' vendors. However, it is pertinent to note that, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was extended to Oggiam Thoraipakkam Village only from 09.08.1995 as per G.O.Ms.No.679 Revenue dated 17.07.1995, however, the petitioners have purchased the above said properties in the year 1993 and the land ceiling proceedings were initiated in the year 1997. Though purchase was made in the year 1993 and land ceiling proceedings were initiated in the year 1997, however, the proceedings were initiated as against the petitioners' vendors

and not against the petitioners. In the above backdrop, the contention of the respondents that the purchase itself is null and void is not sustainable. Further, it is pertinent to note that, no notices were served on the petitioners and physical possession of the above said property was also not taken by the respondents. Though the respondents claim that they have physical possession of the property and that notices were also served on the petitioners, however, the materials available on record is silent on the said aspect and no material whatsoever has been placed by the respondents to substantiate their case.

10. For taking over of the possession, the notice under prescribed format should be served on the land owners. Further, in the present case, the notice was served only by affixture and not sent by registered post with acknowledgement due and the notice under the said Act was not served on land owners in accordance with law and failure of the said provision vitiates the land ceiling proceedings. Further Rule 8 of the Act prescribes the manner in which notice has to be prepared. For better appreciation, rule 8 is quoted 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
conspicuous place in the office of the competent
authority and also upon 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.

(3) The notice under sub-section (4) of section 9
shall be in Form IV]

11. Furthermore, as per Section 11(5) of the Act, refers to
the procedure in which the acquisition of vacant land in excess
of ceiling limit shall be proceeded, which heavily presses upon
serving of notice to the person in possession:-

11. Acquisition of vacant land in excess of
ceiling limit.

(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.

Further Section 4 of the Repeal Act makes it clear that, if
the physical possession was not taken, the entire land ceiling
proceedings would stand abated :-

4. Abatement of legal proceedings. - All
proceedings relating to any order made or
purported to be made under the principal Act
pending immediately before the commencement of
this Act, before any court, tribunal or any
authority shall abate:

Provided that this section shall not apply
to the proceedings relating to sections 12, 13,
14, 15, 15-B and 16 of the principal Act in so
far as such proceedings are relatable to the
land, possession of which has been taken over by



the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

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12. In such circumstance, the land ceiling proceedings initiated as against the erstwhile owners stand abated for not taking physical possession of property and in terms of Section 11(5) of the Act. Therefore, the entire land ceiling proceedings deserves to be quashed.

13. Accordingly, these writ petitions are allowed setting aside the impugned order and further the Jurisdictional Tahsildar is directed to grant patta in favour of the petitioners within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of the patta, the petitioners are directed to present the same along with a copy of this order before the concerned Sub Registrar / R4 and if such document is presented, the SRO is directed to consider the same and pass orders in accordance with law within a period of four weeks from the said date of presentment.

14. With the above observations, these Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skt

To

1. The Assistant Commissioner,
Urban Land Tax Competent Authority (Urban Land Ceiling)
Alandur Zone,
No.153, Karuneegar Street,
Adambakkam, Chennai - 600 088.
2. The REPCO Home Finance Limited,
Represented by its Managing Director,
Corporate Office: 3rd Floor, Alexander Square,
2, Sardar Patel Road, Guindy,
Chennai - 600 032.



3. The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.

4. The Sub-Registrar
Sub-Registrar Office,
Neelankarai.

+4cc to Mr.J.Ravikumar, Advocate, S.R.No.25686 & 25685
+1cc to Mr.A.Ilangovan, Advocate, S.R.No. 26059 & 26060

W.P.Nos.31975 & 31994 of 2019

EV (CO)
AJ (07/06/2022)