

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2014

Delivered on : 18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.20125 of 2014

and

M.P.No.1 of 2014

Mrs.P.Chandrika,
W/o.Late K.V.Gopalakrishnan,
11, Muthusamy Konar Street,
KK Pudur,
Saganur Village,
Coimbatore.

: Petitioner

Vs.

1.The Commissioner,
Commissioner of Urban Land Ceiling
and Urban Land Tax, Ezhilagam,
Chepauk, Chennai - 5.

2.The Assistant Commissioner & Competent Authority,
Urban Land Tax & Urban Land Ceiling,
Coimbatore - 641 018.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents especially the Orders of the first respondent dated 06.01.2014 vide Rc.No.6503/2013/J3 in respect of petitioner's land in S.No.63/1 of Kavundampalayam Village, Coimbatore District admeasuring about 134.5 Cents and quash the same and consequently direct the respondents to treat the proceedings as abated under Section 4 of Tamil Nadu Land (Ceiling & Regulation) Repeal Act 20 of 1999.

For Petitioner	: Mr.Karthikeyan Sekar
For Respondents	: Mr.K.Rajendra Prasad
1 and 2	Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned order dated 06.01.2014 passed by the first respondent vide Rc.No.6503/2013/J3 in respect of the petitioner's land in S.No.63/1 of Kavundampalayam Village, Coimbatore District admeasuring about 134.5 Cents and consequential direction to the respondents to treat the proceedings as abated under Section 4 of Tamil Nadu Land

(Ceiling & Regulation) Repeal Act 20 of 1999 (hereinafter referred to as 'the Act').

2. The learned counsel for the petitioner would submit that first of all, the impugned order is a non-speaking order. It does not give any reasons at all. Time and again, this Hon'ble Court as well as the Hon'ble Supreme Court has held that such an order is not in accordance with law. But, the main contention in the writ petition is that the Urban Land Ceiling Act itself has been repealed. When the Act was repealed and if the possession continues with the petitioner, then all other proceedings lapse. In this case, he would contend that the original owner was not at all served with any notice of proceedings under Sections 11(1) and 11(5) of the Act and therefore, the entire order is vitiated. Above all, when the possession has not been taken, the further course of action will not arise. In this regard, the petitioner would contend that the land in question was originally owned by one Ranga Naicker and after his death, his son Venkitaswamy Naicker succeeded to the property. Venkitasamy Naicker is the father in law of the petitioner. Even during his life time, he had executed a Will to his son V.Gopalakrishnan, the husband of the petitioner. Even during the life time of V.Gopalakrishnan, the husband of the petitioner, there was a civil dispute between him and his family members in O.S.No.1245 of 1998. Pending the suit, the husband of the petitioner died on 12.08.2003. Later on the suit was transferred to FTC No.III, Coimbatore and renumbered as O.S.No.160 of 2002 and that suit was disposed of on 24.09.2010. Another suit was filed against the petitioner by one Meenakshi Ammal who is a close relative of Venkitasamy Naicker and that suit was also disposed of in favour of the petitioner. After the disposal of the above said suit, she applied for grant of patta. She being a widow and retired school teacher, she was driven from pillar to post to get the patta and only then, she came to know that the property was entangled with Urban Land Ceiling proceedings and on verification, she came to know that neither notice under Section 11(1) and 11(5) of the Act was ever served on her nor her father-in-law or her husband or anybody who is concerned with the land and no compensation stipulated under Section 11 and 14 was complied with and there was no excess land available. Above all, the physical possession of the property till date is with the petitioner. Subsequently, she has also paid the entire urban land tax which was due. Therefore, she applied before the competent authority to release the land, as the land is still in her possession, as the entire proceedings had lapsed. But that petition was dismissed or rejected without giving any further reasons but only on the sole ground that the alleged possession has been taken. According to the petitioner, the authority concerned has not considered all these factors especially regarding the possession whether notice was served or not. The non-service of notice under Sections 11(1) and 11(5) is against the principles of natural justice. The authority has not taken into consideration the report of the Commissioner who has recommended for suitable orders and refused to recognize the physical possession as the transfer has never taken place. As per the Division Bench judgment of this Hon'ble Court, the possession is sine qua non, all the entire proceedings are vitiated without notice under Section 11(5) of the Act. When notice under Section 11(5) is not served, automatically,

the whole thing lapses. A catena of decisions of the Division Bench of this Court has categorically held that possession is not taken over, the entire proceedings will lapse.

