

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:17.02.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.1746 of 2014
and
M.P.No.1 of 2014

- 1.State of Tamil Nadu
represented by its Secretary to Government,
Revenue Department, Secretariat,
Chennai - 600 009.
- 2.The Special Commissioner and
Commissioner of Urban Land
Ceiling and Urban Land Tax,
Board of Revenue, Chepauk,
Ezhilagam, Chennai - 600 005.
- 3.The Tahsildar,
Tambaram, GST Road,
Kadaperi, Chennai - 600 045.
- 4.The Assistant Commissioner of
Urban Land Tax and Competent Authority,
Urban Land Ceiling,
Tambaram Taluk, Alandur Area,
Sannathi Street, Adambakkam,
Chennai - 600 088.

... Appellants/Respondents

सत्यमेव जयते

Sumathi Srinivas

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 17.09.2012 in W.P.No.14099 of 2007 presented under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the fourth respondent dt.23.10.97 in Na.K.C.P.81/97D under section 9(5) and 14.12.98 in RC.1280/M8D under section 11(5) in respect of land in survey No.72/4 denote of a572/10 of Peerkankaranai village Tambaram Taluk Kanchipuram Dist and quash the same so as to enable the third respondent to incorporate the names of the petitioners as owners in all Revenue Records passed by the Learned Single Judge.

For Appellants : Mr.N.Sakthivel
Government Advocate

For Respondent : Mr.V.Ramesh
For M/s.K.Moorthy & S.R.Sundar

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant/Petitioner has filed the instant intra-court Writ Appeal as against the order dated 17.09.2012 in W.P.No.14099 of 2007 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned common order on 17.09.2012 in W.P.Nos.14099, 14499 & 15924 of 2007, had opined that the Respondents had not complied with the provision under Section 11(5) of the Land Acquisition Act, 1894 by issuing and serving notice on the Petitioners and also that they had not taken any further action as per the provision under Section 11(6) of the Act and accordingly, set aside the impugned orders passed by the 4th Respondent, dated 23.10.1997 in Na.K.C.P.81/97D and 14.12.1998 in RC 1280/78D in W.P.No.14099/2007 and dated 25.03.1997 in Na.K.C.P.80/97D and 14.12.1998 in RC 1276/98D in W.P.No.14499/2007; and the order of the 2nd Respondent dated 18.04.1997 in Ref.Rc.469/96A and a final settlement dated 23.07.1997 in W.P.No.15924/2007 and resultantly, allowed the Writ Petitions.

3.The Learned Government Advocate for the Appellants/ Respondents submits that the Writ Court failed to take into account of a fact that the possession of excess land was handed over to the Revenue Authorities during the year 1999 and that the Writ Petition was filed after a lapse of 8 years and therefore, it is not maintainable in law.

4.The Learned Government Advocate for the Appellants urges before this Court that only after fulfilling all the requisite formalities/procedures, the land with an extent of 1600 square metres in S.No.72/10 (Old S.No.72/4) of Peerkankaranai Village was taken and handed over to the Revenue Authorities on 09.04.1999 by signing the Land Delivery Receipt. In fact, the possession of the excess land was taken over by the Revenue Authorities on 09.04.1999, well before the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999 and as such, the acquisition is saved under the said Act and viewed in that perspective, the Writ Petition filed by the Respondent/Petitioner is unsustainable in law.

5.The prime contention advanced on behalf of the Appellants is that the Writ Court, in the impugned order, had observed that during the year 1979 the lands in Survey No.72/4 and 99/1AB of Peerkankaranai Village measuring 2225 square metres in the hold of Saraswathiammal was treated as within the ceiling limit after taking

into account the family members but failed to see that during the year 1997 it was noticed that the land in S.No.72/10 (Old S.No.72/4) measuring 0.21.0 hectare was sold to one Lakshmi Kanthammal Vagaiarah and was held by her as per the entries made in Revenue Accounts. Therefore, as per Section 17(1) of the Act, Tmt.Lakshmi Kanthammal is liable to file the return and all the provisions under Sections 7 to 16 of the Act would apply, since she had purchased the land.

