

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.30567 of 2004 and
W.V.M.P.No.2166 of 2005 &
W.P.M.P.No.37045 of 2004

J.X.Mary Rajam

... Petitioner

..Vs..

- 1.The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.
- 2.The Principal Commissioner
and commissioner of Land Reforms,
Chepauk, Chennai - 600 005.
- 3.The Assistant Commissioner,
(Land Reforms, Urban Land Tax
and Urban Land Ceiling),
3rd cross, Kajanagar,
Mannarpuram,
Thiruchirappalli -20.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 3rd respondent herein containing the final statement under Sec.10(1) of the Act in S.R.A.No.103/78, dated 11.04.1979 and the order of the 2nd respondent herein, dated 28.11.2003 in RC-J2/2532/99 directing to seek remedy under the TNUL (C&R) Repeal Act, 1979, quash the same.

For Petitioner
For Respondents

: Mr.N.Damodaran
: Mr.C.Thirumaran,
Special Government Pleader.

O R D E R

This writ petition has been filed challenging the notification issued under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, and the order passed by the second respondent rejecting the petitioner's appeal dated 28.11.2003.

2. The case of the petitioner reads as follows:

The petitioner is the owner of the land measuring to an extent of 3.25 acres, in S.F.No.161 / 1, at Kottapattu Village, Tiruchi Taluk, which was classified as "Government Dry". The petitioner has purchased the above property in the year 1967 and 1969. Thereafter, he cultivated the land with dry crops. Earlier, a proceeding has been initiated against the petitioner under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after called as "Act") by the third respondent treating the land as vacant land and without considering the petitioner's objections, the authorities declared the petitioner's land as a Vacant land and in excess of the ceiling limit to the extent of 10822 sq.fts., and the final statement under Section 10(1) of the Act was issued in the year 1979. Thereafter, the petitioner filed an application before the Government seeking restoration of the land. But, there is no response from the respondents. Since the petitioner's request was not considered by the Government positively, he has filed an appeal under Section 33, of the Act, before the second respondent challenging the notification dated 11.04.1979 issued under Section 10(1) of the Act. The second respondent by an order dated 19.02.1999, admit the appeal and granted stay of all further actions, and the appeal was pending. Pending appeal, the Act has been repealed with effect from 16.06.1999, by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. Thereafter, the petitioner filed a writ petition before this Court in W.P.No.5228 of 2001, challenging the notification on the ground that, since the Act has been repealed, the appellate authority has no power to deal with the appeal. However, the above writ petition was dismissed directing the petitioner to approach the appellate authority. Thereafter, the second respondent has passed the impugned order dated 28.11.2003, rejecting the appeal holding that, since the Act has been repealed, the second respondent, Appellate Authority cannot entertain the appeal on merits. In such circumstances, the present writ petition has been filed challenging the notification issued under Section 10(1) of the Act, as well as the order passed by the second respondent. It is also stated by the petitioner that, so far the possession of the land has not been taken by following the proceedings

contemplated under section 11(5) and 11(6) of the Act, and the possession is still with the petitioner. since the possession was not taken from the petitioner, the entire proceedings has been lapsed as per Section 4, of the Repealing Act.

3. The third respondent has filed a counter affidavit stating that challenging the declaration issued under Section 10 (1) of the Act, the petitioner has filed an appeal under Section 33 of the Act, and the appeal came to be disposed by the second respondent in view of the Repealing Act directing the petitioner to seek remedy under the Repealing Act, 1999. It is further stated that after the publication under section 11(3) of the Act, 1979, the notice contemplated under Section 11(5), of the Act was issued and the same was also served on the petitioner. Thereafter, on 22.11.1980, the land declared as excess was taken possession by the Government. Subsequently, the above land was allotted to Tamil Nadu Civil Supplies Corporation, Trichy in G.O.Ms.No.1702 dated 06.09.1988. Since there was no access to the said land, the Tamil Nadu Civil Supplies Corporation returned the land to the Government. Subsequently, the above allotment was also canceled by an order dated 24.08.1992, and so far land was not allotted to any one and till date, and it is kept as vacant. As the entire proceedings has already been completed as stated above, the petitioner is not entitled to any relief under the Repealing Act of 20 of 1999.

4. Heard Mr.N.Damodaran, the learned counsel appearing for the respondents and Mr.C.Thirumaran, the learned Special Government Pleader appearing for the respondents and perused the materials available on records carefully.

5. The present writ petition has been filed challenging the declaration issued under Section 10(1) of the Act, as well as the subsequent order passed by the second respondent Appellate Authority. So far as the declaration is concerned, the contention of the petitioner is that the lands are agricultural land and it cannot be declared as vacant land and hence, very initiation of proceedings itself is vitiated. Notification under Section 10(1) of the Act was issued on 11.04.1979. But, the petitioner filed an appeal only in the year 1999, i.e., after lapse of twenty years and there is no explanation for the long delay of twenty years for filing appeal. Hence, the above contention of the petitioner cannot be considered at this stage. Apart from that there is no material available on record to establish that the lands are agricultural lands.

