



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD) Nos.2010 to 2013 of 2015 and
20049 to 20053 of 2014 and M.P.(MD)Nos.1,1,1
& 2 of 2015 in W.P.(MD) Nos.2010 to 2013 of 2015
and M.P.(MD) Nos.2,1,1,1 & 1 of 2014 in
W.P.(MD) Nos.20049 to 20053 of 2014

S.MUTHIAH,
S/O.SANTHANA REDIYAR
REPRESENTED THROUGH HIS POWER OF ATTORNEY AGENT
K.RAVISANKAR ... Petitioner in WP(MD).No.2010/ 2015

S.KRISHNAN, S/O.SANTHANAREDIYAR
REPRESENTED THROUGH HIS POWER OF ATTORNEY AGENT
K.RAVISANKAR ... Petitioner in WP(MD).No. 2011/ 2015

S.RAMASAMY, S/O.SANKARALINGAM
REPRESENTED THROUGH HIS POWER OF ATTORNEY AGENT,
K.RAVISANKAR ... Petitioner in WP(MD).No.2012/ 2015

1) V.PALAIKUMAR S/O.P.VAIKUNDAM,
REPRESENTED THROUGH HIS POWER OF ATTORNEY AGENT
K.RAVISANKAR,
2) V.C.LAKSHMANAKUMAR,
S/O.VAIKUNDAM ... Petitioners in WP(MD)No. 2013/ 2015

1 M.PARVATHY
2 M.SANKARI ...Petitioners in WP(MD).No.20049/ 2014

S.MURUGAN, S/O.SORNAM, REPRESENTED BY POWER OF ATTORNEY AGENT
G.SELVARAJ, S/O GNANAKAN ... Petitioner in WP(MD). 20050/ 2014

S. BALASUBRAMANIAN, S/O.SETHURAMALINGAM,
REPRESENTED THROUGH HIS POWER OF ATTORNEY AGENT, K. RAVISANKAR.
<https://hcservices.ecourts.gov.in/hcservices/> ... Petitioner in WP(MD)No. 20051/ 2014



N. ULAGANATHAN S/O.P. NATARAJAPILLAI,
 REPRESENTED THROUGH HIS POWER OF ATTORNEY AGENT,
 K. RAVISANKAR.

... Petitioner in WP(MD)No. 20052/ 2014

WEB COPY

L.KATHIRESAN, S/O LAKSHMANAN
 REPRESENTED BY POWER OF ATTORNEY AGENT
 K.RAVISANKAR

... Petitioner in WP(MD)No. 20053/ 2014

- Vs. -

1 THE ASSISTANT COMMISSIONER (URBAN LAND CEILING) TIRUNELVELI.
 2 THE THASILDHAR, PALAYAMKOTTAI TALUK, TIRUNELVELI.

... Respondents kn all the Writ Petitions

COMMON PRAYER in W.P.(MD) Nos.2010/2015, 2011/15, 20050/14
 to 20053/14:-

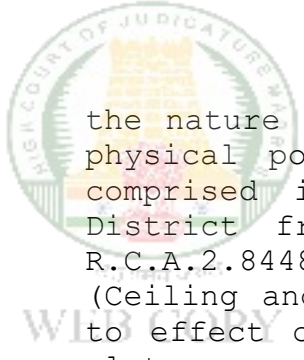
Writ Petitions are filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus, forbearing the 1st respondent from taking physical possession of the approved housing Plot Nos.221, 220, 76, 13, 20, 23 at Arjuna Nagar comprised in S.No.53/2 pt S.No.54/2 and S.No.55/Pt situated at Melapalayam Village Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioners for the above plots respectively.

Prayer in WP(MD). 2012/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ or order or direction more in the nature of Writ of Mandamus forbearing the 1st respondent from taking physical possession of the approved housing Plot NO.70, at Archana Nagar comprised in S.No.54/2 pt, situated at Melapalayam Village, Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

<https://hosea.scc.judis.gov.in/hosea/ces/> Prayer in WP(MD). 2013/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ or order or direction more in



the nature of Writ of Mandamus forbearing the 1st respondent from taking physical possession of the approved housing Plot NO.28, Archana Nagar comprised in S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

Prayer in WP(MD). 20049/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus ,forbearing the 1st respondent from taking physical possession of the approved housing Plot Nos. 94,95,215,216,243,244 and 245, At Arjuna Nagar comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further dircet the 2nd respondent to effect change of patta in the name of petitioner for the above plots and thus render justice.

For Petitioners : Mr.H.Arumugam in all WP's

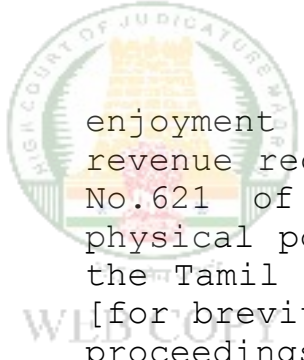
For Respondents : Mr.S.Kumar
Addl. Govt. Pleader in all WP's

C O M M O N O R D E R

As the original owner of the properties, who sold different extents to the petitioners, being one and the same and the grievance of the petitioners being similar, all the Writ Petitions have been taken up together and a Common Order is passed.

