IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
17.02.2016	04.03.2016

Coram

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

W.P.Nos.8658 & 8659 of 2012

M/s.Madeswar Realty Pvt Ltd.,
(Formerly known as M/s.Sree Maruthi Industries)
No.21, C.V.Raman Road, 2nd Floor,
Alwarpet, Chennai - 600 018.
Rep., by its Authorized Signatory,
K.Baskaran ... Petitioner in W.P.No.8658/2012

M/s.Wellstore (Madras) Private Ltd.,
No.21-D, C.V.Raman Road,
Alwarpet, Chennai - 600 018.
Rep., by its Authorised Signatory,
D.Gopichandran ... Petitioner in W.P.No.8659/2012

Vs

1.The Commissioner
Urban Land Ceiling
Chepauk,
Chennai - 5.

2.The Assistant Commissioner,
Urban Land Ceiling,
Kunrathur Area,
153, Karunegar Street,
Adambakkam, Chennai - 88. ... Respondents in all W.Ps.

Prayer in W.P.No.8658 of 2012 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare that the proceedings initiated under the provisions of Tamil Nadu Urban Land (Ceiling and Regulations) Act in respect of lands comprised in Survey No.430/2, measuring an extent of 0.18 cents in Survey No.433/1, measuring an extent of 0.11 cents in Survey No.433/3, measuring an extent of 0.12 cents and in Survey No.434/2, measuring an extent of 0.08 cents, in Survey No.434/1, measuring in extent of 0.15 cents and Survey

No.448/2A measuring an extent of 0.25 cents total extent of 89 cents in Manapakkam village, Sriperumpudur Taluk, Kancheepuram District are stands abated in view of enactment of Repeal Act 20 of 1999 and consequently direct the respondents to effect the mutation of revenue records in the name of Land owners.

Prayer in W.P.No.8659 of 2012 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare that the proceedings initiated under the provisions of Tamil Nadu Urban Land (Ceiling and Regulations) Act in respect of lands comprised in Survey No.433/2, measuring an extent of 8 cents in Survey No.448/1, measuring an extent of 17 cents and in Survey No.448/2B, measuring an extent of 27 cents and in Survey No.449/1, measuring an extent of 42 cents, in Survey No.449/2, measuring an extent of 70 cents, in Survey No.452/1, measuring an extent of 64 cents, in Survey No.452/2, measuring an extent of 63 cents in Survey No.454/1, measuring an extent of 21 cents, in Survey No.454, measuring an extent of 20 cents, in Survey No.456/1, measuring an extent of 20 cents in Survey No.455/3, measuring an extent of 60 cents in Survey No.461/1, measuring an extent of 40 cents, in Survey No.462, measuring an extent of 155 cents and in total 6.07 acres situated at Manapakkam village, Sriperumpudur Taluk, Kancheepuram District are stands abated in view of enactment of Repeal Act 20 of 1999 and consequently direct the respondents to effect the mutation of revenue records in the name of Land owners.

For petitioner .. Mr.Vijayanarayanan Sr., Counsel for M/s.Waron & Sairams

For Respondents .. Mr.R.Rajeswaran Spl., G.P., for RR1&2

C O M M O N   O R D E R

The prayer sought for in both the Writ Petitions are identical wherein the petitioners have sought for issuance of a Writ of Declaration to declare the proceedings initiated under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulations) Act (hereinafter referred to as the 'Act') in respect of the lands in question stand abated in view of the enactment of the Repeal Act, 20 of 1999 and for a consequential direction to the respondents to effect mutation of revenue records in the name of the landowners.

2. The primary ground on which the Writ Petitions have been filed, are by contending that the subject lands are under the continuous and uninterpreted possession of the petitioners on the date Repealing Act, Act 20/1999, was issued and therefore, the petitioners are entitled to hold the lands in their individual capacity, as the proceedings initiated under the Principal Act

stand abated. Further, it is contended that the notifications issued under Section 11(3) of the Principal Act and the notice under Section 11(5) of the Principal Act were not received by the petitioners' predecessors in title and therefore, the entire proceedings are to be declared as null and void in view of the Repeal Act, 20/1999. Further, it is contended that the proceedings under Section 12 of the Principal Act, has not been completed and no payment of compensation has been made till date and the possession of the land continued with the petitioner without any interpretation or disturbances.