3. Though time was granted on many occasions to file counter and the Government Advocate took notice, no counter was filed. But, the learned Government Advocate, on instructions, produced the original file and argued the case. He would mainly contend that as per the records, an enquiry was conducted by the Assistant Commissioner (Urban Land Ceiling), and as per the original file, notice under Section 3(2) was served on the father-in-law of the petitioner namely Venkitasamy Naicker as early as on 16.08.1989. Thereafter, order under Section 9(5), dated 13.11.1989 and 10(1) notice had been served on the husband of the petitioner on 18.01.1990. The 11(3) notice was published in the gazette and rectification was made on 11.05.1994 in the gazette. 11(5) notice though has been sent in the name of the father in law of the petitioner as early as on 18.07.1994, he has not received the same but it was received by one Palaniammal. Thereafter, on 07.01.1997, possession has been taken and handed over and it has been recorded. As far as the compensation is concerned, it was not paid to the petitioner's father-in-law but it has been deposited in the Treasury under Cheque No.B 167060, dated 21.02.2001 for Rs.14,042/- and later on, the cheque has been transferred to the Government account by proceedings dated 17.05.2005. Therefore, the petitioner's request was rightly rejected by the authority concerned on the ground that possession has been taken over on 07.01.1997.

4. Heard both sides and perused the original file.

5. The main ground of attack by the petitioner is that under the Urban Land Ceiling Act, if possession is still retained by the landlord/petitioner, then further proceedings automatically lapses. Therefore, first of all, we have to look into the question that whether possession has been taken over or not. Before that, we have also to take into consideration the question whether notice has been served or not as contemplated under the Act. Notice under Sections 11(1) and 11(5) have not been duly served on the actual original owner of the property. There is no dispute that the petitioner's father-in-law is the original owner at the relevant point of time and as the husband of the petitioner also died, presently, the petitioner is the legal heir which are all admitted facts. The petitioner has also produced a report of the Assistant Commissioner submitted to the Commissioner in his proceedings Na.Ka.865/2013/a4, dated 02.12.2013. The said report has been called for on the basis of the application made by the petitioner. From which it is very clear that the original notice under Section 9(5) and 10(1) even have not been served in the name of the father-in-law of the petitioner and notice under Section 11(5) has not been served at all. In fact, precisely, 3(2) notice alone was served on the father-in-law of the petitioner and 9(5) and 10(1) notice have been served on the husband of the petitioner. 11(1) and 11(5) notice have been sent as early as on 07.01.1997 but it was not served either on the father or son but it was received by one Palaniammal. The original file report also says so. Therefore, notice served on the third party cannot be a valid notice and even otherwise, for the

possession taken, in the original file, the learned Government Advocate pointed out and it has been verified that the possession certificate alone finds a place. In the possession certificate, what is stated is the survey number, the extent and four boundaries. As far as the four boundaries are concerned, no four boundaries are mentioned excepting the survey numbers of north, east, south and west are mentioned and in the end, it is only stated as 'taken over by Revenue Inspector on 07.01.1997' and 'handed over by Special Deputy Tahsildar, Urban Land Tax, Coimbatore, and it is countersigned by the Village Administrative Officer but nowhere we find any reference at all that the petitioner's father-in-law or his son, the husband of the petitioner, or any one has been informed, even signed or they have accepted or the possession has been taken over from the actual owner of the property. What was stated is only a paper delivery. As enunciated by the Division Bench of this Court, stated supra, 11(5) notice also has not been served on the party and actual physical possession has not been taken from the party. What is mentioned in the original file is the land was taken over and handed over.

6. In this background, when we analyse the judgments relied upon by the petitioner reported in Gajanan Kamlya Patil vs. Additional Collector and Comp. Auth. and others [2014-3-L.W. 60] wherein the Hon'ble Supreme Court has categorically held that if the possession has not been taken in accordance with the procedures, it is only a de jure possession and it cannot give any right and when it is not proved regarding the possession before the Repealing Act, the entire proceedings lapses. The relevant paragraph of the judgment reads as under:

"13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in

view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed.

14.The Appeals are, accordingly, allowed. However, there shall be no order as to costs."

7.In the above case, they have also relied upon the decision made in State of U.P. v. Hari Ram [(2013) 4 SCC 280] to the same effect.

