

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-12-2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.24413 to 24415, 13888 to 13890 of 2004
and
W.P.M.P.Nos.29663 to 29665 of 2004

D.Natesan ..Petitioner in WP 24413 & 13889/2004
Shanthi Chandrasekhar ..Petitioner in WPs 24414 & 13888/2004
Chandrasekhar ..Petitioner in WP 24415 & 13890/2004

vs

The Competent Authority
(Urban Land Ceiling),
Tambaram,
Chennai - 600 088. ..R-1 in all WPs

The Tamil Nadu Slum Clearance Board
Represented by its Chairman,
Kamarajar Salai,
Chennai - 600 005. ..R-2 in all WPs

G.Nataraja Reddiar
also known as G.Natarajan ..R-3 in WPs 24413 to 24415/
2004

WP 24413 of 2004 is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the acquisition of the petitioner's land under the first Respondent's proceedings bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997 and the further actions taken by the 2nd Respondent are illegal and void and consequently direct the first and second Respondents to pay the Petitioner compensation of Rs.38,40,584/- (Rupees Thirty Eight Lakhs Forty Thousand Five Hundred and Eighty Four only).

WP 24414 of 2004 is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the acquisition of the petitioner's land under the first Respondent's proceedings bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997 and the further actions taken by the 2nd Respondent are illegal and void and consequently direct the first and second Respondents to pay the Petitioner compensation

of Rs.51,23,622/- (Rupees Fifty One Lakhs Twenty Three Thousand Six Hundred and Twenty Two only).

WP 24415 of 2004 is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the acquisition of the petitioner's land under the first Respondent's proceedings bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997 and the further actions taken by the 2nd Respondent are illegal and void and consequently direct the first and second Respondents to pay the Petitioner compensation of Rs.51,52,830/- (Rupees Fifty One Lakhs Fifty Two Thousand Eight Hundred and Thirty only).

WP 13888 of 2004 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the first respondent bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997, quash the same and consequently direct the respondents not to occupy or deal with the petitioner's property viz., Agricultural Nanja Land measuring 48.064 cents comprised in Survey No.12/1 in Village No.169 Peerkankaranai Village, Saidapet Taluk, Chengleput District either by themselves or by persons claiming through them in any manner whatsoever.

WP 13889 of 2004 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the first respondent bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997, quash the same and consequently direct the respondents not to occupy or deal with the petitioner's property viz., Agricultural Nanja Land measuring 48.064 cents comprised in Survey No.12/1 in Village No.169 Peerkankaranai Village, Saidapet Taluk, Chengleput District either by themselves or by persons claiming through them in any manner whatsoever.

WP 13890 of 2004 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the first respondent bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997, quash the same and consequently direct the respondents not to occupy or deal with the petitioner's property viz., Agricultural Nanja Land measuring 48.338 cents comprised in Survey No.12/1 in Village No.169 Peerkankaranai Village, Saidapet Taluk, Chengleput District either by themselves or by persons claiming through them in any manner whatsoever.

For Petitioner in all WPs: Mr.P.L.Narayanan

For R-1 in all WPs : Mr.M.Elumalai,
Government Advocate.

For R-2 in WP. 24413 to 24415/04 : Mr.M.Rajasekar

For R2 in WP.13888 to 13890: Mr.S.Prabhu

For R-3 in WPs 24413 to
24415/2004 : Dismissed vide order of
Court dated 21.12.2009

C O M M O N O R D E R

WP No.24413 of 2004 is filed for the issuance of a Writ of Declaration, to declare the proceedings of the first respondent dated 27.10.1997 as illegal and void and further direct the first and second Respondents to pay the writ petitioner compensation of Rs.38,40,584/-.

2. WP No.24414 of 2004 is filed for the issuance of a Writ of Declaration, to declare the proceedings of the first respondent dated 27.10.1997 as illegal and void and further direct the first and second Respondents to pay the writ petitioner compensation of Rs.51,23,622/-.

3. WP No.24415 of 2004 is filed for the issuance of a Writ of Declaration, to declare the proceedings of the first respondent dated 27.10.1997 as illegal and void and further direct the first and second Respondents to pay the writ petitioner compensation of Rs.51,52,830/-.

4. WP No.13888 of 2004 is filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the first respondent bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997, quash the same and consequently direct the respondents not to occupy or deal with the writ petitioner's property viz., Agricultural Nanja Land measuring 48.064 cents comprised in Survey No.12/1 in Village No.169 Peerkankaranai Village, Saidapet Taluk, Chengleput District either by themselves or by persons claiming through them in any manner whatsoever.

