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W.P. No.11130 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P. No.11130 of 2019

M.Murugesan

... Petitioner

Vs.

1. The Special Commissioner and
Commissioner of Land Reforms
(Formerly the Director, Urban Land
Ceiling and Urban Land Tax)
Chepauk, Chennai - 600 005
2. The Assistant Commissioner-cum-
Competent Authority
Urban Lnd Ceiling, Salem. Now at
O/o.The Assistant Commissioner
Urban Land Tax Scheme
Chintamani Commercial Complex
1st floor, 12/1, Mettupalayam Main Road,
North Coimbatore, Coimbatore-641 002
3. The Tahsildar
Salem West, Salem

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records in S.R.No.A1/20/93 dated 28.02.1994 from the file of the then Assistant Commissioner-cum-Competent Authority, Urban Land Ceiling, Salem (whose office is disbanded) and records are now at the now at office of the Assistant Commissioner, Urban Land Tax Scheme, Chintamani Commercial



Complex (1st floor), 12/1, Mettupalayam Main Road, North Coimbatore, Coimbatore-641 002, quash the same so far as the 1584 Sq.ft. of lands belonging to the petitioner in S.No.157/1S is concerned and forming part of the larger extent of 19.306 sq.mtrs. out of a total area of 22,306 Sq. mtrs (5.51 acres) larger extent of 5.51 acres in S.No.157/1 of Sivadhapuram Vilage, Salem Taluk, which is the subject matter of the above said proceedings dated 28.02.1994 and forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of the same.

For Petitioner : Mr.D.Shivakumran

For Respondents : Mr.P.Gurunathan
Additional Government Pleader

ORDER

This Writ Petition is filed seeking to issue a Writ of Certiorarified Mandamus to call for the records in S.R.No.A1/20/93 dated 28.02.1994 from the file of the then Assistant Commissioner-cum-Competent Authority, Urban Land Ceiling, Salem (whose office is disbanded) and records are now at the now at office of the Assistant Commissioner, Urban Land Tax Scheme, Chintamani Commercial Complex (1st floor), 12/1, Mettupalayam Main Road, North Coimbatore, Coimbatore-641 002, quash the same so far as the



1584 Sq.ft. of lands belonging to the petitioner in S.No.157/1S is concerned and forming part of the larger extent of 19.306 sq.mtrs. out of a total area of 22,306 Sq. mtrs (5.51 acres) larger extent of 5.51 acres in S.No.157/1 of Sivadhapuram Vilage, Salem Taluk, which is the subject matter of the above said proceedings dated 28.02.1994 and forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of the same.

2. The learned counsel for the petitioner submitted that the petitioner's grandfather N.Vijayagopal Pillai purchased the subject property measuring 1584 sq.ft. of vacant land in S.No.157/1S from one M.L.Krishnamurthy and his wife Kuppammal under a registered sale deed dated 16.11.1988. The petitioner's grandfather's vendors had purchased the said property under a registered sale deed dated 29.11.1979 and their names were also included in the revenue records including 'A' Register and all the previous owners were in possession and enjoyment of the the subject land and after the settlement of the said house site in favour of the petitioner, the petitioner is in possession and enjoyment of the same and that he has been paying the vacant land tax for the said property. He has also put up a house in the vacant site



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and the house is also assessed to property tax by the Salem Municipal Corporation. While so, the 3rd respondent and his subordinates appears to have come and told that the said property has already been vested with the Government as excess vacant land, which was acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter called the 'Act') even as early as 1994 and that the petitioner do not have any right over the property and the house is liable to be demolished. Hence, the petitioner rushed to office of the 4th respondent wherein, he was informed that the subject land has already been declared as excess vacant land in the hands of one K.Kandasamy Gounder S/o. Karuppanna Gounder and one S.Perumal S/o.Sengoda Gounder as early as 28.02.1994 and that the lands have vested with the Government and possession is also with the Government as per revenue records. On enquiring about the same with his neighbours, the petitioner came to known that many writ petitions were filed to quash the said proceedings in S.R.No.A1/20/93 dated 28.02.1994 passed by the the then Assistant Commissioner-cum-competent Authority, Urban Land Ceiling, Salem under Section 9(5) of the Act, declaring that an extent of 19,306 sq.mtrs. out of 22,306 sq.t mtr. belonging to the alleged previous owners as of 1994 viz. K.Kandasamy Gounder and one S.Perumal. The petitioner



understands that already this Court in W.P.No.8610 to 8612 of 2004 dated 07.06.2011 has quashed the said order in S.R.No.A1/20/93 dated 28.02.1994 under Section 9(5) of the Act. The writ petitions filed by many other persons who are owners of portions of the lands comprised in the very same S.No.157/1 were also allowed and the same does not appear to have been challenged so far. A perusal of the proceedings dated 28.02.1994 shows that settlor's vendors were not put on notice by the competent authority, before even passing the order under Section 9(5) of the Act. The learned counsel submitted that when the Repeal Act came into force, the petitioner was in possession and till now the petitioner is in possession of the property and hence the petitioner is entitled to the benefits under the Repeal Act 20 of 2009.