8.The learned counsel for the petitioner also relied upon an unreported decision of the Division Bench of this Court made in W.A.No.759 of 2014 dated 25.06.2014 (The Special Commissioner and Commissioner of Land Reform, Chepauk, Chennai - 5 vs. M/s.Dual Structurals rep. by its Partners Sri A.Anjiah and Sri Ravindrakumar). In the above case, the original 11(5) proceedings itself was challenged following the decision of the earlier Division Bench, the writ appeal was dismissed. The stand of the Government was, possession has been taken over by the appellants viz., the Government. Therefore, on the ground of even delay and latches, the very writ petition should have been dismissed. But the contention of the petitioner in the writ petition was, when the factual possession is with them, as per the repealing Act, no further proceedings could go on and the Division Bench has held as follows:

"6.The appellants have not produced any document to show the factum of possession. Similarly, they are not able to demonstrate the alleged dispossession by the respondent. The averments made regarding the sale and the construction of house have not been denied. Therefore, the learned Single Judge has taken note of two Division Bench judgments of this Court, wherein it has been held as under:

"13.The reliance is also placed on the Hon'ble Division Bench judgment of this Court in M/s.Sree Jayalakshmi Brick Industries vs. The Special Commissioner and Secretary to Government and 3 others, 2009-4-L.W.-819, laying down therein as under:-

"12.In view of such categorical pronouncements of this Court, we are of the view that the notice under Section 11(5) should be served on the petitioner. Though, his purchase by a sale deed is made invalid by Section 6 of the Act, in view of the word "any person who may be in possession" used in Section 11(5) of the Act, notice ought to have been served on the petitioner to surrender or deliver possession to the Government.

14.We, therefore, hold that there was no notice served under Section 11(5) of the Act

either on the petitioner or on the erstwhile owner, viz., the vendor of the land.

....
23. Once the possession is not taken over by the Government as held by us, all the proceedings under the Act must be held to have abated under Section 4 of the Repealing Act, in view of the categorical pronouncement of the constitutional Bench of the Honourable Apex Court in Smt. Angoori Devi vs. State of Uttar Pradesh and Others reported in JT 2000 (Suppl.1) SC 295."

17. The Hon'ble Division Bench of this Court, in the case of V. Somasundaram vs. Secretary to Government, Revenue Department, (2007) 1 MLJ 750, has laid down as

"From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11 (5) notice was also issued to the third respondent, who was not the real owner. As per Section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days' time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act.

...
11. As rightly contended by the learned counsel for the appellants, the appellants were not entitled to file appeal due to enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, from 16.9.1999. Hence, the writ petition filed without availing the alternate remedy of filing appeal under Section 33 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, is maintainable.

7. Considering the same, we do not find any merit in this writ appeal and the same is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is also dismissed."

9. In fact, in the decision reported in K. Jayalakshmi and others vs. Principal Commissioner and Commissioner of Land Reforms [(2013) 1 MLJ 839] this Court has taken into consideration all the judgments and held that when there is nothing on record to show that actual physical possession of the land in question has been taken over by the Government and that the compensation amount had been paid to the petitioner in respect of the said land, the land ceiling proceeding said to have been instituted is not sustainable in the eye of law. Therefore, they quashed the very proceedings. In fact, the petitioner would rightly contend that under Section 11(5) of the Act, the competent authority is bound to issue a notice in writing to a person who is in possession of the land in question asking him to surrender and deliver the possession of the same to the State Government or the person duly authorised by the State Government. However, in the present case, no notice has been served to the petitioner by a competent authority and no record on the file also for sending such notice. In that case also the Court clearly pointed out the possession has been taken over and handed over to the revenue authority is stated to be on 23.03.1994. This Court has also relied upon the earlier judgment of this Hon'ble Court in C.V. Narasimhan v. Government of Tamil Nadu and 2 others [(2002) 2 LW 764] wherein it has been held as follows:

"It is clear that the repealed Act gives certain right to the owners of the land where the physical possession of such land continues to be with the owner. The statutory vesting is of no relevance. In the case on hand, the petitioner claims to be in possession of the disputed land. When sub-section (2) of Section 3 of the repealed Act specifically makes a provision to refund the compensation and retain possession if possession remain with the land owner. Hence, it is for the first respondent to consider the question of physical possession and decide the issue. Virtually, the first respondent has failed to consider this vital factor. This Court is of the view that the non-consideration of this vital factor by the first respondent will amount to an error apparent on the face of the record, as well as the impugned order suffers from non application of mind with regard to the legal implications of the repealed Act.

It is also contended by the learned counsel for the petitioner that the land did not fall within the purview of the Tamil Nadu Act 24 of 1978 and if that is so, even assuming that the petitioner had voluntarily submitted the return, the same cannot be taken as an estoppel by conduct as there cannot be any estoppel against the statute. When the land did not fall within the purview of the Tamil Nadu Act 24 of 1978, then the authorities have no jurisdiction to proceed with the acquisition of the said land. If any action was taken in respect of the land which did not fall within the purview of the repealed Act, then the said action of the authorities is non est in law, as the petitioner cannot be deprived of the land under a proceeding which is contrary to the statute."

