IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.7890 of 2012

D.Krishnamoorthy .. Petitioner

Vs

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

2.The Assistant Commissioner of
Urban Land Tax,
Poonamallee, Chennai - 600 056.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Tiruvallur District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the proceedings initiated by the third respondent in SR.No.834/95 dated 15.11.1995 is abated in view of Section 4 of the Repeal Act, since the physical possession of the Agriculture land comprised in Survey No.503/5 to an extent of 0.72 acres, situated at Paruthipattu Village, Poonamallee Taluk, Thiruvallur District is with the petitioner.

For Petitioner : Mr.A.Ramu
For Respondents : Mr.R.Rajeswaran
Special Government Pleader

ORDER

Heard Mr.A.Ramu, learned counsel appearing for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents and by their consent, the Writ Petition is taken up for final disposal.

2. In this Writ Petition, the petitioner seeks for issuance of a Writ of Declaration to declare the proceedings initiated by the third respondent dated 15.11.1995 as abated, in view of Section 4 of the Repealing Act, by which the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 was repealed. The petitioner's case is that he is in actual physical possession of the property and the possession had not been taken over. He is entitled to the benefit of Section 4 of the Repeal Act, 1999 and therefore the proceedings initiated under Urban Land Ceiling Act stood abated.

3. The petitioner would state that he had purchased an extent of 72 cents in Survey No.503/5 in Paruthipattu Village by a sale deed dated 21.08.1985 from one A.Parthasarathy Naicker and the sale was registered as Document No.4669/85 on the file of Sub-Registrar, Poonamallee. The petitioner's case is that the land belonged to one Thiruvenkata Pillai and his son sold the said land on 18.11.1974 by a registered sale deed, registered as document No.2920 of 1974 to A.Parthasarathy Naicker, the petitioner's vendor. The said A.Parthasarathy Naicker was in possession and enjoyment of the land, who had sold the same to the petitioner by a sale deed dated 21.08.1985. It is further submitted that Thiruvenkata Pillai died in the year 1981 and as on date when the Principal Act came into force on 03.08.1976, he was not the owner of the land, because, the sale was effected much prior to that date i.e., during the year 1985. The petitioner would state that he is in physical possession of the land and he has not been dispossessed till date and in terms of Section 9 of the Repeal Act, 2009, the proceedings stand abated.

4. In support of the petitioner's contentions, the learned counsel appearing for the petitioner referred to the decision of the Hon'ble Supreme Court in the case of Commissioner of Wealth Tax Vs.Sita Ram Jindal reported in JT 2000 (Suppl.1) SC 296; decision of this Court in Sarawathi and another Vs. The Principal Commissioner & Commissioner of Land Reforms, Chepauk, Chennai and another reported in 2007 (4) CTC 714; the decision of this Court in the case of K.Murugesan Vs.The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax and another in W.P.No.21635 of 2006 dated 17.10.2006; the decision of the Hon'ble Division Bench of this Court in Sree Jayalakshmi Brick Industries Vs.The Special Commissioner and Secretary to Government and others reported in 2009-4-L.W.819; and the decision of this Court in Mrs.Mumtaz Bivi and others Vs.The Special Commissioner and Commissioner Urban Land Ceiling and Urban Land Tax and another in W.P.No.13909 of 2010 dated 13.09.2011; the decision of the Hon'ble Supreme Court in Raghbir Singh Sehrawat V. State of Haryana & Ors.reportedin AIR 2012 SC 468 B; and the decision of

the Hon'ble Division Bench of this Court in the case of Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax and Another Vs.Mumtaz Bivi and others reported in 2015 (1) CWC 17. It is further submitted that the Hon'ble Division Bench had confirmed the order passed in W.P.No.13909 of 2010.

5. With the above submissions, the learned counsel for the petitioner sought for issuance of a Writ of Declaration, to declare that the entire proceedings stood abated in the light of the Repeal Act.

6. The learned Special Government Pleader appearing for the respondents elaborately set out the facts of the case and referred to the counter affidavit filed on behalf of the respondents. The learned Special Government Pleader raised three objections, the first one is that the petitioner being a subsequent purchaser, having purchased the land only in the year 1985, is not entitled to the benefit of Repeal Act. Secondly, it is contended that after following the procedure contemplated under law, the possession of excess vacant land was handed over to the Revenue Authorities on 29.08.1997. Thirdly, it is contended that notices were sent to Thiruvengadam Pillai, who was the registered land owner and the proceedings have been concluded after following the procedure contemplated under law and that there is no error in the decision making process. Therefore, it is submitted on facts, that the decisions relied on by the learned counsel for the petitioner are clearly distinguishable.

7. Heard the learned counsel for the parties and perused the materials placed on record. The prayer sought for by the petitioner is sought to be resisted by the respondents broadly on three grounds; firstly, by stating that the petitioner is a subsequent purchaser and not entitled to such a relief; secondly, it is stated that the excess vacant land has been handed over to the Revenue Authorities on 29.08.1997 and thirdly it is contended that the proceedings under the Act were scrupulously followed and after notice to the land owner Thiruvengadam Pillai, the proceedings were initiated and there is no error.

