IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.10.2018

PRONOUNCED ON : 22.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10852 of 2008
and
M.P.Nos.1 of 2018 and 1 of 2009

1.P.Sarala Devi
2.P.Sridhar
3.P.Ravichandran
4.P.Selvakumar ... Petitioners

vs.

1.The Special Commissioner &
Commissioner of Land Reforms,
Ezhilagam, Chepauk,
Chennai - 5.

2.The Asst. Commissioner (ULT),
Competent Authority (ULC),
Thiruvallur District,
Poonamallee Taluk,
Chennai - 56. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records on the file of the 2nd respondent in S.R.No.938/96/D dated 30.04.1997 under 9(5) of the Tamilnadu Urban Land Ceiling and Regulation Act and quash the same.

For Petitioners : Mr.V.Ramesh, for
Mr.S.Parthasarathy.

For Respondents : Mrs.Narmadha Sampath, AAG.
Assisted by Mr.N.Manikandan, G.A.

ORDER

The petitioners have filed the above writ petition for a writ of certiorari to call for the records on the file of the 2nd respondent in S.R.No.938/96/D dated 30.04.1997 under 9(5) of the Tamilnadu Urban Land Ceiling and Regulation Act, 1978 and quash the same. Action was taken in respect of the lands in S.Nos.346/3A & 346/3C only and not to land cover by S.No.346/3B.

2.The said Act has been repealed by Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1999 with effect from 16.06.1999 vide The Tamil Nadu Government Gazette, Extraordinary, Issue No.487, Chennai. Therefore, for the sale of brevity the Tamilnadu Urban Land Ceiling and Regulation Act, 1978, it shall be hereinafter referred to as the Repealed Act.

3.The petitioners are the legal heirs of late Mr.Padmanabhan, who appeares to have died intestate on 20.12.1987. It appears the land originally came into the hands of late Mr.Padmanabhan, the 1st petitioner's husband and the father of the 2nd to 4th petitioners in the year 1982 for a total extent of 1 acre 3 cents in old S.No.346/3A-extent 0.74 cents, old S.No.346/3B-extent 0.08 cents and S.No.346/3C - extent 21 cents in terms of a partition Deed dated 05.11.1982. It was submitted that the said land was under cultivation by late Mr.Padmanabhan during his life time.

4.The land in excess of the ceiling limit were proposed to be acquired under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as the Repealed Act) during February, 1996 from the petitioners.

5.Notice under Section 7(2) dated on 14.02.1996 addressed to the 3rd petitioner was served on 18/19.02.1996 though in the affidavit filed in support of the above writ petition, it was stated that the noticee P.Ravichandran in the said notice was not known to the petitioners. However, during the hearing, this defence has been withdrawn.

6.After the said notice was served on 18/19.02.1996 on P.Ravichandran viz., the 3rd petitioner, a notice dated 18.03.1996 under Section 9(4) of the Repealed Act was issued along with the draft statement under Section 9(1).

7.The respondents called for an objection against the proposed acquisition of 3400 sq.m of excess vacant land after allowing 500 sq.m. as entitled area for the family under the provision of the Repealed Act.

8.Since no objection was filed by P.Ravichandran, the impugned order dated 30.04.1997 came to be passed under Section 9(5) of the Repealed Act.

9.On 30.06.1998, a notification was issued under Section 11 (1) of the Act. Thereafter, a notification under Section 11(3) was issued on 20.08.1998.

10.In 2007, the petitioners stated that they wanted to partition the land and therefore approached the Village Administrative Officer for a field map sketch for effecting partition of the subject land.

11.It is further stated that the Village Administrative Officer directed the petitioners to approach the 2nd respondent herein. The petitioner submitted that on enquiry, they came to know that the land in question had been subjected to acquisition under the provisions of the Repealed Act. It is these measures, the petitioners have challenged in this writ petition i.e., the notification dated 30.04.1997 issued under Section 9(5) of the Act.

12.The petitioners submitted that the respondents had not taken physical possession of the land under Section 11(5) and (6) of the repealed Act and therefore, the impugned proceedings under the provisions of the Repealed Act, was not sustainable. It was submitted that if the land is required they should now acquire under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (also Land Acquisition Act, 2013).

