

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.A.Nos.578 and 579 of of 2016
CMP.Nos.7635 and 7636 of 2016

1. P.Thulasibai @ Thulasiammal ... Appellant in
W.A.No.578/2016
- 2.S.Unnikrishnan
3.S.Nalini
4.S.Muralikrishnan ... Appellants in
W.A.No.579/2016
- vs.
1. The Government of Tamil Nadu,
Rep. by its Secretary,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The Assistant Commissioner (U.L.T.)
Competent Authority,
Urban Land Ceiling,
No.5, Sannathi Street, 2nd Floor,
Poonamallee, Chennai-600 056.
3. The Special Deputy Tahsildar,
Urban Land Ceiling
Poonamallee, Chennai-600 056. .. Respondents in both W.As.

Prayer in W.A.No. 578 of 2016: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.01.2016 made in W.P.No.8038 of 2014.

Prayer in W.A.No. 579 of 2016: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.01.2016 made in W.P.No.8408 of 2014.

Prayer in W.P.Nos.8038 & 8408 of 2014:-

Writ petition filed under Article 226 of the constitution of India for a writ of certiorari to call for the records and no quash the order of the 2nd respondent herein made in this proceedings NK.No.1294/93D, dated 29.05.1995.

For Appellants : Mr.B.Ramamoorthy,
in both W.As.

For Respondents : Mr.A.N.Thambidurai
Special Govt. Pleader for R1 to R3

C O M M O N J U D G M E N T

(Judgment of the Court was made by M.SATHYANARAYANAN, J.)

The writ petitioners made a challenge to the order of the second respondent dated 29.05.1995, in and by which lands admeasuring to an extent of 7400 sq.mtrs was declared as surplus after permitting the eligible minimum of 500 sq.mtrs and the remaining extent of lands have been declared as surplus as per the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [in short "TNULC Act"]. The writ petitions, after contest, came to be dismissed on 22.01.2016 and aggrieved by the same, the writ petitioners had filed these writ appeals.

2. Facts leading to the present litigation have been narrated in detail and in extenso in the impugned orders passed in the writ petition and therefore, it is unnecessary to restate the facts once again except to state the relevant facts which are necessary for the disposal of these writ appeals.

3. It is the case of the petitioner that late Balaiah Naidu was the owner of the lands admeasuring to an extent of 1.95 acres in S.No.108/1 at No.5, Vilinjambakkam Village, Sriperumbudur Taluk, then Chengalpattu District and he, out of love and affection towards his daughter, settled an extent of 3.5 cents through the registered Sale Deed dated 17.07.1972 vide Doc.No.1704/1992 on the file of the Sub-Registrar, Poonamallee. The father of the petitioners in W.P.No.8408 of 2014, late Sri Sukumaran Thambi had purchased 31 cents of land out of total extent of 1.60 acres in S.No.108/1 through registered Sale Deed dated 19.02.1986 vide Doc.No.861/1986 on the file of the Sub Registrar Officer, Poonamallee. Late Balaiah Naidu, through registered Will dated 31.01.1994, had bequeathed the property admeasuring to an extent of 1.29 acres in favour of the petitioner in W.P.No.8038 of 2014 and he died on 13.07.2009.

4. It is the case of the petitioner that The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 came to be repealed by The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 [Act No.29 of 1999] [in short "TNULC Repeal Act"] and the procedure regarding service of notice have not been followed in accordance with the rules framed thereunder and since the petitioners continue to be in possession of the lands in question, they are entitled to the benefit of the said Act and as such, the proceedings initiated under the TNULC Act got lapsed.

5. Mr.B.Ramamoorthy, learned counsel appearing for the appellants/writ petitioners would submit that though elaborate arguments were advanced and reliance was also placed upon very many judgments rendered by the Hon'ble Supreme Court of India as well as by this Court, it was not properly appreciated by the learned Judge. It is the further submission of the learned counsel appearing for the appellants that though orders were reserved in the writ petitions on 01.12.2014, pronouncement was made on 21.01.2016 and on account of long passage of time between the date of reserving orders and pronouncement, the points urged on behalf of the writ petitioners/appellants have not been considered in proper perspective. The learned counsel appearing for the appellants/writ petitioners has invited the attention of this Court to the letter of the second respondent dated 28.01.2008 addressed to the petitioners' father, namely Balaiah Naidu and would submit that admittedly, the compensation of Rs.7,400/- has not been deposited and only after long passage of time, an attempt was made by the said official to deposit the same by sending a communication to his late father and on the sole ground, the proceedings initiated against his father under the TNULC Act should have been declared as lapsed. It is the further submission of the learned counsel appearing for the appellants/writ petitioners that no attempts have been made to serve notice either on the father of the appellants or on the appellants and only affixture was resorted to and in the light of the fact that the land is declared as surplus and admittedly, for vacant land, affixture should not be done and therefore, on that ground also, prays for quashing of the impugned proceedings and allowing of these writ appeals.

6. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents has invited the attention of this Court to the counter affidavits of the second respondent filed in the writ petitions and would submit that after following due process of law and the procedure contemplated under the statutory provisions, the surplus lands declared was taken possession and the appellants/petitioners had approached the Court nearly after a decade and as they are guilty of delay and

laches, they are not entitled to any relief and prays for dismissal of these writ appeals.

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. The petitioners in paras 6 and 7 of the affidavit filed in support of these writ petitions respectively had assigned reasons for the belated approach by them in filing the writ petitions. This Court, after going through counter affidavit filed by the second respondent, is also of the view that the said official has taken inconsistent stand.