6.According to the Learned Government Advocate for the Appellants, the Writ Court had failed to note that the land in S.No.72/10A of Peerkankaranai Village was owned by Lakshmi Kanthammal as per Patta No.1136 and she was the registered holder of the land when actions were initiated and the stated settlement made in favour of the Respondent/Petitioner in the said land after the initiation of actions under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and after commencement of the Act is null and void as per Section 6 of the Act.

7.The Learned Government Advocate for the Appellants projects an argument that after publication of Notification under Section 11(3) of the Act, the land vested with the Government in 1998 and possession of the land was taken and handed over to the Revenue Department on 09.04.1999 and that the proceedings had attained finality well before the Repeal Act came into force.

8.Advancing his arguments, the Learned Government Advocate for the Appellants contends that the Learned Single Judge should have seen that the Notification was published under Section 11(1) of the Act and if any one was interested in the said land, he/she should file his/her objection before the competent authority and in addition to the publication of this Notification in the Government Gazette, it was affixed in a conspicuous places of the Offices of the Competent Authority viz., District Collector, Tahsildar concerned and Local Body etc., as per 10(1)(a)&(b) of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978. Moreover, if any one had made any objection on the basis of this, then he/she would be entitled to service of notice under Section 11(5) of the Act, apart from the original owner of the land. Further, it is the stand of the Appellants that the Respondent/ Petitioner had not filed any objection before the Competent Authority and as such, the allegation of issue of notice to the Respondent/ Petitioner does not arise.

9.The Learned Government Advocate for the Appellants submits that the Government Records clearly point out that the possession of the land is with the Government for the last 13 years ever since 1999 and in fact, the possession of excess vacant land, as an immovable property, can be indicated only through records and in case of individual by documents and in case of Government machinery by Village and Taluk Accounts. Further, these aspects were not taken

into account by the Learned Single Judge at the time of passing the impugned order.

10.Expatiating his submissions, the Learned Government Advocate proceeds to submit that the physical possession was not taken by the Government is unsustainable and further, the aspect of physical possession if any by the Respondent/Petitioner after issuance of Section 11(5) notice ought to be treated only as an encroachment of the Government land.

11.During his last leg of argument, the Learned Government Advocate for the Appellants contends that the Respondent/Petitioner filed any Appeal under Section 33 of the Act and after the Repeal of the Act in 1999 and after lapse of 8 years, the Respondent/Petitioner had filed the present Writ Petition in the year 2007 and therefore, it is not maintainable.

12.Per contra, it is the submission of the Learned Counsel for the Respondent/Petitioner that the Respondent is the absolute owner of Plot No.6 in S.No.72/4, in Peerkankaranai Village (Village No.169), Tambaram Taluk, Kancheepuram District measuring an extent of 2450 square feet of a residential plot.

13.The Learned Counsel for the Respondent brings it to the notice of this Court that the property in S.No.72/4 forms part of a larger extent of land measuring 0.52 acres which originally belonged to one Krishna Iyer, who was the Respondent/Petitioner's mother's grandfather and that by means of a registered settlement deed dated 22.01.1958, the said Krishna Iyer settled 0.52 acre in S.No.72/4 in Peerkankaranai Village in favour of Petitioner's mother Saraswathiammal and that the said Saraswathiammal, through a registered Document dated 14.07.1983, sold 2470 square feet of land in S.No.72/4 in Peerkankaranai Village in favour of one Lakshmi Kanthammal.

14.It is the stand of the Respondent/Petitioner that the Respondent/Petitioner's mother, through a settlement deed dated 16.12.1988, settled Plot No.7, adjacent property in favour of the Respondent/Petitioner's sister Uma Maheswari and that the said Saraswathiammal settled Plot No.6 in favour of the Respondent/Petitioner. As a matter of fact, the Respondent/Petitioner and her sister were put in possession of the respective lands and that the 3rd Respondent/Tahsildar had issued a patta bearing No.2055 to the Respondent/Petitioner's sister Uma Maheswari in the aforesaid survey number for Plot No.7.

