

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.17259 and 17260 of 2009

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|-------------------|------------------------------------|
| 1. J.Vasantha | ...Petitioner in W.P.17259 of 2009 |
| 2. P.B.K.Thilagar | ...Petitioner in W.P.17260 of 2009 |

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St.George, Chennai - 9.
2. The Assistant Commissioner,
(Competent Authority)
Urban Land Tax and Ceiling Alandur,
O/o. Urban Land Tax,
Karuneegar Street, Adambakkam,
Chennai - 600 088.
3. The Special Tahsildar,
(Land Acquisition) Mass Rapid Transit
System 2nd Phase Extn.
Thirumailai Railway Station Building,
Mylapore, Chennai - 4.
4. The District Collector,
Kancheepuram District.
5. The Additional Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 9.

(R-3 to R-5 have been impleaded as per order
dated 08.01.2016 in M.P.Nos.1 & 1 of 2015
in these W.Ps.

... Respondents

Prayer in both W.Ps : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for entire records culminating in the issue of the impugned order in Na.Ka.No.923/97/b, dated 30.06.1997 and notice, dated 01.02.1999 under Section 11 (5) of

the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 passed by the second respondent relating to the acquisition proceedings in respect of the land belonging to the petitioner in S.No.21/3 of No.154, Madipakkam Madura Puzhudivakkam Village of Tambaram Taluk of Kancheepuram District, measuring to an extent of 24 cents or thereabouts and to quash the same and to direct the respondents to treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999 and consequently, to the respondents 3 to 5 to include the name of the petitioner as the owner of the property in the acquisition proceedings and to give fresh notification and declaration and award commensurate compensation for the acquisition of the petitioner's land.

(Prayers amended as per order passed by this Court in M.P.Nos.2 and 2 of 2015 of these W.Ps., dated 08.01.2016.)

For Petitioners : Mr.Ramesh Senior Counsel
for Ms.Manoj Sreevalsan

For Respondents : Mr.R.Rajeswaran
Special Government Pleader

C O M M O N O R D E R

Since the issue involved in both Writ Petitions is identical, these Writ Petitions were taken up together, and disposed of by this common order.

2. In both the Writ Petitions, by way of amended prayers, the petitioners seek for issuance of a writ of certiorarified mandamus to quash the proceedings, dated 30.06.1997 issued under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to the 'Principal Act') and the notice, dated 01.02.1999, issued by the second respondent in respect of the land in question, and to hold that the land acquisition proceedings initiated under the provisions of the principal Act stand abated, in terms of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999.

3. It has to be pointed out that during the pendency of the Writ Petitions, the land in question is being utilized for the scheme of Mass Rapid Transit System, for which, proceedings have been initiated by the Special Tahsildar (Land Acquisition Officer). This authority has been impleaded as the third respondent in these Writ Petitions. In the event of the petitioners succeeding in these Writ Petitions, then, they will be entitled to claim compensation for land, which has been utilized for Mass Rapid Transit System.

4. On earlier occasion, when the matters were taken up for hearing, records were produced before this Court, and the learned counsel appearing for petitioners was permitted to peruse the records in the Office of the learned Government Pleader, which has been done, and today, the learned counsels appearing for the parties have advanced their submission in great detail.

5. Heard the learned counsel appearing for the parties and perused the materials placed on record. Therefore, the short issue that falls for consideration in these Writ Petitions is as to whether the petitioners, who claims under the original owner, Mrs.Jayalakshmi, continued to be in actual and physical possession of the property in question as on date.

6. In the affidavits filed in support of the Writ Petitions, the petitioners have traced their title over the property as to how they are legally and lawfully entitled to the property in question. These averments have not been disputed, more particularly, when the petitioner in W.P.No.17259 of 2009, viz., J.Vasantha, is the daughter of the landowner and the petitioner in W.P.No.17260 of 2009, viz., P.B.K.Thilagar, is the brother in law of the land owner. Though elaborate references have been made to the manner, in which, proceedings were conducted, for the present, all that is required to be seen is as to whether the petitioners are in actual possession of the property in question to be entitled to the benefit of Repeal Act 20 of 1999.

7. File has been circulated by the learned Special Government Pleader for respondents for perusal of this Court, from which, it is seen that the notice under Section 7 (2) was issued on 03.12.1996. It is surprising to note that the first notice issued under the Principal Act, was served on the landowner, by affixture. The service of notice by affixture has not been properly attested by independent witness. Similarly, notice under Section 9 (1) also, is said to be served by affixture. One interesting aspect, which could be seen from the proceeding of the Assistant Commissioner, Urban Land Ceiling (ULC), dated 15.05.1997 is that, in respect of the property in question, the Authority found that there are four terraced building, and the property has been divided into a layout, there are roads, and the names of the occupants of plot Nos.1, 2, 92, 93, 93A and 97 have been mentioned.

