

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.08.2018

Judgment Delivered on : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.Nos.1139 and 1152 of 2018
and
C.M.P.Nos.9121, 9216, 11242 and 11243 of 2018

1. The State of Tamil Nadu,
Rep. by its Secretary,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The Assistant Commissioner/(Competent Authority),
Urban Land Tax and Ceiling,
Alandur, O/o Urban Land Tax,
Karuneegar Street,
Adambakkam, Chennai-600 088.
3. The Special Tahsildar (Land Acquisition),
Mass Rapid Transit System,
2nd Phase Extension,
Thirumailai Railway Station Building,
Mylapore, Chennai-4.
4. The District Collector, Kancheepuram District.
5. The Additional Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai-9.

.. Appellants in both W.As./
Respondents in WPs

Vs.

P.B.K.Thilagar

.. Respondent in W.A.No.1139 of 2018/
Petitioners

J.Vasantha

.. Respondent in W.A.No.1152 of 2018

Writ Appeal No.1139 of 2018 filed under Clause 15 of the Letters Patent against the order dated 15.04.2016 passed by the learned Single Judge in W.P.No.17260 of 2009 on the file of this Court.

Writ Appeal No.1152 of 2018 filed under Clause 15 of the Letters Patent against the order dated 15.04.2016 passed by the learned Single Judge in W.P.No.17259 of 2009 on the file of this Court.

Prayer in W.P.Nos.17259/2009 and 17260/2009:

Petition filed Under Article 226 of constitution of India, may be Pleased to calling for the entire records culminating in the issue of the impugned order in Na.Ka.923/97/B dated 30.06.1997 and notice dated 1.2.1999 under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 passed by the second respondent relating to the acquisition proceedings in respect of the land belonging to the petitioner in Survey No.21/3 of No.154 Madipakkam Madura Puzhudiavakkam Village of Tambaram Taluk of Kancheepuram District land measuring to an extent of 24 cents or thereabouts and quash the same and direct the respondents to treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999 and consequently to the respondents 3 to 5 to include the name of the Petitioner as the owner of the Property in the acquisition proceedings and to give Fresh notification and declaration and ward commensurate Compensation for the acquisition of the Petitioner's Land.

For appellants in both W.As. : Mr.N.Manikandan,
Govt. Advocate

For respondents in both W.As.: Mr.A.Kabir,
Senior Counsel for
Mr.G.Krishnakumar

COMMON JUDGMENT

R.SUBBIAH, J

Since the facts and the issue involved in both these Writ Appeals are identical, they are disposed of by this common judgment.

2. The appellants herein are the respondents in the Writ Petitions and the respondents herein are the petitioners in the respective Writ Petitions. Both these Writ Appeals arise out of

the common order passed by the learned Single Judge in W.P.Nos.17259 and 17260 of 2009, dated 15.04.2016, in and by which, the prayer of the respondents/writ petitioners to quash the order dated 30.06.1997 and notice dated 01.02.1999 issued under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, by the second appellant relating to the impugned proceedings and consequently, to direct the appellants/respondents in the Writ Petitions to treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act and also to direct the appellants 3 to 5/respondents 3 to 5 to include the name of the writ petitioners as the owners of the properties in the impugned acquisition proceedings and to give fresh Notification and Declaration and award commensurate compensation for the acquisition of the lands of the writ petitioners, was allowed.

3. The brief facts which are common, to decide the issue involved in both these Writ Appeals, are as follows:

(a) The respondents/writ petitioners are the owners of Punjai agricultural land situated in Survey No.21/3 of No.154, Madipakkam Madura Puzhudivakkam Village of Tambaram Taluk of Kancheepuram District, measuring an extent of 60 cents and 24 cents or thereabouts, respectively, (out of the total extent of 2 acres and 49 cents, comprised in the said S.No.21/3). The said lands were purchased by the respective petitioners from (i) S.T.Govindarajan and 4 others, who are the legal heirs of deceased Jayalakshmi and (ii) V.Subramanian, based on the respective registered sale deeds.

(b) Since there was excess vacant land, notice under Section 7(2) of the said Act was issued on 03.12.1996 by the second appellant in the name of one Jayalakshmi (since deceased) and it was served by affixture on 18.02.1997. Since no reply was received from the respondents/writ petitioners, subsequently, notice under Section 9(4) of the Act was issued along with Draft Statement under Section 9(1) of the Act on 04.04.1997 and service of notice was made by affixture on 13.05.1997. The land was inspected on 15.05.1997. It was found that there were four terraced buildings in which the purchasers were residing and the remaining extent was vacant and used as road. Hence, enquiry notice was issued on 19.06.1997. As some of the houses were locked and others refused to receive the notice, the notice could not be issued and notice was issued by affixture to the urban land owners to appear for enquiry, and as some of them were not residing in the village and even their whereabouts were not known, an order under Section 9(5) of the Act was passed on 30.06.1997, declaring 9600 Sq.Mts. as excess vacant, after allowing 500 Sq.Mtrs. as entitlement and as stated above, notice under Section 9(4) with statement under Section 9(1) was issued

for the proposed acquisition of the excess vacant land. The final statement under Section 10(1) of the Act was issued on 15.04.1998. The Notification under Sections 11(1) and 11(3) were issued on 28.07.1998 and 12.10.1998 and the notice under Section 11(5) was issued on 01.02.1999 by affixture and the possession of the vacant land was taken on 20.05.1999 and it was handed over to the Revenue Authorities on 30.06.1999.