5. WP No.13889 of 2004 is filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the first respondent bearing Na.Ka.C.Pa.102/96-D dated 27.10.1997, quash the same and consequently direct the respondents not to occupy or deal with the writ petitioner's property viz., Agricultural Nanja Land measuring 48.064 cents comprised in Survey No.12/1 in Village No.169 Peerkankaranai Village, Saidapet Taluk, Chengleput District either by themselves or by persons claiming through them in any manner whatsoever.

6. WP No.13890 of 2004 is filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the first respondent bearing

Na.Ka.C.Pa.102/96-D dated 27.10.1997, quash the same and consequently direct the respondents not to occupy or deal with the writ petitioner's property viz., Agricultural Nanja Land measuring 48.338 cents comprised in Survey No.12/1 in Village No.169 Peerkankaranai Village, Saidapet Taluk, Chengleput District either by themselves or by persons claiming through them in any manner whatsoever.

7. The writ petitioners are the owners of the Agricultural Nanja Lands from Mr.G.Nataraja Reddiar by way of Sale Deeds. The writ petitioner claims that ever since from the date of purchase of the lands, they are in possession and enjoyment of the said Agricultural Lands and cultivating the same. The writ petitioners were informed by the local people that the Officers from the Office of the second respondent visited the properties belong to the writ petitioners by stating that the lands are taken over by the Government. Thereafter, the writ petitioners made enquiries in the Offices attached to the Local Authorities as well as in the Office of the second respondent, who in turn informed the writ petitioners that the first respondent passed an order declaring the portion of the lands under the Urban Land Ceiling Act, as excess lands.

8. The writ petitioners claim that no notice was served to them. The writ petitioners subsequently came to understand that the first respondent has proceeded on the basis that the owners of the lands were were not residing in the village and their addresses were also not available. However, the first respondent has proceeded against the Predecessor in title, that is, the vendor of the writ petitioners namely, Mr.G.Nataraja Reddiar.

9. The learned counsel for the writ petitioners contends that the acquisition of the lands belong to the writ petitioners under the Land Ceiling Act, without even issuing notice and opportunity to the writ petitioners, is bad in law and the entire proceedings under the Urban Land Ceiling Act, is liable to be scrapped.

10. The lands belong to the writ petitioners were not vacant lands, so as to attract the provisions of the Act. This apart, the Ceiling Act now stands repealed by the Repealing Act (Act 20 of 1999) and all pending proceedings are also to be declared as abated. Even in case of initiation of any action after the repealing of the Land Ceiling Act, the proceedings initiated are liable to be dropped. Thus, the agricultural lands acquired under the Land Ceiling Act, are not only in violation of the provisions of the Act, but contrary to the very object and purpose of the Statute. The learned counsel for the writ petitioners further states that the first respondent had failed to comply with the provisions of Section 7(2) of the Land Ceiling Act. Thus, the mandatory requirements under the provisions of the Land Ceiling Act, had not been complied with

and the notices were served to wrong persons and therefore, the proceedings of the respondents are liable to be scrapped.

11. The learned Government Advocate, appearing on behalf of the first respondent, contended that the respondents had followed the procedures strictly in accordance with the provisions of the Act and there was no violation at all. Thiru Natarajan owned the lands in Survey No.12/1 measuring 5350 sq.meters in Peerkankaranai Village, Tambaram Taluk. Under Section 7(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, notices were issued in SR No.102 of 1996 dated 7.4.1997. The notices were served by affixture. A Draft Statement under Section 9(1) of the Act and notices under Section 9(4) of the Act, were issued on 1.9.1997 and the Assistant Commissioner had inspected the said lands on 1.10.1997 and found that the lands were not cultivated for the past several years and the lands in the surrounding area are urban in nature. The Draft Statement and the notices under Section 9(4) were also served by affixture. As there was no response to the notices issued, the order under Section 9(5) of the Act was passed vide proceedings B/1275/98 dated 27.10.1997, declaring the excess vacant land as 4850 sq. meters after allowing 500 sq. meters towards individual entitlement. Section 9(5) order was served by affixture as the urban land owners addresses were not known.

12. The final statement under Section 10(1) of the Act was issued on 28.4.1998 and was served by affixture. The notification under Section 11(1) of the Act was published in the Tamil Nadu Government Gazette No.31, dated 12.8.1998 in Part VI-Section I vide Notification No.1223/98, dated 28.6.1998. The notification under Section 11(3) of the Act was published in the Tamil Nadu Government Gazette No.43, dated 11.11.1998 in Part VI Sec.1/1836/98 dated 25.9.1998. The notification under Section 11(5) of the Act was issued on 14.12.1998. The possession of the excess vacant land was handed over to the Revenue Department on 9.4.1999. The land was allotted to Tamil Nadu Slum Clearance Board vide G.O.Ms.No.391/Rev./ULC 1(2) Department, dated 17.9.2003. The writ petitioners had applied for the certified copy of the order with sale documents and it was issued on 9.4.2004. Against the said order, the writ petitioners have filed the present writ petitions.