8. With regard to the first contention, it is seen from the counter affidavit that the respondents have accepted, that the land belonged to Thiruvengadam Pillai, who owned an extent of 2900 sq.mtrs and proceedings were initiated under the Act by issuing a notice under Section 7(2) of the Act on 03.05.1993, as the urban land owner did not file the return under Section 7(1) of the Act. It is stated that a notice under Section 9(4) of the Act along with the draft statement under Section 9(1) of the Act was issued on 31.08.1995 and it was served on one

G.Rajarajan, grandson of Thiruvengadam Pillai. Further it is stated that since no reply or objection was received to the draft statement, orders under Section 9(5) of the Act was passed on 15.11.1995, declaring that an extent of 2400 sq.mtrs. as excess vacant land and allowing 500 sq.mtrs. towards family entitlement and same was received by the grandson of Thiruvengadam Pillai namely, P.T.Devanathan. It is further submitted that the final statement under Section 10(1) of the Act was issued on 29.12.1995 and it was served on the grandson of Thiruvengadam Pillai on 04.02.1996. Further, the notification under Section 11(1) of the Act was issued on 29.02.1996 and was published in the Tamil Nadu Government Gazette on 03.04.1996. It is further stated that proceedings were initiated under Section 11(3) of the Act and notice was issued under Section 11(5) of the Act on 30.01.1997 and the possession of the excess vacant land was handed over to the Revenue Authorities on 29.08.1997 and notice under Section 12(7) of the Act was issued on 17.03.2001 and was received by one Dharman, son of Thiruvengadam Pillai and since the compensation which has been determined, is not claimed and it is kept in Recurring Deposit.

9. In the counter affidavit, it has been admitted that after the final statement under Section 10(1) of the Act was issued, one P.T.Devanathan, the son of the original land owner sent an objection on 19.02.1996. This objection was prior to the publication of the notice under Section 11(1) of the Act in the Government Gazette, which was published only on 03.04.1996. Thus, it is clear that, on the date when the notice under Section 11(1) of the Act was published in the Government Gazette, there was already an objection raised by the land owner's son. His objections were two-folds. Firstly, he has stated that the land was sold by his father in the year 1974 itself and secondly, it was stated that his father died on 20.04.1981. Along with the objections, photostat copies of sale deed executed in favour of Parathasarathy Naicker, the petitioner's vendor was enclosed. However, the authorities ignored his objections. The consequence of ignoring this objection has rendered the further proceedings initiated under the Act as illegal. Firstly, it has to be noted that the land owner died on 20.04.1981, that was much prior to the proceedings being initiated under the Act, since the notice under Section 7 (2) of the Act was issued only on 03.05.1993. Another crucial factor which has to be noted is that the original land owner sold the land in the year 1974 itself, that is much prior to coming into force of the Principal Act, which came into force only on 03.08.1976. Therefore, all subsequent proceedings made after notice under Section 7(1) of the Act, without considering the objections sent by the land owner's son dated 19.02.1996 are held to be bad in law. Further, though it is stated that the

notice under Section 11(5) of the Act was issued on 30.01.1997, there is no specific averment in the counter affidavit that, on what date and in what manner possession was handed over. This is a very crucial factor which has not been dealt with in the counter affidavit. The petitioner claims to be in possession of the property till date. Therefore, to state that the possession has been taken over and state that the petitioner's possession can at best be treated as a paper possession, if the land owner has not delivered possession, in spite of notice under Section 11(5) of the Act, there should be a record to show that actual possession was taken over by resorting to the power under Section 11(6) of the Act. This very issue was considered by the Division Bench of this Court in the case of Government of Tamil Nadu V. Mecca Prime Tannery 2012 (6) MLJ 273, wherein it is held as follows :

> "33. The phrases shall be deemed to have been acquired and shall be deemed to have been vested absolutely in the State Government occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and invested is vested in the State Government by Notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the landowner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.
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> 34. There are cases, where after Notice under Section 11(5) of the Act, the landowner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the landowner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the landowner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.
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> 35. However, there are cases where although the Competent Authority issued the Notice under Section 11(5) of the Act to the

landowners or persons in possession to surrender or deliver possession of the land, but the landowner or the person in possession fails to deliver the land and continues to be in possession of such land and the Authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands."

10. The above decision was taken note of by this Court in the case reported in 2015 (1) CWC. Therefore, the contentions raised by the respondents on this aspect has to necessarily fail. The respondents contended that the petitioner is a subsequent purchaser. However, it is to be noted that the petitioner's vendor purchased the property in the year 1974, much prior to coming into force of the Principal Act, which came into force only on 03.08.1976. Therefore, the sale in favour of the petitioner's vendor is not hit by the provisions of the Act. Therefore, the petitioner cannot be thrown out as a subsequent purchaser, when the vendor purchased the property prior coming into force of the Repeal Act. Therefore, this objection raised by the respondents also deserves to be rejected. Thus, this Court is fully convinced that the petitioner is entitled to the relief sought for, in the light of the law laid by this Court as referred to supra.

11. Accordingly, the Writ Petition is allowed and the entire proceedings initiated by the respondent under the provisions of the Act are held to be abated.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

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

2.The Assistant Commissioner of Urban Land Tax,
Poonamallee, Chennai - 600 056.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Tiruvallur District.

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