(c) After a lapse of ten years, the present Writ Petitions were filed by the respondents/writ petitioners in 2009 to quash the impugned order dated 30.06.1997 and also the notice dated 01.02.1999 issued under Section 11(5) of the Act passed by the second appellant relating to the impugned acquisition proceedings in respect of the lands in question belonging to the respondents/writ petitioners.

4. It is the stand of the respondents/writ petitioners that they have been in possession of the respective properties since 1987 till date, and at no point of time, the possession was surrendered, nor was it forcibly taken by the Government. Further, notice under Section 7(2) of the Act was issued in the name of the said Jayalakshmi by the second appellant and she died way back in the year 1954. Hence, according to the respondents/writ petitioners, the said notice is null and void, having been issued on the dead person and therefore, the entire acquisition proceedings initiated under the Act, are vitiated. Further, according to the respondents/writ petitioners, the notice dated 01.02.1999 was also issued under Section 11(5) of the Act to the said Jayalakshmi, even though it is the contention of the appellants/State that the possession was taken on 20.05.1999 much before the Repealing Act came into force on 16.09.1999.

5. The learned Single Judge, by accepting the submissions of the respective parties and after perusal of the records, allowed both the Writ Petitions in W.P.Nos.17259 and 17260 of 2009 on 15.04.2016. Aggrieved by the same, the State is before this Court by way of filing the present Writ Appeals.

6. It is the submission of the learned Government Advocate appearing for the appellants/State that the respondent/writ petitioner in W.P.No.17260 of 2009, had purchased the property from one S.T.Govindarajan and four others, who are the legal heirs of the deceased Jayalakshmi and it originally stood in the name of the said Jayalakshmi, who was the owner of 60 cents out of the total extent of 2 acres and 49 cents, in S.No.21/3 of No.154 Madipakkam Madura Puzhudiavakkam Village of Tambaram Taluk, Kancheepuram District. The respondent/writ petitioner in W.P.No.17259 of 2009, had purchased the property from one V.Subramanian and it also originally stood in the name of the

said Jayalakshmi, who was the owner of 24 cents out of the total extent of 2 acres and 49 cents, in S.No.21/3 of No.154 Madipakkam Madura Puzhudivakkam Village of Tambaram Taluk, Kancheepuram District. Learned Government Advocate appearing for the appellants/State further submitted that an extent of 9600 Sq.Mts. of land was declared as excess vacant land and action was taken against the original urban land owner Jayalakshmi, in whose name the land was registered in the Village/Taluk Accounts. The death of the said Jayalakshmi was not brought to the knowledge of the appellants, and hence, the enquiry notice was issued to the residents occupying the said land in Ref.B/923/1997, dated 19.06.1997 by the competent authority. Some of the houses were locked and some of them refused to receive the notice and hence, it could not be served on them. It is further submitted by the learned Government Advocate that after complying with legal formalities and after following due procedures, the excess vacant land was acquired and the symbolic possession was taken on 20.05.1999 well before the repeal of the Act and necessary changes were made in the Village/Taluk Accounts. Therefore, the finding of the learned Single Judge that in view of the Repealing Act, the entire acquisition proceedings under the Principal Act are vitiated, is not correct. Moreover, the present Writ Petitions were filed after a lapse of ten years. In this regard, learned Government Advocate appearing for the appellants/State relied on a judgment of the Supreme Court reported in MANU/SC/0552/2010 = 2010 (8) SCC 467 (Sulochana Chandrakant Galande Vs. Pune Municipal Transport and others) to fortify his contention that there is a lapse in filing the present Writ Petitions, and hence, the respondents/writ petitioners are not entitled to the relief sought for in the Writ Petitions, and thus, he prayed for setting aside the impugned order passed by the learned Single Judge.