13.The respondents have filed a detailed counter and have averred that the writ petition is liable to be dismissed. It is stated that the petitioners have received notice at different stages but failed to give required details and in the absence of information, the land owner was treated as an individual and the eligibility of 500 sq. mts. was also allowed as per Sec.5(1) of the Repealed Act by the 2nd respondent.

14.The land was deemed to have been acquired and vested with Government free from all encroachments with effect from 1st November 1998 as per the notification issued u/s 11(3) of the Act which was published in Tamil Nadu government Gazette dated 11.04.1998.

15.The possession of excess vacant land was taken over on 14.06.1999 and handed over on the same day to the Revenue Department represented by the Revenue Inspector, Thirunindravur Firka.

16.According to the respondent, since the possession of the land stood vested with the respondents, the present writ petition was liable to be dismissed.

17.Further, it was stated that action taken in this case was saved by Section 3(1)(a) of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999.

18.Heard Mr.V.Ramesh, learned senior counsel for Mr.S.Parthasarathy, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Additional Advocate General assisted my Mr.N.Manikandan, learned Government Advocate for the respondent.
I have gone trough the records of the case and case laws filed by either side.

19.The learned counsel for the petitioner relied on the following decisions:

(i)The Government of Tamil Nadu & others Vs. M/s.Mecca Prima Tannery and others - (2012) 4 L.W. 289.

(ii)State of U.P. Vs. Hariram - (2013) 2 L.W.469.

(iii)V.P.R.Varadharajan and anoter Vs. The State of Tamil Nadu, represented by the Assistant Commissioner, Urban Land Ceiling and Tax, Kundrathur - Alandur (E), No.153 Karuneegar Street, Adambakkam, Chennai - 88 and another -- W.A.No.145 of 2016 dated 04.10.2017 (Madras High Court).

20.The learned Additional Advocate General relied on the following decisions:

(i)State of U.P. Vs. Hariram - (2013) 4 SCC 80

(ii)The Government of Tamil Nadu & Others V. Mecca Prima Tannery and others - (2012) 4 L.W. 289

(iii)The Competent Authority (ULC) & another V. Dr.S.Anandalakshmy - (2013) 1 L.W. 970

(iv)The Secretary, Revenue Department, Fort St. George, Chennai & Others V. K.Gopal - (2013) 3 L.W. 103

(v)G.Krishnamoorthy and four others Vs. The Government of Tamil Nadu, rep. by its Secretary, Revenue Deparetment, Fort St. Goerge, Chennai - 9 and three others - W.P.No.3749 of 2001 dated 07.08.2009 (Madras High Court) (vi)V.Geetha Lakshmi Vs. The State of of Tamil Nadu, rep. by its Secretary, Revenue Deparetment, Fort St. Goerge, Chennai - 9 and two others - W.P.No.24528 of 2001 dated 26.08.2014 (Madras High Court)

(vii)Competent Authority vs. Barangore Jute Factory - (2005)13 Supreme Court Cases 477

(viii)Lajia Ram V. UT.Chandigarh - (2013) 11 Supreme Court Cases 235

(ix)Tukaram Kana Joshi V. M.I.D.C. - (2012) 8 MLJ 515 (SC)

(x)V.P.R.Varadharajan and anoter Vs. The State of Tamil Nadu, represented by the Assistant Commissioner, Urban Land Ceiling and Tax, Kundrathur - Alandur (E), No.153 Karuneegar Street, Adambakkam, Chennai - 88 and another. - W.A.No.145 of 2016 dated 04.10.2017 (Madras High Court)

(xi)A.Thiagarajan and another Vs. The Competent Authority (ULC) & Assistant Commissioncer (ULC), Kunrathur Zone - W.A.Nos.2394 & 2395 of 2011 dated 10.11.2017 (Madras High Court)

(xii)The Assistant Commissioner, Urban Land Tax/Competent Authority, Urban Land Ceiling, No.5, Sannathi Street, Poonamallee, Chenni - 56 and three others Vs. D.Nagarajan. - W.P.No.1496 of 2017 dated 28.06.2018 (Madras High Court)

(xiii)The Principal Secretary to Commissioner, Land Reforms, Chepauk, Chennai - 5 and two others Vs. B.Govindammal. - W.A.No.756 of 2015 dated 13.12.2017 (Madras High Court)

21.The learned counsel appearing for the petitioners submits that since the possession of the land was not taken by the respondents under Section 11(5) of the Repealed Act and in view of the fact that there are several mistakes committed in complying with the mandatory requirements of the Repealed Act, the alleged acquisition was no acquisition in the eye of law and cannot be used as against the petitioners.

