

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 25.09.2018

Order pronounced on : 31.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.43654 of 2016

and

W.M.P. 37473 & 37474 of 2016

R.Devaraj

... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Principal Secretary
to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The District Collector,
Collectorate, Coimbatore.
3. The Principal Commissioner and
Commissioner of Land Reforms,
Commissionerate of Urban Land Ceiling
and Urban Land Tax,
Chepauk, Chennai-600 005.
4. The Assistant Commissioner of
Urban Land Tax,
District Collectorate Complex,
State Bank Road,
Coimbatore.
5. The Special Deputy Tahsildar,
O/o. Assistant Commissioner
(Urban Land Tax),
District Collectorate Complex,
State Bank Road,
Coimbatore.
6. The Tahsildar,
Coimbatore North,
O/o. The Tahsildar,
Coimbatore.
7. The Revenue Inspector,
Saranampatti,
Coimbatore.

8. The Sub-Registrar,
Ganapathy,
Maniyakaranpalayam Road,
Ganapathy, Coimbatore-641 006.

9. N.Kandasamy

10. R.Nataraj

11. D.Thirumalaisamy ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the respondents pertaining to notice in Na.Ka.No.6904/94 B2, dated 19.04.1996, the Notification in Ref.No.6904/94 B2 under Sec.11(1) of the Tamil Nadu Urban Land Ceiling Act, 1978 dated 14.10.1998 published vide Tamil Nadu Government Gazette dated 14.10.1998 and consequent notification under Sec.11(3) in Ref.No.6904/94 B2 on the file of 1st respondent and the consequent notice dated 15.04.1999 under Sec.11(5) and the possession certificate dated 18.05.1999 on the file of the respondents 5 and 7 and quash the same and consequently direct the 8th respondent to register deeds presented by the petitioner for conveyance of the property in S.F.No.191/2, in Vilankurichi Village, Gandhipuram Sub-Registration District, Coimbatore Registration District in accordance with law.

For Petitioner : Mr.Richardson Wilson
For Respondents : Mr.C.Thirumaran,
Special Government Pleader
for R-1 to R-8

O R D E R

This Writ Petition has been filed challenging the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter called as "Act") against the petitioner.

2. The case of the petitioner in brief is as follows :-

The petitioner has purchased a land in S.F. No.191/2, Vilankurichi Village, Gandhipuram Sub-Registration District, Coimbatore Registration District to an extent of 2.97 acres by means of registered sale deed dated 03.02.1974. Apart from that, the petitioner was assigned with certain extent of property adjacent to the above property, and he owned a total extent of 3.26 acres in the said survey number, and patta was also issued in his favour for the entire extent, chitta and adangal also stands in his name. Subsequently, in the year 1992 the petitioner has sold an extent of 52 cents in favour of 9th respondent herein by means of a registered sale deed dated 27.10.1992, another extent of 53 cents in favour of 10th

respondent herein on the very same day, and another extent of 52 cents in favour of 11th respondent by means of registered sale deeds on the above said date. Thereafter, the respondents 9 to 11 have executed a general power of attorney in favour of the petitioner to lay out the above lands and to sell the same. Subsequently, the petitioner has sold another extent of 13 cents to third parties, and the remaining extent of 1.57 acres is in possession and enjoyment of the petitioner. Later on, the petitioner came to know that a proceedings has been initiated under the Act against the above land and a notice under Sec. 7(2) of the Act has been issued in the name of N.Kandasamy, the 9th respondent herein for the entire extent of 3.26 acres on 30.01.1995. Thereafter, a notice under Sec.9(1) of the Act was issued on 21.12.1995 and a notice under Sec.9 (4) of the Act was also served on the 9th respondent herein on 10.02.1996. Since the 9th respondent has not responded to the notice, an order under Sec.9(5) of the Act was passed on 19.04.1996. Finally, a declaration under Sec.10(1) of the Act was issued on 23.03.1996 and another declaration under Sec.11 (1) of the Act was issued on 31.08.1998. Even in the above said declaration, an extent of 2.89 acres was shown as belonging to N.Kandasamy, which actually belongs to the petitioner. The petitioner also came to know that a possession certificate was issued under Sec.11(5) of the Act on 18.05.1999, wherein it has been mentioned that the 5th respondent has handed over the possession to the 7th respondent. Even in the possession certificate, only the name of 9th respondent alone was found place as the owner.

