IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 24/11/2014

DATED : 18/08/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.2421 of 2012 &
M.P.No.1 of 2012

Sosamma Mathen ... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
   Revenue Department,
   Fort St. George,
   Chennai - 600 009.

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

3. The Assistant Commissioner
   for Urban Land Tax,
   Alandur, Chennai - 600 088 now
   at Mylapore, Kodambakkam,
   Chennai - 600 024. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Declaration, to declare that the proceedings initiated by the third respondent in his SR.No.54/82A dated 12.12.1986 is abated in view of Section 4 of the Repeal Act, 1999 since the physical possession of the land comprised in Old Survey No.84/15 part and new survey No.84/17 to an extent of 650 square meters situated at Thiruvanmiyur Village, Mylapore, Triplicane Taluk, Chennai District is with the petitioner.

For Petitioner : Mr.K.Venkatesan

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The petitioner submits that he has purchased the land comprised in Survey No.84/13, 15 Part of Thiruvanmiyur Village, then Saidapet Taluk, Chengalpattu District now Mylapore Taluk, Chennai District in and by a registered sale deed dated 06.05.1960 registered as Document No.2129/1960 in the Office of the Sub Registrar, Saidapet for valuable consideration from one Janardhana Chetty, son of Kathalingam Chetty and V. Subramania Chetty son of Janardhana Chetty and V.Ramachandira Chetty son of Janardhana Chetty. From the date of purchase, he is in exclusive possession and enjoyment of the above said properties without any interruption or disturbance from any quarter. The petitioner further submits that while so, during the course of enjoyment and possession, the third respondent herein has passed the impugned proceedings in SR.54/82 A dated 12.12.1986 and thereby declared the excess vacant land of 650 square meters in Survey No.84/15 Part leaving entitlement area of 3000 square meters and thereby passed the impugned proceedings under Section 9(5) of the Tamil Nadu Urban Land (C&R) Act, 1978. The petitioner further submits that the third respondent herein has assigned the Survey No.84/17 for the excess vacant land of 650 square meters. The petitioner further submits that the first respondent herein has passed the Government Order in G.O.Ms.No.61, dated 21.01.1991 and thereby allotted the excess vacant land to the High Court Employees and City Judicial Officers Co-operative Housing building Society Limited on condition that the said Society should utilize the land for the purpose of distribution of house sites and construction of houses by its members and that the land should not be utilized for any other purpose other than residential house or flats and another condition was that the allotment of the said land to the Society would be cancelled and revert to the Government free of encumbrances in the event of the High Court Employees and City Judicial Officers Co-operative Housing Society or its members do not comply with any of the conditions of the allotment.

2. The petitioner further submits that the above said Co-operative Housing Society have executed a sale deed in favour of it members and thereby plotted out as Plot No.1 and 2 to an extent of 335.60 square meters and 314.40 square meters respectively. Since after execution and allotment made by the Co-operative Society, the members of the Society have not yet taken physical possession of the said land. Now, the compound wall has been put around the land and physical possession is with him. The petitioner further submits that while these facts are so, on 22.10.2008, he has filed a writ petition in W.P.No.25476 of 2008 seeking writ of mandamus directing the second respondent to consider his representation dated 29.08.2008 which is pending consideration. In view of the pending

adjudication, he has filed this writ petition since the physical possession of the land is with him along with the compound wall and it is in the care and custody of him. Neither the allottee nor the above said Co-operative Housing Society nor the third respondent took the physical possession to him even till date. Now, he has come to understand that the Principal Act also has been repealed by the State Act 20 of 1999 and therefore, as the physical possession of the land is with him, benefit of Section 4 of the Repeal Act 20 of 1999 have to be given to him. The petitioner further submits that the physical possession of the said land is with him. Though the second respondent passed the impugned order, he has not taken any physical possession from the petitioners till date. Moreover, the petitioner has not been served notice over the said proceedings. Further, the petitioner submits that the Principal Act has been Repealed by the State Act 20 of 1999 dated 16.06.1999 and thereby the second respondent proceedings have been abated because she is in physical possession and enjoyment of the same.