22.Per contra, the learned Additional Advocate General submits that the acquisition was carried out as was required under the Repealed Act and therefore, the petitioner cannot have any grievance merely because they would get lesser compensation under the repealed Act and it is not open for them to state that possession was not taken as they have woken up only in the 2007 when indeed the land had been acquired and possession was taken as early as 14.06.1999.

23.Learned Additional Advocate General further submits that by G.O.(Ms.) No.127 dated 30.03.2012, the CMDA has requested for allotment of certain lands acquired under the Repealed Act in formation of outer ring road and law has been set in motion for utilization of land.

The learned Additional Advocate General appearing for the respondents submitted that though the Hon'ble Supreme Court in Indore Development Authority vs. Shailendra (Dead) through Lrs & Ors - 2018 SCC Online 100 has held as follows:

> "Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of lan in every case. But, here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should there be taken possession of and determining its extent was sufficient to constitute taking of possession."

24.The Learned Assistant Advocate General however submitted that the decision, Indore Development Authority vs. Shailendra (Dead) through Lrs & Ors - 2018 SCC Online 100 has been questioned in Pune Municipal Coporation & Another V. Harakchand Misirimal Solanki - 2014(3) SCC 183 and that the case has been referred to the Larger Bench and therefore the issue has not attained finality.

25.I have considered the rival submissions on facts and law. The Repealed Act came into force on 03.08.1976. The petitioners derive their rights as legal heirs of late Mr.Padmanahban. Under Section 4 of the repealed Act, on and from the commencement of the said Act, no person is entitled to hold any vacant land in excess of the ceiling limit.

26.Section 4 reads as under:

> "4.Persons not entitled to hold vacant land in excess of the ceiling limit. - Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall bc entitled to hold any vacant land in excess of the ceiling limit."

27.Section 5 of the Repealed Act prescribes the ceiling limits for holding lands in the urban area. There were separate categories of land under the Repealed Act. The respondents have sought to classify the subject land within the purview of "urban agglomeration" falling within category I specified in Schedule I of the Repealed Act.

28.As per Section 5 of the Repealed Act, where the vacant land is situated in an urban agglomeration within category I specified in Schedule I, a family consisting of 2 members are entitled to hold only 1000 sq.ms. Family consisting of 3 members are entitled to hold only 1500 sq.ms and where the family consists of 4 or more members, they are entitled to hold 2000 sq.ms.

29.However, it has not been specifically stated as to when the aforesaid land came under the purview of the Repealed Act. It is also not clear from the averments in the affidavit and counter affidavit as to whether the land in question was an agricultural land or an urban land for the purpose of the Repealed Act on the date of partition of the land in favour of late Padmanabhan.

30.However, from the records of the inspection carried out by the Tahsildar on 05.12.1996, it appears that the land was classified as an urban land as on 15.02.1993. The report reads as under:

> "மேற்கண்ட புலங்களை பார்வையிட்டதில் மண் எடுக்கப்பட்டு பத்தடி ஆழத்தில் பள்ளமாக இருக்கிறது, கேட்பு பதிவேட்டினை சரிபார்த்ததில் (ருடுகூ,5.1401 டி 5) (ஞ,1401) நாள் 15,12,1993 நகர்ப்புற நிலவரி விதிக்கப்பட்டுள்ளது எனத் தெரியவருகிறது""

31.At the time of the inspection , the land is stated to have been dug up and excavated 10 feet deep and urban land tax was imposed on 15.02.1993.

32.Thus, when the land was partitioned on 07.11.1982, it appears that it was an agricultural land and did not fall within urban agglomeration and therefore perhaps fell outside the purview of the repealed Act.

33.Section 6 mandated that no person shall transfer land in excess of ceiling limit and he is required to furnish statement required under Section 7 and notification regarding excess vacant land held by him has been published under Section 11(1). Any transfer made shall be deemed to be null and void.

34.Section 7 of the repealed Act contemplates that every person holding "vacant land" in excess of the "ceiling limit" at the "commencement of the Act" shall, within the prescribed time, file a statement before the competent authority having jurisdiction, specifying the location, extent and such other particulars as may be prescribed of all vacant lands and of any urban or other land on which there is a building, whether or not with a dwelling unit with any urban agglomeration held by him including the nature of his right, title or interest therein and also specifying the vacant lands within the ceiling limit, which he desires to retain.