7. Countering the above submissions, learned Senior Counsel appearing for the respondents/writ petitioners contended that the land originally stood in the name of the said Jayalakshmi, who died as early as on 25.04.1954 itself. She executed a Will, dated 01.11.1951, which was probated on 25.08.1955 in O.P.No.141 of 1955 by this Court and under the said Will, she bequeathed the property in favour of her husband Thiruvengada Mudaliar. Subsequently, the said Thiruvengada Mudaliar died on 25.10.1965 leaving behind his last Will and Testament, dated 12.08.1964, bequeathing the property in favour of his son S.T.Govindarajan and this Will executed by him was also probated by this Court on 23.12.1965 in O.P.No.287 of 1965. Therefore, the said S.T.Govindarajan became the absolute owner of the property. He, along with his wife and children as persons interested in the property, sold the land to an extent of 60 cents each to the respondent-writ petitioner-P.B.K.Thilagar (in W.P.No.17260 of

2009) and V.Subramanian, vide sale deeds in Doc.Nos.2396 and 2397 of 1987, dated 17.07.1987. The respondent-writ petitioner-J.Vasantha (in W.P.No.17259 of 2009) purchased the property from V.Subramanian as per the sale deed dated 20.10.2005, vide Document No.4582 of 2005.

8. It is further submitted by the learned Senior Counsel appearing for the respondents/writ petitioners that all along, the notice(s) by affixture was made only in the name of Jayalakshmi, who died long back in 1954, much prior to the initiation of the present land acquisition proceedings. Since the notice(s) were issued in the name of a dead person, the entire proceedings are vitiated.

9. Learned Senior Counsel appearing for the respondents/writ petitioners further contended that it is incorrect to state that the possession was taken by the appellants on 20.05.1999 much prior to the Repealing Act which came into force on 16.09.1999. In this context, learned counsel for the respondents/writ petitioners submitted that when the present Writ Petitions were pending, the balance land measuring 5 cents out of 60 cents (in respect of respondent-writ petitioner-P.B.K.Thilagar in W.P.No.17260 of 2009) and out of 24 cents (in respect of respondent-writ petitioner-J.Vasantha in W.P.No.17259 of 2009), were taken over and utilised for the Mass Rapid Transit System (MRTS) project, and hence, according to the learned counsel for the respondents-writ petitioners, the writ petitioners are entitled to additional compensation for the same, which would show that the symbolic possession alone was with the appellants/State, but not the actual physical possession.

10. It is the further submission of the learned Senior Counsel appearing for the respondents/writ petitioners that Section 9(2) of the Act stipulates that every statement prepared under sub-section (1), should contain the particulars enumerated therein and this is in furtherance to the statement to be filed by the owner under sub-sections (1) and (2) of Section 7 or on the basis of the information received under sub-section (5) therein and after holding an enquiry. The said Section mandates that not only the notice must be given to the owner, but an enquiry must also be held prior to preparing the Draft Statement, which has not been done in this case. The disposal of the objections will have to be done under Section 10 of the Act, because, under Section 9(2) of the Act, the owner is entitled to furnish the particulars of vacant land which he desires to retain within the ceiling limit, and only thereafter, the acquisition of the land under Section 11(5) of the Act can be made. But, no such event happened in this case. Under such circumstances, by considering all the above aspects, the learned

Single Judge has allowed the Writ Petitions by passing a well-considered order, and hence, learned counsel for the respondents/writ petitioners prayed for dismissing the Writ Appeals. In support of his submissions, learned Senior Counsel for the respondents-writ petitioners relied on the following decisions of the Division Bench of this Court:

(i) MANU/TN/7107/2007 = 2007 (2) LW 109 = 2007 (1) MLJ 750 (V.Somasundaram, Nityakalyani and V.Sugandhi Vs. The Secretary to Government, Revenue Department, The Assistant Commissioner (Land Reforms and Urban Land Ceiling) and S.Pitchai), and

(ii) MANU/TN/0927/2015 = 2015 (2) LW 391 = 2015 (3) MLJ 691 (State of Tamil Nadu and others Vs. Sumathi Srinivas).

11. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have carefully perused the materials available on record.

12. From the above submissions, we find that the entire land acquisition proceedings were intended and notice(s) were issued only in the name of the said Jayalakshmi, who died as early as in 1954. It is trite law that when the proceedings are initiated against a dead person and not against the real owner, the entire proceedings are invalid/vitiated. On this contention, a reference could be placed on the abovesaid judgment relied on by the learned Senior Counsel appearing for the respondents/writ petitioners, reported in MANU/TN/7107/2017 (cited supra), wherein it has been observed 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 notice 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 MANU/TN/9646/2006 = 2006 (4) MLJ 676 = 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 16.09.1999. Hence the writ petition filed without availing the alternate remedy of filing appeal under Section 33 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, is maintainable."

13. A reading of the above judgment shows that if the notice was issued against the erstwhile owner and not on the real owner, then the acquisition proceedings are invalid and they would get vitiated. Moreover, as per Section 11(5) of the said Act which stood prior to Repeal of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within 30 days' time. The proceedings initiated against the erstwhile owner is non-est in law. Non-compliance of Section 11(5) of the Act, cannot be rectified at a later stage. Thus, if no notice has been issued to the land owner or the person in possession, then taking possession of the land is non-est in the eye of law. The defect is not curable. Further, when notice has not been issued to the actual owner or the transferee, the land owner has lost the opportunity to challenge the decision by way of appeal by virtue of the enactment of the Repeal Act of 1999.

