

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **31.03.2016**

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19802 of 2003

- 1.Chinnamma Abraham (Deceased)
- 2.Philip Abraham
- 3.Susan Verghese
- 4.Asha George Peter
(petitioners 1 & 2 are rep. by their
power of attorney agent Asha George Peter
petitioners 2 to 4 substituted in the place of
the deceased first petitioner as per order
dt 5.9.2007 in WPMP 2040/07 in WP 19802/03)
.. Petitioners

Versus

- 1.State of Tamil Nadu
rep. by its Secretary
Housing and Urban Development Department
Fort St.George, Chennai 9.
- 2.State of Tamil Nadu
rep. by its Secretary
Revenue Department
Fort St.George, Chennai 9.
- 3.The Special Commissioner and Commissioner
for Land Administration,
Ezhilagam, Chepauk, Chennai 5.
- 4.Tamil Nadu Housing Board
rep. by its Chairman
Anna Salai, Nandanam
Chennai 35.

5. Tamil Nadu Slum Clearance Board
rep. by its Chairman
5, Kamarajar Salai, Chennai 5.
6. The Special Commissioner and Commissioner,
Urban Land Ceiling and Urban Land Tax
Ezhilagam, Chepauk, Chennai 5.
7. The Assistant Commissioner of Urban Land Tax and
Competent Authority under the
Urban Land Ceiling Act (Mylapore)
345, Arcot Road, Kodambakkam,
Chennai 24.

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, to declaring that the proceedings initiated by the 7th respondent in S.R.No.1235/76(A), dated 30.09.1986 is abated in view of section 4 of the repeal Act 1999 since the physical possession of the land is with the petitioners

[prayer amended as per order dated 17.12.2015 in WPMP No.101/2015 in W.P.No.19802 of 2003]

For Petitioners : Mr.T.Ramachandran

For Respondents : Mr.R.Rajeswaran - R1 to R3
Special Govt. Pleader

Mr.B.Viveka Vanan - R4

Mr.Y.Bhuvaneshkumar - R5

ORDER

Heard Mr.T.Ramachandran, learned counsel appearing for the petitioners, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 to 3, Mr.B.Viveka Vanan,

learned Counsel appearing for the fourth respondent, and Mr.Y.Bhuvaneshkumar, learned counsel appearing for the fifth respondent and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The amended prayer in the Writ Petition is for issuance of a writ of declaration to declare that the proceedings initiated by the 7th respondent namely the Assistant Commissioner of Urban Land Tax and Competent Authority under the Urban Land Ceiling Act as abated in view of Section 4 of the Repeal Act, 1999, since the physical possession of the land is with the petitioner.

3.The legal position is well settled that if the petitioners are able to establish that on the date when the Repealing Act came into force, they were in actual physical possession of the land in question, then they are entitled to the benefit of the Repealing Act.

4.In my view, there can be no doubt that the petitioners are in possession even as on date and therefore, they are entitled to the benefit of the Repeal Act. I support such conclusion with the following reasons. The 7th respondent initiated proceedings under the Tamil Nadu Urban Land Ceiling Act, 1978 (hereinafter referred to as the 'Principle Act') and returns were submitted by the

petitioner stating that the land was within the ceiling limit. The Competent Authority by an order dated 30.09.1986, under section 9(5) of the Act, declared an extent of 1500 sq.meters in Survey No.84/98 as excess in the hands of the land owner. Even prior to such declaration being issued, the Government acquired the lands for a Scheme of the Tamil Nadu Housing Board, by issuance of a Government Order in G.O.Ms.No.667 dated 06.08.1981.

5.Thus, on the date when the Urban Land Ceiling Authority issued orders under section 9(5) of the Act, the land had already been acquired by the Government. Therefore, the proceedings under section 9(5) of the Act dated 30.09.1986 did not have any force of law. The petitioners challenged the land acquisition proceedings by filing a Writ Petition in W.P.No.3253 of 1985 and interim stay of the acquisition proceedings was granted on 17.04.1986. This is sufficient to prove that the petitioners continued to be in possession till that date and till the Writ Petition was allowed on 08.10.1991, and the acquisition proceedings were quashed.

6.For the next four years, the Government took no steps to file any Appeal against the said order and during 1994, Writ Appeal in W.A.No.656 of 1994 was filed by the Government against

the dismissal of the Writ Petition challenging the land acquisition proceedings. No interim order was granted in the Writ Appeal. Consequently, the petitioners were in possession. The Writ Appeal was dismissed by the Hon'ble Division Bench by Judgment dated 25.01.1995 and as against which no further proceedings were initiated.