15.The Learned Counsel for the Respondent submits that in the petition filed by the Respondent/Petitioner's mother claiming exemption from the provisions of the erstwhile Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the 2nd Respondent, in Letter

No.G3.244/1977 dated 10.01.1979, had stated the following:

"... With reference to your application for grant of exemption from the provisions of Chapter III of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in respect of a land held by you in S.Nos.72/4 and 99/1 AB of Peerankaranai Village measuring 2225.500 square meters in toto, I am to inform you that the above mentioned Act has been repealed and replaced by the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and that the above lands are reported to be within the ceiling limit prescribed in the new Act.. Taking into account the number of members of your family, as husband, two minor children including notional share eligible to the 2 major sons as such no exemption from the provisions of the Urban Land Ceiling Act is necessary."

16.The Learned Counsel for the Respondent proceeds to submit that a letter dated 13.12.1989 was addressed from the 4th Respondent's office invoking Sections 9(1) and 9(4) of the Act and pursuant to the same, on 18.07.1991 after the notice was issued to the Respondent/Petitioner's mother, she appeared before the 4th Respondent and furnished particulars about the family members as well as the letter issued by the 2nd Respondent dated 10.01.1979.

17.The real grievance of the Respondent is that the possession of the property was all along with the predecessors-in-title of the Respondent/Petitioner and in fact, neither the Respondent/Petitioner nor the mother was put on notice before invoking the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 even the other mandatory provisions contemplated under the Act were never taken.

18.According to the Learned Counsel for the Respondent, through a letter dated 13.11.1994, the 4th Respondent/Competent Authority, Urban Land Ceiling, issued proceedings threatening to invoke Section 39(1) of the Act and a prompt reply was furnished on 14.01.1998 elucidating the necessary facts and no action was taken by the concerned Respondent. Also that, the mandatory conditions prescribed under Sections 7 to 12 were not followed by the Respondents and statutory conditions for the purpose of acquiring all the lands were not followed and no decision was taken by the Respondents. Moreover, mutation of entries were made to the Respondent/Petitioner's adjacent land (which also forms part of S.No.72/2).

19.The categorical plea of the Respondent/Petitioner is that the possession of land was clearly with her and her predecessors-in-title when the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was

repealed by Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 which came into effect during the month of September, 1999.

20.The Learned Counsel for the Respondent draws the attention of this Court that the Respondent/Petitioner was constrained to submit a detailed representation on 05.04.2005 and a detailed legal notice was issued on 31.01.2006 but they were of no avail. That apart, for the representation of the Respondent/Petitioner's mother's letter dated 02.03.2006 relating to mutation, the 4th Respondent, by means of proceedings dated 26.09.2006 (which was received on 03.10.2006), had replied that the lands were vested under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and since the Act was repealed, the representation of the Respondent/Petitioner's mother could not be considered.

21.Finally, the Learned Counsel for the Respondent contends that the Appellants/Respondents had failed to provide any opportunity before declaring the lands as surplus and further that, since the Respondent/Petitioner's mother was not well and recouping from the surgery, the passing of the impugned order by the 4th Respondent was known to the Respondent/Petitioner only recently and hence, she had filed the present Writ Petition.

22.The Learned Counsel for the Respondent cites the Division Bench decision of this Court in M/s.Sree Jayalakshmi Brick Industries V. The Special Commissioner and Secretary to Government & 3 others reported in 2009-4-L.W.-819, at special page 820, whereby and whereunder, it is held as follows:

"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."