6. So far as taking possession is concerned, it is the case of the petitioner that, even though, a declaration has been issued in the year 1979, the possession was not taken from the petitioner, the procedure contemplated under 11(5) and 11(6) of

the Act was not followed. In such circumstances, when the actual possession is still with the petitioner, entire proceedings now stands lapsed in view of the Repealing Act, 1999. For that, the respondents filed a counter affidavit stating that, after publication of notice under Section 11(3) of the Act, on 26.09.1979, a notice under Section 11(5) of the Act was issued to the petitioner on 14.10.1980, and the same was served on the petitioner on 25.10.1980. But, the counter affidavit is not clear as to when possession was taken from the petitioner, and after issuance of notice under Section 11(5) of the Act, the land owner failed to come forward to surrender the land, and action has been taken under Section 11(6) of the Act. Except the above averments, there is nothing available in the counter affidavit to show that whether the notice was served on the petitioner as contemplated under Rule 8 of the rules framed under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Apart from that, it is also not clear whether after issuance of notice under Section 11(5) of the Act, any proceedings has been taken under Section 11(6) of the Act. In the above circumstances, I am of the considered view that there is no material available on record to show that the actual possession was taken from the petitioner. Hence, the entire proceedings stands lapsed as per Section 4 of the Repealing Act.

6. Accordingly, this writ petition is allowed and the order passed by the respondents are set aside. No costs. Consequently the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi/mrp

To

- 1.The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.
- 2.The Principal Commissioner
and commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

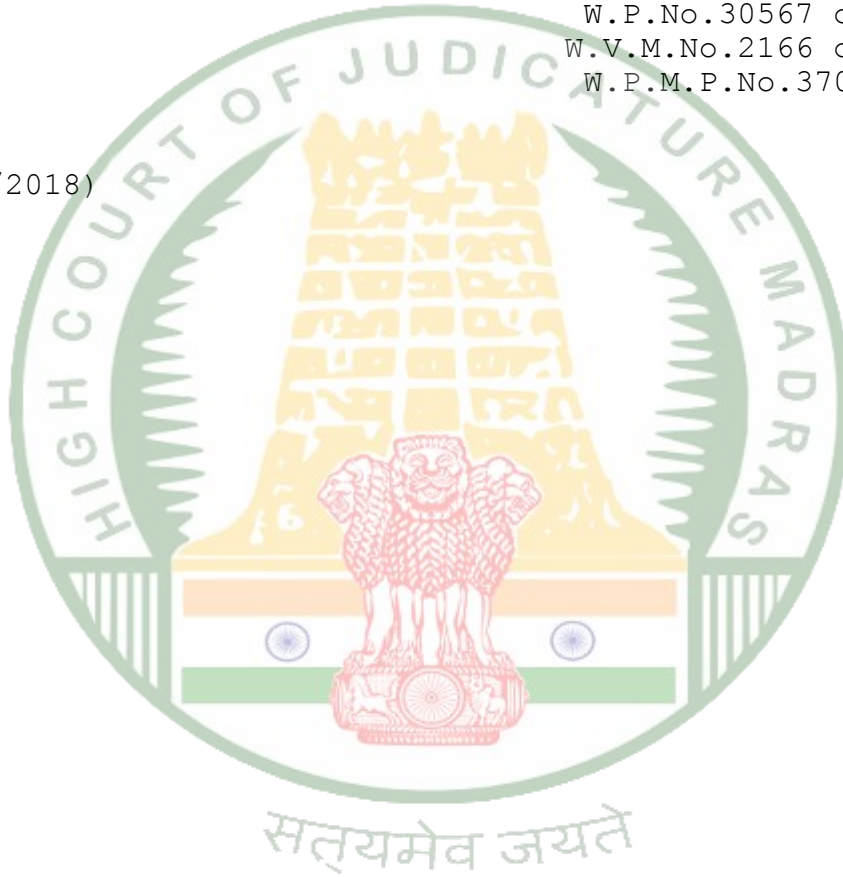
3.The Assistant Commissioner,
(Land Reforms, Urban Land Tax
and Urban Land Ceiling),
3rd cross, Kajanagar,
Mannarpuram,
Thiruchirappalli -20.

+5cc to Mr.N.Damodaran, Advocate, S.R.No.69189

+1cc to the Government Pleader, S.R.No.69148

W.P.No.30567 of 2004 and
W.V.M.No.2166 of 2005 and
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RR(CO)
GSP(05/12/2018)



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