IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
17.02.2016	10.03.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.2662 of 2015

1.Brindawan Colony,
Srinivasa Nagar Housing Welfare Association,
No.24, Gokulam Street, rep. by its
President M. Thangaraju
Seenivasa Nagar, Uppilipalayam,
Singanallur,
Coimbatore - 641 015.

2.S.Elagovan
3.R.Balasundaram
4.M.Rajagopal ... Petitioners

Vs

1.State of Tamil Nadu,
Rep., by its Secretary to Govt.,
Revenue Department,
Secretariat, Fort St., George,
Chennai - 600 009.

2.The District Collector,
Coimbatore Collectorate,
Coimbatore.

3.The Principal Commissioner & Commissioner
of Land Reforms,
Commissionerate of Urban Land Ceiling
and Urban Land Tax,
Chepauk, Chennai - 600 005.

4.The Assistant Commissioner (Urban Land Tax),
District Collectorate Complex,
State Bank Road,
Coimbatore.

5.The Tahsildar,
Office of the Tahsildar,
Coimbatore South Taluk,
Coimbatore District.

6.The Special Deputy Tahsildar,
Officer of the Assistant Commissioner
(Urban Land Tax),
Coimbatore South Taluk,
Coimbatore District.

7.The Revenue Inspector,
Singanallur,
Coimabatore.

8.The Sub-Registrar,
Office of the Sub-Registrar,
Singanallur, Coimbatore.

9.The Village Administrative Officer,
Uppilipalayam, Singanallur,
Coimbatore. ... Respondents

Prayer :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the fourth respondent under the Government Gazette No.7, dated 21.02.1990, and possession certificate, dated 21.10.1998, acquired under Ref.No.SRI/87 (OLD No.692/80) and C.No.341.95, A2, dated 21.07.1990 issued under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 including proceedings under Section 11(1) with respect to properties situated in SF.Nos.231, 233, 234/1, 230/1, 230/2 in Uppilipalayam Village, Coimbatore District and quash the same in the light of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act of 1999 as the proceedings have abated and the members of the petitioner association are the lawful owners of the properties and possession of the properties have not been taken by the State Government and consequently forbear the respondents from in any way interfering the peaceful possession and enjoyment of S.Nos.231, 233, 234/1, 230/1 and 230/2 in Uppilipalayam village, coimbatore District.

For petitioner .. Mr.P.Wilson Sr., Counsel for M/s.P.Wilson Associates

For Respondents .. Mr.R.Rajeswaran Special Government Pleader

O R D E R

There are four petitioners in this Writ Petition, first being an association consisting of members who have purchased plots in a lay out called 'Brindawan Colony' situated in Srinivasa Nagar, Uppilipalayam, Singanallur, Coimbatore. Petitioners 2 to 4 are individual members who own plots in the said lay out.

2. The petitioners seek for issuance of a Writ of Certiorarified Mandamus to quash the proceedings initiated by the fourth respondent, the authority under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation)Act, 1978, (hereinafter referred to as the Repeal Act). The petitioners would state that they were unaware about the proceedings and came to know only when the eighth respondent refused to entertain sale deeds for registration. It appears that the petitioner association sought for information under the Right To Information Act, (RTI Act) and came to know that the possession certificate has been issued by the sixth respondent stating that the lands comprised in S.F.Nos.230/1, 230/2, 231, 232, 233, 234/1, measuring in total extent of 96200 sq mts., has been handed over to the Revenue Officer, Singanallur, seventh respondent herein.

