

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/2/2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.5778 of 2011

1. Guruswamy Naidu
2. Kasthuri
3. Rukmangathan
4. Meganathan. ... Petitioners

Vs

1. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk
Chennai 5.
2. The Assistant Commissioner
Urban Land Ceiling
Poonamallee
Chennai 56.
3. The Tahsildar
Poonamallee Taluk
Poonamallee
Chennai 74. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in connection with the impugned orders passed by him in SR.No.726/95 dated 18/10/1995, SR No.726/95D dated 6/8/1997 and Na.Ka.No.2199/10C dated 7/1/2011 and quash the same and further direct the third respondent to restore the name of the petitioners in the revenue records in respect of Survey No.240/2 and extent of 1.66acres at Viliinjiambakkam village.

For Petitioners ... M/s.G.Ilamurugan
Balamurugan

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

O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal.

2. Heard M/s.Ilamurugan and Balamurugan, for the petitioners and Mr.R.Rajeswaran, learned Special Government Pleader for the respondents.

3. In this writ petition, the petitioners seeks for the issuance of a writ of certiorarified mandamus, to quash the order passed by the second respondent/Assistant Commissioner, Urban Land Ceiling, Poonamallee, Chennai, under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978, dated 18/10/1995 and consequential proceeding, dated 7/1/2011 and to direct the third respondent, to restore the name of the petitioner in the revenue records in respect of the lands comprised in 240/2.

4. The petitioners are the legal heirs of Krishnaswamy Naidu. It is stated that Krishnaswamy Naidu was the registered owner of the property in question, having purchased the same by registered sale deed, dated 16/12/1965. The lands were said to be punja lands and the said Krishnasamy Naidu was cultivating the lands. Therefore, the first contention raised by the petitioners is that the lands could not have been declared as urban lands and proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, could not have been initiated. The land owner died on 15/10/1983, leaving behind the petitioners and his wife Tmt.Pankajam. The petitioner's mother passed away on 11/2/1988 and the petitioners became jointly entitled to the land in question.

5. The case of the petitioners is that they are in possession and enjoyment of the property jointly and when they made a request to the Tahsildar, to grant patta in their favour, a reply was received by them, stating that the lands have been declared as excess lands in the hands of the original land owner and therefore, patta cannot be granted and subsequently, on 6/1/2011, notices were sent to the petitioners, calling upon them to come and accept the compensation, fixed at the rate of Rs.6,200/- and they were requested to produce the relevant documents, to receive the compensation.

6. The petitioners had filed this writ petition, challenging the entire proceedings initiated by the second respondent, on the ground that the petitioners were not issued with any notice under the provisions of the Act and they were not dispossessed from the property and they continued to be in possession of the same and therefore, in terms of the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, (20 of 1999), the entire land acquisition proceedings are deemed to have been abated.

7. Though other grounds were raised by the learned counsel for the petitioners, during the course of argument, it may not be necessary for this Court to go into those aspects, since if the petitioners are entitled to the benefit of Repeal Act, then they are entitled to succeed. Therefore, this Court, to decide that issue, perused the stand taken by the respondents in the counter affidavit, with regard to taking over possession.

8. In paragraph 2 of the counter affidavit, it has been stated that final settlement under Section 10 (1) of the said Act was issued in SR.726/95/D on 16/7/1996 and it was sent by Registered Post and received by the wife of Thiru Gurusamy, who did not file any objection and hence a Notification under Section 11 (1) was issued on 25/11/1996, which was published in the Tamil Nadu Government Gazette No.1 on 1/1/997. Subsequently, Notification under Section 11 (3) was issued on 5/6/1997 and the land was vested with the Government from 1/7/1997.

9. It is further stated that notice under Section 11 (5) of the Act was issued in S.R.No.726/95, on 6/8/1997, to handover possession of the excess vacant land and this notice was received by G.Ravi, S/o.Gurusamy, on 29/10/1997. It is further stated that possession of the excess land was handed over to the revenue authorities on 8/5/1998.

10. From the above averments, it is seen that the notices issued under the Act on various dates have been set out. However, one crucial detail which is missing in the counter affidavit is the date on which possession of the land was taken over from the land owner. This would be very relevant as if the respondents have failed to establish the same, automatically the benefit of the Repeal Act would stand attracted.

11. In order to afford an opportunity to the respondents, the learned Special Government Pleader was directed to produce the files, by an order, dated 6/1/2016. Accordingly, on the next hearing date, i.e., on 27/1/2016, the learned Special Government Pleader, produced the original records and by pointing out to the document at page No.111, it is submitted that possession has been taken over, which has been accepted and signed by the son of the land owner, viz., Guruswamy Naidu, by affixing his signature on 29/10/1997.

