

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.7390/2003 & W.P.M.P.No.9529 of 2003

Harikrishnan Jhaver
Proprietor
Manmohan Trading Company,
Having its Office at
118, Broadway II Floor,
Chennai 600 108

...Petitioner

..Vs..

1. State of Tamil Nadu
Represented by its Secretary
Urban Land Tax Department,
Secretariat, Chennai 600 009.

2. The Assistant Commissioner.
Urban Land Tax, Madhavaram.

3. Santhosh Devi Sewag

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent culminating in the notice bearing R.C.No.3401/92/D dated 25.09.1998 purportedly issued under Section 11(5) of the said Act to the third respondent herein and quash the same and forbear the first and Second respondents their men, agents, servants and all other persons claiming through or under them from initiating or taking any action pursuant to the said notice dated 25.09.1998 bearing R.C.No.3401/92/D including any steps to dispossess the petitioner from the land admeasuring an extent of 8.5 cents in Survey No.85/1, R.S.No.85/1, Manjambakkam Village, Ambattur Taluk.

For petitioner : Mr.S.Raghunathan

For Respondents: Mr.K.Ravikumar,AGP

ORDER

The prayer sought for in this writ petition is for the issuance of a Writ of Certiorari Mandamus to call for the records of the second respondent culminating in the notice bearing R.C.No.3401/92/D dated 25.09.1998 purportedly issued under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act [herein after referred to as Act] to the third respondent herein, to quash the same and to forbear the first and Second respondents from initiating or taking any action, pursuant to the said notice dated 25.09.1998 bearing R.C.No.3401/92/D including any steps to dispossess the petitioner from the land admeasuring an extent of 8.5 cents in Survey No.85/1, R.S.No.85/1, Manjambakkam Village, Ambattur Taluk.

2. The short facts which are required to be noticed for disposal of this Writ Petition are as follows:-

(i) The third respondent herein was the Original owner of the land to an extent of 1 acre 53 cents which was claimed to be punjai land situated in Survey No.85/1, Manjambakkam Village, Ambattur Taluk. The said property was purchased by the third respondent by a valid Sale Deed dated 22.06.1962 registered as Document No.2049 of 1962 in the Office of the Sub Registrar, Sembium, Chennai.

(ii) Out of the said land, the third respondent sold an extent of 1 acre 44.5 cents in favour of one N.Sundarababu on 10.07.1977 as Document No.3255 of 1997 in the Office of the Sub Registrar, Red Hills. The balance extent of 8.5 cents was purchased by the petitioner by a valid registered Sale Deed dated 05.09.2001 in Document No.4516 of 2001 in the Office of the Sub Registrar, Red Hills.

(iii) It is the claim of the petitioner that, adjacent to the said land of 8.5 cents purchased by the third respondent, the petitioner was having large extent of agricultural lands and only in order to have direct access to such agricultural lands, this land was purchased.

(iv) It is the further claim of the petitioner that, the subject land of 8.5 cents also had been the agricultural land as it has been classified as Punjai under the Chitta.

(v) It is the further case of the petitioner that, after having purchased the said land, he applied for patta to the concerned Tahsildar, where, the petitioner came to know that, the subject land, which was a part of the larger extent of land,

belonged to the third respondent, had already been acquired by invoking provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act and therefore, patta cannot be granted to the petitioner, as he ought not to have purchased the said land from the third respondent, which was part of the acquired land under the said Act.

(vi) It is the further case of the petitioner that, only thereafter, the petitioner came to know that there had been proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act (in short "the Act") against the third respondent, who was the vendor of the petitioner and the said proceedings were ended in notification under Section 11(5) of the Act. Thereafter, the petitioner after having collected the documents including the notice dated 25.09.1998 issued by the respondents under Section 11(5) of the Act seeking delivery of possession of the land which was said to be acquired under the said Act, had chosen to file this Writ Petition challenging the said notice issued under Section 11(5) of the Act on 25.09.1998 and that is how the petitioner has filed this Writ Petition with the above said prayer.