3. The petitioner further submits that the physical possession of the land comprised in Old Survey No.84/15 part and new Survey No.84/17 to an extent of 650 square meters situated at Thiruvanmiyur Village, Mylapore Triplicane Taluk, Chennai District remains with her and the above said land is exclusively in her possession and enjoyment. The petitioner further submits that since Principal Act 24 of 1978 have been repealed by State Act 20 of 1999, the second respondent has no right whatsoever to take physical possession of the land comprised in Old Survey No.84/15 part and new Survey No.84/17 to an extent of 650 square meters situated at Thiruvanmiyur Village, Mylapore. Hence, the physical possession of the land is with her. The petitioner further submits that though the Act was Repealed by the State Act 20 of 1999, if any irregularities are there, that may be challenged in a Special Tribunal constituted for the purpose of Urban Land Ceiling. Since the Tribunal has been abolished, she has no other way except to file this writ petition before this Court to challenge the irregularities arising out of the impugned order.

4. The respondents have filed a counter affidavit and resisted the above writ petition. As per records, on behalf of his wife Sosamma Mathen had field the return under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 on 29.07.1982 before the then Assistant Commissioner, Urban Land Tax, Alandur, the third respondent herein, in respect of his wife's holdings of the land in S.No.84/13 and 84/15 of Thiruvanmiyur Village measuring an extent of about 3362.60 sq.mts. The then Assistant Commissioner, Urban Land Tax, Alandur, the third respondent herein, sent a notice dated 20.08.1982 to the Urban Land Owner with a request to appear for enquiry on 28.08.1982 with

relevant records in the office at 169, Sannathy Street, Adambakkam, Chennai. The Urban Land Owner in her letter dated 25.08.1982 requested time to attend the enquiry on 10.09.1982. Later, the Urban Land Owner's husband appeared for hearing on 20.09.1982 before the third respondent herein and informed that his family consisted of two major sons, two minor sons and one minor daughter as on 03.08.1976 and the said land was vacant since 1976 and their family did not have any other land. After due inspection and verification of records, out of the total extent of 3650 sq.mts, an extent of 3000 sq.mts, was allowed as family entitlement and an extent of 650 sq.mts., was arrived as an excess vacant land as per the Act. Notice under Section 9(4) of the Act along with a draft statement under Section 9(1) of the Act was sent to the Urban Land Owner on 15.08.1984 by the third respondent. Since the petitioner had not filed any objections, a notice was sent to the Urban Land Owner by RPAD on 06.10.1986, requesting to appear for enquiry on 20.10.1986. It was returned undelivered stating "No such person in this address". Hence orders under Section 9(5) of the Act was passed by the third respondent herein in SR 54/82A, dated 12.12.1986 to acquire the excess vacant land of 650 sq.mts, in S.No.84/15 pt of Thiruvanmiyur Village and it was also returned undelivered stating "No such person in this address." Then final statement under Section 10(1) of the Act was issued on 31.12.1986. Copy of proceedings SR.54/82A, dated 12.12.1986 and final statement issued under Section 10(1) of the Act was again sent to the Urban Land Owner by the third respondent in his letter No.805-87, dated 13.02.1987 by RPAD to the new address and served on 19.02.1987. Notification under Section 11(1) of the Act was published in part VI Section I of the Tamil Nadu Government Gazette, dated 23.11.1988. Notification under Section 11(3) was also published in part VI Section I of the Tamil Nadu Government Gazette, dated 08.02.1989. Notice under Section 11(5) was issued by the Assistant Commissioner, Urban Land Tax, Alandur (i.e.) third respondent herein on 26.04.1989 and served to the Urban Land Owner on 15.05.1989 by RPAD. After surrender of the excess land measuring 650 sq.mts, by the petitioner, the vacant land was assigned as S.No.84/17. The possession of the excess vacant land measuring an extent of 650 sq.mts, was taken and handed over to the Revenue Authorities on 11.09.1989.

