IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.997 of 2016
and
C.M.P.No.12958 of 2016

1. The Secretary to Government
   Revenue Department,
   St.George Fort, Secretariat, Chennai

2. The Assistant Commissioner
   Urban Land Ceiling and Urban Land Tax
   No.153, Karunigar Street
   Adambakkam, Tambaram, Chennai-600 088

3. The Competent Authority
   Urban Land Ceiling, Tambaram

4. The Tahsildar
   Alandur, Alandur Taluk ... Appellants/Respondents

Vs.

B.Nirmal Kumar ... Respondent/Petitioner

Writ Appeal filed against the order dated 18.03.2013 made in W.P.No.34451 of 2012.

W.P.No.34451 of 2012 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Notification No.VI(1)/576/98 dated 22.4.1998 published in No.15 Part-VI Section-1 of the Tamil Nadu Government Gazette Notification No.VI(1)/1725/97 ated 31.10.1997 in Part VI Section 1 of the Tamil Nadu Government Gazette and Notification issued by the third respondent under Section 11(1) of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in Rc.2578/97 B. Dt.31.10.1997 and quash the same in view of abatement of acquisition proceedings under Section 3(2) and 4 of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999 (Act 20 of 1999) and consequently direct the respondent to mutate the revenue records and issue patta in respect of Petitioner's property comprised in Survey No.286/1A1, ad measuring to an extent of 381/2 cents situated in Anagaputhur Village No.128 in Saidapet Taluk, Kancheepuram District.

For Appellants : Mrs.A.Srijayanthi,
Special Government Pleader

For Respondents : Mr.V.Lakshmi Narayanan
for Mr.B.Vijay

JUDGMENT

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

Heard Mrs.A.Srijayanthi, learned Special Government Pleader, appearing for the appellants/State, who was assisted by Mr.Rajagopal, Junior Assistant, attached to Appellants-Department and Mr.V.Lakshminarayanan, learned counsel representing for Mr.B.Vijay, learned counsel for the respondent herein/writ petitioner.

2. This Writ Appeal is preferred by the appellants-State against the order of the learned Single Judge dated 18.03.2013 passed in W.P.No.34451 of 2012.

3. The writ petitioner/respondent herein preferred the writ petition seeking quashment of the notification No.VI(1)/576/98 dated 22.04.1998 published in No.15 Part-VI Section 1 of the Tamil Nadu Government Gazette Notification No.VI(1)/1725/97 dated 31.10.1997 in Part VI Section 1 of the Tamil Nadu Government Gazette and Notification issued by the third respondent under Section 11(1) of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in Rc.2578/97 B.Dt.31.10.1997 in view of abatement of acquisition proceedings under Section 3(2) and 4 of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20 of 1999).

4. The facts of the case are that, the land in question in Survey No.286/1A1, admeasuring to an extent of 38 ½ cents situated in Anagaputhur Village No.128 in Saidapet Taluk, Kanchipuram District was purchased by the respondent herein by way of a registered sale deed dated 23.11.1988 and when the petitioner applied for patta, he came to know that proceedings was initiated under the Urban Land Ceiling Act. However, relying on the provisions of the Act 20 of 1999, it was stated that no further proceedings can be initiated for taking possession, if the possession remains with the owner. Even, possession was not

taken over by the authorities under the provisions of the Act 20 of 1999.

5. The learned Single Judge, referring to the judgment in Saraswathi Vs. The Principal Commissioner & Commissioner of Land Reforms [2007 (4) CTC 714], came to the conclusion that there is nothing on record to show that possession has been taken from the petitioner and when that is the factual position, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20 of 1999), the proceedings initiated under the Act, 1978 abates.

6. The question that arises for our consideration is as to whether possession of the land in question was taken over by the authorities at any point of time after initiation of the proceedings under the provisions of the Act, 1978.

7. The learned Special Government Pleader appearing for the appellants failed to produce any document in support of the contention that possession was taken over on 27.10.1998 even though it is stated the grounds of appeal that the excess vacant land was acquired after following the procedure and the possession was handed over to Revenue Authorities on 27.10.1988. No material was produced before the learned Single Judge as well as before us to establish that apart from paper possession, as recorded in the Government records, there is any other overt act, whereunder the possession of the land in question was taken at any point of time before the provisions of the Act 20 of 1999 came into force.

8. The issue as to whether possession is deemed to have been taken, came into consideration in a batch of writ appeals arising from the land acquisition proceedings. The Division Bench of this Court in The Tamil Nadu Housing Board, rep by its Managing Director, No.331, Anna Salai, Nandanam, Chennai-600 034 and another Vs. iGate Global Solutions Limited, and another [W.A.Nos.1101 of 2014, etc., batch cases], by judgment dated 26th February, 2016, held as under :

> " 60.The ratio deducible from the aforestated judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the revenue authorities must establish by producing some evidence, i.e., either preparation of panchanama in the presence of the witnesses or some other documents. The transfer certificates subsequently prepared by the revenue authorities for delivering possession of the land in question to the Housing Board in absence of a witness or land owner, will not be sufficient to establish that possession

of the lands was taken over from the land owners......”

9. In yet another case in State of Tamil Nadu, rep by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and 3 others Vs. Sumathi Srinivas [W.A.No.1746 of 2014, dated 17th February 2015], it was observed as under :

> “34.It is to be noted that although the Appellants/Respondents claim that the possession of the land in question was vested with the Government under Section 11(3) of the Act on 18.11.1998 and subsequently handed over on 09.04.1999, the purported possession being handed over on 09.04.1999 in the form of land receipt, in law, is only a symbolic possession and as a matter of fact, actual/real possession was not taken. As such, the resultant possession is either the land owner Lakshmi Kanthammal or anybody for that matter had not handed over the physical possession and also when the Appellants had only taken a symbolic possession and in reality, when the actual/ real possession of the land in issue is in the hands of the Respondent/ Petitioner, the Respondent/Petitioner is entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.”

10. In view of the aforestated legal provisions and also the indisputable facts involved herein, we do not find any infirmity or illegality in the order rendered by the learned Single Judge. There is no merit in the writ appeal. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

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   Alandur, Alandur Taluk.

+1cc to Mr.B.Vijay, Advocate, S.R.No.47023
+1cc to the Government Pleader, S.R.No.47703

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SCD(CO)
CA(18/08/2016)