3. It is further stated that said certificate describes the land in these Survey Numbers as having been “formed as a lay out for built up area of house site lying at Seenivasa Nagar and Brindawan Colony parts”. In this Writ Petition, the petitioners are concerned with the lands in Survey No.230/1, 230/2, 231, 233, 234/1. The petitioners' case is that S.F.No.231, which falls in Brindawan Colony - I, was divided into 72 plots by Duraisamy Naidu in the year 1958, the lay out plan was approved much before the coming into force of the Principal Act by the Director of Town and Country Planning vide proceedings dated 05.03.1958. The Panchayat passed a resolution on 28.03.1958. Thereafter, a revised lay out plan was prepared, which was approved by the Regional Deputy Director of the Town and Country Planning, Coimbatore and Nilgiris by order dated 21.01.1975. The plots so formed were sold to third parties and one such sale was in favour of A.Sundarambal in respect of plot Nos.45 to 71 and this was by a registered sale deed executed in the year 1965, registered as document No.872 of 1965.

4. It is further stated that in respect of the land in S.F.No.233, it was divided into 52 plots and formed as Brindavan Colony-2. The lay out was approved by proceedings dated 16.03.1961 and Panchayat also passed a resolution, accepting the

same on 12.05.1961. The plots were sold and one such transaction was in favour of Noorin Shah Begum, by sale deed dated 26.01.1965 registered as Document No.580 of 1965. The fourth respondent has purchased a part of the land from the said Noorin Shah Begum. Thus, it is submitted that the fourth respondent, namely, the authority under the provisions of the Principal Act was fully aware that Duraisamy Naidu was no longer the owner of the property on the date when the notification was issued, but the property was with third parties. In paragraphs 9 to 11 of the affidavit filed in support of the Writ Petition, the petitioner has set out as to how the property devolved on the petitioners and that the petitioners have been issued individual patta in their names. These averments could be gone into if a need arise at a later point of time.

5. The first question which requires consideration is as to whether the proceedings initiated under the Principal Act stood abated in the light of the Repeal Act. The necessity to go into the correctness of the other contentions raised by the petitioner would arise depending upon the conclusion that is arrived at on the first issue.

6. In terms of Section 4 of the Repeal Act, all proceedings under the Principal Act, before any authority, Tribunal or Court shall stand abated from 16.06.1999. Section 3 of the Repeal Act saves from the operation of Section 4 only those properties wherein possession has been taken over by the State Government. The specific case of the petitioners is that the possession of the lands still continue with their members though a possession certificate has been drawn by the fourth respondent. To establish that, several documents have been filed in the typed set of papers, such as patta, property tax assessment, payment of Water and Sewerage Tax, formation of roads etc.

7. Mr.P.Wilson, learned Senior counsel appearing for the petitioner submitted that the case of the petitioners is fully supported by the decision of the First Bench of this Court in the case of Government of Tamil Nadu & Ors., vs. M/s.Mecca Prime Tannary., reported in 2012-4-L.W.289. After inviting the attention of this Court to the sale deeds, the partition deed executed by the G.V.Duraisamy Naidu in favour of his sons and legal heirs dated 01.09.1976, the sale deed in favour of the fourth petitioner dated 25.05.1977, the order passed in E.P.No.192 of 1979 in O.S.No.110 of 1971, filed by the fourth petitioner dated 17.09.1980, pertaining to a proceedings initiated by the fourth petitioner against the one C.S.Jabar Shah and the vendor Noojahan @ Noornisha Begam pertaining to the sale of the property in execution of the decree obtained by him in O.S.No.110 of 1971, the sale deed executed in favour of the third petitioner, dated 08.12.1982, the sale deed in favour of the second petitioner dated 07.06.1989, the death certificate of

Duraisami Naidu, dated 08.09.1989, the learned counsel referred to the assessment order passed by the fourth respondent assessing urban land tax in the name of the fourth petitioner dated 26.07.1990, which was made after due enquiry. By relying upon the said document, it is submitted that this document is sufficient to prove that possession of the land in question has not been taken over. The receipts issued by the Special Tahsildar, Urban Land Tax, Coimbatore were also referred to and the subsequent order passed by the Assistant Commissioner of Urban Land Tax, dated 31.03.1994, and the connected proceedings were also shown to establish that the property continues to be in possession of the purchasers. Referring to the possession certificate signed by the Revenue Inspector and the Deputy Tahsildar, which the petitioners have obtained under the Right to Information Act, clearly shows that the entire area of 9620sq.mtrs., have been formed into a lay out, and there are built up areas and certain house sites are vacant.