3. The petitioners have filed additional affidavit in both these Writ Petitions placing on record certain vital facts, which would be essential for disposal of the Writ Petitions. The petitioner in W.P.No.8658 of 2012, is a private limited company incorporated under the provisions of Companies Act, 1996 and they are owners of the agricultural lands measuring a total extent of 1 acre and 23 cents in Manapakkam village. The lands were originally owned by Tmt.V.Karpagam, who was the sole proprietrix of M/s.Sree.Maruthi Industries. The said sole proprietor concern was an allied business undertaking of M/s.Maxwell Exim(P) Ltd., and M.V.R.Industries Ltd, who were carrying on business of import and export of cashewnuts to various foreign countries. The proprietary concern namely Sree.Maruthi Industries was established for the purpose of manufacturing tins for packing the processed cashewnuts for export. The lands were purchased by the original land owner Tmt.V.Karpagam, in the year 1990, as agricultural lands and they were lying contiguous to the larger extent of properties purchased by their principals namely, M/s.Maxwell Exim(P) Ltd., MVR Industries Ltd and another sister concern M/s.Wellstore (Madras) Private Ltd., the petitioner in W.P.No.8659 of 2012. The total extent of the properties measured 17.42 acres, which was a contiguous extent and duly protected by a compound wall on all sides. All the companies had established their industries within the said total extent and they have laid roads and provided other amenities for the concerns and the entry to all the properties is through a single access gate from Pilaiyar Kovil Street, Manapakkam and even as on date, all the properties are lying within the same compound. Further, it is submitted that all the actions purportedly done by the respondents under Section 11(3) and 11 (5) of the Principal Act were never actually done, but shown to be done for the sake of compliance of the provisions of the Act. It is further submitted that similar proceedings were initiated against the properties owned by other companies and M/s.Maxwell Exim (P) Ltd., was granted exemption under Section 21(1)(a) of the Act and they are carrying on their industry. The petitioners' predecessor in title Tmt.V.Karpagam also applied for exemption from the provisions of the Act by application, dated 11.01.1992 and during the pendency of the application, order under Section 11(5) was passed on 15.06.1993, declaring 2700sq.mt., as excess vacant

land, after allowing 500sq.mts., as retainable extent. The appeal filed under Section 33 of the Act by Tmt.V.Karpagam, before the Special Commissioner and Commissioner of Land Reforms was disposed of confirming the order passed under Section 9(5) of the Act, with a further direction to the authorities not to proceed further till the disposal of the exemption application. The exemption application stood rejected only on 13.11.1996. The Principal industry M/s.Maxwell Exim(P) Ltd., ran into financial difficulties and business operations came to a stand still and the exemption granted was withdrawn and they challenged the acquisition proceedings in W.P.No.9744 of 2004 and the entire acquisition proceedings were set aside by order dated 28.11.2008. It is further submitted that the respondents did not take any steps to serve notices on Tmt.V.Karpagam and the allegation that she did not co-operate with the respondents is incorrect. Therefore, it is submitted that the physical possession having not been taken over, the entire proceedings stand abated as of 1999. The said Tmt.V.Karpagam settled the property in favour of her husband Mr.M.Venkatesan, by registered settlement deed, dated 18.11.2009, registered as document No.6095/2009, subsequently, the petitioner purchased the property from Mr.Venkatesan in 2010 and during the course of all these transactions, the physical possession of the property remained with the respective owners.

4. Further, it is contended that the claim of the respondents that they have taken over physical possession is absolutely false and it is an impossibility, as the lands lie within the same campus contiguous with the properties owned by the Principal industry M/s.Maxwell Exim(P) Ltd., and others. The notice under Section 11(5) allegedly sent by registered post on 21.10.1997 had admittedly returned unserved on Tmt.V.Karpagam. Further, the competent authority has admitted that when they inspected the premises on 23.07.1997, the company was found closed and there was no one except a Watchman. This fact would go to show that the property is enclosed in the same compound along with the other contiguous lands owned by the sister concern. Therefore, the claim of the respondents that they have taken physical possession of the lands and handed over the same to the Revenue Department on 02.12.1997, is absolutely false. Further, it is submitted that the respondents after issuance of the notice under Section 11(3) of the Act had not taken possession either through land delivery receipt given by the petitioner nor taken possession by exercising power under Section 11(6) of the Act. Further, the failure on the part of the respondents in demarcating/sub-dividing the excess lands and the retainable extent by metes and bounds clearly goes against the claim of the respondents. Further, the contention that no compensation has been paid to Tmt.V.Karpagam was reiterated.

5.In the additional affidavit filed in W.P.No.8659 of 2012, similar stand has been taken stating that the land is locked by the properties of M/s.Maxwell Exim(P) Ltd., and the respondents have not taken possession of the excess lands as claimed by them. It is further submitted that an extent of 4.68 acres of land, out of the total extent of 6.05 acres belonging to the Petitioner M/s.Wellstore was mortgaged in favour of Indian Bank to secure the loan transaction of M/s.Maxwell Exim(P) Ltd., and this debt was assigned to a securtisation company M/s.ARCIL in 2008 and physical possession was handed over by the petitioner to M/s.ARCIL on 14.10.2008 and M/s.ARCIL had appointed a Tamil Nadu State Government undertaking namely M/s.ITCOT, as its custodian of the mortgaged properties who appointed the Security Guards to safeguard the property. The remaining extent is still held by Indian Bank as security for other loans. Therefore, it is submitted that these facts will clearly go to show that the respondents never took possession of the lands.

