IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2015

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. No.2998 of 2004

1.A.N.Visalakshi
2.Jayanthi Venugopal
3.A.N.Ganesh
4.A.N.Shankar ... Petitioners
Rep., by his power agent
Vallur Narasimhan Venkataraman

Vs.

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

2.The Assistant Commissioner,
Urban Land Ceiling and Land Reforms,
Tambaram, Chennai - 600 088.

3.The Tamil Nadu Land Reforms Special,
Appellate Tribunal,
Santhome,
Chennai - 600 004. ... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for all the records in relation to the order of the third respondent in T.R.P.No.70 of 1999 and dated 15.11.2000, examine and quash the same.

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For petitioners .. Mr.V.Ramesh for
Mr.N.Senthilkumar

For Respondents .. Mr.V.R.Kamalanathan AGP for RR1&2
R3 - Tribunal

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM,J.)

The petitioners, who are the legal heirs of one Mr.A.S.Nagarajan, have filed this Writ Petition challenging the order passed by the Tamil Nadu Land Reforms Special Appellate Tribunal (hereinafter referred to as the 'Tribunal') in TRP No.70 of 1999, dated 15.11.2000, by which the Revision Petition filed challenging the order passed by the Special Commissioner, Urban Land Ceiling and Land Reforms/ first respondent dated 16.04.1990, was rejected.

2. This petition was filed to reconsider an order passed by the first respondent rejecting an appeal filed under Section 33 of the Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978, (Act) which was dismissed by the first respondent as time barred. This appeal petition filed by the petitioners was challenging the order passed by the Assistant Commissioner, Urban Land Ceiling and Land Reforms/second respondent dated 31.10.1985, declaring an extent of 550 sq mts., as excess vacant land in the hands of the original land owner.

3. We have heard Mr.V.Ramesh, learned counsel for the petitioners and Mr.V.R.Kamalanathan, learned Additional Government Pleader appearing for the first and second respondents and considered submissions made on either side and perused the records placed before this Court.

4. The short issue which falls for consideration is whether the proceedings under the Act stood abated after coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act,1999?

5.The learned counsel for the petitioners submitted that the possession of the land continues to remain with the land owners and by virtue of Section 4 of the Repeal Act, all proceedings initiated under the Parent Act stood abated. It is further submitted that when the proceedings acquiring the land under the Parent Act was subject matter of challenge before the Tribunal, the Parent Act was repealed and the only question which had to be considered by the Tribunal was whether the respondents have taken actual physical possession of the land pursuant to the order under Section 11(5) of the Act, dated 30.12.1987. It is submitted that the Tribunal on perusal of the records observed that the Revenue Department has taken over the lands as early as on 07.03.1988, sub-division has taken place and proceedings were initiated under Section 12 of the Act for disbursing the compensation amount. Therefore, the Tribunal held that it cannot be said that possession was not taken over by the Revenue Department in the year 1988. The learned counsel for the petitioners submitted that possession continues to remain with the land owner and mere paper possession does not mean actual taking over of physical possession and therefore, the Tribunal fell in error in rejecting the

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petitioners' Review Petition. Further, it is submitted that the very same Officer who passed the order in the capacity of the competent authority under the Land Ceiling Act, is also the officer under the provisions of the Urban Land Tax Act, who has recognised the possession of the land owner and levied urban land tax on the land owner during 1989 i.e., much after the alleged date on which the respondents are said to have taken possession of the land in question, which would establish that the land owner is in actual physical possession of the land. In support of his contentions the learned counsel relied on the decision of the Division Bench of this Court in the case of G.Krishnamoorthy and Ors., vs. Government of Tamil Nadu, in W.P.No.3749 of 2001, dated 07.08.2009, where the Division Bench pointed out that taking over possession is complete only when it is signed by the land owner while delivering the excess land pursuant to the proceedings initiated under Section 11(5) of the Act. Reference was also made to the decision of the Division Bench in the case of Government of Tamil Nadu vs. Mecca Prime Tannery and another reported in 2012-4-L.W.289, in the support of the contention that if action is not taken under Section 11(6) of the Act for taking delivery of possession, the State Government shall not be deemed to be in possession of those lands. On the above submissions, the learned counsel prayed for setting aside the impugned proceedings.