3. I have heard Mr.S.Raghunathan, the learned counsel appearing for the petitioner, who has raised two grounds for consideration before this Court.

4. The first ground raised by the learned counsel appearing for the petitioner against the impugned proceedings is that, the entire extent of land (i.e) 1.53 acres was an agricultural land, originally belonged to the third respondent. Though larger extent of lands out of the total extent were sold in the year 1977 to a third party by the third respondent, the remaining land of 8.5 cents had been purchased by the petitioner in the year 2001, which was classified as Punjai Land for cultivation. In fact, the cultivation had been taken place in the entire land including the subject land.

5. Therefore, the learned counsel appearing for the petitioner would submit that, since the land in question is an agricultural land where, as per Chitta, the classification given was Punjai, where agricultural activities had taken place, the said land cannot be subjected to any acquisition proceedings by invoking the provisions of the said Act.

6. The second ground raised by the learned counsel appearing for the petitioner is that, even assuming that the land was not an agricultural land, as no agricultural activities had taken place by filing any proof in the eye of law, even then, the proceedings initiated to acquire the land especially

in the context that after 11(3) Notification, even though notice under Section 11(5) was issued which is the impugned order herein, the petitioner had purchased the subject land on 05.09.2001 and had been in continuous possession and enjoyment of the property and no possession has been taken by the respondents.

7. In this regard, the learned counsel appearing for the petitioner would further submit that, there is no proof on the side of the respondents in the eye of law to state that the delivery of possession has been taken place as claimed by the respondents on 26.05.1999 in the manner known to law. Therefore, the said claim made by the respondents that possession of the land has been taken from the petitioner or from the Predecessor-in-title of the petitioner on 26.05.1999, cannot be accepted, as absolutely there is no supporting documents to that effect.

8. By raising the above grounds, the learned counsel appearing for the petitioner would urge that, the entire proceedings culminated by impugned order seeking delivery of possession from the vendor of the petitioner, is unlawful and therefore, the same has to be quashed.

9. Per contra, the learned Additional Government Pleader appearing for the respondents, by relying on the averments made in the counter affidavit, has submitted that, the entire extent of land viz., 1.53 acres belonged to the third respondent was found to be excess as per the provisions of the said Act. Therefore, notice under Section 7(2) of the Act was issued and thereafter, further proceedings were issued under Sections 9 and 10 and ultimately 11(3) notification was also issued. After 11 (3) notification, the entire land including the land in question has been vested with the Government and therefore, once the land is vested with the Government, it cannot be retrieved by merely raising a dispute that it had been a part of agricultural land.

10. The learned Additional Government Pleader would also submit that, there is absolutely no proof to show that the land in question had been the part of the agricultural land where agricultural activities in the knowledge of the revenue authorities had taken place. When that being the position, the claim made by the petitioner that the subject land also had been the part of the agricultural land where agricultural activities had been undertaken, has to be rejected.

11. The learned Additional Government Pleader would further submit that, after 11(3) notification, as per the procedures contemplated under the Act, notice under Section 11(5) of the Act was issued on 25.09.1998, directing the owner of the land

(i.e) the third respondent to deliver the vacant possession of the land. Subsequently, since the third respondent did not surrender the possession, by force, the possession was taken over on 26.05.1999 and the delivery of possession has also been recorded.

12. In support of this contention, the learned Additional Government Pleader has produced the relevant files before this Court for perusal and this regard, the learned Additional Government Pleader has relied upon the land delivery receipt dated 26.05.1999 whereby the delivery has been taken from the third respondent as the owner of the property and it has been handed over to the respondents. Therefore, the learned Additional Government Pleader would submit that the two grounds raised by the petitioner's side are unsustainable, as there is no proof to show that the said land had been the agricultural land and also there is no proof to show that the possession has been taken by recording the delivery of possession as early as on 26.05.1999 and the subsequent sale claimed to have been made in the year 2001, by which the petitioner claimed to have purchased the subject land, cannot be a valid sale deed in view of Section 6 of the Act.