5. The respondents further submit that later, notice under Section 12(7) of the Act was sent to the Urban Land Owner on 16.10.1989. On receipt of above notice, Thiru.Joseph K.Mathen, son of the Urban Land Owner, appeared for enquiry on 08.01.1990 and filed a statement requesting to send the compensation amount to the new address plot No.1354, Mogappair, Chennai-15. Accordingly, the compensation amount was claimed and paid to the Urban Land Owner. The Urban Land Owner also received the compensation amount without

any protest. Hence, the excess land was possessed by the Government after following all the procedures laid down under the Act. Since the excess vacant land was with the Government, the High Court Employees and City Judicial Officers Co-Operative Housing Building Society applied for allotment of this land in S.No.84/17 along with other excess vacant lands in Nerkundram, Palavallam, Neelankarai Villages and the Government have allotted this excess vacant land to High Court Employees and City Judicial Officers Co-operative House Building Society, Madras, vide G.O.Ms.No.61, Revenue Department, dated 21.01.1991. The permission to enter upon the land was also accorded as early as in the year 1991 by the Government to the authorities concerned in Government Letter No.6139/T3/91, Revenue Department, dated 04.04.1991. The respondents further submit that Tmt.Sosamma Mathen, the petitioner herein, has filed a petition before the Special Commissioner and Commissioner, Urban Land Ceiling and Urban Land Tax on 29.08.2008 requesting order for re-possession of the above lands and to hand over it to her in view of the fact that the Urban Land Ceiling Act stands abated and further to pass a prohibitory order restraining the allottees from alienating their respective plot of lands pending disposal of the proceedings. In the meantime, the Urban Land Owner has also filed W.P.No.25476 of 2008 to issue a writ of mandamus to direct the Commissioner, Urban Land Ceiling and Urban Land Tax to consider the representation dated 29.08.2008 and pass appropriate orders. While the representation of the petitioner was under examination with reference to the Act and the Rules made there under by the respondents, the petitioner again filed this writ petition in W.P.No.2421 of 2002.

6. The respondents further submit that the petitioner who is an Urban Land Owner, filed the return under Section 7(1) of the Act on 03.08.1976 in respect of the lands in S.No.84/13 and 84/15 of Thiruvanmiyur Village measuring to an extent of 3362.60 sq.mts. After due enquiry and inspection by the Competent Authority, i.e., the third respondent herein, the Assistant Commissioner has passed 9(5) orders. Out of the total extent of 3650 sq.mts, an extent of 3000 sq.mts, was allowed as family entitlement to her, and the remaining extent of 650 sq.mts, was arrived as excess vacant land as per the provisions of the Act. After surrender of the excess land measuring 650 sq.mts, by the petitioner, the vacant land was assigned as S.No.84/17. The possession of the excess vacant land measuring an extent of 650 sq.mts, was taken and handed over to the Revenue Authorities on 11.09.1989. The permission to enter upon the land was also accorded as early as in the year 1991 by the Government to the authorities concerned in the Government letter No.6139/T3/91, Revenue Department, dated 04.04.1991. As requested by the son of the Urban Land Owner, the compensation amount was claimed and paid to the Urban Land Owner. The Urban Land Owner

received the compensation amount without any protest. Hence, the right over the land in question has ceased to exist for the petitioner from the date of receipt of the compensation amount. The respondents further submit that after acquisition of excess land from the Urban Land Owner, the petitioner herein, the Government allotted it to the High Court Employees and City Judicial Officers Co-operative House Building Society Limited on request and also on payment of single market value of the land in question, in G.O.(Ms)No.61, Revenue Department, dated 21.01.1991. The permission to enter upon the land was also accorded as early as in the year 1991 by the Government to the authorities concerned in Government Letter No.6139/T3/91, Revenue Department, dated 04.04.1991.

