IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.10.2017

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.24977 to 24980 of 2008 &
M.P.Nos.1 to 1 of 2008 & 1 to 1 of 2012

S.S.Ananthapadmanabhan	..	Petitioner in WP 24977 of 2008
V.Raghupathy	..	Petitioner in WP 24978 of 2008
G.Ramadass	..	Petitioner in WP 24979 of 2008
M.Vel Raju	..	Petitioner in WP 24980 of 2008

versus

1.The Commissioner and Special Commissioner
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai-600 005.

2. The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Coimbatore Collectorate,
Coimbatore-1.

3. The Tahsildar,
Coimbatore South,
Coimbatore .. Respondents in all Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, to call upon the production of the records relating to the order dated 18.9.2008 made in Na.Ka.No.5090/07 A1 passed by the 3rd respondent and the consequential final notice dated 20.09.2008 made in Na.Ka.No.5090/07 A1 passed by the 3rd respondent and quash the same.

For petitioners : Mr.S.Senthilnathan

For respondents : Mr.S.Gunasekaran, AGP

COMMON ORDER

Since all the Writ Petitions raise common issues and grounds, they are taken up together and being disposed of by this common order.

2. For the purpose of brevity, the facts as stated in W.P.No.24977 of 2008 can be stated hereunder:

2.1 The petitioner is the absolute owner of the house and premises bearing No.75, Siva Nagar, situated in S.No.388/1 and 389/1, measuring 2430 sq.ft. In Uppilipalayam village, Coimbatore taluk. He purchased the above said property from one V.Rangasamy and his sons by way of a sale deed dated 11.12.1985 and the same was registered as Document No.2966 of 1985 in the Office of the Sub Registrar, Singanallur. The plot was also approved by the Coimbatore Corporation by proceedings dated 29.9.2006. The property has been assessed for property tax and the petitioner got his electricity and water connection to the subject premises.

2.2 While matters stood thus, the third respondent issued a notice dated 8.2.2008 stating that the land purchased by the petitioner was a surplus land, taken over by the Government under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (in short, 'the Land Ceiling Act') measuring to an extent of 854 sq.mtr. in S.No.389/1 in Upplipalayam village and the said surplus land has been allotted to Government for the purpose of constructing homes for women. In the said notice, the 3rd respondent directed the petitioner to show cause as to why the encroachment made by the petitioner should not be removed. In response to the said notice, an enquiry was conducted and the petitioner had also attended the same on 19.2.2008 and gave his explanation. Thereafter, a final order was passed on 18.09.2008 by the third respondent, stating that the petitioner's explanation was not acceptable and the petitioner was directed to remove the encroachment and hand over the land to the Social Welfare Department. Even though the order was dated 18.9.2008, it was served on the petitioner on 10.10.2008. Thereafter a final notice dated 20.9.2008 was issued to the petitioner directing to remove superstructure within 7 days, failing which, action will be taken for removing the superstructure. On receipt of the final notice, once again a representation was made to the first respondent on 11.10.2008. In the said representation, it was stated by the petitioner that he and few others were bona fide purchasers of the land and they were not aware of acquisition proceedings initiated by the Government under the Land Ceiling Act.

2.3 The petitioner has also approached the Government, seeking protection of his interest under G.O.Ms.No.565 Revenue Department dated 26.9.2008 seeking for regularization of the land purchased by him since the said G.O. provides for such regularization in respect of innocent buyers of the lands which were subjected to acquisition under the Land Ceiling Act. In the meanwhile, in the year 1999, the Land Ceiling Act has also been repealed. Since there was no action forth coming and the petitioner was confronted with the situation to demolish the superstructure put up by him and the lands were to be taken into possession by the Government, he has come forward with the present writ petition, challenging the impugned proceedings passed by the third respondent dated 18.9.2008 and 20.9.2008.

2.4 The other similar Writ Petitions, viz., W.P.Nos.24978 to 24980 of 2008 were also filed by the petitioners therein with same set of grounds, challenging the same proceedings dated 18.9.2008 and 20.9.2008 issued by the third respondent in respect of their respective lands.