9. In para 10 of the counter affidavit, the second respondent took a stand that after recording statement from the Urban Land Owner, namely Balaiah Naidu, orders under Section 9 (5) of the Act were served on 29.05.1995 and final statement under Section 10(1) of the Act was issued on 05.08.1995 and in spite of the same, no objections were raised and no further challenge was also made. In para 11 of the counter affidavit, the second respondent took a stand that orders under Section 9 (5) of the Act were passed on 29.05.1995 and as it was refused, it was served by affixture in the land and final statement under Section 10(1) of the Act was served on the Urban Land Owner. In para 12 of the counter affidavit, it is the stand of the second respondent that order under Section 9(5) of the Act was sent by RPAD petitioner on 08.06.1995. Insofar as taking over and handing over possession of the lands in question, in para 13 of the counter affidavit, it is averred that the possession of the excess vacant land was handed over to the Revenue Authorities on 28.08.1997 by making necessary entries in the revenue records and the land was fenced by the Tahsildar, Poonamallee for the purpose of protecting it.

10. Insofar as the affixture made on the land on account of the alleged non-availability of the land owner and refusal to receive the notice, it was considered by a Division Bench of this Court in the decision in The Government of Tamil Nadu, Rep. by its Secretary to Government, Revenue Department, Fort St. George, Chennai-9 and Others v. Nandagopal and Others [2011 (3) CTC 843] and it is relevant to extract para 7 of the said judgment:

" 7. In order to find out as to whether th notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the Respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the Competent Authority affixing the said notice on the vacant

site, which should be only a last resort after making an attempt to send the notice by registered post and inspite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the Respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the Respondents must be accepted."

(emphasis supplied)

11. The Hon'ble Supreme Court of India, in the decision in *Gajanan Kamlya Patil v. Additional Collector & Competent Authority & Ors.* [2014 (2) CTC 665], has consider the issue relating to taking over possession and after taking note of it's earlier decision in *State of Uttar Pradesh v. Hari Ram* [2013 (4) SCC 280], held as follows:

"13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in

view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed."

12. In Vipinchandra Vadilal Bavishi and Others v. State of Gujarat and Others [2016 (2) CTC 470], the mode of taking possession came up for consideration and the Hon'ble Supreme Court of India has taken note of Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 and observed in para 21 that "the authority alleged to have proceeded under Section 10(5) of the Act for taking possession of the land. At this juncture, it is relevant to mention here that no Notice has been produced by the State to show that the Appellants were asked to deliver the possession of Plot Nos.36 to 43" and the Apex Court has taken note of Hari Ram's case (cited supra) and decided in favour of the appellant therein.

13. It is not clear from the counter affidavit of the second respondent as to how the notice under Section 9(5) of the Act was served and possession was taken under Section 11(5) of the said Act. As already pointed out, the second respondent in one portion of the counter affidavit speaks about the service of notice and took a contra stand that it was done by affixture. As regards taking possession of the lands, it is the stand of the second respondent that possession of excess vacant land was handed over to the revenue authorities on 28.08.1997 and the counter affidavit is silent as to who has handed over possession and whether one revenue official to another revenue official or not. Admittedly, possession was handed over to the Zonal Deputy Tahsildar on 28.08.1997 by the Deputy Tahsildar (ULT), Poonamallee and the counter affidavit is silent as to how possession of the land came into the hands of the Deputy Tahsildar (ULT). In the absence of any tenable ground as to the following of the procedures contemplated under the said Act, this Court is to necessarily held that taking over possession of the lands in question has not been done in accordance with law.

14. That apart, no reasonable attempt has been made to pay compensation. The communication sent by the second respondent dated 28.01.2008 addressed to the father of the petitioners would also disclose that he was called upon to appear by himself or through his authorized person along with the documents regarding identification.

15. It is relevant to extract Section 3 of the TNULC Repeal Act:

"3.Savings - (1) the repeal of the Principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 21 or any action taken thereunder.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government"

As per Section 3(2) of the TNULC Repeal Act, the Principal Act shall not affect if the amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, has been refunded to the State Government.

16. Section 14 of the TNULC Act speaks about disputes regarding the right to receive the amount and as per the sub-section (1) of Section 14, in the event of there being a doubt or dispute as to the right of a person to receive the whole or any part of the amount referred to in Section 12, the competent authority or the Tribunal, as the case may be, shall refer the matter to the Court and shall make the disbursements in accordance with the decision of the Court.

17. The counter affidavit of the second respondent is also not clear as to how the second respondent took such a long time to intimate regarding the payment of compensation to the original owner of the lands.

18. In the considered opinion of the Court, in the light of the reasons assigned above, the appellants/writ petitioners are

entitled to the benefit of the TNULC Repeal Act and as such, the impugned proceedings are liable to be quashed.

19. In the result, both the Writ Appeals are allowed and the orders dated 21.01.2016 made in W.P.Nos.8038 and 8408 of 2014 are set aside and the Writ Petitions are allowed and the impugned proceedings of the second respondent in Na.Ka.No.1294/93/D dated 29.05.1995 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Secretary,
The Government of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The Assistant Commissioner (U.L.T.)
Competent Authority,
Urban Land Ceiling,
No.5, Sannathi Street, 2nd Floor,
Poonamallee, Chennai-600 056.
3. The Special Deputy Tahsildar,
Urban Land Ceiling
Poonamallee, Chennai-600 056.

+2ccs to Mr.B.Ramamoorthy,, Advocate, S.R.No.65222 & 65223

+2ccs to the Government Pleader, S.R.No.65632 & 65633

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