8. The property tax assessments were also referred to by the learned counsel to show that the house has been assessed to property tax, apart from photographs of a school constructed by the Coimbatore Corporation, a shop leased out for a Ration shop, a Park formed in the reserved area in Brindhavan Colony-2 in S.F.No.233, existence of a temple in reserved site, since 1982, apart from the other photographs to show that the entire area is an approved lay out inhabited and as such possession being vested with the persons, who have purchased the property. Therefore, it is submitted that the entire proceedings stand abated.

9. The learned Special Government Pleader appearing for the respondents submitted that G.V.Duraisamy filed a return under Section 7(1) of the Principal Act on 10.12.1990 in respect of the properties in Survey Nos.231 & 233 of Uppilipalayam Village. The notice of enquiry sent to the land owner is said to have been acknowledged by him, but he did not turn up for enquiry and the notice under Section 7(2) is also said to have been served on the urban landowner, but he did not turn up for enquiry and therefore, on the basis of revenue records i.e., adangal extracts and Form 13 received from the Sub-Registrar Office, the Assistant Commissioner initiated action under the Act and declared as extent of 96200sq.mts as excess vacant land. It is further submitted that notice under Section 9(4) with the draft statement under Section 9(1) was issued on 12.01.1987. However, no objection was raised by the urban land owner and an order under Section 9(5) of the Act was passed by the fourth respondent on 26.04.1989, determining an extent of 96200sqmts as excess vacant land. It is further submitted that final statement dated 26.06.1989, was issued under Section 10(1) and sent to the land owner by Registered post on 01.07.1989. The notification under Section 11(1) of the Act was issued by the

fourth respondent, dated 24.10.1989, published in the Tamil Nadu Government Gazette on 21.02.1990. The notice under Section 11 (3) was issued by the fourth respondent on 25.04.1990 and published in the Tamil Nadu Government Gazette on 06.06.1990. It is submitted that after due publication under Section 11(3) final notice under Section 11(5) of the Act was issued to the Urban Land owner on 24.07.1990, to surrender and deliver possession of the excess vacant land to the Government. It is further submitted that the Urban land owner did not surrender possession of the vacant land and it was taken over by the Revenue Authorities, i.e., Revenue Inspectors, Singanallur, on 21.10.1990. Therefore, it is contended that the entire proceedings have been taken in accordance with the Act and the petitioners being not the urban land-owners, but subsequent purchasers have no locus standi to challenge the proceedings, that too after a lapse 16 years.

10. After referring to the above factual averments the learned Special Government Pleader reiterated that the seventh respondent has taken over possession after following procedure under the Act and the possession having been taken over prior to the commencement of the Repeal Act, the petitioners cannot seek the benefit of the Repeal Act and the proceedings initiated are valid and proper. The voluminous documents, which were placed in this Writ Petition, have not been controverted by the respondents in their counter statement. But the fact remains that the land is an approved lay out and the specific averments that the first approval was granted prior to the coming into force of the Principal Act, has not been denied. Thus, if before proceedings were initiated, if a land has been converted as a lay out and approval has been granted, the question of applying the provision of the Principal Act subsequently and to state that the lands are in excess of the holding of the urban landowner is a proposition not feasible of acceptance and liable to be rejected.

11. At the time, when the Writ Petition was filed, an objection was raised by the Registry as to how a Writ Petition with such a prayer is maintainable at the instance of an association. The petitioner is pointed out that the first petitioner is an association and the petitioners 2 to 4 have also joined in the Writ Petition in their personal capacity to avoid any technical objection to the filing of the Writ Petition by the association. Further, it was stated that the petitioners seek to challenge the impugned proceedings, which has been issued in the name of the landowner, since the landowners and the names of the persons appearing in the impugned proceedings have alienated the property to third parties after forming a lay out and obtaining approval from the competent authority. Subsequently, when the matter was heard on 20.01.2015, the Court

has directed the petitioners to produce documents to prove ownership of all the members of the first petitioner association. These documents have been filed by the petitioner in four volumes and on being satisfied, the Writ Petition has been numbered and notice was issued on 04.02.2015.

