

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.15303 of 2007

and

M.P.No.2 of 2007

Vijayalakshmi

... Petitioner

vs.

1.The Principal Commissioner and
Commissioner Land Reforms
Chepauk, Chennai-5

2.The Assistant Commissioner
Land Reforms
Urban Land Ceiling and Urban
Land Tax
I Floor, MRC Complex
Pudukottai Road, TVS Tollgate
Tiruchirappalli-20

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to the Notification, dated 01.11.1982, under Section 11(1) and Notification, dated 31.01.1983, Under Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in RCA1/330/82 and quash the same, consequently to drop all further proceedings in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20/1999).

For Petitioner : Mr.K.Radhakrishnan

For Respondents : Mr.M.S.Ramesh, A.G.P.

O R D E R

Reserved on : 12.10.2015

Pronounced on : 04.11.2015

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the notifications, dated 01.11.1982, under Section 11(1) and Notification and dated

31.01.1983, under Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in R.C.A.No.1/330/82 on the file of the second respondent and to drop all further proceedings in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20/1999).

2. The short facts of the case are as follows:

According to the petitioner, her father owned an extent of 3.52 Acres of dry land in SF.No.124/2 of Kottappattu Village, Tiruchirappalli Taluk. He purchased the land by the registered Sale Deed No.4544 of 1944. The said land was in his exclusive possession and enjoyment. He died in the year 1972 intestate leaving behind his wife Guna Bai and children, namely, Prema, Chandran and the petitioner herein as his legal heirs. After his demise, the said land came to be enjoyed by them in equal share. Accordingly, she is in possession of her share.

3. The second respondent sought to acquire her land under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 holding that she owns vacant land in excess of the ceiling limit. Though the said land is agricultural land and classified as 'Dry Land' in the revenue records and thereby it falls outside the scope of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the second respondent treated the said land as "Urban Vacant Land" for the reason that the land was left uncultivated for many years and initiated action under the provisions of the said Act against all the four persons. Insofar as the petitioner is concerned, the second respondent, under Section 9(5) and 10(1) of the Act, had determined that she was holding vacant land to an extent of 937 sq.mts., in SF No.124/6 of Kottapattu Village in excess over the ceiling limit fixed out of the total extent of 3550 sq.mts. owned by her. The second respondent then proceeded further and passed orders under Sections 11(1) and 11(3) in R.C.No.A1/330/82, dated 01.11.1982 and 31.01.1983 respectively to acquire the said 937 sq.mts., of land and published the notification in the Government Gazette, dated 08.12.1982 and 16.02.1983 vesting it in the Government. Challenging the said acquisition, she had filed W.P.No.11693 of 2000 before this Court and this Court by order, dated 21.08.2000 in W.P.M.P.No.16740 of 2000, granted interim injunction and ordered notice to the respondents therein and the matter is pending consideration.

4. Although 937 sq.mts., of land in S.F.No.124/6 of Kottappattu Village belonging to her has been acquired and deemed to have vested in the State Government under Section 11 (3) of TNUL (C & E) Act, 1978 the physical possession of the said land continues to be with her similar to the land of her