10. In fact, in the above case, it has been clearly pointed out that the possession, if it is taken, has to be proved that the possession has been taken by following the provisions prescribed under the Act and even any possession is stated to be taken which is not in consonance with Section 11(5) of the Act. Accordingly, this Court has categorically held that since the records do not show the possession of the lands in question is not actually taken, the entire proceedings has been vitiated. In fact, a judgment of the Division Bench reported in V.Somasundaram and others v. Secretary to Government, Revenue Department, Chennai and others [(2007) 1 MLJ 750] has been relied upon in the above case. They relied upon that even in the case of mutation of records subsequently, until the possession is proved, the possession taken cannot be accepted. In fact, the earliest decision made in W.P.No.17416 of 2004 dated 22.08.2006 the word taking possession has been defined. In fact, this Court has held as follows:

"This Court, in a long line of decisions had held that taking possession means "taking physical possession". Therefore, the sine qua non to keep the property declared as surplus under the provisions of the Act is that physical possession of the said property ought to have been taken by the competent authority, despite coming into force of the Repealing Act. To sustain its possession, learned Government Advocate would refer only to a letter written by a Tahsildar to another Tahsildar stating that the land owners have already delivered possession. None of the land owners have signed in that letter, which alone would constitute an acknowledgment on their behalf having parted with possession. In the absence of any signature of the land owners in such interdepartmental correspondence, I have no doubt at all that the competent authority had not taken physical possession of the property. In other words, there is no document at all whatsoever, except the above referred to letter, to show that physical possession of the property had been taken over by the competent authority. Accordingly all proceedings initiated under the old Act had elapsed after coming into force of the Repealing Act and the writ petition stands ordered as prayed for. No costs."

The facts in the present case is identical to the facts of the above case. As we have stated earlier, in the original file there is only one proceedings which says the land is taken over and handed over without any signature of the owner. Hence, on the basis of this ruling itself the entire proceedings will lapse.

11. Yet another vital point has been raised by the learned counsel for the petitioner that the impugned order is a cryptic order and it does not give any reason. In fact, he would submit that in this case possession was stated to have taken on 07.01.1997.

As rightly pointed out, the authority concerned has not even considered regarding non issuance of notice under Section 11(5) and the order has become lapsed after the Act has been repealed. In this connection, he would rely upon the decision of the Hon'ble Supreme Court in Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela-I Circle and others wherein it has been categorically held that "reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. (See Raj Kishore Jha v. State of Bihar [2003] 11 SCC 519)" It is further observed as under:

"Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [1971] 1 All ER 1148, observed : "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974] ICR 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice". "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

12. Therefore, the principle laid down in the above case would also apply to the facts of this case as no reason has been given in the impugned order. The next question arise in this case is that because of non-issuance of notice, whether the matter has to be remanded back or not? This question also does not arise because first of all, the Act has been repealed very long back and it is admitted that possession has not been taken and the very original file itself reveals that the notice has not been served on the parties concerned. Therefore, it will be a futile attempt again to remand the matter back. Further, he relied upon a decision of a Division Bench of this Hon'ble Court which has categorically held that entire proceedings lapses for not following the procedures as contemplated under Section 11(5) of the Act as there is no need for further enquiry. Hence, the prayer of the petitioner to treat the

proceedings as abated is only an automatic conclusion as every proceedings have lapsed.

13.Further, the only document which has been produced is similar to that viz., handing over and taken over. The set of facts in that case would squarely apply to the facts of the case on hand. In fact, the petitioner has also produced a receipt for payment of urban land tax showing that the entire fasli amount has been paid and also the report of the Assistant Commissioner is in her favour. But on a careful reading of the impugned order would show that the authority does not even consider anything and he has simply stated only one word "possession has been taken". Therefore, the possession alleged to have taken in this case is not an actual physical possession as contemplated under the Act, hence the entire proceedings lapses. Therefore, the impugned order is set aside. Accordingly, the prayer in the writ petition to treat the property as lapsed and hence removed from the clutches of the authority is valid and correct as the petitioner alone is in possession and enjoyment of the property. Hence, the impugned order is set aside and the relief sought for by the petitioner in this Writ Petition is granted in toto.

14.In the result, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

Sub Assistant Registrar

srm

To

1.The Commissioner,
Commissioner of Urban Land Ceiling
and Urban Land Tax, Ezhilagam,
Chepauk, Chennai - 5.

2.The Assistant Commissioner & Competent Authority,
Urban Land Tax & Urban Land Ceiling,
Coimbatore - 641 018.

+1 CC to Mr.Karthikeyan Sekar, Advocate, Sr.No.9212

W.P.No.20125 of 2014