

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 16.11.2017

JUDGMENT PRONOUNCED ON : 10.01.2018

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.2485 of 2013

and MP.No.1 of 2013

1.State of Tamil Nadu  
rep.by its Secretary to Government,  
Revenue Department, Fort St.George, Chennai-9.

2.The Competent Authority,  
Urban Land Ceiling  
Urban Land Commissioner,  
Kanneeyar Street,  
Adambakkam, Chennai-88.

3.The Tahsildar,  
Tambaram Taluk,  
Chennai.

.. Appellants

Vs.

V.R.Ramanathan

.. Respondent

PRAYER : Appeals are filed under clause 15 of Letters patent, to set aside the order dated 14.03.2012 made in WP.No.24167 of 2009 : Writ petition filed under article 226 of the Constitution of India to issue a writ of Declaration declaring the proceedings in Rc. 7009/85B on the file of the Assistant Commissioner (ULC) Competent Authority/Respondent 2 dt 30.6.89 or any other proceedings initiated in terms of the provisions of Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 in respect of the land comprised in Survey No. 341/51B of Jemeen Pallavaram village Tambaram taluk as null and void since the same is abated in terms of provisions contained in Tamilnadu Urban Land Ceiling and Regulation) Repeal Act 1999 and consequently direct the respondents to make necessary changes in the name of the petitioner in all the revenue records and to

issue patta in favour of the petitioner in respect of the samd land.

For appellants : Mrs.A.Srijayanthi, Spl.GP.  
For respondent : Mr.V.Ramesh,  
for Mr.T.Thiagarajan.

#### JUDGMENT

P. VELMURUGAN, J.

This appeal is filed against the order dated 14.03.2012 passed by the learned single judge in WP.No.24167 of 2009.

2. The factual matrix of the case is as follows :-

Originally, the land in S.No.341/6 corresponding to New S.No.341/51 was purchased by the mother of the respondent by name VR.Annapoorani Achi vide registered sale deed dated 23.08.1958. A stone crushing unit was set up in a portion of the said land under the name and style of Sriram & Co. Necessary building and other infrastructure for running the blue metal business and crushing unit have been put up. The entire extent of land was surrounded by pucca compound wall. At present only an extent of 2.19 acres is available out of 3.00 acres as the remaining 0.81 cents of land had been left out for access to the public.

3. The case of the appellant is that the proceedings under the Tamil Nadu Urban land (Ceiling and Regulation) Act, 1978 [herein after referred to as "Principal Act"] was initiated against the mother of the respondent by following the procedure of serving notices under Section 9(5) and 11(5) of the Principal Act. The possession of the land has already been taken over by the authorities vide the land delivery receipt dated 19 December 1997 and as such, the respondent cannot state that the possession is still with him. According to the appellants, the respondent is not entitled to seek the benefit under the Repeal Act.

4. The case of the respondent is that the land was purchased by his mother vide registered sale deed dated 23.08.1958 and a stone crushing unit was set up in a portion of the land. The mother of the respondent executed a settlement deed dated 26.05.2005 vide registered Doc.No.2454/2005 on the file of the Sub Registrar, Pallavaram, in his favour. The respondent is in continuous possession and effective enjoyment of the entire extent of land in S.No.341/51, till date. Recently, the respondent came to know that the land in

S.No.341/51 was sub divided into 341/51A and 341/51B and on verification, he was made known that Urban land ceiling proceedings were initiated against his mother. Thereafter, the respondent has made a representation before the second appellant with a request to furnish the details of proceedings initiated in terms of the provisions contained under the Act and a further request to release the land from such proceedings in view of the Repeal Act. The respondent is in possession and enjoyment of the excess land measuring to an extent of 1.43acres. The respondent has also enclosed all the relevant documents viz., settlement deed, encumbrance certificate, SLR, patta etc along with the representation dated 29.9.2009. However, the Competent Authority has not replied. In the meantime, third parties have attempted to trespass into the property which was duly thwarted by the respondent. The third parties fraudulently created bogus documents in respect of the land and filed a suit in OS.No.126 of 2009 on the file of the District Munsif, Alandur for declaration and permanent injunction and the same is pending. The respondent also applied for patta for the entire extent comprised in S.No.341/51 which was subdivided as 341/51A in the name of his mother and S.No.341/51B was classified as Government land. The respondent was informed that he will not be given patta in respect of the land in S.No.341/51B, since, the same was classified as a Government land. The explanation offered by the respondent contending that the impugned proceedings initiated under the provisions of the Principal Act were abated by operation of law in terms of Section 4 of the Repeal Act, inasmuch as the possession of the alleged excess land has not been taken over from the respondent was of no avail.