8. Therefore, as of the year 1997 itself, when the proceedings were initiated under the principal Act, there were superstructure on the property and the people were in possession and enjoyment of the same. It is rather surprising to see as to

how the respondent/Authority could have proceeded to affix notice under the principal Act, by planting stick in the property. Thus, this plea appears to be inconsistent plea and self-destructive. Since the first notice was served by affixture, all the other subsequent notices were also served by adopting the same mode of service, i.e., the notice issued under Section 10 (1) dated 15.04.1998, notification under Section 11 (1) dated 28.07.1998 and notification under Section 11 (3) dated 12.10.1998. So far as notice under Section 11 (5) dated 01.02.1999 is concerned, it is seen from page No.77 of the file that there is an undated report submitted by an Officer, certifying that the proceedings under Section 11 (5) was served by affixture. In page No.77, the Assistant Commissioner, ULC, has addressed the Tahsildar, Tambaturam Taluk to give suitable instructions to the Firka Revenue Inspector and Village Administrative Officer to enable them to take over possession of the excess vacant land immediately. This is followed by the land delivery receipt at page No.81, which shows that the name of the landowner as Jayalakshmi, and possession being taken over by the Revenue Officials. The column, where the landowner has to sign, has been left blank.

9. Thus, the land delivery receipt, does not in any manner, establish that possession has been taken over in terms of the provisions contained in the Principal Act. Similarly, in page No.83, the Assistant Commissioner, ULC, has addressed the Tahsildar, Tambaram, by proceeding, dated 13.05.1999, requesting for suitable instructions to the Firka Revenue Inspector and the Village Administrative Officer, to take possession. In page No.85 of the file, there is a land delivery receipt, signed by Deputy Tahsildar, Urban Land Ceiling, Assistant Commissioner, Alandur and the Revenue Inspector, Alandur Circle, Tambaram Taluk, on 30.06.1999, but the date regarding handing over of the land, has not been mentioned. Similarly, the signature of urban landowner is not affixed and with regard to the details of the superstructure, it has been mentioned that there are four buildings. If such is the case, it is not known as to how the procedure of service of notice by affixture was adopted in respect of all subsequent proceedings initiated under the Act. So far as payment of compensation is concerned, in the year 1999, the competent authority of ULC has determined the amount payable under Section 12 (6) of the Act as Rs.48,000/-by calculating the same at the rate of Rs.5, per sq.mt., stating the same to be zonal value. In such proforma, contained in page No.97, the date of taking over possession of the land has been mentioned as 30.06.1999, however, there are corrections in the said date, as the date was originally written in blue ink as 30.07.1999, subsequently, the digit 7, has been corrected as 6 with black ink, ie., the month has been changed

as June from July, and it is not known under what circumstances, that correction was made. In any event, the handing over/taking over of land, without surrendering the land to the owners/without obtaining owners consent, cannot confer any benefit on the respondents. In fact, after issuing notice under Section 11 (5) of the Act, the Assistant Commissioner has addressed the Tahsilder, requesting the assistance of Firka surveyor and the Village Administrative Officer to take over the excess vacant land. Files do not disclose as to whether such assistance was provided, but, the fact remains that owners did not handover land in question, since the respondents have followed the provisions of Section 6 of the Parent Act, which provides for procedure to be followed in the event of the landowners fails to handover possession of land.

10. Thus, on a careful perusal of the records, it is evidently clear that the petitioners have not been dispossessed from the land in question, and admittedly, there were four terraced buildings in question, and therefore, the respondents could not have taken over possession of the land, by affixing notices under the provisions of the Act, without service the same on the urban landowner, especially, when the urban landowner passed away much prior to the initiation of the proceedings under the Act, which was initiated in the year 1996, and without ascertaining as to the true ownership of the property, the respondents have proceed mechanically in the matter.

11. Therefore, the entire acquisition proceedings initiated under the principal Act are vitiated, and in gross violation of procedure, which shall enure in favour of the petitioners, who are now in possession and enjoyment of the land. Accordingly, the Writ Petitions are allowed, impugned orders stand quashed, and it is made clear that the proceedings initiated under the principal Act stand abated. Consequently, the petitioners are entitled to claim additional compensation for the land utilized for the Mass Rapid Transit System, and if such a claim is made by the petitioners/land owners, the same should be considered on merits and in accordance with law, without reference to limitation aspect. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St.George,
Chennai - 9.
2. The Assistant Commissioner,
(Competent Authority)
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4. The District Collector,
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5. The Additional Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 9.

+2cc's to Ms.Manoj Sreevalsan, Advocate, S.R.Nos.23790 & 23791
+1cc to the Government Pleader, S.R.No.23884

Writ Petition Nos.17259 and 17260 of 2009

KS(CO)
CA(29/04/2016)

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