13. It is contended that the writ petitioners had purchased the lands which were already treated as excess and acquired under the Land Ceiling Act. Thus the sale itself is null and void and hit by Section 6 of the Act. The purchase of lands by the writ petitioners were after completion of the entire proceedings under the Land Ceiling Act and the possession was taken over by the Government. Thus, the sale became invalid and the writ petitioners cannot claim that no notice was issued to them.

14. In paragraph-12 of the counter-affidavit filed by the first respondent also states that the notices and orders were served to the original urban land owner Thiru G.Natarajan. As there was no response the lands were acquired. Further, the writ petitioners have purchased the lands in 1997 which were treated as excess and acquired under the provisions of the Act. So the sale was hit by Section 6 of the Act and the same is null and void.

15. The learned counsel, appearing on behalf of the second respondent, states that the possession of the excess vacant lands measuring an extent of 4850 sq. meters, were taken and were handed over to the Revenue Authorities in April 1999. Subsequently, it was allotted to the Tamil Nadu Slum Clearance Board vide G.O.Ms.No.391, Revenue Department, dated 17.9.2003. As the lands in question were found urban vacant lands, action was taken to acquire the excess lands and the same were acquired. As the lands were acquired and handed over to the Revenue Authorities on 9.4.1999. Before repealing of the Principal Act, the Repeal Act 20 of 1999 does not apply to these cases.

16. The learned counsel for the second respondent also states that the proceedings under the Land Ceiling Act had already been completed prior to the Repealing Act. Thus, the subsequent sale and initiation of the writ petitioners to reconvey the lands are impermissible in law and therefore, the writ petitions are liable to be rejected.

17. The learned counsel for the writ petitioners relied on the judgment in the case of K.Munusamy vs. The Principal Commissioner and Commissioner of Land Reforms, Chepauk and two others [2009 (4) LW 589], wherein, in paragraph-5, this Court held as follows:-

"5. As seen from the counter-affidavit filed by the second respondent, notice under Section 9(4) of the Act and the Draft Statement under Section 9(1) of the Act have been served by way of affixure stating that the land owner refused to receive the notice. On the contrary, according to the respondents, the declaration order passed under Section 9(5) of the Act dated 30.4.1997 said to have been served on the petitioner by way of affixure stating that the land owner was not residing in the village and the address was not known. Further, even, the notice under Section 11 (5) of the Act has not been served on the petitioner and no details of such service is given in the affidavit. In so far as the

notice under Section 9(4) and the Draft Statement under Section 9(1) of the Act is concerned, a procedure has been prescribed under Rule 8 as to the mode of service and that apparently has not been followed. Further, the question of affixure does not arise unless and until the notice is issued by way of a Registered Post to the person concerned. In this case, there is no material to show that registered notice was in fact issued and refused by the persons concerned. The stand in the counter-affidavit is contradictory with regard to the place of residence of the petitioner. At once place it is stated that the petitioner refused to receive the notice and the very same authority in paragraph 2 of the counter has stated that the address of the petitioner, the land owner, is not known. Even in the counter-affidavit, it is stated that possession of the excess land was taken on 30.3.99. Except statement on affidavit no material is produced by the respondents to show that actual possession was taken over in the manner prescribed. It is therefore, clear that the possession of the land continues with the petitioner."

18. The judgment of the Hon'ble Division Bench of this Court in the case of V.Somasundaram and two others vs. The Secretary to Government and two others [2007 (2) LW 109], wherein in paragraph-4, this Court held as follows:-

"4. The learned Single Judge dismissed the writ petition on two grounds. Firstly, the appellants purchased the property only after the Act came into force and therefore they cannot have any grievance with reference to the steps taken by the authorities under the Act as the extent of the ceiling should be fixed on commencement of the Act. The second reason stated for dismissing the writ petition was that the learned Government Advocate on instructions submitted that the possession has already been taken pursuant to the proceedings taken against the land owners and therefore at this stage the writ petition cannot be entertained."