13. Therefore, the learned Additional Government Pleader would submit that, the acquisition proceedings under the Act ended in taking possession are valid and therefore, the subject land is the land belonged to the respondent/State Government. Therefore, the petitioner cannot seek any remedy including the quashment of the 11(5) notice dated 25.09.1998 as is claimed to be the subsequent purchase in the year 2001. As on date, the land has already been vested with the Government and the possession has been delivered to the Government.

14. I have considered the said rival submissions made by the respective counsels appearing for the parties and also perused the materials placed before this Court including the records produced on the side of the respondents.

15. The issue raised in this Writ Petition is on very narrow compass. As raised by the learned counsel appearing for the petitioner, the first ground to be answered is that, whether the subject land had been the part of the agricultural land originally belonged to the third respondent or not.

16. In order to answer the said question, when this Court has specifically asked as to whether any documents have been filed to show that the subject land had been the part of the agricultural land where agricultural activities had taken place, the learned counsel appearing for the petitioner has relied upon the Chitta given by the Revenue Authorities in respect of the

subject land, where it is mentioned that 0.03.5 hectares and ares had been the subject land under the Coloumn Punjai.

17. He also relied upon the Adangal Extract, stated to have been issued in this regard for the said survey Number.

18. I have perused the said two documents. No doubt in the said Chitta, it has been mentioned as Punjai and by virtue of such document, it cannot be presumed that the said land was the agricultural land where agricultural activities had taken place.

19. If at all, any agricultural activities were taken place, certainly, it would have been included in the Adangal extract of the Village concerned and here, even though the Adangal extract claimed and was relied on by the petitioner and on a perusal, it does not disclose that the said Adangal is related to the subject land for taking any agricultural activities. Therefore, in the absence of any acceptable proof to show that the land in question had been the agricultural land, the said ground raised by the petitioner is liable to be rejected. Accordingly, it is rejected.

20. In so far as the second ground raised by the petitioner with regard to the possession of land is concerned, it is the strong case of the petitioner that even prior to the purchase of the land and subsequent to that, the possession had never been taken by the respondents. It is also the claim of the petitioner that since the purchase of the land in the year 2001 till date, the petitioner has been in continuous possession of the land and to the knowledge of the petitioner, no one has come forward to take delivery of possession of the land. Therefore, by virtue of Repealing Act, especially, under Sections 3 and 4 of Repealing Act of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, the property which was sought to be acquired is not vested with the Government and taking of possession has not taken place. Hence, it shall be returned back to the original owner and therefore, by invoking the said provisions of the Repealing Act, the property shall revert back or vest with the owner of the land and therefore, the subject land can very well be retrieved by the petitioner as the owner of the land as he purchased the same in the year 2001 by a valid registered sale deed. In this regard, it is the claim of the respondents that pursuant to 11(3) Notification, notice under Section 11(5) (impugned order) was issued on 25.09.1998 directing the third respondent to deliver the possession of the land.

21. It is the further case of the petitioner that since the possession had not been given, they have taken the possession forcibly on 26.05.1999.

22. In support of this contention, the learned Additional

Government Pleader by relying upon the land delivery receipt in R.C.No.3401/92/D dated 26.05.1999, has submitted that on the said date i.e. 26.05.1999, the possession of the land was taken place and it has been handed over to the authorities concerned.

23. I have perused the relevant records, which has been heavily relied upon by the learned Additional Government Pleader.

24. The same has been mentioned as R.C.No.3401/92 dated 26.05.1999 under the heading Land Delivery Receipt. Name of the Village, Taluk and District had been mentioned. Four side boundaries of the land had been mentioned. Thereafter, at the bottom, one Official/Employer has signed as possession handed over by and another official / employer has signed as possession taken over by. There is no mention as to who is the authority, who signed in both the places and in both the signatures, the date has been mentioned as 10.01.2003.