14. In the instant case, notice was issued on the dead person and not on the actual owner. Therefore, the actual owner or the transferee of the land owner, has lost the opportunity to challenge the possession by way of appeal by virtue of the enactment of the Repealing Act. Therefore, we are of the opinion that the entire proceedings impugned herein, are vitiated.

15. Yet another submission made by the learned Senior Counsel appearing for the respondents/writ petitioners is that since the symbolic possession was taken on 20.05.1999 itself, the respondents/writ petitioners are not entitled to the benefits of the Repealing Act. Furthermore, as, only symbolic possession has been taken in this case, the writ petitioners/land owners are in actual and real possession of the lands in question. In this regard, learned counsel for the respondents/writ petitioners relied on the decision of the Division Bench of this Court reported in MANU/TN/0927/2015 (cited supra), wherein it has been held as follows:

"33. It is to be noted that although the Appellants/Respondents claim that the possession of the land in question was vested with the Government under Section 11(3) of the Act on 18.11.1998 and subsequently handed over on 09.04.1999, the purported possession being handed over on 09.04.1999 in the form of land receipt, in law, is only a symbolic possession and as a matter of fact, actual/real possession was not taken. As such, the resultant possession is either the land owner Lakshmi Kanthammal or anybody for that matter had not handed over the physical possession and also when the Appellants had only taken a symbolic possession and in reality, when the actual/ real possession of the land in issue is in the hands of the Respondent/ Petitioner, the Respondent/ Petitioner is entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999."

16. On a reading of the above judgment, it is seen that mere symbolic possession is not sufficient. Therefore, the submission made by learned Government Advocate appearing for the appellants/State that since symbolic possession is with appellant, much prior to the repealing of the Act which came into force on 16.09.1999, and that respondents-writ petitioners are not entitled to the benefit of the Repealing Act, has no force in the eye of law. All along, the possession is only with the owner of the land, namely the respondents/writ petitioners.

17. Therefore, on both the grounds, namely that the notice was issued on the dead person and that the symbolic possession alone is with the appellants/State, the Writ Appeals fail. Furthermore, the fact that the possession of the land was taken from the respondents/writ petitioners for the purpose of MRTS project and the same was utilised, would show that the

appellants/State are not in actual possession of the lands in question.

18. Hence, for all the above reasons, we do not find any merit in these Writ Appeals, and accordingly, they are dismissed, confirming the impugned order passed by the learned Single Judge. No costs. Consequently, C.M.Ps. are closed.

CS

Being Mentioned

This Matter having been listed under the caption " for Being Mentioned " on 28th day of September 2018 (28.09.2018) pursuant to the order of this court dated 04.09.2018 and made herein in the presence of the aforesaid counsels on the either side the court made the following order:-

(Order of the Court was made by R.SUBBIAH,J.)

This Court, by order dated 04.09.2018, dismissed the writ appeals. Today, the matter is listed under the caption 'for being mentioned' at the instance of the learned counsel appearing for the respondents.

2.Learned counsel appearing for the respondents has submitted that this Court, while confirming the order of the learned single Judge, dismissed the writ appeals filed by the State. He has further submitted that in the order of the learned single Judge, it has been observed that the respondents herein/writ petitioners are entitled for additional compensation for the lands utilised for the Mass Rapid Transport System and if such a claim is made by the respondents/land owners, the same should be considered on merits and in accordance with law without reference to the limitation aspect. Learned counsel further submitted that the respondents had already made a claim before the third appellant on 07.08.2016 and therefore, a time limit may be fixed to dispose of the claim petition.

3.Considering the submission made by the learned counsel appearing for the respondents, this Court directs the third appellant to dispose of the claim dated 07.08.2016 within a period of twelve weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-600 009.
2. The Assistant Commissioner/
(Competent Authority),
Urban Land Tax and Ceiling,
Alandur, O/o Urban Land Tax,
Karuneegar Street,
Adambakkam, Chennai-600 088.
3. The Special Tahsildar,
(Land Acquisition)
Mass Rapid Transit System,
2nd Phase Extension,
Thirumailai Railway Station Building,
Mylapore, Chennai-4.
4. The District Collector,
Kancheepuram District.
5. The Additional Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai-9.

**To be Substituted the
Order already despatched
on 27.09.2018**

+2cc to M/S.G.Krishnakumar, Advocate Sr.61127
+1cc to the Government Pleader Sr.67849

W.A.Nos.1139 and 1152 of 2018

sj[col]
srg 26/09/2018
CS/10/10/2018

सत्यमेव जयते

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