5. The learned single judge after hearing the arguments of both sides, allowed the writ petition filed by the respondent.

6. Aggrieved against the order passed by the learned single judge in WP.No.24167 of 2013 dated 14.03.2012, the appellants have preferred the present writ appeal.

7. The learned Special Government Pleader representing the appellants would submit that the impugned order was challenged after twenty years. The possession of the land was taken over on 19.12.1997 by the revenue authorities after declaring the excess land and entries were also made in the village accounts. Hence, the repeal Act is not applicable to the facts of the present case. The acquisition proceedings have attained finality and this case does not fall under Section 4 of the Repeal Act. The request for exemption was rejected by the Government on 07.11.1986 and subsequent appeals were also rejected by the Principal Commissioner and Commissioner of land reforms. Similarly, the revision petition before the Special Appellate Tribunal was rejected on 28.08.2000. The notice under Section 11

(5) of the Principal Act directing the urban land owner to hand over possession of the excess vacant land was issued on 28.07.1995 and it was served on V.R.Annapooraniammal by registered post on 15.09.1995. The entire case of the respondent hits on the ground of delay and latches. Hence, the Special Government Pleader prays for allowing the writ appeal.

8. The learned counsel for the respondent would submit that the land was purchased by the mother of the respondent vide registered sale deed dated 23.08.1958 and a stone crushing unit was set up in a portion of the land. A settlement deed dated 26.05.2005 vide Doc.No.2454/2005 on the file of the Sub Registrar, Pallavaram was executed in favour of the respondent by his mother. The respondent is in continuous possession and effective enjoyment of the entire extent of land. Recently, the respondent came to know that the land in S.No.341/51 was subdivided into 341/51A and 341/51B and on verification, he was made known that the subject land was acquired under Urban land ceiling proceedings. Thereafter, the respondent has made a representation to release the land from such proceedings in view of the Repeal Act. The respondent was in possession and enjoyment of the excess land measuring to an extent of 1.43 acres, as on the date of Repeal Act and as such, the entire proceedings would abate and therefore, the writ court was correct in its decision.

9. The learned counsel for the respondent in support of his contentions relied on the judgment of the Hon'ble Supreme Court reported in the case of State of Uttar Pradesh v. Hariram reported in (2013) 4 SCC 280.

10. The Special Government Pleader has produced four volumes of original files pertaining to the acquisition proceedings for our perusal. We have also carefully perused the original records.

11. It is not in dispute that the land originally belonged to Mrs.Annapoorani Veerappan, she having purchased the land vide sale deed dated 23.08.1958. After the Principal Act came into force in the year 1977, she filed Form-I statement under Section 7(1) of the Act on 13.09.1978 and made a claim for exemption under Section 21(1) of the Act on 01.06.1983. She claimed that the subject land is being used for storing boulders for crushing and shed for crushers and for the purposes connected with mining and stone crushing etc. The order under Section 9(5) of the Principal Act was passed on 30.06.1989, thereby rejecting the claim of the landowner. The land was inspected on 14.03.1988, by the competent authority and found no efforts for reviving the crusher unit. During inspection there was no cattle shed on the land and on further inspection on 07.06.1989 also there was no improvement in the land and no new structures or arrangements

for revival of industry have come up. The copy of the order under Section 9(5) of the Principal Act was communicated to the land owner Mrs.Annapoorani on 11.07.1989. The same is found in the original records at Volume II - Page 359. Thereafter, Annapooraniammal filed a petition for reconsideration, and the same was also rejected by the Government on 14.09.1991, stating that the production in the land was stopped in the year 1975 and electricity connection was also disconnected during 1983 and no further steps have been initiated to develop the land into an industrial unit, and there were no documents enclosed to support the contention. Thereafter, Section 10(1) final statement was also properly prepared by the competent authority and the same was also served on Mrs.Annapooraniammal on 29.10.1989.