25. Assuming that the possession has been taken on 26.05.1999, the possession handed over and possession taken over had been mentioned only as 10.01.2003.

26. In this context, it is to be noted that the Courts have already taken the view in favour of the petitioner and the law is well settled in this regard. If at all, notification under Section 11(3) of the Act is issued enabling the vesting of the property to the Government, the follow-up action of taking delivery of possession of the property, has to take place. In this regard, notice under Section 11(5) has been issued to the owner seeking delivery of possession. If the owner does not come forward to deliver the vacant possession of the land pursuant to notice under Section 11(5), the next course of action that has to be undertaken by the respondent/authorities concerned is to invoke Section 11(6) of the Act under which forcible possession has to be taken with the aid of police. In this regard, necessary proceedings/procedures should have been recorded to state that Section 11(6) has been invoked and the police protection was sought for and forcible possession was taken by the authorities and everything has been recorded in the presence of witnesses.

27. These procedures have not been followed in the case on hand and except the land delivery receipt, no other documents have been available in the records produced before this Court.

28. In this context, this Court wants to rely upon the Division Bench decision of this Court reported in 2015 (5) CTC 823 in the case of A.N.Visalakshi and others-Vs-The Special Commissioner, Urban Land Ceiling and Land Reforms and others,

wherein, it has been held as follows:

"12. The facts of the case on hand is also one such case where the Competent Authority issued Notice under Section 11(5) of the Act, and did not take any action under Section 11(6) and consequently, the Second Respondent cannot be deemed to have handed over possession nor the Revenue Department could claim to have taken over possession. The Land Delivery Receipt can at best be construed as a 'paper delivery', not authorized by law.

13. In this regard, it is beneficial to refer to the recent decision of the Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Hari Ram, 2013 (4) SCC 280, among several issues, the Hon'ble Supreme Court considered the distinction between the vesting of right, title or interest from that of delivery/transfer of peaceful de facto possession. Three types of delivery of possession was considered namely, voluntary surrender, peaceful dispossession and forceful dispossession. On voluntary surrender, it was pointed out that the word 'vesting' takes in every interest of the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act). With regard to peaceful dispossession, the Hon'ble Supreme Court pointed out that if de facto possession has already passed on to the State Government by the two deeming provisions under sub-section 93) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section(5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10, can be voluntary so that the person may get the Compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue Notice in writing under sub-section (5) of 12 Section 10, visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10, contemplates a situation of forceful dispossession. With regard to 'forceful dispossession', it was held that the Act provides for forceful dispossession, but only when a person refuses or fails to comply with an Order under

sub-section (5) of Section 10. It was pointed out that Section 10(6) of the Act speaks of "possession", which says, if any person refuses or fails to comply with the Order made under sub-section (5), the Competent Authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. It was further pointed out that sub-section (6), contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the Competent Authority may take possession by use of force. Thus, it was held that forcible dispossession of the land, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10 and sub-sections (5) & (6), therefore, they take care of both the situations i.e., taking possession by giving Notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10. (Section 11(5) and Section 11(6) of the State Act are in pari materia with Section 10 (5) & (6) of the Central Act)

14. Admittedly in the instant case, an order under Section 11(5) of the State Act was passed and Notice issued to the Landowners. The Landowner by representation requested for keeping the proceedings under abeyance, since he has preferred an Appeal. The proceedings were not deferred, but the Respondent would state that they have taken over possession pursuant to a Land Delivery Receipt. In the preceding paragraphs, we have seen that the Land Delivery Receipt has been executed between the urban Land Ceiling Department and the Revenue Department and the Landowner had not surrendered possession pursuant to the order under Section 11(5) of the State Act. Therefore, if the Respondents claim that they have taken over possession, then they should have resorted to the procedure under section 11(6) of the Act which has not been done and the manner in which the possession is sought to be recorded for taken over, is not in accordance with law and the Government are not deemed to be in possession of the land in question.

