

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2017

PRONOUNCED ON : 13.12.2017

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.756 of 2015
and MP.No.1 of 2015

1.The Principal Secretary to
Commissioner, Land Reforms,
Chepauk, Chennai-5.

2.The Assistant Commissioner,
Urban Land Tax,
Competent Authority,
Urban Land Ceiling, Poonamallee Zone,
No.5, Sanathi Street,
II Floor, Poonamallee, Chennai-56.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Chennai-56.

.. Appellants

Vs.

B.Govindammal

.. respondent

PRAYER : Appeals are filed under clause 15 of Letters patent, to set aside the order dated 20.03.2013 made in WP.No.34626 of 2012.

Writ Petition 34626/2012 Prayer:

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified mandamus to Call for the records of the respondents especially the order of the 2nd respondent under Section 9(5) dated 15.11.1996 vide Na.Ka.No.3393/96D Final Settlement under Section 10(1) dated 25.2.1997 vide RC. 3393/96D and Notice under Section 11(5) dated 7.6.1999 vide RC. 3393/96D of the Tamil Nadu urban Land (Ceiling & Regulation) Act 1978 in respect of excess vacant land in Survey No.259/5B measuring an extent of 20.000 sq.mts. of Ayalchery village Poonamalle Taluk and quash the same thereby treating the proceedings referred to above as abated under

Section 4 of the Tamil Nadu urban Land (Ceiling & Regulation) Repeal Act (Act 20 of 1999) so as to enable the 3rd respondent herein to correct the entries in the revenue records by incorporating the name of the petitioner as owner of the land in the survey No. measuring an extent of 20,000sq.mtr of Aylchery Village, Poonamalee Taluk.

For appellants : Mr.A.Zakir Hussain, Government Advocate

For respondents : Mr.V.Ramesh
for Mr.T.Thiagarajan

JUDGMENT

This appeal is filed against the order dated 20.09.2013 passed by the learned single judge in WP.No.34626 of 2012.

2. The facts culled out from the affidavit filed in support of the writ petition is that the respondent is the owner of the agricultural land measuring to an extent of 5 acres 7 cents in S.No.259/5 Ayalchery Village, Poonamallee Taluk by virtue of sale deed dated 10.02.1983 vide document No.594 of 1983 on the file of Sub Registrar, Poonamalee. On the date of registration, the land was purely an agricultural land and it was registered as wet land for the use of agricultural purposes. Subsequently, out of the said land, the respondent and her husband jointly sold 1 Acre of land to one Smt.Anju Kothari vide document No.591 of 1994 dated 16.06.1994 and she had been in possession and enjoyment of the land.

3. In the meanwhile, the second appellant initiated proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, Act 24 of 1978 [herein after referred to as "Act"] to determine and acquire the excess vacant land. Notice under Section 7(2) dated 14.02.1996 appears to have been issued. It was followed by a draft statement under Section 9(1) and notice under Section 9(4) dated 18.03.1996, which were served on the land owner on 09.07.1996. The Deputy Tahsildar conducted enquiry on 12.11.1996 and passed an order on 15.11.1996 under Section 9(5) determining an extent of about 20,000 sq.mtr as excess vacant land after allowing an extent of 500sq.mtr. The details are referred to in the certified copy of the order under Section 9(5) dated 15.11.1996 issued on 19.10.2012. The orders under Section 9(5), final statement under Section 10(1) dated 25.02.1997 and notice under Section 11(5) dated 07.06.1999 appears to have been addressed to M/s.Suresh Brick works, Ayalchery.

4. The respondent has taken a stand that notices were not

served on her or on M/s.Suresh Brick Works. She continues to be the absolute owner of the property. M/s.Suresh Brick Works is run by her husband and son, which is the adjacent land in S.No.259/5 to an extent of 1.5acres. The balance extent of 2.50acres is used for agricultural purposes. Therefore, there was no necessity to visualise or think that the land has been acquired under Act 24 of 1978 which has not been converted as urban vacant land. Recently, during August 2012, the land was inspected by the Revenue Officials. When their act was questioned, the VAO revealed that the land has been acquired under Act 24 of 1978 and it belongs to the Government. The respondent came to know about the earlier proceedings only when the revenue officials inspected the property. Thereafter, the respondent contacted the second appellant and came to know that orders have been passed acquiring the land. Then the respondent applied for the certified copies of the orders and the same was furnished on 19.10.2012. Since, notices were not served on the respondent, she continues to be in actual possession. She was not aware of the proceedings for acquiring the land under Act 24 of 1978 by the appellants.