Also, in the said decision, it is observed and held thus:

"Further, the learned counsel for the petitioner argued from the records produced that even the vendor of the land was also not served with the notice under Section 11(5) of the Act read with Rule 10(3). According to him, the notice under Section 11(5) should be sent by RPAD. In this case, admittedly, the records do not indicate that notice was sent through RPAD to the erstwhile owner. The learned counsel also pointed out that there was no endorsement from the erstwhile owner for the receipt of the notice. On the other hand, the records reveal

that an endorsement was made by the official at page No.937 of the record file that notice was served on the erstwhile owners. According to the learned counsel for the petitioner, this does not amount to service of notice under Section 11(5) of the Act. The learned counsel for the petitioner strenuously contended that if such a method is approved, then the officials would cook up the records by simply making an endorsement in the notice without getting endorsement from the concerned persons for proof of service or by sending through RPAD. We find force in the submission of the petitioner.

The learned Special Government Pleader vehemently argued that symbolic possession is sufficient when the actual take over of possession is not contemplated under the Act. We are not in agreement with that submission in view of the categorical pronouncements of this Court referred to above.

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 these circumstances, we are inclined to set aside the order passed by the Tamil Nadu Land Reforms Special Appellate Tribunal. Accordingly, the order dated 11.10.2000 passed in T.R.P.No.313 of 1999 by the Tamil Nadu Land Reforms Special Appellate Tribunal is quashed and all the proceedings under the Act must be held to have abated in view of Section 4 of the Repealing Act 20 of 1999." सत्यमेव जयते

23.He also relies on the Division Bench Judgment of this Court in W.A.No.239 of 2014 (between The Principal Commissioner, Commissioner of Land Reforms, Chennai & 2 others V. M.Venkataraman), wherein in paragraphs 4 & 5, it is observed and held as follows:

"4.The learned Additional Government Pleader appearing for the appellants submitted that possession has already been taken as early as on 21.05.1999 and as such, the order passed by the learned single Judge will have to be set aside.

5.We are not inclined to entertain this writ appeal, as, after thorough scrutiny of the files, the learned single Judge has rendered a factual

finding. The appellants are not able to produce any contra material. After going through the entire file, the learned single Judge recorded a finding that the appellants could not have taken possession on or before 21.05.1999, since the notices have been despatched only on 24.04.1999. Therefore, it is impossible for the appellants to take possession before 21.05.1999. Accordingly, the learned single Judge was pleased to hold that it was factually incorrect to state that possession was taken on 21.05.1999. In view of the said factual finding, we do not propose to interfere with the order passed by the learned single Judge."

24. At this stage, this Court pertinently points out that the Appellants, in their Counter to the Writ Petition, had averred that the urban land in S.No.72/10 (Old S.No.72/4) measuring 2100 square metres of Peerkankaranai Village classified as 'Dry' was owned by Lakshmi Kanthammal under Patta No.1136 and in fact, she had not filed the return under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and a notice under Section 7(2) of the said Act was issued in S.R.No.81/97 dated 06.03.1997 by the 4th Respondent. Moreover, a draft statement under Section 9(1) with notice under Section 9(4) of the said Act proposing the acquisition of excess vacant land was issued on 01.09.1997 and served by affixture in the case land as the urban land owner was not residing in the village and her whereabouts were not known.

25. Apart from the above, the stand of the Appellants is that as there was no objection to the notice, the then Assistant Commissioner (Urban Land Tax), Tambaram (4th Respondent) had passed an order under Section 9(5) of the said Act declaring the excess vacant land as 1600 square metres after allowing 500 square metres towards entitlement. In fact, an order dated 23.10.1997 passed in Ref.No.81/1997/D was served by affixture in the presence of Village Administrative Officer and two witnesses. Also that, final statement under Section 10(1) of the said Act was issued by the 4th Respondent in Rc.D/1280/98 dated 28.04.1998 and was served by affixture in the manner prescribed under Section 9(5) of the said Act.