35.Section 7 of Repealed Act reads as under:

> "7. Persons holding vacant land in excess of ceiling limit to file statement. -
>
> (1) Every person holding vacant land in excess of the Persons holding ceiling limit at the commencement of this Act shall, within vacant land such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent and such other particulars as may be prescribed of all vacant lands and of any urban or other land on which there is a building, whether or not with a dwelling unit therein in any urban agglomeration held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain.
> (2) If the competent authority is of opinion that any person holds at the commencement of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1) and the person on whom such notice is served shall be bound to comply with such notice.
> (3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods, as it may think fit :
>
> Provided that the period or the aggregate of the periods of such extension shall not exceed such period as may be prescribed.

(4) The statement under this section shall be filed,-

(a) in the case of an individual, by the individual himself ; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs by his guardian or any other person competent to act on his behalf ;
(b) in the case of a family, by the husband or wife, and where the husband or wife is absent from India. or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both ;

(c) in the case of a company, by the principal officer thereof ;
(d) in the case of a firm, by any partner thereof ;
(e) in the case of any other association, by any member of the association or the principal officer thereof ; and
(f) in the case of any other person, by that person or by a person competent to act on his behalf.

Explanation.-For the purposes of this sub-section, " principal officer ",-
(i) in relation to a company, means the secretary, manager or managing director of the company ;
(ii) in relation to any association, means the secretary, treasurer, manager or agent of the association;
and includes any person connected with the-management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of its intention of treating him as the principal officer thereof.

(5) If any person who is liable to file a statement under this section fails to file the statement within the period within which it hc7s to be filed, the competent authority, may obtain necessary information In such manner as it thinks fit.

36.If the competent authority was of the opinion that any person holds at the “commencement” of the repealed Act, vacant land in excess of the ceiling limit, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file statement within such period as may be specified in the notice and such person on whom such notice is served shall be bound to comply with such notice.

37.Section 7(5) also allows the competent authority to obtain necessary information in such manner as he thinks fit. After the information are furnished voluntarily under Section 7 (1) or under Section 7(2), or on the basis of information obtained under sub-section (5) of Section 7, the competent authority has to prepare a draft statement under Section 9 of the Repealed Act in respect of the person who has filed the statement under sub-section (1) or sub-section (2) of section 7, about whose lands information has been obtained under sub-section (5) of the Act. In the present case, the notice dated 14.02.1996 under Section 7(2) was served on the 3rd petitioner on 18.02.1996. However, there was no reply.

38.The draft statement has to be served on the person under Section 9(4) of the Repealed together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service of notice. In the present case, the Draft Statement dated 18.03.1996 was served on the 4th petitioner on 10.07.1996.

39.The competent authority was expected to consider objections from the person concerned after giving reasonable opportunity of being heard and pass such orders as he deems fit.

40.After the disposal of the objections received under sub-section 9(5) of the Repealed Act. the competent authority was expected to make such alteration in the draft statement and cause a copy of the statement as so altered to be served in the manner referred to in sub-section (4) of Section 9 on the person concerned.

41.Though notice dated 18.03.1996 issued Section 9(4) of the Repealed Act, addressed to the 3rd petitioner together with draft statement was served on the 4th respondent on 09.12.1997, no objection was filed by any of the petitioners.

42.Due to non filing of the objection, impugned order dated 30.04.1997 came to be passed under Section 9(5) of the Repealed Act. The respondent claim that they have complied with the requirement by affixture.

43.The impugned order dated 30.04.1997 passed under Section 9(5) of the Repealed Act came to be served on the 1st petitioner on 13.08.1997, which has been impugned in present writ petition.

44.Thereafter, on 13.12.1997, a final statement under Section 10(1) of the Repealed Act was issued. According to the respondents, since the members of the petitioner's family refused to receive the notice of the final settlement, the same was served by an affixture.

45.After the final statement is issued, acquisition of vacant land is initiated under Section 11 with the service of notice of final settlement under Section 10 of the Act and the competent authority has to cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that the land is to be acquired by the State Government and all the claims of all the persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land to be published for the information of the general public in the Tamil Nadu Government Gazette and in such other manner. On 30.06.1998, a notification was issued under Section 11(1) of the Repealed Act.