7.In such circumstances, the question would be whether the proceedings Urban Land Ceiling Act can be reopened and whether it could be proceeded with after the land acquisition proceedings were quashed. The only answer to this question should be in the negative, since after the lands have been acquired by the Government in 1981, the question of declaring the land as surplus in the hands of the land owner would not arise. The order of interim stay obtained by the petitioners against the land acquisition proceedings cannot take advantage of by the authorities under the said Act.

8.During 1995, the petitioners have sold a portion of the land to certain third parties and continued to be in possession of an extent of 36.5 cents. So far as the lands which were sold to the nominees of the Anubhav Group of Companies, were vested with

the Official Liquidator. During 2000, an attempt was made to take over the extent of 1500 sqmtrs of the land stating that the same has been allotted to the Tamil Nadu Slum Clearance Board by G.O.Ms.No.239 dated 11.5.2000. The petitioners immediately challenged the said order by filing a Writ Petition in W.P.No.14787 of 2001 and the Court granted liberty to the petitioners to challenge the proceedings under sections 10 & 11 of the Urban Land Ceiling Act, by an order dated 02.01.2003. Since the petitioners were not communicated with any of the orders said to have been passed under the Principle Act, they made an Application for furnishing copies. The Authority under the Principle Act kept silent and therefore, the petitioners filed another Writ Petition to furnish certified copies of those order. Though a direction was issued, only three documents were furnished viz. the proceedings dated 30.09.1986 under section 9(5) of the Act, the final statement under section 10(1) of the Act and notices under section 11(5) of the Act dated 10.11.1991.

9.In the background of these facts, it is evidently clear that even assuming that proceedings were initiated under the Urban Land Ceiling Act and continued exparte, it has to be established that after issuance of the notice under section 11(5) of the Act, which is

said to have been received by Mr.N.P.Abraham as per paragraph 9 of the counter affidavit, the authorities under the Urban Land Ceiling Act have to establish that they have taken over actual physical possession.

10.It has to be noted that portion of the land has already been sold by the petitioners as early as in the year 1995. In such circumstances, the fact that the petitioners are in possession of the land can hardly be disputed by the respondents. The settled legal position is that after issuance of a notice under section 11(5) of the Act, if possession of the land has not been surrendered by the land owner, then the authorities have to exercise their power under section 11(6) of the Act and take possession of the land and if there is any resistance, they can use such force as may be necessary. The counter affidavit filed by the respondents does not say anything on those lines. The Housing Board has also taken a stand by informing their Legal Advisor by letter dated 23.03.2015 that the acquisition proceedings was not proceeded with and award was not passed.

11.Considering all the above facts, there can be no dispute that the petitioners are entitled to the benefit of the Repeal Act, 1999. Accordingly, the Writ Petition is allowed as prayed for and it

is declared that the proceedings initiated by the seventh respondent dated 30.09.1986 is abated in view of Section 4 of the Repeal Act, 1999, as the petitioners have established that they in physical possession of the land in question. No costs. Consequently, connected Miscellaneous Petition is closed.

31.03.2016

rpa
To

- 1.State of Tamil Nadu
rep. by its Secretary
Housing and Urban Development Department
Fort St.George, Chennai 9.
- 2.State of Tamil Nadu
rep. by its Secretary
Revenue Department, Fort St.George, Chennai 9.
- 3.The Special Commissioner and Commissioner
for Land Administration,
Ezhilagam, Chepauk, Chennai 5.
- 4.Tamil Nadu Housing Board
rep. by its Chairman
Anna Salai, Nandanam, Chennai 35.
- 5.Tamil Nadu Slum Clearance Board
rep. by its Chairman
5, Kamarajar Salai, Chennai 5.
- 6.The Special Commissioner and Commissioner,
Urban Land Ceiling and Urban Land Tax
Ezhilagam, Chepauk, Chennai 5.
- 7.The Assistant Commissioner of Urban Land Tax and
Competent Authority under the
Urban Land Ceiling Act (Mylapore)
345, Arcot Road, Kodambakkam,
Chennai 24.

T.S.SIVAGNANAM, J.,
r p a

W.P.No.19802 of 2003

31.03.2016