7. The respondents further submit that after allotment of land by the Government, the High Court Employees and City Judicial Officers Co-operative House Building Society Limited converted the land into two plots and re-allotted it to the two Judicial Officers. In as much as the acquired land was already allotted to the High Court Employees and City Judicial Officers Co-operative House Building Society Ltd., for allotment of land to their members and the said society has also re-allotted to their members of the society, the question of cancellation of allotment to the society, as stated by the petitioner, does not arise at this stage and the acquired land will not be handed over to the previous Urban Land Owner, as the possession of excess vacant land was already taken by the Government and also the petitioner received the compensation for the excess land without any protest at that time. Further, all the proceedings were over and the possession of the land was taken by the Government well before the said Repeal Act which came into force on 16.06.1999. As no proceedings were pending on that day as per the Act in this case, the petitioner cannot claim the said land in question and further the construction of compound wall as mentioned by the petitioner in the excess vacant land is liable to be demolished by the subsequent allottee as it is illegal. It is further submitted that in the affidavit filed by the petitioner, in W.P.No.25476 of 2008, it has been stated that the land in question was already surrendered by her and then only the land was assigned as S.No.84/17. Paragraph 4 of the affidavit filed by the petitioner in W.P.No.25476 of 2008 are as follows:-

> "4. I submit that pursuant to the said order, notice under Section 11(5) of the Urban Land (C&R) Act, 1978 was issued on 26.04.1989, requesting me to hand over possession of the said excess land to the authority concerned and accordingly the excess land surrendered by me was assigned S.No.84/17."

It is further submitted that on receipt of notice under Section 12

(7) of the Act, Thiru.Joseph K.Mathen, son of the Urban Land Owner, appeared for enquiry on 08.01.1990 and filed a statement requesting to send the compensation amount to the new address plot No.1354, Mogappair, Chennai-50. Accordingly, the compensation amount was claimed and paid to the Urban Land Owner. The Urban Land Owner also received the compensation amount without any protest for the said excess land of 650 sq.mts. situated in S.No.84/17. Hence, the petitioner's right over the land in question has already ceased from the date of receipt of the compensation amount. Now, the petitioner has misled this Court by filing a false affidavit stating that the land has been protected by a compound wall and still the petitioner is having physical possession with her to achieve the object of acquiring the land back in her favour. The respondents further submit that in as much as the excess vacant land was already allotted to the High Court employees and City Judicial Officers Co-operative House Building Society Ltd., for re-allotment of the land to their members vide G.O.(Ms)No.61, Revenue, dated 21.01.1991, the benefit of section 4 of the Repeal Act 20 of 1999 shall not be applicable to the petitioner. As no proceedings were pending as per the Act 24 of 1978, the petitioner cannot claim the Government land stating that she is in possession of the vacant land along with the compound wall said to be made in the excess vacant land. Hence, the contention of the petitioner is not correct.

8. The respondents further submit that only after surrender of the excess land measuring 650 sq.mts by the petitioner, the vacant land was assigned as S.No.84/17. The possession of the excess vacant land measuring an extent of 650 sq.mts, was taken and handed over to the Revenue Authorities on 11.09.1989. The acquired land was allotted to the High Court Employees and City Judicial Officers Co-operative House Building Society Ltd. for allotment of land to their members. The permission to enter upon the land was also accorded as early as in the year 1991 by the Government to the authorities concerned in Government Letter dated 04.04.1991. As requested by the son of the Urban Land Owner, the compensation amount was claimed and paid to the Urban Land Owner. The Urban Land Owner also received the compensation amount without any protest. Hence, the right over the land in question has ceased from the date of receipt of the compensation amount and the question of the benefit of Section 4 of the Repeal Act 20 of 1999 shall not be applicable to the petitioner. The respondents further submit that as per the provisions of the Act, the acquisition action had been initiated and the possession of the land was taken and handed over to the Revenue Authorities on 11.09.1989 i.e., well before the Repeal Act came into force. On request, the above land was also allotted to High Court Employees and City Judicial Officers Co-operative Building Society for re-

allotment to their members vide G.O.Ms.No.61, Revenue, dated 21.01.1991. In this case, the writ petitioner has to be treated as an encroacher of the land and is liable to be evicted. The respondents further submit that Section 11(3) of the Act clearly states that from the date of notification, the land stands transferred and vested with the Government i.e., the right and ownership of land would stand transferred to the Government. Even if the physical possession is held by the original land owner it can only be treated as illegal. Hence, the Repeal Act shall in no way affect the cases where the possession of land has already been vested with Government under Section 11(3) of the Act before the Repeal Act 20 of 1999 came into force. In this case, the Urban Land Owner had also received the amount payable under Section 12(6) of the Act. Hence, the respondents entreat the Court to dismiss the above writ petition.