mother and brother. She had planted survey stones on all the four boundaries of her land besides putting up a live fence. A watchman had been employed and he has been guarding the land to prevent unscrupulous elements entering into her land. Even if the land is vested in the State Government under Section 11(3) of the Act, it is incumbent upon the second respondent to follow procedures as laid down under Sections 11(5) and 11(6) of the Act before taking possession. It is clear from Sections 11(3), 11(5) and 11(6) that the second respondent must first secure possession of the land from the land owner and then only he can handover possession to the District Collector for safe custody until it has been allotted by the Government as per Section 24 of the Act read with Rule 23 framed under the Act. The District Collector is the authority to take possession of the land so acquired from the competent authority and to handover the same to the allottee as per Rule 23(6). The fact remains that the second respondent has not taken possession of the said land so far and he cannot proceed further with regard to the allotment of the said land to any third party. The principal Act has been repealed with effect from 16.06.1999 by the enactment of the Tamil Nadu Urban (Ceiling and Regulation) Repeal Act, 1999 (Tamil Nadu Act 20 of 1999). As per Section 3 of the Tamil Nadu Act 29/1999, after vesting of the land in the Government under Section 11(3), if possession has not been taken over, such land can be restored to the owners on the refund of the compensation amount, if compensation has been paid. In the present case, possession had not been taken and compensation had not been paid pursuant to the Order passed under Section 11(3) of the Act and as such the respondent is estopped from taking possession of the said land after the Tamil Nadu Act 20 of 1999. Whiles, the watchman, who had been guarding the land, brought to her notice that the field staff attached to the office of the second respondent had visited the said land on 22.01.2007 and took measurement. When he questioned them, the field staff had told him that they are taking measurements as per the instructions of the second respondent. The said action is invalid, against law and without jurisdiction in view of the Principal Act repealed by an Amending Tamil Nadu Act 20/1999. No appeal could be preferred before the first respondent against the order of the 2nd respondent as the Principal Act, 1978 which contained provision for appeal to the first respondent under Section 33 of the Act has ceased to exist with effect from 16.06.1999 consequent on the enactment of Tamil Nadu Act 20/1999. Hence, she has filed this writ petition.

5. The learned counsel appearing for the petitioner has submitted that the petitioner's father owned an extent of 3.52 Acres of dry land in S.F.No.124/2 of Kottappattu Village, Tiruchirappalli Taluk. He had purchased the same under a

registered Sale Deed during 1944 and from the date of purchase, he was in possession and enjoyment of the same. After his demise, the petitioner and other legal heirs had succeeded the same in equal share. In such circumstances, the second respondent had acquired the said land on the ground that the petitioner owned urban vacant land in excess of the ceiling limit. Actually, the said land has been classified as agricultural dry land and hence treating the subject land as urban vacant land is not correct. Though the second respondent had acquired 937 sq.meters of land owned by the petitioner and deemed to have vested with the Government, the physical possession of the said land continues to be with her similar to the land of her mother and brother. She had stationed survey stones on all the four boundaries and employed a watchman. Therefore, the second respondent's proceedings are not maintainable, since the subject land had not been delivered from the land owners. After the said acquisition proceedings, the subject land had not been assigned to any third party. Hence, the learned counsel has prayed this Court to restore the subject land to the petitioner, since she had not received any compensation. The second respondent took measurement of the subject land on 22.01.2007 and the same was objected by the watchman. It clearly proves that the subject land is under the care and maintenance of of the petitioner.

6. The learned Additional Government Pleader appearing for the respondents has submitted that the subject land is situated within the urban area. Hence, the second respondent had initiated acquisition proceedings and acquired the surplus urban vacant land to an extent of 937 sq.meters. The same was published in the Government Gazette on 08.12.1982. Subsequently, the second respondent took possession of the subject land and handed it over to the revenue authorities. After a lapse of 25 years, the petitioner has challenged the acquisition proceedings, which had been completed during 1983. Further, the subject land is under the care and custody of the Government. Therefore, the learned Additional Government Pleader has prayed this Court to dismiss the writ petition.

7. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the competent authority and the Assistant Commissioner of Urban Land Reforms had given publication in the Government Gazette on 16.02.1983 stating that the subject land has been acquired by the State Government free from all encumbrances. The said notification is valid. Further, the petitioner had not produced any current relevant records including revenue records stating that the subject land is in the name of the petitioner. In such

circumstances, the writ petition does not have sufficient force to allow it and the same is liable to be dismissed.

8. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To:

- 1.The Principal Commissioner and
Commissioner Land Reforms,
Chepauk, Chennai-5.
- 2.The Assistant Commissioner,
Land Reforms,
Urban Land Ceiling and Urban
Land Tax,
I Floor, MRC Complex,
Pudukottai Road, TVS Tollgate,
Tiruchirappalli-20.

W.P.No.15303 of 2007
and
M.P.No.2 of 2007

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