6. The learned Additional Government Pleader submitted that the land owner filed returns under Section 11(1) of the Act, on 07.09.1982 and the competent authority after conducting preliminary enquiry arrived at the excess vacant land holding as 550 sq.mts., and the proceedings were issued proposing to acquire the excess vacant land. The land owner submitted his objections and after enquiry, the same were rejected and the provisional notice issued under Section 9 (4), was confirmed. Thereafter notification under Section 11(1) of the Act was published in the Government gazette, dated 04.03.1987 and pursuant to the notification, the land is said to have vested with the Government free from all encumbrances with effect from 16.12.1987. Subsequently, notice under Section 11(5) of the Act was issued to the land owner to surrender the land to the concerned Tahsildar within 30 days of service of the notice. It is submitted that possession was handed over to the Revenue Authorities through the Deputy Tahsildar of the Urban Land Ceiling Department and possession was taken over by the Revenue Inspector, Tambaram Firka on 07.03.1988. It is further submitted that the Appellate Authority rejected the appeal petition filed by the land owner as time barred by order dated 12.10.1988, after which notice under Section 12(7) of the Act was issued on 27.03.1989, and an amount of Rs.5500/- was sanctioned out of which an amount of Rs.1908/- was sent to the land owner through demand draft. It is further submitted that the land owner filed a Writ Petition in W.P.No.6010 of 1990, challenging the proceedings initiated under the Act which was transferred to the Tribunal and renumbered as T.R.P.No.70 of 1999, and the same was dismissed by the Tribunal on 15.11.2000 and challenging the said order this Writ Petition has been filed.

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7. The learned Additional Government Pleader further submitted that the procedure under the Act has been followed and possession was taken over on 07.03.1988 much prior to the coming into force of the Repeal Act, sub-division was made and compensation amount was also arrived and therefore, the lands in question have vested with the Government free from all encumbrances and possession of the land has been taken over in accordance with the procedure under the Act and the order passed by the Tribunal, is just and proper.

8. From the facts noticed above, there is no dispute as regards the proceedings initiated under the Act; the challenge made by the land owner to such proceedings which has ultimately culminated in the impugned order passed by the Tribunal. There would be no necessity to go into the contentions regarding the land holding i.e., the extent of land which could be held by the land owner as the Parent Act itself stood repealed. The effect of the Repealing Act on the impugned proceedings is the only issue to be decided.

9. After hearing the learned counsels appearing for the parties and perusing the records, the dispute has fallen into a narrow campass i.e., as to whether the possession of the land was taken over by the Government in accordance with law. It is not in dispute that notice was issued under Section 11(5) of the Act. This is the final stage when the Government issues notice to the person in possession of the vacant land to surrender the lands to any person authorised by the State Government within 30 days of service of the notice. If the land owner on receipt of the notice voluntarily surrenders possession, there would be no issues. Sub-section (6) of Section 11 provides for the procedure to be adopted in cases where a person fails to comply with an order made under sub-section (5) of Section 11. The petitioners' consistent case is that they have not handed over possession.

10. On perusal of the original records which were placed before this Court, it is seen that possession is said to have been taken over on 07.03.1988, in terms of a land delivery receipt which finds place in page no.327 of Volume No.1 of the file. One Mr.P.Karupaiya is said to have handed over the land to the Revenue Inspector, Tambaram Firka, who was taken over the land. On a query to the learned Additional Government Pleader as to who was this Mr.P.Karrupaiya as he is not the land owner. On instructions, it is submitted that he is the Deputy Tahsildar in the office of the competent authority under Urban Land Ceiling Act. Thus, the land delivery receipt relied on by the respondents to justify their stand that they have taken possession on 07.03.1988, has been signed by two officials, one from the Urban Land Ceiling Department, who is said to have handed over the land and the other official from the Revenue Department, who is said to have taken over of the land.