9. The highly competent counsel Mr.K.Venkatesan appearing for the petitioner submits that the petitioner had purchased the land comprised in Survey No.84/13, 15 Part of Thiruvanmiyur Village, in and by a registered sale deed dated 06.05.1960, on the file of Sub Registrar, Saidapet. Since the date of purchase, she is in exclusive possession and enjoyment of the said property. Under the circumstances, the third respondent, viz., Assistant Commissioner for Urban Land Tax has passed impugned order dated 12.12.1986, thereby declared the excess vacant land of 650 sq.mts, in Survey No.84/15, part leaving entitlement area of 3000 sq.meters and thereby passed the impugned proceedings under Section 9(5) of the Tamil Nadu Urban Land (C&R) Act, 1978. Subsequently, the first respondent has issued G.O.Ms.No. 61, dated 21.01.1991 and thereby allotted the excess vacant land to the High Court employees and City Judicial Officers Co-operative Housing Building Society Limited, on the condition that the said Society should utilize the land for the purpose of distribution of house sites and construction of houses by its members and that, the said land should not be utilized for any other purpose other than residential purpose.

10. The highly competent counsel appearing for the petitioner further submits that the Judicial Officers Co-operative Housing Society have executed a sale deed in favour of its members and thereby plotted out the said land. After allotment made by the Co-operative Society, the allottee had not occupied the same. However, the petitioner had raised compound wall and maintained the said property. Further, the Tamil Nadu Urban Land Ceiling Act had been repealed. As such, the petitioner is entitled to receive benefits under Section 4 of the Repeal Act. Hence, the highly competent counsel entreats the Court to declare the proceedings initiated by the third respondent as null and void.

11. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents submits that the third respondent had acquired the surplus land under the Tamil Nadu Urban Land Ceiling Act. The third respondent had sent a notice to the petitioner with a request to appear for enquiry. On that day, the petitioner's husband appeared and requested for time and hence, the matter was adjourned. The highly competent Additional Government Pleader further submits that 3000 sq.mt of land was allotted to the petitioner's family. The excess land to an extent of 650 sq.mt was was acquired by the third respondent. However, the respondent had sent a notice on 06.10.1986 and the same was returned with an endorsement of 'No such person in the said address'. Thereafter, after granting sufficient time to the petitioner and after observing all legal formalities including publication, the third respondent had served notice to surrender the possession and the same was surrendered by the petitioner and the subject land was handed over to the Revenue Authorities. Under the circumstances, the above writ petition is not maintainable. Further, the Government employees attached to the High Court and City Civil Court had been allotted lands at Pallavaram and Nerkundram.

12. The highly competent Additional Government Pleader further submits that now the subject land is under the occupation and control of Revenue Authorities. The son of the petitioner had claimed compensation and the same was paid to him. Under the circumstances, the above writ petition is not maintainable. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, this Court does not find any force in the above writ petition to allow it. Further, this Court is of the view that the petitioner's submission that she is continuously occupying the said property after raising compound wall and she is in physical possession has not been proved through documentary evidence. Further, as per counter statement of the respondents, the son of the petitioner had received compensation amount without any protest. Hence, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Secretary to Government of Tamil Nadu,
   Revenue Department,
   Fort St. George,
   Chennai - 600 009.

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

3. The Assistant Commissioner
   for Urban Land Tax,
   Alandur, Chennai - 600 088 now
   at Mylapore, Kodambakkam,
   Chennai - 600 024.

+1cc to the Government Pleader, S.R.No.43875

W.P.No.2421 of 2012 &
M.P.No.1 of 2012

RSK(CO)
CA(03/09/2015)