12. It is found that one Mr.Veerappan/husband of Mrs.Annapooraniammal submitted a statement on behalf his wife on 09.03.1991 stating that the land was purchased for putting up a stone crushing unit and sought exemption under the Principal Act. During inspection, the officer found that the land was kept vacant without any infrastructure for stone crushing unit. The building situated in the land was also found to be in a dilapidated condition. The land was never used for a stone crushing unit or for agricultural purpose. Therefore, the Authority opined that the subject land does not fall under the exemption clause of the Principal Act. On each and every occasion, the land owner was taking different stand stating that they are going to restructure the crushing unit after getting approval from the department. Even after the lapse of ten years also the land owner was not able to run the crushing unit in the subject land. At one point of time, the landowner has filed a suit for eviction against third parties as if they had encroached upon the said land and got an eviction decree. This shows that the land owner was not in possession of the entire property. They have stated that they are doing agricultural activities and they want to continue to use the land for agricultural purposes and sought exemption under the Principal Act. Though, several opportunities were given to the land owner, as stated earlier, the land owner has not started any kind of activity or a crushing unit nor used the land for agricultural purposes. As admitted by the land owner, some of the third parties were in possession of the land.

13. Further, on a perusal of the entire records, it reveals that the land owner/Mrs.Annapooraniammal and her husband/Mr.Veerappan have continuously and actively participated in all the proceedings and made several representation's for exemption in each and every stage. The representations were carefully considered by the competent authority by dealing with the claim of the land owner and ultimately rejected the claim holding that the land would cover under the provisions of the Urban Land Ceiling Act. Notice under Section 11(5) of the Principal Act

dated 28.07.1995, for Delivery of possession of excess vacant land was served on the land owner on 15.09.1995. The Notification under Section 11(3) of the Act dated 16.01.1995 was published in the Tamil Nadu Government Gazette on 22.3.1995. Aggrieved against the order passed under Section 11(5) of the Principal Act, the land owner preferred an appeal under Section 33 of the Act, before the Commissioner of Land reforms. After considering the factual aspects and the report submitted by the circle officer, the appeal was rejected by the Commissioner of Land reforms on 07.09.1998. Thereafter, the land owner preferred a Special Revision petition before the Special Appellate Tribunal in SRP.No.30 of 1999. After considering the factual findings recorded by the authorities and the law on the subject, the Chairman agreed with the findings of the authority and dismissed the special revision petition on 28.08.2000.

14. The land owner has not made any serious objection for taking over possession of the land and as such, there was no need to take forcible possession under Section 11(6) of the Act. Further, the suit filed by the land owner against a third party for eviction itself would prove that neither the respondent or the original owner were in possession at the relevant point of time. The respondent after exhausting all the remedies under the Act, approached this Court challenging the order dated 30.06.1989 passed under Section 9(5) of the Act as null and void, in terms of the provisions contained under the Repeal Act. The Special Revision petition filed before the Special Appellate Tribunal in SRP.No.30 of 1999 was dismissed on 28.08.2000. The said order was not challenged before any Court of law and the same has become final. The order passed under Section 9(5) of the Act dated 30.06.1989 was challenged before this Court after twenty years. The said order was not challenged by the original owner under Section 33 of the Principal Act. The repeal Act came into force in 1999 and after 10years the order was subjected to challenge.

15. Even according to the land owner, they are not in possession of the entire subject property. It is seen from the records that a portion of the land was encroached by third parties. After actively participating in all the proceedings and after exhausting all the remedies under the Act, the land owner executed a settlement deed dated 26.05.2005 vide Doc.No.2454 of 2005 on the file of the Sub Registrar, Pallavaram in favour of the respondent. Taking advantage of the Repeal Act, and in the capacity as a legal heir of the land owner, the respondent cannot challenge the proceedings under Section 9(5) of the Act dated 30.06.1989. The land owner had not challenged the proceedings immediately after passing the orders. The land owner ought to have challenged the proceedings before the Court of law without delay. The settlement deed executed by Mrs.Annapooraniammal in favour of the respondent is null and

void and not binding on the authorities, as it was executed only after taking over possession of the excess land under the Act, by the Department and after the Repeal Act came into force. The subject land is vested in the Government. The writ petition filed by the respondent is hit on the ground of enormous delay and laches.