12. In order to afford an opportunity to rebut this submission, the learned counsel for the petitioners was permitted to peruse the records, in the office of the learned Government Pleader, which he has done and they are before this Court, to argue the matter today.

13. During the course of argument, this Court also perused the entire file, from which, it is seen that the notice under Section 11 (5) is said to have been issued and received by one G.Ravi on 29/10/1997. It is stated that there is no son by name G.Ravi for Gurusamy. Even assuming that the notice has been received for and on behalf of the land owner, it has to be seen as how they were despatched, since the scheme of the Act provides for such a procedure after issuance of notice under Section 11 (5).

14. Thus, on a perusal of the file, it is seen that the Assistant Commissioner, Urban Land Tax, Poonamallee, Madras, vide proceedings in R.C.No.726/95 D, dated 18/11/1997 has addressed to the Tahsildar, Poonamalle, stating that Notification under Section 11 (3) of the Act was published in the Gazette Notification, dated 2/7/1997. Notice under Section 11 (5) of the Act has been issued to the land owner. A copy of the same was enclosed and request was made to the Tahsildar to the effect that possession of the land may be taken over from the urban land owner or from the Deputy Tahsildar of this office and a copy of the Land Delivery Receipt be sent. The files do not contain any document, to show that the Tahsildar took over possession of the land in question from the Urban land owner.

15. In terms of Section 11 (6) of the said Act, when a person refuses or fails to comply with an order made under sub-Section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary.

16. Therefore, if the second respondent has proceeded in accordance with the statute upto the stage of Section 11 (5), there is nothing on record to show that possession has been taken over. This crucial document is missing in the files and there is nothing on record to show that the Tahsildar has taken the possession and handed over the same to the authority.

17. The file contains various representations given by the petitioners, request for copies of the notices, viz., 9 (5), 10 (1) and 11 (5), on 26/9/2008, 11/11/2010. However, this request has been rejected on 7/12/2010, alleging that already documents have been given.

18. That apart, steps for calculating the compensation has been taken only in 2011. The law on the subject has been well settled in various decisions and it would be worthwhile to refer to the decision of the First Bench of this Court in GOVERNMENT OF TAMIL NADU, REP. BY THE COMMISSIONER AND SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, SECRETARIAT, CHENNAI 9 AND OTHERS Vs. MECCA PRIME TANNERY, REP. BY ITS MANAGING DIRECTOR TMT.V.JAYAKODI, CHENNAI 44 AND OTHERS {2012 (6) MLJ - 273}, wherein the Division Bench, considered this very issue and held in paragraph 33 as follows:-

"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.

19. In a recent decision, the effect of the Land Delivery Receipt, prepared by the revenue official, as in the instant case, as found in page No.117 of the file was considered by the Honourable First Bench, in A.N.VISALAKSHI AND 3 OTHERS Vs. THE SPECIAL COMMISSIONER, URBAN LAND CEILING AND LAND REFORMS,

EZHILAGAM, CHEPAUK, CHENNAI 5 AND 2 OTHERS {2015 (5) CTC - 823}, wherein it was held as follows:-

"11. It is to be noted that the landowner's signature does not find place in the Land Delivery Receipt. In page 327 of the same file, we find a representation of the landowner, dated 13.2.1998, 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 landowners or persons in possession to surrender or deliver possession of the land, but the landowners 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 Report can at best be

construed as 'paper delivery', not authorised by law.

20. The legal position, as set out in the preceding paragraphs would squarely be applicable to the facts of this case and in the light of the above, the petitioners are entitled to the benefit of the Repeal Act.

21. Accordingly, this writ petition is allowed and the impugned order is quashed. The third respondent is directed to consider the petitioner's application, for grant of patta and proceed to take a decision, on merits and in accordance with law, within a period of three months, from the date of receipt of a copy of this order. The petitioners are directed to submit one more representation/application to the third respondent, along with the copy of this order, for compliance of the above direction. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk
Chennai 5.
2. The Assistant Commissioner
Urban Land Ceiling
Poonamallee
Chennai 56.

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3. The Tahsildar
Poonamallee Taluk
Poonamallee
Chennai 74.

+1cc to M./s.Ilamurugan, Advocate, S.R.No.7104
+1cc to the Government Pleader, Advocate, S.R.No.7226

W.P.No.5778 of 2011

rsi (CO)
srg (15/02/2016)



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