IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.35063 of 2019

1.R.Sridhar

2.R.Srinivasan ... Petitioners

vs.

1. The District Collector,
   Chennai District,
   Chennai - 600 001.

2. The Special Commissioner and Commissioner,
   Urban Land Ceiling and Urban Land Tax,
   Chepauk, Chennai - 600 005.

3. The Assistant Commissioner (ULT),
   Egmore Zone,
   Kuralagam Complex,
   Chennai - 600 104.

4. The Tashildar,
   Ayanavaram Taluk,
   Chennai - 600 102. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to delete the name of 'Government of Tamil Nadu' entered in the revenue records relating to Survey No.226/1 Part of Konnur Village, Ayanavaram Taluk, Chennai District, further direct the first respondent to enter the name of the petitioners in the revenue records relating to the said Survey No.226/1 Part of Konnur Village, Ayanavaram Taluk, Chennai District, as the owners thereof and in pursuance thereof, direct the fourth respondent to issue Patta in the name of the petitioners herein.

For Petitioners : Mr.P.V.Sudakar

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

This writ petition has been filed to issue a Writ of Mandamus, directing the respondents to delete the name of 'Government of Tamil Nadu' entered in the revenue records relating to Survey No.226/1 Part of Konnur Village, Ayanavaram Taluk, Chennai District, further direct the 1st respondent to enter the name of the petitioners in the revenue records relating to the said Survey No.226/1 Part of Konnur Village, Ayanavaram Taluk, Chennai District, as the owners thereof and in pursuance thereof, direct the 4th respondent to issue patta in the name of the petitioners herein.

2. The case of the petitioner is that the land comprised in Survey No.226/1 situated at Konnur Village, Saidapet Taluk, Chinglepet District, belong to Sree Baba Co-operative House Site Society Limited and they have purchased the said property by the Sale Deed dated 30.01.1965 registered vide Document No.288 of 1965. Thereafter, the said Sree Baba Co-operative House Site Society Limited had developed the said land and laid out into house sites upon obtaining due approval from the Director of Town and Country Planning vide DTP/TP.No.41/1964. One house plot bearing No.368 comprised in Survey No.226/1 ad-measuring to an extent of 3341 sq.ft., forming part of the approved layout was purchased by the petitioners' father by the Sale Deed dated 05.07.1965 registered vide Document No.2790 of 1965 from the said Sree Baba Co-operative House Site Society Limited. In fact, their father sold out part of the property to an extent of 1230 sq.ft out of total extent of 3441 sq.ft in the plot bearing No.368 in favour of one R.Jothibai by the Sale Deed dated 02.09.1982 registered vide Document No.4015 of 1982. Subsequently, he died on 11.08.2003 intestate leaving behind his wife, two sons and two daughters. Thereafter, his wife also died on 09.02.2013 and his two daughters have executed a Settlement Deed dated 21.04.2016 registered vide Document No.1915 of 2016 in favour of the petitioners, who are being the sons of the said T.Radhakrishnan. On the strength of the settlement deed, the petitioners partitioned the said property by the Partition Deed dated 14.06.2019 and approached the 4th respondent herein for issuance of patta by sub-division. However, they were informed that the subject land stands in the name of 'Government of Tamil Nadu' and the said land was under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as the 'Act' for short).

3. On perusal of the counter affidavit filed by the 3rd respondent, revealed that the land comprised in Survey No.226/1 ad-measuring to an extent of 2700 sq.meters stood registered in the name of Bojammal as per the revenue records. Hence, notice

under Section 7(2) of the Act was issued on 14.05.1987 and the same was duly served to the urban land owner on 20.05.1987. However, the said urban land owner neither filed any return as contemplated under Section 7(1) of the Act nor appeared for enquiry. Therefore, notice under Section 9(4) of the Act and draft statement under Section 9(1) of the Act were published on 15.05.1989 and served on 20.06.1989 to the son-in-law of the urban land owner. Since no objections were received, orders passed under Section 9(5) of the Act on 16.11.1990 declaring that the subject land ad-measuring 2200 sq.mts., as excess land after allowing an extent of 500 sq.mts., towards family entitlement. The final statement under Section 10(1) of the Act was issued on 30.06.1991 and served on 10.08.1991 to R.Lakshmi W/o.P.Rathinam. The notification under Section 11(1) of the Act was issued on 27.09.1991 and published in the Tamil Nadu Government Gazette on 18.12.1991. Thereafter, the excess land is notified under Section 11(3) of the Act and it was issued on 18.11.1993 and published in the Tamil Nadu Government Gazette on 05.01.1994 thereby, the entire land vested with the Government with the effect from 03.01.1994. Thereafter, the notice under Section 11(5) of the Act was issued on 08.02.1994 to the urban land owner, thereby requested to surrender the possession of excess vacant land by RPAD on 24.03.1994. It was returned as undelivered and as such, the said notice was served by affixture on 21.07.1997. Thereafter, the possession of the excess vacant land to an extent of 2200 sq. mts., comprised in S.No.226/1 situated at Konnur Village was taken and handed over to the Revenue Authority on 24.10.1997. Therefore, the subject land in the present writ petition had already been declared as excess and acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