26. It is the plea of the Appellants/Respondents that the Notification under Section 11(1) of the said Act was published in the Tamil Nadu Government Gazette 31 dated 12.08.1998 at page 1104, 1105 in part vi(1)/1222/ dated 20.06.1998 and the Notification under Section 11(3) of the said Act was published in Tamil Nadu Gazette 43, dated 11.11.1998 in Part VI(1)/1841/98 at page 664 and the notice under Section 11(5) of the Act directing the urban land owner to surrender possession of the excess vacant land within 30 days from the date of service of notice was issued on 17.12.1998 and since the

land owner had not obliged to the notice, the Tahsildar, Tambaram instructed by the Collector, Kancheepuram in Letter No.K.Dis.6284/99, dated 09.02.1999 to take possession of the land and after following the procedure, the possession of the land was taken on behalf of the Government on 09.04.1999 and handed over to the Revenue Department. Indeed, according to the Appellants, the Respondent/ Petitioner had filed the present Writ Petition after a lapse of 8 years.

27.The Appellants take an unequivocal stand before this Court that the Pattadar is deemed to be the owner in terms of Section 3(d) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and therefore, action was taken against her under Sections 9 to 11 of the said Act and the land was acquired as per the provisions of the said Act after following the procedures and that the Respondent/Petitioner acquired a portion of the case land during the year 1998 only and this transaction is null and void as per Section 6 of the Act.

28.In pith and substance, the Appellants contend that the land in question was registered in the name of Lakshmi Kanthammal vagaiarah and others in the Revenue Records and as such, no notice could have been issued to the Petitioner and therefore, the action initiated by the Appellants in terms of Sections 9 to 11 of the Act was correct in law. Besides that, the land in question was vested with the Government under Section 11(3) of the Act on 18.11.1998 and subsequently handed over on 09.04.1999 and as such, the Respondent / Petitioner's request was not considered. In short, since the possession of the land in question was taken and handed over, the Respondent/ Petitioner's case fall under Section 3(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 and as such, the other provisions of the Repeal Act would not apply.

29.At this stage, this Court significantly points out that the Appellants, in their counter to the Writ Petition, had clearly stated that the 1st Appellant/State Government had decided to regularise the purchase of land by the innocent purchasers in the acquired land and had issued guidelines in G.O.Ms.No.565, Revenue, dated 26.09.2008 and that the Respondent/Petitioner may seek remedy on the aforesaid guidelines.

30.It transpires from the Records/Files that the land owner Lakshmi Kanthammal, who was possessing urban land in S.No.72/10 measuring 2100 square metres, was not residing in the village land and also her present address was not known and also that, since a return under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was not filed, a notice under Section 7(2) of the Act was issued as per office letter/report dated 06.03.1997 and ultimately, the said notice under Section 7(2) of the Act was served by affixture in the said survey number by placing the stick. Also that, in the total extent of 2100 square metres leaving extent of

land of 500 square metres of the said Lakshmi Kanthammal, the excess vacant land measuring 1600 square metres was sought to be acquired and if there was any objection, the same can be filed with sufficient proof within 30 days from the date of receipt of notices (i.e. 01.09.1997) issued under Section 9(1) and Section 9(4) of the Act. Since the land owner was not residing in the Village and her address was also not known, the notices under Sections 9(1) and 9(4) of the Act were served by affixture in the form of planting a stick.

31.It appears that the vacant land owner had not appeared for an enquiry and as such, the details of family members could not be furnished as per Report of the Deputy Tahsildar No.I, Tambaram. Also that, an order dated 23.10.1997 under Section 9(5) was passed by the Competent Authority for acquiring the excess vacant land of 1600 square metres belonging to that of the Lakshmi Kanthammal in S.No.72/10 of Peerkankaranai Village. Also, the Competent Authority had informed that a separate notice under Section 10(1) of the Act would be issued and the land owner Lakshmi Kanthammal was advised to prefer an Appeal as per Section 33 of the Act within 30 days from the date of receipt of copy of the order/proceedings dated 23.10.1997 passed by the Competent Authority (ULC). Also, it appears that a Notification declaring the acquisition of excess vacant land under sub-section (3) of Section 11 of the Act was published in Ref.No.1222/98 dated 20th June 98 in Part VI Section 1 of the Tamil Nadu Government Gazette, dated 12th August 1998, with effect on and from 1st November 1998.