6. Further, it is submitted that ARCIL issued auction-sale notice of the mortgaged properties on 31.03.2014, stating that they are in possession of the properties and no objection was raised by the respondents to such public notice. Further, details of the superstructure constructed on the property have been set out in paragraph 9 of the additional affidavit. It is further contended that no notice under Section 11(5) has been served nor any action was initiated invoking power under Section 11(6) nor any compensation paid as required under Section 12 of the Act.

7. In order to ascertain the factual position, the original files relating to the acquisition proceedings were called for and the learned counsel for the Writ Petitioners were also permitted to peruse the same.

8. It has to be pointed out that the files do not in any manner advance the case of the respondents nor have they been able to place any records to controvert the factual submissions raised by the petitioners as set out in the preceding paragraphs.

9. Mr.Vijay Narayan, learned Senior counsel appearing for the petitioners after elaborately setting out the above factual position referred to a sketch filed in the additional typed set of papers the correctness not disputed by the respondents which clearly shows that the lands which are said to have been declared as surplus and said to have been taken over by the respondents are land locked and the entrance is through a single entrance from Pilaiyar Kovil Street from which it is prima facie clear that the respondents could not have taken actual physical possession of the lands said to have been declared as excess vacant land. The learned Senior counsel referred to the recent decision of the First Bench of this Court to which I was a party in the case of A.N.Visalakshi & Ors., vs. Special Commissioner of Urban Land Ceiling and Land Reforms and others in W.P.No.2998 of 2004, dated 05.08.2015.

10. Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents referred to the counter affidavit filed by the respondents, and after reiterating the steps taken by the authorities under the provisions of the Act, the learned Special Government Pleader, has drawn the attention of this Court to the various dates and events which have taken place in order to enforce the provisions of the Act. Thus, it is submitted that all the procedures and actions under the provisions of the Act have been completed in respect of the lands in question, much before the Repeal Act came into force and hence, the contention of the petitioners is incorrect and Writ Petitions filed after a long delay should not be entertained and the acquisition proceedings has to be sustained. The factual position which have been set out in the additional affidavits filed by the petitioners have not been converted.

11. To have the benefit of the Repeal Act, the petitioners had to establish that they are in actual physical possession of the land in question when the Repealing Act came into force.

12. At this stage, it would be relevant to refer to the decision in the case of A.N.Visalakshi & Ors., (supra), in which some what identical circumstances arose for consideration and the Court dealt with the manner in which the competent authority should proceed pursuant to action initiated under Section 11(5) of the Act. The relevant portion of the decision is quoted herein below:-

> 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.
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> 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 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 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.

13. The factual scenario in the instant case appears to be not in dispute. The lands which are subject matter of these Writ Petitions are not stand-alone properties, but they formed part of a contiguous extent with that of the lands owned by the other sister concerns of the petitioner. The fact that the land was mortgaged to Indian Bank and Indian Bank had transferred their security interest in favour of an asset reconstruction company, who have in turn appointed a State Government undertaking to act as the custodian of the property cannot be denied by the

respondents. In fact ARCIL has advertised for sale of the immovable property stating that they are in possession of the property. The respondents have not raised any objections to such public notice. The files did not disclose taking over actual physical possession which in my view was virtually an impossibility in the facts and circumstances of the case. The sketch produced before this Court clearly delineates the properties of the Writ Petitioners and they lie adjoining to the other properties owned by their sister concerns. In fact to approach the properties which are subject matter of these Writ Petitions, one has to go through the properties of the sister concerns. These are all factors, which clearly establish that actual physical possession was not taken over by the competent authority. Thus, the alleged handing over and taking over said to have been recorded by the competent authority, are all paper delivery receipts and can never be taken to be actual taking over of possession. Hence, it is factually established that the petitioners continued to be in actual physical possession of the lands in question and therefore, they are entitled to the benefit of the Repeal Act.

14. In the light of the above discussion, the petitioners are entitled to succeed and accordingly, the Writ Petitions are allowed and the impugned acquisition proceedings are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

pbn

To
1.The Commissioner
Urban Land Ceiling
Chepauk, Chennai - 5.

2.The Assistant Commissioner,
Urban Land Ceiling,
Kunrathur Area,
153, Karunegar Street,
Adambakkam, Chennai - 88.

1 cc to Government Pleader, Sr. 14328
1 cc to M/s. Waron and Sairamsm Advocate, Sr. 14181

W.P.Nos.8658 & 8659 of 2012

KJI (CO)
kk 23/3