3. Shri S.Senthil Nathan, learned counsel appearing for the petitioners would contend that the possession has been still with the petitioners as on date and therefore, entire acquisition proceedings have lapsed in view of repealing of the Land Ceiling Act in 1999 itself. He would submit that the Government itself has passed the order on 26.9.2008 in G.O.Ms.No.565 Revenue Department, facilitating regularization of lands purchased by the innocent buyers. Such regularization has been done in respect of several innocent purchasers by extending the benefit as contemplated in the said G.O., but unfortunately, the learned counsel would submit that in their case alone, such regularization has not been extended. Therefore, he would submit that on this count alone, inaction on the part of the Government in not extending the benefit, is discriminatory and arbitrary.

4. The learned counsel would further submit that even otherwise since the possession is still vested with the petitioners as owners of the lands, the same has not been handed over in terms of provisions of the Land Ceiling Act. He would specifically draw the attention of this Court to Sub Clause 5 of Section 11 of the Land Ceiling Act, which is extracted as under:

> "11.(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice."

5. According to the learned counsel for the petitioners, in terms of the above regulations, no action was initiated by the Government for taking over the land and which case, the entire

acquisition proceedings is deemed to have lapsed. According the learned counsel, no action was taken either under Sub Clause (5) or Sub Clause (6) of Section 11 of the Act. Sub Clause (6) of Section 11 of the Act, reads as under:

> (6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorized by the State Government in this behalf and may for that purpose use such force as may be necessary."

6. In support of his contentions, the learned counsel would rely upon the decision reported in 2009 MLJ 85 (G.Krishnamoorthy and others versus Govt.of Tamil Nadu, rep. by its Secretary, Revenue Department and others)", wherein, a Division Bench of this Court has in categorical terms, held that notice under Section 11(5) of the Land Ceiling Act is mandatory and in the absence of Section 11(5) notice, entire proceedings are initiated. The learned Division Bench has further held that take over of possession is complete only when it was signed by the land owner in the 'land delivery receipt' while delivering the excess land pursuant to the notice under Section 11(5) of the Act. In fact, the learned Division Bench has referred to several decisions passed by this Court and finally held as above.

7. The learned counsel would also draw the attention of this Court to another decision rendered by the same Division Bench of this Court reported in "2009(8) MLJ 522 (Sree Jayalakshmi Brick Industries, rep.by its Proprietor versus Special Commissioner and Secretary to Government, Chennai and others) in which, the Division Bench has held that once possession was not taken over by the Government, proceedings under the Act must be held to have abated under Section 4 of the Repealing Act.

8. The learned counsel would further draw the attention of this Court to a decision rendered by another Division Bench of this Court reported in "CDJ 2012 MHC 3421 (The Govt. of Tamil Nadu, rep. by the Commissioner and Secretary to Government & others versus M/s.Mecca Prima Tannery, rep. by its Managing Director)" wherein in paragraph 31 to 35 of the judgment, the Division Bench has clearly held that unless the possession is taken by resorting to Section 11(5) or 11(6) of the Act, as the case may be, there is no valid take over of possession can be inferred. Paragraph 31 to 35 of the judgment are extracted herein below:

> "31. The crux of the submissions made by the learned Additional Advocate General is that after vesting of the land takes place under Section 11(3) of the Act, the Government becomes the owner of the property and the title vests with the Government, by notification under

Section 11(3) of the Act. Hence, even after the notification under Section 11(3), if possession of the land is retained by the land holder or any person, it will be considered as unlawful and illegal possession and they would be treated as encroachers in the eye of law. According to the learned Additional Advocate General, the Ceiling Act prescribes penal provisions under Section 11(6) and for the purpose of taking possession, force may be used, if necessary, which means the right of the Government to initiate action against a person or trespasser or any person who is holding illegal possession. If we read the provisions of Section 11 of the Ceiling Act and Section 3 of the Repealed Act, we are unable to accept the submission made by the learned Additional Advocate General.