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11. It is to be noted that the land owner's signature does not find place in the land delivery receipt. In page 327 of the same file, we find a representation of the land owner, dated 13.02.1998, requesting the second respondent to keep in abeyance, the notice issued under Rule 10(3) of the Rules on the ground that appeal is pending before the first respondent. The file discloses that no action has been taken on the said representation and the officials appear to have mechanically recorded a land delivery receipt. The question would be as to whether the procedure adopted by the second respondent for handing over possession is in accordance with law. This question was considered by the Division Bench of this Court in the case of Mecca Prime Tannery and another (supra). The Division Bench pointed out that in cases where the competent authority issued notice under Section 11(5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owners or the persons in possession fails to deliver the land and continues to be in possession of such land and the authority of the State (Urban land Ceiling Authority) did not take any action under Section 11(6) of the Act for taking delivery of possession, in such cases the State Government shall not be deemed to be in possession of those lands.

12. The facts of the case on hand is also one such case where the competent authority issued notice under Section 11(5) of the Act, and did not take any action under Section 11(6) and consequently, the second respondent cannot be deemed to have handed over possession nor the Revenue Department could claim to have taken over possession. The land delivery receipt can at best be construed as a "paper delivery", not authorised by law.

13. In this regard, it is beneficial to refer to the recent decision of the Hon'ble Supreme Court in the case of State of Uttar Pradesh vs. Hari Ram reported in (2013) 4 SCC 280, among several issues, the Hon'ble Supreme Court considered the distinction between the vesting of right, title or interest from that of delivery/transfer of peaceful or de facto possession. Three types of delivery of possession was considered namely, voluntary surrender, peaceful dispossession and forceful dispossession. On voluntary surrender, it was pointed out that the word "vesting" takes in every interest of the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976, (Central Act). With regard to peaceful dispossession, the Hon'ble Supreme Court pointed out that if de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub- section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of

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possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession. With regard to 'forceful dispossession', it was held that the Act provides for forceful dispossession, but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. It was pointed out that Section 10(6) of the Act speaks of "possession", which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force-as may be necessary-can be used. It was further pointed out that sub-section (6), contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force, Thus, it was held that forcible dispossession of the land, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10 and sub-sections (5) and (6), therefore, they take care of both the situations i.e., taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10. (Section 11(5) and Section 11(6) of the State Act are in pari materia with Section 10(5) & (6) of the Central Act)

14. Admittedly in the instant case, an order under Section 11 (5) of the State Act was passed and notice issued to the land owners. The land owner by representation requested for keeping the the proceedings under abeyance, since he has preferred an appeal. The proceedings were not deferred, but the respondent would state that they have taken over possession pursuant to a land delivery receipt. In the preceding paragraphs, we have seen that the land delivery receipt has been executed between the Urban Land Ceiling Department and the Revenue Department and the land owner had not surrendered possession pursuant to the order under Section 11(5) of the State Act. Therefore, if the respondents claim that they have taken over possession, then they should have resorted to the procedure under Section 11(6) of the Act which has not been done and the manner in which the possession is sought to be recorded or taken over, is not in accordance with law and the Government are not deemed to be in possession of the land in question.

15. In the light of the above, we have no hesitation to hold that the possession said to have been taken over by the Revenue Department, pursuant to the land delivery receipt cannot be construed as possession taken in accordance with law and therefore, cannot confer any right on the Department/Government and the land owners are held to be continued to possession and consequently, the proceedings initiated under the Urban land Ceiling Act stand abated in the light

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of the coming into force of the Repealing Act, Act 20 of 1999.

16. In the result, the Writ Petition is allowed and the impugned order is set aside and consequently, proceedings initiated under the Parent Act are quashed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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

2.The Assistant Commissioner,
Urban Land Ceiling and Land Reforms,
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3.The Tamil Nadu Land Reforms Special,
Appellate Tribunal,
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2 cc to Mr. N.Senthilkumar, Advocate Sr.No.40706

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