5. The appellants filed a detailed counter affidavit in the writ petition stating that the action was initiated in the name of the land owner as registered in the village accounts as on 09.08.1995. Accordingly, all the notices were issued in the name of M/s.Suresh Brick Works and served on Thiru.A.Babu Naidu/husband of the respondent and in spite of receiving notices neither she participated in the enquiry proceedings nor filed her objections. Hence, the respondent cannot plead ignorance about the acquisition proceedings after a lapse of 13years and prayed for dismissal of the writ petition.

6. The learned single judge after hearing the arguments of both sides, allowed the writ petition filed by the respondent.

7. Aggrieved against the order passed by the learned single judge in WP.No.24626 of 2012, the appellants have preferred the present writ appeal.

8. (a) The learned Government Advocate representing the appellants would submit that the learned single judge failed to see that all the notices except notice under Section 11(5) were served to one A.Babunaidu, the husband of the respondent and after receipt of the notices, no returns or objections were filed during the process of the acquisition proceedings. The learned single judge failed to see that after completing the procedure under the Act, the possession of excess vacant land was handed over to the revenue authorities on 15.06.1999 and mutations were carried out in the revenue records, which was

prior to the commencement of Repeal Act. The Act 20 of 1999 under the Tamil Nadu Urban Land (ceiling and regulation) Repeal Act is not applicable to the facts of the case on hand. The land measuring to an extent of 20,000 sq.mtr in S.No.259/5B in Ayalcherry village, Poonamallee taluk was declared as excess after allowing the retention of 500 sq.mtr.

(b) The authority has issued orders in the name of M/s.Suresh Brick Works of Ayalcherry village under Section 9(5) of the Act on 15.11.1996 and the same was served on one B.Suresh who is the son of the respondent on 24.01.1997. The final statement under Section 10(1) of the Act was issued on 25.02.1997 and the same was served to Thiru. A.Babunaidu, on 15.03.1997. The Notification under Section 11(1) issued on 29.08.1998 was published in Tamil Nadu Government Gazette No.46, dated 26.11.1997. The notification declaring the acquisition of excess vacant land under Sub Section 3 of Section 11 of the Act was issued on 10.05.1999 and it was published in the Tamil Nadu Government Gazette No.21, dated 02.06.1999. The excess vacant land was vested with the Government with effect from 15.05.1999 free from all encumbrances. Notice under Section 11(5) of the Act was issued on 07.06.1999 and it was served by affixture as the Urban land owner had refused to receive the same.

(c) It is the further case of the appellants that notice under Section 7(2) of the Act was issued on 14.02.1996, and it was served on A.Babunaidu on 16.02.1996. The Notice under Section 9(4) along with draft statement under Section 9(1) of the Act was issued on 18.03.1996 and the same was also served on Thiru.A.Babunaidu on 09.07.1996. All the notices were served on the urban land owners and the question of sending the notices through RPAD do not arise. After receipt of the notices, the respondent neither appeared for enquiry nor filed objections. After following the procedure meticulously, an extent of 20,000sq.mtr in S.No.259/5B of Ayalcherry Village was declared as excess vacant land. The entire exercise were carried out well before the Repeal Act came into force w.e.f.16.06.1999. Hence, the learned Government Advocate prays to set aside the order of the learned single judge dated 20.03.2013 made in WP.No.34626 of 2012.

9. The learned counsel appearing for the respondent would submit that the authorities failed to follow the procedure as contemplated under the Act. Notice was not served on the respondent under Section 11(5) of the Act to deliver the possession of the land. The learned single judge has taken note of the above fact and held that notice was not served on the proper person and possession was not taken in the manner known to law. The Court rightly granted the prayer sought for by the respondent and hence the learned counsel prays for dismissal of

the writ appeal.

10. The Government Advocate has produced the original files pertaining to the proceedings. We have also carefully perused the original file.