19. In the case of Mrs.Subbulakshmi, H.Rajeswari, H.Rekha and H.Vijayalakshmi all represented by their power agent A.K.Mani vs. Assistant Commissioner of Urban Land Tax, Secretary to the Government, Revenue Department and the Tahsildar [WP No.235 of 2003 decided on 23.1.2009], wherein this Court in paragraph 22 of its judgment observed as under:-

"22. Even though it has been contended on behalf of the respondents that the acquired lands had been allotted to the Labour Department, such allotment would not be sufficient to validate the acquisition proceedings. No additional sanctity would be attached to such proceedings by the mere allotment of the lands, said to have been acquired by the respondents, to the other departments of the Government, once it is found that the initial acquisition proceedings had been done contrary to the provisions of the Act. Accordingly, the writ petition stands allowed. No costs."

20. In respect of the judgment of K.Munusamy vs. The Principal Commissioner and Commissioner of Land Reforms Chepauk and two others [2009 (4) LW 589] (cited supra), this Court was of the opinion that none of the procedures envisaged under Act 24 of 1978 has been followed. In the abovesaid case, the notice under Section 9(4) of the Act and the Draft Statement under Section 9(1) of the Act have been served by way of affixture stating that the land owner refused to receive the notice. On the contrary, according to the respondents, the declaration order passed under Section 9(5) of the Act dated 30.4.1997 said to have been served on the petitioner by way of affixture stating that the land owner was not residing in the village and the address was not known.

21. In the judgment decided in the case of K.Munusamy (cited supra), the Court held that the notice under Sections 9 (4) and 9(1) was served by way of affixture and the declaration order passed under Section 9(5) was received by the owner. On account of certain factual contradictions, this Court was inclined to consider the case of Mr.K.Munusamy in WP No.30070 of 2005 (cited supra).

22. However, in the present writ petitions, the facts and circumstances are different and distinct. In fact, the writ petitioners had purchased the lands after completion of the proceedings under the Land Ceiling Act. The entire proceedings were completed before the enactment of the Repealing Act during the year 1999. The writ petitioners claim that they had not even received any notice from the Competent Authorities. Thus, those facts, in the present writ petitions, are dissimilar to that of

the facts enumerated in the case cited by the learned counsel for the writ petitioners and therefore, the judgment (cited supra) is of no avail to the writ petitioners.

23. Even in respect of other judgments also, the factual circumstances were entirely different and the reliance placed by the learned counsel for the writ petitioners deserves no merit consideration.

24. The learned counsel for the second respondent produced the judgment of the Hon'ble Supreme Court of India, dated 1.4.2013 in SLP (Civil) No.34117 of 2010, passed the following orders:-

"The Division Bench of the High Court reserved the order of the learned Single Judge and observed:

"The land owner was very much available during the pendency of the proceedings before the statutory authority. She died only on 11.3.1994. Affidavit filed in support of the writ petition sworn by the respondent contains a statement that the land owner has made an application for a copy of the impugned order dated 7.10.1997. Therefore, it is evident that the land owner was aware of the final order passed by the competent authority dated 7.10.1997 even during her life time. However, for the reasons best known to her, the order remained unchallenged during her lifetime. The first respondent was not in the picture at all during the pendency of the proceedings. When the proceeding has come to an end and the property was taken possession even before the Repeal Act, there was nothing to be agitated thereafter. The land which was taken possession on 24.5.1999 was handed over to the Slum Clearance Board on 17.8.2003. In any case, it was not the case of the land owner that she was not aware of the statutory proceeding. The

original land owner was very much aware of all the proceedings. The respondent has stated in her affidavit that notice was fixed on a stick in the vacant land and formalities completed were not as per the Statute. However, there was no basis for such averments as the respondent was not in the picture. Her averments in the affidavit that her mother made application during her lifetime for obtaining a copy of the order dated 7.10.1997 would clearly show that everything was within the knowledge of the land owner."

We have heard Mr.Dhruv Mehta, learned Senior Counsel appearing for the petitioner and Mr.Gurukrishna Kumar, learned Additional Advocate General, Tamil Nadu and carefully perused the record.

In our view, the learned Single Judge committed serious error by entertaining and allowing the writ petition ignoring the fact that Smt.Savitri Ammal had filed an appeal against order dated 7.10.1997 and the same was pending before the Appellate Authority. In any case, the learned Single Judge should have insisted on withdrawal of the appeal as a condition precedent to the entertaining of the writ petition filed for quashing that order on the ground of violation of rule of natural justice. His failure to do so has resulted in manifest injustice to the respondents.

There is another reason for our disinclination to entertain the special leave petition. It is not in dispute that after taking possession of the surplus land, the Revenue Department of the State Government transferred the same to respondent No.4, which allotted small plots to 198 slum dwellers and they have been allowed to raise construction. None of the allottees was impleaded as party to the writ petition. Therefore, no order adversely affecting their rights or interest could have been passed by the learned Single Judge.