3. Now, the grievance of the petitioner is that the entire proceedings has been carried out in the name of 9th respondent, who is the owner to an extent of 52 cents and no notice was served on him, even the possession notice was also not served on the petitioner. Since the possession was not taken from the petitioner, the entire proceedings is lapsed under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter called as "Repeal Act"). In the said circumstances, the present Writ Petition has been filed challenging the above proceedings.

4. The respondents 1 to 5 filed counter affidavit inter alia stating that, a proceedings under the Act has been initiated in respect of the land in Survey No.191/12E of Vilankurichi Village owned by N.Kandasamy, R.Nataraj and T.Thirumalaisamy measuring to an extent of 3.26 acres. Since the landowners failed to file reply under Sec.7(1) of the Act, a notice under Sec.7(2) of the Act was issued to N.Kandasamy on behalf of other two owners requesting them to furnish a statement along with family members details. Since no objection was received within the stipulated period, a draft statement under Sec.9(4) of the Act was issued to Kandasamy, who has converted the urban land and lay out it into 'house sites'. Neither the landowner nor representative has filed any objection. Hence, an order under Sec.9(5) of the Act was

passed for acquisition of excess vacant land to an extent of 11774 sq. meters, out of 13,274 sq. meters and that order was served on one Vijayalakshmi, wife of the landowner. Thereafter, a final statement under Sec.10(1) of the Act was issued on 23.06.1996, and the same was sent through registered post to the landowner Kandasamy on 03.08.1996. A notification under Sec.11(1) of the Act was issued on 31.08.1998 and it was also published in Government Gazette on 13.10.1998. Thereafter, a notice under Sec.11(3) of the Act was issued on 24.11.1998 and published in the Government Gazette on 23.12.1998 vesting the land with the Government with effect from 01.01.1999 free from all encumbrances. Then a notice under Sec.11(5) of the Act was issued on 31.01.1999 to surrender or deliver the possession of excess vacant land and the same was served on Janaki, mother of landowner on 15.04.1999. Thereafter, necessary changes were made in the revenue records. Since the original landowner did not come forward to surrender and hand over the excess land as instructed by the 2nd respondent, the possession of the said land was taken over by the 7th respondent viz., the revenue inspector Saravanampatti village on 18.05.1999 and the compensation amount of Rs.2925/- was fixed for the acquired excess vacant land.

5. The learned counsel appearing for the petitioner would submit that originally, the petitioner owned an extent of 3.26 acres in the above said survey number, and a patta was also issued in his name, Chitta and Adangal also stands in the name of the petitioner. Later on, he has sold an extent of 1.57 acres in favour of respondents 9 to 11 herein on 27.10.1992, and the remaining extent of 1.51 acres is still with the petitioner and he is in possession and enjoyment of the same. The learned counsel also relied upon the registered sale deeds, in which the petitioner has purchased the land to an extent of 2.97 acres on 03.02.1974 from one Bagammal and also the transfer made in favour of respondents 9 to 11.

6. Apart from that, the learned counsel also referred the patta issued in the name of the petitioner in respect of 3.26 acres and also the chitta and adangal, which stands in the name of the petitioner. It is the contention of the learned counsel for the petitioner that an extent of 1.51 acres still stands in the name of the petitioner, but, the entire proceedings has been initiated in the name of 9th respondent, who is the owner to an extent of 52 cents only. Even in the counter affidavit filed by the respondents, they did not deny the averments made by the petitioner in the affidavit. The learned counsel further contended that the actual possession of the land was not taken by the respondent as contemplated under Sec.11(6) of the Act and the petitioner continuously is in possession and enjoyment of the land, and as per Sec.4 of the Repeal Act, the entire proceedings stand abated. The learned counsel also relied upon the judgment of this court reported in 2012 (4) L.W. 289, in the matter of The Government

of Tamil Nadu, represented by the Commissioner and Secretary to Government, Revenue Department, Chennai and another Vs. M/s.Mecca Prime Tannery, rep. by its Managing Director and another judgment of this court in W.P.No.2662 of 2005 dated 10.03.2016.

7. The learned counsel appearing for the respondent has contended that the petitioner and the respondents 9 to 11 are closely related and the petitioner is fully aware of the proceedings initiated under the Act, despite the same, he did not come forward to raise his objections. Since the lands belong to the 9th respondent, a notice has been issued to him, even after receipt of notice, he did not come forward to raise his objections, hence, a declaration was issued. Thereafter, a notice under Sec.11(3) of the Act was issued, which was also gazetted on 23.12.1998, the entire land vest with the Government with effect from 01.01.1999. Thereafter, a notice under Sec.11(5) of the Act was issued to the landowner to deliver possession of the excess vacant land, which was served on the mother of the landowner and since the landowner did not come forward to hand over the possession, the possession of the vacant land was taken over by the 9th respondent on 18.05.1999 after fixing the compensation amount for the excess land. As the possession has been taken over from the landowner long ago, now, the petitioner cannot challenge the same after long lapse of time.