15. In the light of the above, we have no

hesitation to hold that the possession said to have been taken over by the Revenue Department, pursuant to the land Delivery Receipt cannot be construed as possession taken in accordance with law the therefore, cannot confer any right on the Department/Government and the Landowners are held to be continued to possession and consequently, the proceedings initiated under the Urban land Ceiling Act stand abated in the light of the coming into force of the Repealing Act, Act 20 of 1999".

29. The said Division Bench Judgment has been upheld by the Honb'le Apex Court and the same has been followed in number of decisions.

30. Considering the above decisions, I had an occasion to consider the similar issue in W.P.32700 of 2003 [Sathiyavathi -vs-The Principal Commissioner and Commissioner of Urban Land Ceiling and another], wherein, I have passed the following order:-

"33. Therefore, the fact remains that, provisions of the Act have not been followed, the procedures contemplated under the Act have not been followed, the procedures set out under the Rule for serving the notice has also not been followed.

34. The claim made by the respondents that they have taken possession has also not been proved. In such circumstances applying the principles laid down in the aforesaid judgments, this Court has no hesitation to hold that the entire proceedings initiated under the provisions of the Act ended in the impugned order and also subsequent events including alleged taken over of the possession, as claimed by the respondents, are completely vitiated, as the said procedure as adopted by the respondents cannot be approved in the eye of law.

35. In the result, the impugned proceedings is quashed. Consequential proceedings including the claim of taking over the land in question from the petitioners, are declared to be invalid.

Therefore, by virtue of the Repealing act, the land shall vest with the owners of the land, who are the petitioners herein and they shall be free to deal with the said land in accordance with law.

36. With these directions, the writ petition is allowed. However there shall be no costs."

31. The issue as to how the delivery of possession has to be taken place in so far as the land acquired under the provisions of the Act, that too, after Section 11(3) Notification, has been very well defined and decided. In the case on hand, the mere production of land delivery receipt dated 26.05.1999 where some two persons have signed as possession handed over or possession taken over on 10.01.2003, no doubt, with that receipt, it cannot be safely concluded that the delivery of possession had not at all taken place in respect of the subject land as claimed by the respondents on 26.05.1999.

32. It is also to be noted that the petitioner has claimed that, even prior to the purchase of the property and subsequent to the purchase of the property, no delivery of possession has been given or taken over and right from the date of purchase, the petitioner had been in continuous possession of the property.

33. All these factors would go to show that, the respondents have not taken delivery of possession of the subject land in the eye of law, especially, under the provisions of Section 11(5) as well as Section 11(6) of the Act.

34. All these aspects have been considered, discussed and decided by this Court in the aforesaid judgment cited in W.P.No.32700 of 2003 .

35. Since the law is well settled in this regard, if we apply the said principle to the facts of the present case, certainly, the irresistible conclusion would be that, the petitioner is entitled to get the benefit of the provisions of the Repealing Act to get back the property, i.e. the subject land, as the acquisition procedure have not been completed by taking delivery of possession of the land, in the eye of law.

36. In the result, the Writ Petition is allowed and the impugned order is quashed. The petitioner shall be at liberty to continue in possession of the land in question and the petitioner shall be entitled to claim patta for the said land. Therefore, if patta is claimed by the petitioner, the same shall

be considered and the patta should be issued to the petitioner, if otherwise, he is entitled to the same. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

srn

To

1. Secretary, State of Tamil Nadu
Urban Land Tax Department,
Secretariat, Chennai 600 009.

2. The Assistant Commissioner.
Urban Land Tax, Madhavaram.

+1 cc to M/s.S.Ragunathan, Advocate, Sr.No. 59390

+1 cc to The Government Pleader, Sr.No. 59765

W.P.No.7390/2003
& W.P.M.P.No.9529 of 2003

SKV(CO)
CSL/26.04.2019