32.On going through the Land Delivery Receipt in Rc.No.1280/98 D signed by the Revenue Inspector, Tambaram Firka, Tambaram, it is evident that the extent of land was mentioned as 1300 square metres in blue ink and later, it is rounded off and written in pencil as '1600' in respect of S.No.72/10A measuring an extent of 0.16.00 with stated boundaries wherein there are 3 terraced houses in one part of the land and one building was mentioned and the name of the land owner was described as 'Tmt.Lakshmikanthammal'. In the said receipt, on 09.04.1999, the person who handed over and also the Firka Revenue Inspector had signed. Significantly, under the head 'Possession taken over by', there is a blank.

33.The clear cut stand of the Respondent/Petitioner is that the Secretary (ULC and ULT), Board of Revenue, Madras had addressed a letter to Saraswathi Bikeswaran of Tambaram East, Madras in Lr.No.G3.244/77 dated 10.01.79 (with reference to her application for grant of exemption from the provisions of Chapter III of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1976 pertaining to the land held in S.No.72/4 and 99/1AB of Peerkankaranai Village measuring 2225.500 sq. mts. in toto) stating that since the 1976 Act was repealed and replaced by Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further, the above land were reported to have been within the Ceiling limit prescribed under the new Act,

taking into account the number of persons of her family etc., no exemption from the provisions of the urban ceiling land is necessary. In fact, the said letter was communicated to the 3rd Appellant as well as the Appellants 1 and 2. As such, the impugned orders of the 4th Respondent in Na.K.C.P.81/97D under Section 9(5) and 14.12.98 in RC 1280/78D under Section 11(5) are clearly hit by the Doctrine of Estoppel by Conduct/Promissory Estoppel and also, they are clearly unsustainable in the eye of Law.

34.It is to be noted that although the Appellants/Respondents claim that the possession of the land in question was vested with the Government under Section 11(3) of the Act on 18.11.1998 and subsequently handed over on 09.04.1999, the purported possession being handed over on 09.04.1999 in the form of land receipt, in law, is only a symbolic possession and as a matter of fact, actual/real possession was not taken. As such, the resultant possession is either the land owner Lakshmi Kanthammal or anybody for that matter had not handed over the physical possession and also when the Appellants had only taken a symbolic possession and in reality, when the actual/real possession of the land in issue is in the hands of the Respondent/ Petitioner, the Respondent/Petitioner is entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

35.At this stage, this Court recalls and recollects the following decisions:

(a) In the decision V.S.Thiagarajan Chettiar (died) and another V. The Commissioner, Land Reforms, Madras, 1997-2-M.L.J.-667, it is observed and held as follows:

"Apart from the plain reading of Sec.9(5) of the Act that a personal opportunity of being heard is required to be given. This Court have no hesitation in stating that giving a reasonable opportunity of being heard is mandatory, particularly so when the opportunity is contemplated before passing final order dealing with immovable properties as to vacant excess land.

Sec. 9(5) of the Act mandates giving of reasonable opportunity of hearing also in addition to consideration of the objections filed under Sec.9(4) of the Act, this Court find it difficult to sustain the order of the learned single Judge. The appellants are entitled to succeed in this writ appeal on this short ground that a reasonable opportunity of being heard was not given as required under Sec.9(5) of the Act."

(b) In the decision V.Somasundaram and others V. Secretary to Government, Revenue Department, Chennai and others, (2007) 1 M.L.J.

750, at special page 751, it is observed and held as follows:

"In view of Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, 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 authorized by the State Government, within thirty days' time. Proceedings initiated against the erstwhile owner is non est in law. Non compliance of Section 11(5) of the Act cannot be rectified at a later stage.

When the alternative remedy of Appeal, is lost due to the enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 from 16.9.1999, the aggrieved party can maintain a writ petition against the proceedings initiated under Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978."

(c) In the decision *Krithika Conference Hire Services Private Limited* represented by its Director V. Government of Tamil Nadu, (2007) 8 M.L.J. 668, it is held as follows:

"Unless physical possession of the property declared as surplus under the old Act, was taken over by the State, the proceedings taken under the old Act would lapse."