"32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Section 11(5) and Section 11(6) of the Act.Section 11(5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorised by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under Section 11(6) of the Act.

"33. The phrases shall be deemed to have been acquired and shall be deemed to have been vested absolutely in the State Government occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and invested is vested in the

State Government by notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

"34. There are cases where after notice under Section 11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the land owner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the land owner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

"35. However, t then in such cases, the State Government shall not be deemed to be in possession of those lands."

9. Upon notice, Shri S.Gunasekaran, learned Addl.Government Pleader entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is stated that the competent authority has recorded take over of possession in respect of the subject lands after the same has been obtained under the Land Ceiling Act, way back in the year 1993 itself. According to the respondents, the petitioners had applied for regularization of the lands only in the year 2008 wherein, the lands in question were purchased 23 years ago. He would further submit that the earlier action initiated was in pursuant to the direction passed by this Court in different writ proceedings and therefore, the same cannot be questioned in the present writ petitions.

10. As regards the factual dispute about taking over possession under the provisions of the Land Ceiling Act, the Government Pleader is directed to produce original file. The original file was produced before this Court and the same is perused.

11. On a perusal of the original record, this Court does not find any proof of handing over of possession by the owners of the subject lands under Section 11(5) of the Act or was there any action initiated by the Government under Section 11(6) of the Act. As stated by the learned Government Pleader there was a record of taking over of possession by the Revenue officials under Section 11(3) of the Act.

12. As held by the learned Division Bench of this Court that

take over of possession is complete only when the Government resorted to Section 11(5) of the Act and in case the owners of the lands refused to hand over possession, Section 11(6) of the Act has to be resorted to. In the instant case, no such action was taken by the Government and the lands in question were not handed over by the owners under Section 11(5) of the Act.

13. Since the law has been settled that in the absence of legal take over of possession of the lands, the entire acquisition proceedings are deemed to have lapsed/abated. The action thus initiated against the petitioners through the impugned proceedings cannot be sustained in law. Moreover, the petitioners appear to be innocent purchasers having no knowledge about the acquisition proceedings on the date of purchase of the same during 1985-86. Therefore, they are also entitled to the benefit of regularization which was granted under G.O.Ms.No.565 Revenue Department dated 26.9.2008. In any event, once possession has not been taken over by the Government in terms of the mandatory regulations of the Land Ceiling Act, particularly Sections 11(5) and 11(6) of the Act, it cannot be held that the lands were taken over by the Government and it is in their possession for the purpose of further action to remove the petitioners as encroachers of the lands. The petitioners being bona fide purchasers who are admittedly still in possession of the lands in question and their possession thereof, cannot be construed to be as one of encroachment.

14. In the said circumstances, the impugned proceedings initiated by the authority concerned, cannot be countenanced both in law and on facts. This court, therefore holds that the acquisition proceedings initiated against the respective lands of the petitioners are deemed to have abated/lapsed in view of the legal position that there is no valid take over of possession of the land in terms of Section 11(5) and 11(6) of the Land Ceiling Act.

15. For the forgoing reasons, the impugned proceedings, dated dated 18.9.2008 in Na.Ka.No.5090/07/A1 issued by the 3rd respondent and the consequential final notice dated 20.09.2008 made in Na.Ka.No.5090/07/A1 issued by the 3rd respondent are set aside.

16. Accordingly, the Writ Petitions are allowed. No costs. Consequently, all connected MPs are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner and Special Commissioner
   Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai-600 005.

2. The Assistant Commissioner,
   Urban Land Ceiling and Urban Land Tax,
Coimbatore Collectorate,
Coimbatore-1.

3. The Tahsildar,
Coimbatore South,
Coimbatore.

+ 4 ccs to Mr.S. Senthilnathan, Advocate Sr.74825 to 74828
+ 1 cc to Additional Government Pleader SR.75312

sukW.P.Nos.24977 to 24980 of 2008 &
M.P.Nos.1to1 of 2008 & 1to1 of 2012

MR(CO)
EU(22/12/2017)