

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.10.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.152 of 2016

Mrs.Sosamma Mathen

Appellant/Petitioner

Versus

1. The Secretary to Government of
Tamilnadu,
Revenue Department,
Fort St. George, Chennai 600 009.
2. The Special Commissioner and
Commissioner Urban Land Ceiling
and Urban Land Tax,
Ezhilagam, Chepauk,
Chennai 600 005.
3. The Assistant Commissioner for
Urban Land Tax,
Alandur, Chennai 600 008.
now at Mylapore, Kodambakkam,
Chennai 600 024.

Respondents/Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 18.8.2015 passed in W.P.No.2421 of 2012 on the file of this court. Petition is filed under Article 226 of the constitution of India for a writ of Declaration, to declare that the proceedings initiated by the third respondent in his Sr.No.54/DLA dated 12.12.1986 is abated in view of section 4 of the Repeal Act, 1999 since the physical possession of the 1 and comprised in old survey No.-84/15 part and new survey No.84/17 to an extent of 650 square meters situated at Thiruvanmiyur village, Mylapore, Triplicane Taluk, Chennai District to with the petitioner.

For appellant :Mr.Vijay Narayan, Senior Counsel for
Mr.R.Parthiban

For Respondents :Mr.K.Venkataramani,
Additional Advocate General assisted by
Mr.R.Prathapkumar, AGP

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Senior Counsel appearing for the appellant and the learned Additional Advocate General appearing for the respondents.

2. It appears that this is the second round of litigation by the writ petitioner claiming that still she is in possession of the excess land and possession was not taken from her. Contending further that no notice or proceedings as per sections 11(5) and 11(6), were issued by the authorities and therefore, there is no proof to show that possession was actually taken from her. In this regard, by placing reliance on the decision of a Division Bench of this court reported in THE GOVERNMENT OF TAMIL NADU & OTHERS v. M/S.MECCA PRIME TANNERY AND OTHERS (2012-4-LW 289) the writ petitioner/appellant sought to contend that the land remains with her and as such a direction has to be issued to the Government to pass necessary orders.

3. Per contra, the learned Additional Advocate General submitted that this is the second round of litigation at the instance of the writ petitioner, by referring to the stand taken by the writ petitioner in her earlier writ petition viz., W.P.No.25476 of 2008 which reads as under:-

"I submit that pursuant to the said order, notice under Section 11(5) of the Urban Land (C&R) Act, 1978 was issued on 26.04.1989, requesting me to hand over possession of the said excess land to the authority concerned and accordingly the excess land surrendered be me was assigned S.No.84/17."

4. Further, it is evident from the records that possession of the excess land was already taken by the authorities and it appears that the compensation amount is also withdrawn. Whiles, the appellant/writ petitioner sought to contend that the Government has not taken possession, when the fact remains that possession was already taken and handed over to some other persons as evident from the records and the affidavit filed by the writ petitioner herself to show that she had handed over possession and therefore, the question of issuing notice/proceedings under sections 11(5) and 11(6) is also

redundant.

5. In view of the same, the learned Single Judge has rightly dismissed the writ petition. The writ appeal is dismissed with a cost of Rs.5000/- to be paid to the Mediation Centre attached to this High Court Bench, for having moved the appeal despite the admission on the part of the writ petitioner herself in the affidavit filed by her in her earlier writ petition, to the effect that she had surrendered possession.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary to Government of
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2. The Special Commissioner and
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Chennai 600 024.

+2cc to Mr.R. Parthiban, Advocate, S.R.No.57564

+1cc to the Government Pleader, S.R.No.57818

sr (CO)

md (10/11/2016)

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