11. The respondent purchased the property in S.No.259/5 to an extent of 5acres 7cents on 10.02.1983 vide Document No.594/1993 in SRO, Poonamallee and carrying on agricultural operation. It is admitted by the respondent in paragraph 6 of his affidavit which is extracted hereunder :

"6. ... the various orders referred to above, which was never served on me or on M/s.Suresh Brick works, I continued to be in absolute possession and enjoyment of the land. In fact, Suresh Brick Works is run by my husband and son and occupies the adjacent land and a portion of my land measuring about 1.5acres in S.No.259/5. The balance extent of about 2.50acres is under active agricultural operations. Therefore, there was no necessity to visualize or think that the land had been acquired under Act 24 of 1978 which has not been covered as urban vacant land.

.....
.....

Recently, during April 2012, the land was inspected by the Revenue Officials and their act was questioned. It was revealed by the officials especially by the village administrative officer, that the land has been acquired under Act 24 of 1978 and came to know that orders have been passed acquiring the land. Immediately, I applied for certified copies of the orders which were furnished after 19.10.2012. Since no notices were served properly and I continue to be in actual physical possession I was not aware of any of the proceedings acquiring the land under Act 24 of 1978 by the respondents. As stated already, I came to know about the proceedings only when the revenue officials inspected."

12. A careful perusal of the original file placed before us, shows that Section 9(1) statement was prepared by the department in SR.1228/1996 dated 15.03.1996 and it was served on one A.Babunaidu on 09.07.1996 who is the husband of the respondent. Below the signature of A.Babunaidu, he himself has written as the owner of the land. The final statement under Section 10(1) in RC.No.3393/96D was served on one P.Suresh on 24.01.1997, who is none other than the son of the respondent. Even after receipt

of the draft statement under Section 9(1) on 09.07.1996 and final statement under Section 10(1) on 24.01.1997, neither the respondent nor her husband or son responded to the notices under Section 9(1) and 10(1) of the Act. Since, the notice under Section 11(5) of the Act in RC.NO.3393/1996D dated 07.06.1999 was refused by the land owner, it was served by affixture on 10.06.1999. Thereafter orders were passed to take delivery of possession of land. Based on the orders passed by the Competent authority, the possession of the land was handed over by the Deputy Tahsildar, ULT, Poonamallee to the Zonal Deputy Tahsildar, Poonamallee on 15.06.1999. There is no proof in the file to show that physical possession was taken. However, the husband of the respondent Thiru.Babunaidu admitted that the Government has acquired the land under the land ceiling Act.

13. On 18.01.2001, the husband of the respondent sent a letter to the Assistant Commissioner, ULT, Poonamallee wherein it was stated that the property belongs to him in S.No.259/5 and he needs certified copies of the proceedings under Sections 9(5) and 11(5) of the Act for filing an appeal before the competent authority. It is useful to extract the content of the letter which reads as follows :-

vdf;F nrhe;jkhd ,lk; Maynrhp Gy
vz;.259/5 cs;sJ. ,e;j epyk; jkpo;ehL
efh;g;Gw epy cr;r tuk;gpd; fPH; Mh;Ipak
bra;ag;gl;L tpl;ljh; ,jw;F ehd; nky; KiwaPL
bra;a ntz;oa[s;s;jhy; vdf;F 9(5) cj;jut
[kw;Wk; 11(5) efy; tH';FkhW gzpt[ld;
nfl;Lf;nfhs;fpnwd;. "

In the said letter he has clearly admitted that the land has been acquired by the Government. Further, Babunaidu in his statement dated 31.01.2001 before the revenue officials stated that copies of the proceedings were handed over to the advocate for filing a case before the Court and requested certified copies of the proceedings under Sections 9(5), 10(1) and 11(5). For better understanding the relevant portion of the statement is extracted hereunder:-

"ehd; nk;fz;l Kfthpapy; trpj;J tUfpnwd;/
vdf;F brhe;jkhd"K;d;W br';fy; bjhHp;w; rhiyfSf;F
bgw;w gphpt[9(5), 10(1) kw;Wk; 11(5) cj;jut[fis
brd;id cah;ePjpkd;wj;jpy; tHf;F jhf;fy; bra;a[k;
tHf;fwp"hp;lk; ehd; bfhLj;Js;nsd;/ mj;Jld;
nrh;j;J ,e;j br';fy; bjhHp;w; rhiyfSf;Fk; gphpt[9
(5), 10(1) kw;Wk; 11(5) Mizfs; njitg;gLfpwJ/ vdnt.
nk;fz;ltw;wpd; efy;fis tH';FkhW gzpt[ld;
nfl;Lf;bfhs;fpnwd;/"