8. I have considered the rival submissions and perused the materials available on record.

9. The primordial contention of the petitioner is that he was the owner of the property to an extent of 3.26 acres, which was purchased by him in the year 1974, and after transferring an extent of 1.57 acres in favour of respondents 9 to 11, now, he is in possession and enjoyment of 1.51 acres, necessary mutation was also carried out in the revenue records and patta, chitta and adangal also stand in the name of the petitioner. Whereas the 9th respondent, who is owner of the vacant land only to an extent of 52 cents, which was acquired by him in the year 1992, now for the entire extent of 3.67 acres, the proceedings has been initiated in his name. To substantiate his contention, the petitioner has produced the sale deed dated 03.02.1974, and also the patta, chitta and adangal. That part, the petitioner has also produced the sale deeds executed in favour of the respondents 9 to 11 on 27.10.1992 respectively, transferring an extent of 52 cents in favour of 9th respondent out of total extent of 3.26 acres.

10. Admittedly, the proceedings has been initiated against respondents 9 to 11 for the entire extent of 3.26 acres, and the notices have been issued only in the name of 9th respondent, and no notice was issued to the petitioner. The respondents in their counter affidavit did not dispute all

those facts, and the counter affidavit merely says that one Kandasamy, Nataraj and Thirumalaisamy alone are owners of the property and notice has been issued in the name of Kandasamy, who is 9th respondent herein on behalf of two others. The records were produced by the respondent, on perusal of entire records, it is found that all the notices have been issued only in the name of 9th respondent Kandasamy for the entire extent of 3.26 acres. Even though the revenue records were stands in the name of the petitioner, no notice was issued to him.

11. Considering the materials available on record, I am of the considered view that the petitioner has established that he is the owner of the land to an extent of 1.51 acres on the date of issuance of notice under Sec.7(2) of the Act, but, no notice was issued to him. The entire proceedings has been initiated without any notice to the petitioner, on that ground, the impugned notifications are liable to be set aside, so far as an extent of 1.51 acres of land owned by the petitioner.

12. That apart, so far as taking possession of the land is concerned, from the records, it could be seen that a notice under Sec.11(3) of the Act has been issued only to the 9th respondent, which was received by one Janaki, mother of 9th respondent. Thereafter, the possession was said to have taken on 21.05.1999. While taking possession also, no notice was issued to the petitioner and the respondents also not followed the procedures contemplated under Sec.11(5) and 11(6) of the Act.

13. A Division Bench of this Court in a case reported in 2012 (4) L.W.289 (supra) has considered mode of taking possession under the Act and held as follows :-

"32. Section 11(3) of the Act very clearly provides that after the notification is issued under Sec.11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Sec.11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Sec.11(5) and Sec.11(6) of the Act. Sec.11(5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as

contemplated under Sec.11(6) of the Act.

33. The phrases shall be deemed to have been acquired and shall be deemed to have been vested absolutely in the State Government occurring in Sec.11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and interest is vested in the State Government by notification under Sec.11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

34. There are cases where after notice under Sec.11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the landowner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the landowner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

35. However, there are cases where although the competent authority issued the notice under Sec.11(5) of the act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Sec.11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands."

14. In the instant case also, the authorities did not follow the procedures as contemplated under Sec.11(6) of the Act and only a paper delivery was taken and it does not amount to actual taking over possession of the land. In the said circumstances, I am of the view that the entire proceedings stands abated under Sec.4 of the Repealing Act, 1999.

15. In the result, the Writ Petition stands partly allowed and the notification issued by the respondents is set aside in respect of the petitioner's land to an extent of 1.51 acres in S.F.No.191/2, Vilankurichi Village, Gandhipuram Sub-Registration District, Coimbatore Registration District. No

costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Rpp

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The District Collector,
Collectorate, Coimbatore.
3. The Principal Commissioner and
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7. The Revenue Inspector,
Saranampatti, Coimbatore.
8. The Sub-Registrar,
Ganapathy, Maniyakaranpalayam Road,
Ganapathy, Coimbatore-641 006.

+3ccs to Mr.Richardson Wilson, Advocate S.R.Nos.75586 & 74594.
+1cc to the Government Pleader, S.R.No.75258

KR/15/11/18

W.P.43654 of 2016

and

W.M.P.37473 & 37474 of 2016