(d) In the decision *Vijay Foundation (P) Limited*, represented By its Director, R.Thiagarajan, Chennai V. Principal Commissioner and Commissioner of Land Reforms, Chennai and others, (2006) 4 M.L.J. 676, it is observed as follows:

"The respondents herein have initiated acquisition proceedings against the person who is not at all the owner of the lands. The above quoted mandatory conditions mentioned in Sections 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired.

The defence that mutation proceedings contain only name of the erstwhile owner, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the

proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents."

(e) In the decision *S.Subramaniam V. State of Tamil Nadu*, represented by the Secretary to Government, Revenue Department, Chennai and others, (2006) 3 M.L.J. 509 at page 510, it is laid down as follows:

"The possession of the land was still with the petitioner at the time of coming into force of the Repealing Act. Under the Act, pending proceedings will stand abated and the proceedings taken against the petitioner under the Act stand abated."

36.It is to be pointed out that while dealing with the question of Estoppel by representation, a Court of Law is to bear in mind that the said representation ought to be: (a) plain; (b) not ambiguous; or (c) matter of questionable inference. In short, 'Estoppel' can only arise from a clear cut definite statement and a statement in order to put an Estoppel, should be clear and unambiguous, not necessarily susceptible of only one interpretation, but such as will reasonably be appreciated/understood in the sensus contended for and in this regard, the representation in entirety should be looked into. Furthermore, an 'Estoppel' must be strictly interpreted and to create an 'Estoppel' against a party, his declaration, act or omission must be of unequivocal character. In short, the Doctrine of 'Promissory Estoppel' belong not to Law of Contract or Evidence but relates to 'Equity and Fairness in Action'.

37.As far as the present case is concerned, since the Respondent/Petitioner is in possession and enjoyment of the land in question and admittedly, in view of the fact that the physical possession of the property was not acquired from her in the present case, we are of the considered opinion that the Respondent/Petitioner is entitled to avail the benefits of ingredients of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (20 of 1999).

38.In the upshot of qualitative and quantitative discussions as mentioned supra and also this Court bearing in mind the Letter No.03. 244/77 dated 10.01.1979 of Secretary (ULC & ULT), Board of Revenue, Madras - 5 addressed to Saraswathi Bikeswaran, Madras - 59 wherein it was mentioned that the land in S.No.72/4 and 99/1AB of Peerkankaranai Village measuring 2225.500 Sq. mts in toto, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976 was repealed and replaced by the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and also that, the said lands were reported to be within the ceiling limit prescribed under the new Act etc. and as such, no exemption from the urban ceiling land was necessary and further, no action in terms of Section 11(6) of the Act was taken with a view to

secure actual physical possession of the land from the Respondent/ Petitioner, this Court holds that the impugned orders of the 4th Respondent in Na.K.C.P.81/97D under Section 9(5) and 14.12.98 in RC 1280/78D under Section 11(5) are clearly per se invalid and illegal one. Viewed in that perspective, the Writ Appeal fails.

39. In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the order passed by the Learned Single Judge dated 17.09.2012 is confirmed by this Court for the reasons assigned by this Court in this Writ Appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
Dated: 27.2.15

True Copy

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department, Secretariat,
Chennai - 600 009.
2. The Special Commissioner and
Commissioner of Urban Land
Ceiling and Urban Land Tax,
Board of Revenue, Chepauk,
Ezhilagam, Chennai - 600 005.
3. The Tahsildar,
Tambaram, GST Road,
Kadaperi, Chennai - 600 045.
4. The Assistant Commissioner of
Urban Land Tax and Competent Authority,
Urban Land Ceiling,
Tambaram Taluk, Alandur Area,
Sannathi Street, Adambakkam,
Chennai - 600 088.

+1 cc to Mr.K.Moorthy, advocate, SR.9204

+1 cc to Government Pleader, SR.8798.

tej(co)
krd 6/3

W.A.No.1746 of 2014