14. A perusal of the records and the orders passed therein shows that the order under Section 9(1) was served on Thiru.

Babunaidu. The final statement under Section 10(1) was served on Thiru. Suresh, son of the respondent. The notice under Section 11(5) of the Act was refused by the land owner and the same was affixed in the said property. In the letter dated 18.01.2001, the husband of the respondent admitted that the land has been acquired by the Government and in his statement dated 13.01.2001 also he admitted that the copies of the proceedings were handed over to the advocate for filing a case before the Court and requested certified copies of the proceedings under Sections 9 (5), 10(1) and 11(5) of the Act. As against the final order dated 07.06.1999, neither the respondent nor her husband preferred any appeal under Section 33 of the Act.

15. The respondent in the affidavit filed in the writ petition has stated that her husband and son occupies the adjacent land and carrying on Suresh Brick works in S.No.259/5 to an extent of 1.5acres. The respondent has not taken any specific stand that she and her husband are living separately and they are not on talking terms. It is well settled principle that notice served on the adult members of the family, shall be construed as due service. It is found in the records, a copy of the sale deed dated 10.02.1983 registered in favour of the respondent in S.No.259/5 to an extent of 5.07acres i.e, when the Act is in force. The land was purchased by the respondent after the Act came into force. The respondent ought to have filed her statement under Section 7(1) of the Act, whereas, she has failed to do so. After the inspection of the property by the revenue officials, a draft statement under Section 9(1) of the Act was prepared and the same was served on the husband of the respondent. Though, the land acquisition proceedings were initiated against M/s.Suresh Brick Works, the respondent also admitted the fact that the M/s.Suresh Brick Work was run by her husband and son, and the said land is also adjacent to the land of the respondent. The draft statement and other notices were received by her husband. As far as the service of possession notice under Section 11(5) of the Act is concerned, the notice was refused by the land owner, and it was hence served by way of affixture, which is a deemed service. The possession was taken by the Deputy Tahsildar and it was handed over to the Zonal Deputy Tahsildar on 15.06.1999, i.e, prior to the Repeal Act.

16. The interesting point here is that the possession taken by the Government was admitted and confirmed by the husband of the respondent in his letter dated 18.01.2001. He has also given a statement before the officials on 31.01.2001, which clearly shows that the husband of the respondent has knowledge about the acquisition proceedings. The respondent taking advantage of all the above facts with the support of the sale deed approached the Court. She was not in a position to produce any valid documents or proof to show that the property is agricultural land and she

was engaged in agricultural activities. The revenue officials have also inspected the property and submitted a report that the land in S.No.259/5 is not used for any kind of the agricultural purposes, but it was used for the purpose of brick work (kiln). During the currency of the Urban land ceiling Act, the respondent purchased the land and as such, in the acquisition proceedings she ought to have participated and raised objections effectively. The main stand taken by the respondent is that the holder of the lands for agricultural purposes need not file any written objection and another stand is that no notice was served on her. Whereas, the notices were served on the family members of the respondent (i.e, the husband and son) who are doing brick works (kiln) in the name of M/s.Suresh Brick Works in the same land. The officials were made to believe that the said land belongs to M/s.Suresh Brick Works and notice were served on the owner of the property Thiru.Babunaidu, who is the husband of the respondent. In fact, in the draft statement under Section 9(1) of the Act, the husband of the respondent described him as the owner of the land. It is not in dispute that Babunaidu is the husband of the respondent and M/s.Suresh Brick Works belongs to the respondent's family. Under such circumstances, the proceedings was not issued against the respondent and it was issued only against M/s.Suresh Brick Works. As per Section 7(1) of the Act, every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall, file a statement before the competent authority having jurisdiction specifying the land within the ceiling limit which he desires to retain. The respondent stated in the writ petition that the land is used for agricultural purposes. However, she has not shown any document to prove that she was carrying on agricultural activities.