16. The decision referred to by the learned counsel for the respondent relates to land acquisition proceeding and the same is not applicable to the facts of the present case on hand.

17. It is useful to refer the judgment of the Hon'ble Supreme Court in State of Rajasthan vs. D.R.Laxmi reported in 1996(6) SCC 445, wherein it was held that even a void proceedings need not be set at naught if the party has not approached the Court within a reasonable time, as judicial review is not permissible at a belated stage.

9. Recently, another Bench of this Court in Municipal Corpn. of Greater Bombay v. Industrial Development & Investment Co. (P) Ltd. [ CA No. 286 of 1989, decided on 6-9-1996 (see infra)] re-examined the entire case law and had held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. ...

10. The order or action, if ultra vires

the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for; the award of the Court under Section 26 enhancing the compensation was also accepted. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4(1) and declaration under Section 6.

18. In view of the above discussion, we are of the considered opinion that the order passed by the learned single judge warrants interference.

19. In the result, the writ appeal is allowed by setting aside the order passed by the learned single judge in WP.No.24167 of 2009 dated 14.03.2012. No costs. Consequently, connected miscellaneous petition is closed.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1.The Secretary to Government,  
Revenue Department,  
Fort St.George, Chennai-9.

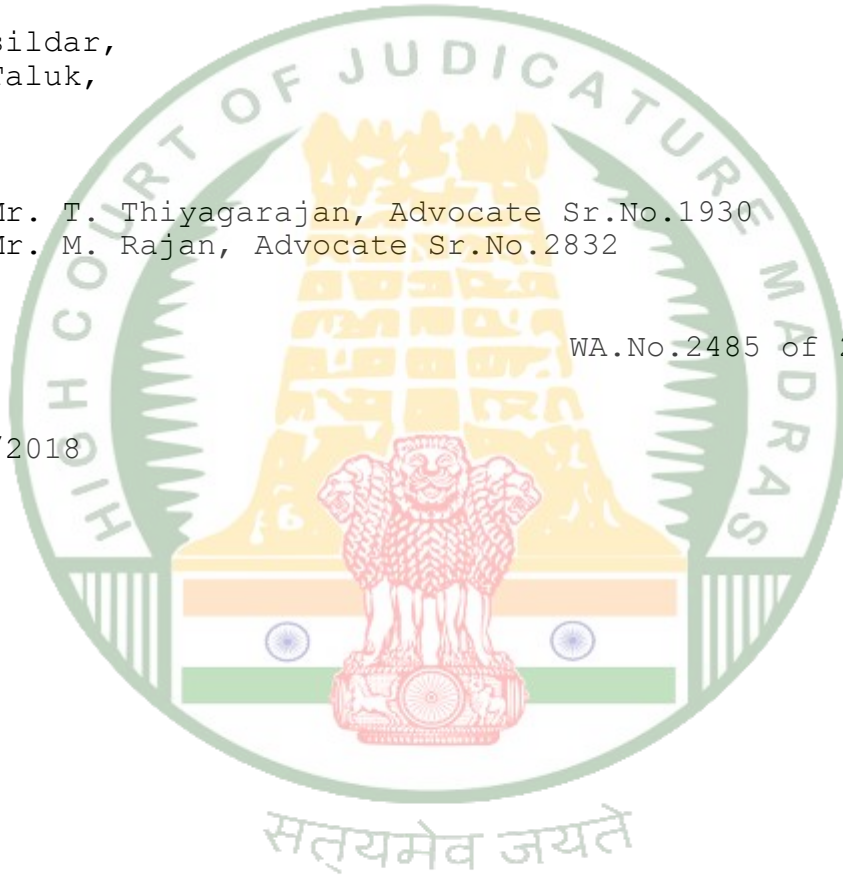
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3.The Tahsildar,  
Tambaram Taluk,  
Chennai.

+1 cc to Mr. T. Thiyagarajan, Advocate Sr.No.1930  
+1 cc to Mr. M. Rajan, Advocate Sr.No.2832

WA.No.2485 of 2013

MK: 03/02/2018



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