12. As already pointed out that the only issue would be whether the possession continues with the members of the petitioner association, who are purchasers on various dates from either the original landowner. The question of going into locus standi of the petitioners may not arise in the instant case, because the areas have been developed into a housing lay out and several of the purchasers are shown to have purchased meagre extent of land and sale transactions commenced from the year 1977 onwards. Therefore, it has to be seen as to whether possession has been taken by the fourth as required to be done under the provision of the Act, so as to apply the provisions of the Principal Act and deny the benefit of the Repeal Act to the petitioners.

13. In the case of M/s.Mecca Prime Tannary., (supra), this very issue was considered and the aspect as to how possession should be taken in the case the urban land owner refuses to surrender possession was discussed. The relevant portion of the decision is quoted herein below:-

> 32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Section 11 (5) and Section 11(6) of the Act. Section 11 (5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorised by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as

contemplated under Section 11(6) of the Act.

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 land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

34. There are cases where after notice under Section 11(5) of the Act, the land owner 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 land owner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the land owner 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.

35. However, there are cases where although the competent authority issued the 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 owner 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.

14. The contention raised by the learned Special Government Pleader based on the averments to the counter affidavit has been set out in the preceding paragraphs, in which it is submitted that the notification under Section 11(3) of the Act was issued

by the fourth respondent on 25.04.1990 and published in the Tamil Nadu Government Gazette on 06.06.1990, and after publication of the said notification under Section 11(3), final notice under Section 11(5) of the Act was issued to the Urban landowners on 24.07.1990, to surrender or deliver the possession of the excess vacant land to the Government and the Urban landowners did not come forward to surrender the possession of the excess vacant land. The decision in the case of M/s.Mecca Prime Tannary., (supra), sets out the procedure to be followed by the authority in such an eventuality and it was pointed out that in cases where after issuance of notice under Section 11(5) of the Act, the landowner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority 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. The said decision squarely applies to the facts of this case, since the respondents have admitted in the counter affidavit that the landowners did not surrender possession after notice under Section 11(5) was issued. Therefore, the authority should have proceeded further under Section 11(6) to take over possession from the landowners or person in possession. This admittedly has not been done and the so called delivery receipt is only a paper delivery and does not amount to actual taking over of possession of the lands. This is, more so, because in the same delivery receipt, the fact that the land is a housing lay out partially constructed and partially housing plots lying vacant has been noted. Added to this, the proceedings of the Commissioner, Corporation of Coimbatore, dated 30.09.1985 furnishing certain information which has been obtained under the RTI Act, proceedings of the Assistant Commissioner, ULC, the Sub-Registrar, recognising the transaction which have taken place in relation to the said property during 1972, would further strengthen the case of the petitioners. Thus, the respondents having failed to establish that they have taken over actual physical possession of the lands in question, the benefit of the Repeal Act has to be extended to the case on hand.

15. In the result, the Writ Petition is allowed and the impugned proceedings initiated under the Tamil Nadu Urban Land Ceiling Act, stand abated in terms of the Repealing Act, 1999 and accordingly quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
1.State of Tamil Nadu,
Rep., by its Secretary to Govt.,
Revenue Department,
Secretariat, Fort St., George, Chennai - 600 009.

2.The District Collector,
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9.The Village Administrative Officer,
Uppilipalayam, Singanallur,
Coimbatore.

+1cc to Mr.P. Wilson, Advocate, S.R.No.15616
+1cc to the Government Pleader, S.R.No.15708

AD(CO)
EU(21/03/2016)

W.P.No.2662 of 2015