17. In the affidavit filed by the respondent in the writ petition the respondent has stated that she along with her husband and son sold one acre of land to one Anju Kothari vide sale deed dated 16.06.1994 in Document No.591 of 1994 on the file of Sub Registrar, Poonamallee. If at all she was the absolute owner of the property then there was no necessity for executing the sale deed jointly in respect of a portion of the property in favour of Anju Kothari. It shows that Thiru.Babunaidu only purchased the property in the name of his wife and he only dealt with the property by opening a (kiln) M/s.Suresh Brick works in the property. In the Section 9(1) draft statement he has signed as the owner. In the letter dated 18.01.2001 he has stated that the property belongs to him. The respondent stated in her writ petition that she had no knowledge about the acquisition proceedings and she came to know only during April 2012 and thereafter she applied for certified copies of the proceedings and approached this Court. There is no proof to show that she only made an application in her name for

certified copies of the proceedings. Whereas the husband of the respondent/petitioner received the notice and he was fully aware of the proceedings and thereafter submitted a letter dated 18.01.2001 for want of certified copies of the proceedings, which shows the family members (i.e. husband and son) of the respondent were fully aware of the statutory proceedings.

18. It is clear from the original file that the competent authority has conducted the entire proceedings strictly and meticulously in accordance with the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The possession of the property was also taken and it was handed over to the Revenue department long prior to the Repeal Act came into force. There were no proceedings pending before the statutory authority as on the date on which the repeal Act came into force.

19. In view of the above facts and the position of law, we are of the considered opinion that the order passed by the learned single Judge is liable to be set aside.

20. In the result, the writ appeal is allowed by setting aside the order passed by the learned single judge in WP.No.34626 of 2012 dated 20.03.2013. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To,

1. The Principal Secretary to
Commissioner, Land Reforms,
Chepauk, Chennai-5.

2.The Assistant Commissioner,
Urban Land Tax,
Competent Authority,
Urban Land Ceiling, Poonamallee Zone,
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3.The Tahsildar,
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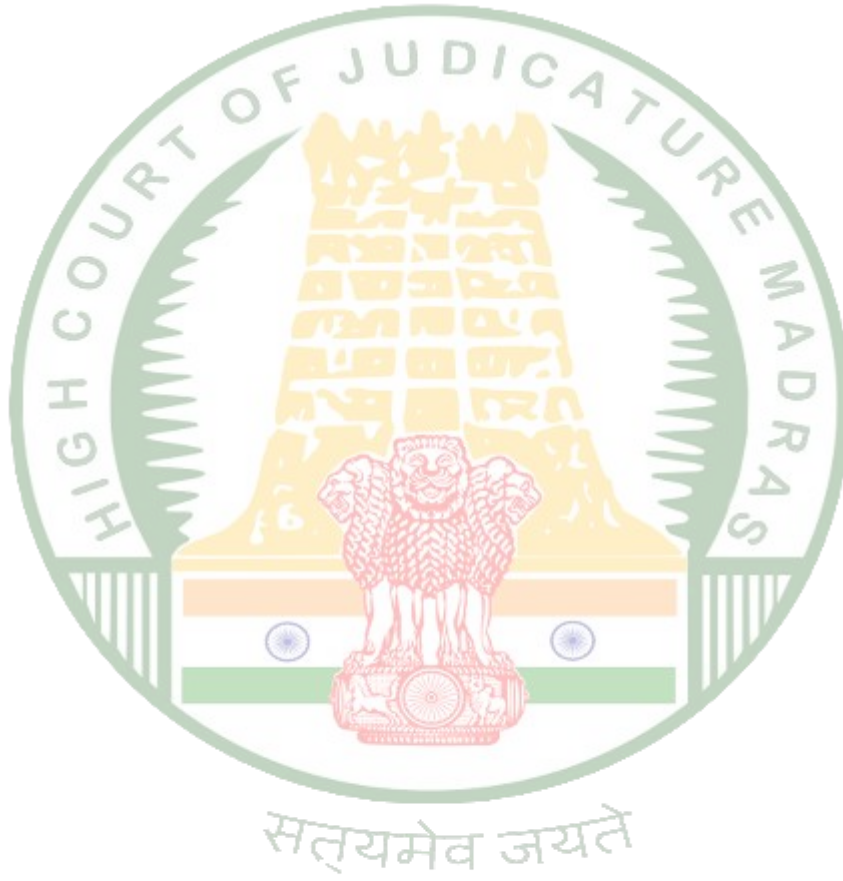
+1cc to Mr.T.Thiagarajan, Advocate, S.R.No.88965

+1cc to the Government Pleader, S.R.No.89003

WA.No756 of 2015

DK (CO)

RRK (04/01/2018)



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