46.Sub section (3) of Section 11 states that after the publication of the notification under sub-section (1), the competent authority may by notification in the Tamil Nadu Government Gazette declare that the excess vacant land referred to in the notification published under the sub-section (1) shall with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

47.Once the land stood vested with the Statement Government under sub-section (3) of Section 11 of the Repealed Act, the competent authority has to take possession by giving notice in writing asking any person who may be in possession of it to surrender or deliver possession to the Statement Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of notice. In the present case, a notification under Section 11(3) was issued on 20.08.1998.

48.If there is failure to comply with the order made in sub-section 5, the competent authority may take possession of the vacant land or cause it to be given to the Statement Government or to any person duly authorised by the State government in this behalf and may for the purpose of such use and such force as may be necessary. Thereafter, compensation are made by way of payment in the vacant land acquired under Section of 12 of the Act.

49.In the present case, different sets of notice came to be served on petitioners other than the 2nd petitioner except the 2nd petitioner, thought the notice was addressed to the 3rd petitioner.

50.Notice under Section 7(2) of the Repealed Act commenced with the service of notice addressed to the 3rd petitioner on 18.02.1996 only. All the subsequent proceedings also came to be issued only in the name of the 3rd petitioner.

51.The notice addressed to the 3rd petitioner under Section 9(4) was served on the 4th respondent P.Selvakumar on 10.07.1996.

52.The impugned order dated 30.04.1997 under Section 9(5) has been served on P.Sarala Devi viz., the 1st petitioner on 13.08.1997.

53.It is the case of the petitioner that even if an inspection was carried out by the competent authority on 09.12.1996 when they allegedly found 10 feet land was found excavated on the subject land, it cannot be construed the land was urban land. However, from the facts as narrated above the urban land that was imposed on 15.12.1993.

54.The provisions of the Repealed Act particularly Section 7 onwards applies only to excess vacant land in an urban area on the date of commencement of the Repealed Act. Thus, the Repealed Act, would not have applied to a non urban land.

55.Schedule 1 of the repealed Act has specified several areas for the aforesaid purpose. It has several panchayats and revenue villages. It is not clear as to which panchayat or the revenue village the subject land fell under. It was under the Sriperumbadur Taluk. Thus, exact status of the land needs to be ascertained.

56.Therefore, before dealing with the rival contentions of the either side, the fundamental question to be answered is whether the land in question was an urban land on the date of commencement of the Repealed Act and/or thereafter at the time of its partition in favour of late Mr.Padmanahban and/or after his death and/or on 15.12.1993?

57.The supplementary issue to be answered is whether the writ petition is liable to be dismissed an account of latches.

58.For answering the first issue, the definition in

Section 3(b), (c), (o) and 3 (p) of the Repealed Act may be referred to. They are extracted as under:-

(b) "ceiling limit" means the ceiling limit specified in section 5 ;

(c) "commencement of this Act" means-

(i) in respect of any urban agglomeration specified in Schedule I, the 3rd day of August 1976, (ii) in respect of any area declared to be an urban agglomeration by a notification under sub-clause (ii) of clause (n) of section 3, the date of publication of such notification in the Tamil Nadu Government Gazette ;
(iii) where any land, not being vacant land, has become vacant land by any reason whatsoever, the date on which such land becomes vacant land ;

(0) " urban land " means-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan ;
or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.-For the purpose of this clause and clause (p),-
(A) " agriculture " includes horticulture, but does not include-
(i) raising of grass,
(ii) dairy farming,
(iii) poultry farming,
(iv) breeding of livestock, and
(v) such cultivation, or the growing of such plant, as may be prescribed ;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if-such land is not entered in the revenue or land records before the commencement of this Act as for the purpose of agriculture;

(C) notwithstanding anything contained in the clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture :

Provided that where any such land is actually used mainly for the purpose of agriculture, such land shall not be deemed to be urban or vacant land so long as it is continued to be so used for the purpose of agriculture;

(D) where on the commencement of this Act, any land is actually used mainly for the purpose of agriculture, but is used mainly for a purpose other than agriculture, after such commencement, then on and from the date on which such land is used for any purpose other than agriculture, the land shall be deemed to be vacant land and accordingly the provisions of this Act shall apply.