2. For the sake of brevity, facts are being taken from W.P. (MD) No.2010 of 2015, in which, the petitioner seeks to forbear the 1st respondent from taking physical possession of the approved housing Plot No.221 at Arjuna Nagar comprised in S.No.53/2 pt S.No.54/2 and S.No.55/Pt situated at Melapalayam Village Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

3. The land in question originally belonged to one Appakutty Thevar, who had two wives and after his death, his legal heirs inherited the property and sold the same to 23 persons, from whom, the petitioners purchased specific extents of land in the year 1969. The sale has been effected by way of Registered Deeds. After purchase, though the petitioners are in peaceful possession and



enjoyment of the property, the 2nd respondent did not change the revenue records and the vendors of the petitioners filed W.P.[MD]. No.621 of 2013 for forbearing the 1st respondent from taking physical possession of the approved house plots. In the meanwhile, the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 [for brevity, "the Act"], came into force, thereby all the pending proceedings were declared as null and void. Hence, these Writ Petitions have been filed on the ground that in view of Sections 3 and 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, coupled with the further fact that the petitioners are, admittedly, in possession of the properties and proceedings under Section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, having not been followed, these Writ Petitions will have to be allowed.

4. The learned counsel appearing for the petitioners has made reliance upon the following Judgments:-

- i. V.Somasundaram and others Vs.Secretary to Government, Revenue Department, Chennai and others reported in 2007 (1) MLJ 750.
- ii. Government of T.N.V.Mecca Prime Tannery, reported in 2012 (6) MLJ 273.

5. Learned Additional Government Pleader appearing for the respondents would contend that it is nowhere said in the Act that the lands already taken to Government from the land owners as excess urban land is to be returned to the land owner and hence, the sale effected in the year 1989 had no bearing as far as the land in which Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was implemented. Therefore, all these Writ Petitions will have to be dismissed, as all the pending proceedings have become null and void.

6. Heard the learned counsel for the petitioners, learned Additional Government Pleader appearing for the respondents and perused the records carefully.

7. Considering the very same issue, a Division Bench of this Court in V.Somasundaram and others Vs. Secretary to Government, Revenue Department, Chennai, reported in 2007 (1) MLJ 750, was pleased to hold as follows:-

"9. From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner . As per section 11(5) of the Act, the competent authority is bound to issue in writing to any person, who may be in possession of the land, to surrender and delivery possession thereof, to the State Government or to any



person duly authorised by the State Government, within thirty days time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of section 11(5) of the Act.

10. Similar issue was considered by a learned single Judge of this Court (A.Kulasekaran, J.) in the decision reported in 2006 (5) CTC 52 (Vijay Foundation (P) Ltd. v. The Principal Commissioner and Commissioner of Land Reforms) and in para 7 the learned Judge held as follows:-

"7. The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Section 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents." We are in entire agreement with the said decision of the learned Judge.

11. As rightly contended by the learned counsel for the appellants, the appellants were not entitled to file appeal due to enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, from 16.9.1999.

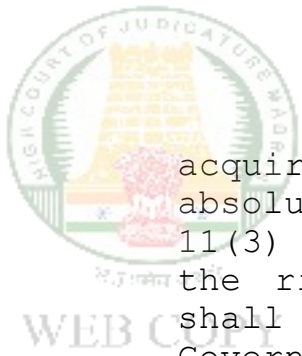


Hence the writ petition filed without availing the alternate remedy of filing appeal under section 33 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, is maintainable."

8. The Division Bench of this Court in Government of T.N.V.Mecca Prime Tannery, reported in 2012 (6) MLJ 273, in Paragraph Nos.31 to 33 and 35, was pleased to hold as follows:-

"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 interest 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.

35. However, there are cases where although the competent authority issued the notice under Section 11 (5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands."

9. In the light of the above said two pronouncements, this Court is of the view that these Writ Petitions will have to be allowed. Accordingly, all these writ petitions are allowed and consequently, a direction is issued to the 2nd respondent to pass appropriate orders on the request of the petitioners concerned regarding the issuance of patta within a period of eight weeks from the date of receipt of a copy of this order. It is made so clear that while passing such orders, the said authority shall not reject the request of the petitioners on the ground that the lands have been vested with the Government under the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

1. The Assistant Commissioner, (Urban Land Ceiling), Tirunelveli.

2. The Tahsildar, Palayamkottai Taluk, Tirunelveli.

+One cc to Mr.H.Arumugam, Advocate, SR.No.64519

+One cc to The Special Government Pleader, SR.No.64533

ar/rm

<https://hcservices.courtsofmadras.org/In/CSA/Pet/24/7/2017>

W.P. (MD) Nos.2010 to 2013 of 2015
and 20049 to 20053 of 2014

10.07.2017