4. On perusal of the records, revealed that the subject land in the present writ petition comprised in S.No.226/1 situated at Konnur Village, Saidapet Taluk, Chinglepet District, was purchased by the Sree Baba Co-operative House Site Society Limited by the Sale Deed dated 30.01.1965 itself registered vide Document No.288 of 1965 in the office of the Sub Registrar, Sembium. Thereafter, the entire land was laid out into house sites upon due approval from the Director of Town and Country Planning vide DTP/TP.No.41/1964. The entire land had been divided into house sites in which one of the house plots No.368 ad-measuring to an extent of 3441 sq.ft was purchased by the petitioners' father by the Sale Deed dated 05.07.1965 vide Document No.2790 of 1965. In fact, he had also sold out to an extent of 1230 sq.ft out of total extent of 3441 sq.ft in favour of one R.Jothibai by the Sale Deed dated 02.09.1982 registered vide Document No.4015 of 1982. Therefore, the entire transactions were made, even before the enactment of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Therefore,

the stands taken by the 3rd respondent is not unfounded and not supported by any legally tenable proceedings as none of the process mentioned in the Urban Land Ceiling Act for acquisition of excess vacant land has been adhered by the 3rd respondent.

5. Even assuming that the subject land was under the acquisition proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the notice under Section 11(5) of the Act had been sent to the urban land owner by RPAD on 24.03.1994. However, it was returned as undelivered. Thereafter, the copy of the notice was served by affixture only on 21.07.1997 by the Village Administrative Officer. Thereafter, the possession of excess vacant land ad-measuring to an extent of 2200 sq.meters comprised in S.No.226/1 situated at Konnur Village, Saidapet Taluk, Chinglepet District, had been taken over and handed over to the Revenue Authority on 24.10.1997. Even according to the 3rd respondent, notice under Section 11(5) of the Act, returned as undelivered and thereafter, it was served only by affixture. Therefore, there is absolutely no point in handed over the vacant possession of the subject land by land owner. When the notice under Section 11(5) of the Act served by affixture, the urban land owner could not have handed the vacant possession of the subject land. When it was being so, the 3rd respondent ought to have issued notice under Section 11(6) of the Act to take vacant possession of the subject land by the proceedings as contemplated under the provision. There is absolutely no record to show that the 3rd respondent followed the procedure laid down under Section 11(6) of the Act to take physical possession of the subject property.

6. As stated supra, even before the enactment of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the subject land was sold out in favour of Sree Baba Co-operative House Site Society Limited and thereafter, the subject land was laid out into house sites. One of the house sites was purchased by the petitioners' father on 05.07.1965 itself, even then, the subject land stands in the name of the 'Government of Tamil Nadu'.

7. That apart, after purchase of the house site, the petitioners' father had sold part of the land ad-measuring to an extent of 1230 sq.ft in favour of one R.Jothibai and thereafter, constructed house. The said house was assessed to the property tax and water tax even on 16.08.1968 itself. Only after partition between the petitioners, they applied for sub-division and issuance of patta.

8. In view of the above, any acquisition proceedings made in respect of the subject land, the entire acquisition proceedings have lapsed in view of the provisions under Section

4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, since the physical possession is in the hands of the petitioners. The 4th respondent is directed to delete the name of 'Government of Tamil Nadu' in the revenue records and mutate the revenue records in favour of the petitioners in respect of the property comprised in S.No.226/1 situated at Konnur Village, Saidapet Taluk, Chinglepet District and issue sub-division patta in favour of the petitioners, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
   Chennai District,
   Chennai - 600 001.

2. The Special Commissioner and Commissioner,
   Urban Land Ceiling and Urban Land Tax,
   Chepauk, Chennai - 600 005.

3. The Assistant Commissioner (ULT),
   Egmore Zone,
   Kuralagam Complex,
   Chennai - 600 104.

4. The Tashildar,
   Ayanavaram Taluk,
   Chennai - 600 102.

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No.5584

+1cc to the Government Pleader, S.R.No.6032

W.P.No.35063 of 2019

KK(CO)
SU(28/02/2022)