(p) " vacant land " means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated ;

(ii) in an area where there are building regulations,-

(a) the land occupied by any building constructed before, or under construction on the commencement of this Act with the approval of the appropriate authority and the land appurtenant to such building ;

(b) the land where any building is proposed to be constructed in respect of which the building plan has been approved by the appropriate authority before the commencement of this Act and the land appurtenant to such building ;

(iii) in an area where there are no building regulations, the land occupied by any building constructed before or under construction on the commencement of this Act and the land appurtenant to such building; and

(iv) the land which is exclusively used as pathway by one or more families subject to such limits and conditions as may be prescribed :

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before such commencement shall not be deemed to be vacant land for the purposes of this clause.

59.As per 2(o)," urban land " means any land situated within the limits of an urban agglomeration and referred to as such in the master plan or in a case where there is no master plan or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration but does not include any such land which is mainly used for the purpose of “agriculture”.

60.As per Explanation B to the above definition, a land shall not be deemed to be used mainly for the purpose of “agriculture”, if such land is not entered in the revenue or land records before the commencement of this Act as for the purpose of “agriculture”. Explanation C carves our an exception to Explanation B.

61.A land shall not be deemed to be mainly used for the purpose of “agriculture” if such a land has been specified in the master plan for a purpose other than agriculture. However, where any land was actually used mainly for the purpose of agriculture, was not to be deemed to be an urban or vacant land so long as it was continued to be so used for the purpose of “agriculture”.

62.As per Explanation D, if on the date of commencement of Repealed Act, any land actually used mainly for the purpose of agriculture, but was used mainly for a purpose other than agriculture, after such commencement, then on and from the date on which such land was used for any purpose other than agriculture, the land was deemed to be vacant land and accordingly the provisions of this Act shall apply. In other words, when the land became an urban land is to be fundamentally determined.

63.Thus, there are different circumstances under which land could be an agricultural land or an urban land or vacant land on the date of commencement of Repealed Act.

64.In this case, the as per the Tahsildars report, the land was brought within the purview of urban land tax on 15.12.1993. Thus, the land in question certainly was an urban land from the said date. In fact, it may have been classified as an "urban land" earlier also it was in the master plan. However, these question of facts remains unansered.

65.Be that as it may, next issue to be considered is whether the respondents were justified in by treating the petitioners are one family unit for the purpose of the Repealed Act.

66.The expression 'family' has been defined in Section 3(f) of the repealed Act as follows:

> Section 3(f) - "family", in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children."

67.The expression "person" also has been defined in Section 3(j) as follows:

> Section 3(j) - "person", includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;"

68.In my view, the respondents would have been justified in treating the petitioners as one family only if on the date of death of late Mr.Padmanabhan on 20.12.1987, the subject land was already an urban land. This fact is not coming out from the pleadings. Therefore, this issue would require re-consideration.

69.If the subject land was an urban land before the death of late Mr.Padmanabhan on 20.12.1987, the respondents would be justified in treating the petitioners as one unit for the purpose of the proceedings initiated and the proceeding initiated would be saved by Section 3(1)(a) of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 as was contended by the learned Additional Advocate General .

70.On the other hand, if the subject land came to be classified as an "urban land" subsequent to the death of late Mr.Padmanabhan, each of the petitioner would have been entitled to a separate entitlement and separate notice under the Repealed Act. Therefore, the decisions cited by either of the parties are not relevant without the details.

71.Therefore, I am not inclined to dismiss the writ petition straight away on the ground of latches as was contended on behalf of the respondent at this stage as it is not clear from the facts as to when the subject land become an “urban land” for the purpose of the Repealed Act. In case, the land was an “urban land” already before the death of late Mr. Padmanabhan, the proceedings initiated by the respondents cannot be questioned.

72.This writ petition is therefore disposed by way of remand. The respondent shall re-examine the facts afresh and pass a fresh order after giving an opportunity to the petitioners to give their representation and a right to be heard. Respondent shall pass a speaking order determining the rights with reference to the actual date of the land getting classified as an urban land, after considering the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul

To

1.The Special Commissioner &
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai - 5.

2.The Asst. Commissioner (ULT),
Competent Authority (ULC),
Thiruvallur District,
Poonamallee Taluk,
Chennai - 56.

+1 cc to M/s.S.Parthasarathy, Advocate Sr.No.79889

order made in
W.P.No.10852 of 2018

KJ(CO)
CSL/24.01.2019