For the reasons stated above, the special leave petition is dismissed."

25. In the case before the Supreme Court, the land already acquired under the Land Ceiling Act, was transferred to the Tamil Nadu Slum Clearance Board, who in turn developed the land by constructing flats to the Slum Dwellers.

26. In the present writ petitions, the learned counsel for the writ petitioners as well as the respondents had not disputed the fact that the lands acquired under the Land Ceiling Act had been handed over to the Tamil Nadu Slum Clearance Board, who in turn, developed the land by constructing 198 tenements and all the flats are occupied by the Slum Dwellers and they are all residing in that place. When the lands were acquired even before the enactment of the Repealing Act and the same were subsequently handed over to the Slum Clearance Board and the Slum Clearance Board also had developed the lands by constructing flats and now 198 Slum Dwellers are residing there, this Court is of an opinion that there is no irregularity found in respect of the acquisition of the lands under the Land Ceiling Act and the acquisition was made prior to the Repealing Act and the grounds raised in the writ petitions deserve no merit consideration.

27. In respect of the grounds raised by the writ petitioners that no notices were served, this Court is of an opinion that the very purchase of the lands by the writ petitioners were after completion of the acquisition proceedings under the Land Ceiling Act. Thus, the sale itself is hit by Section 6 of the Act and therefore, the writ petitioners are not entitled for any relief, as such, sought for in the present writ petitions and accordingly, all the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

Svn

To

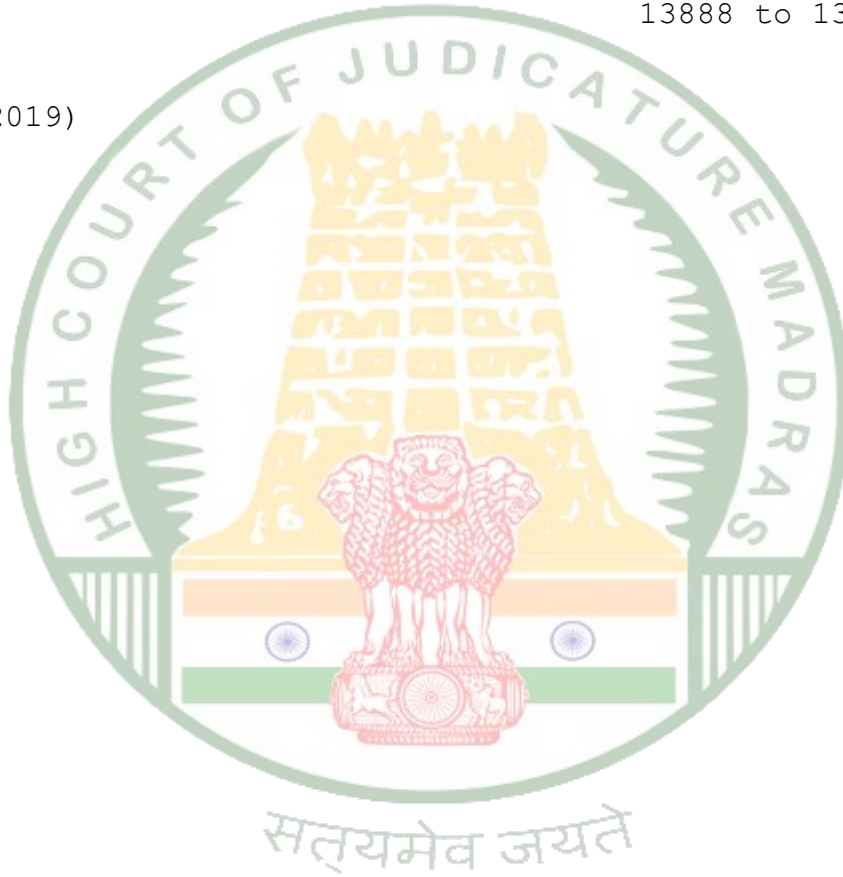
1. The Competent Authority
(Urban Land Ceiling),
Tambaram, Chennai - 600 088.

2.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 600 005.

+1cc to Mr.S.Prabhu, Advocate, S.R.No. 89621
+1cc to Mr.M.Rajasekhar, Advocate, S.R.No. 89223
+5cc to Mr.P.L.Narayanan, Advocate, S.R.No. 89322
+1cc to the Government Pleader, S.R.No. 89995 & 89996

W.P.Nos.24413 to 24415,
13888 to 13890 of 2004

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