3. The learned Additional Advocate General, assisted by the learned Government Advocate appearing for respondents 1 to 3 submitted that one C.Kandasamy Gounder and S.Perumal was holding the urban land measuring 22310 Sq.mtrs. in S.No.157/1 of Sivathapuram Village in Salem, considered to be more than the ceiling limit allowed to a family. Since the said land owner did not file return under Section 7(1) of the Act with details of family



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members and details of other lands owned in Agglomerations in Tamil nadu, notice under Section 9(4) with draft statement under Section 9(1) of the Act was issued to the land owners on 08.10.1993, calling for objections, for the proposed acquisition of excess vacant land held by them, but they have not filed their objections. The said land was laid out into house sites and sold out to various persons without getting prior permission from the Urban Land Ceiling Authorities. Hence, the orders under Section 9(5) of the Act was passed by the 2nd respondent in proceedings S.R.No.A1/20/93 dated 28.02.1994 determining an extent of 19306 sq. mtrs. out of 22306 sq. mtrs. after allowing 3000 sq.mtrs. towards the urban land owner's family entitlement. The final statement under Section 10(1) of the Act was issued to the urban land owners. Then notification under Section 11(1) of the Act was issued and published in the Government Gazette. Thereafter, notification under Section 11(3) of the Act was published in the Tamil Nadu Government Gazette vesting the lands with the Government. Thereafter, notice under Section 11(5) of the Act was issued to the land owners to surrender or deliver the possession of the excess vacant land to the Collector of Salem. Since the land owners did not come forward to surrender the excess vacant land, it was taken over by the Government on 15.06.1999 prior to the commencement of



the Repeal Act, 20 of 1999 and the same was kept vacant. When a land is vested with the Government and if anybody occupies the same, they are nothing but trespassers and the trespassers are not entitled to any relief. In this case, the acquisition proceedings was already completed and therefore, the petitioner is a trespasser and being a trespasser, the petitioner is not entitled for the relief sought for in this writ petition.

4. Heard both sides and perused the materials available on record.

5. It is seen that the proceedings under the Act was initiated by issuing notice under Section 7(2) of the Act to the urban land owners C.Kandasamy Gounder and S.Perumal and the same was served on the urban land owners. After following due process of law, orders under Section 9(5) of the Act was passed in S.R.No.A1/20/93 dated 28.02.1994. Thereafter notification under Section 11(1) and 11(3) of the Act were issued and the same are published in Government Gazette vesting the land with Government. Thereafter notice under Section 11(5) of the Act was issued to the land owners requesting to deliver possession. Since, the land owners did not turn up to surrender the excess vacant land, the Government took the possession of the properties



prior to the commencement of the Repeal Act came into force and nothing was left on the date of Repeal Act came into force.

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6. Once the land is vested with the Government after following the due procedures under the Act, then it is the Government's land and therefore, the petitioner is nothing but a trespasser. On the date of initiation of acquisition proceedings under the Act, the petitioner was not the owner and therefore, he cannot expect to be issued notice. The petitioner got the title only after the declaration made under Section 11(3) of the Act. The excess vacant land was vested with the Government and possession of the excess land was taken over by the Government on 15.06.1999 and necessary entries have also been made in the revenue records. On the date of Repeal Act came into force, the land was vested with the Government and there is no record to show that on the date of Repeal Act came into force, the land stood in the name of the petitioner. If the petitioner was in physical possession of the land, he should have produced any document to show that on the date of Repeal Act came into force he is in possession of the lands and revenue records also mutated either in his name or in his vendors name and subsequently the mutation continued in their names. Therefore as per the records, entire acquisition



proceeding attained finality on 15.06.1999 prior to the Repeal Act came into force and hence the petitioner is not entitled to get benefits under Section 4 of the Repeal Act.

7. In view of the foregoing observations, this Court does not find any reason to entertain the writ petitioner's claim especially when the respondents proved the vital fact that all the acquisition proceedings were completed prior to the Repeal Act came into force. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

15.12.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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