

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	12/12/2017
PRONOUNCED ON	06/02/2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1104 of 2016 &
C.M.P.No.14327 of 2016

- 1.The Special Commissioner and
Commissioner of Land reforms,
Chepauk, Chennai - 5.
- 2.The Assistant Commissioner /
Competent Authority (Urban Land Ceiling),
Sannadhi Street, Alandur, Chennai - 88.
- 3.The special Deputy Tahsildar,
Tambaram, Chennai - 45. ... Appellants

Vs.

Nagapillai ... Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 17.09.2012 made in W.P.No.15924 of 2007, on the file of this Court.

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records of the forth respondents, especially the order of the 2nd respondent dt 18.4.1997 under section 9(5) vide Ref.Rc.469/96A and a final statement under section 10(1) dt 23.7.1997 and quash the same and directing the respondents 1 and 2 treat the proceedings relating to acquisition of land in survey No.161 measuring an extent of 6250 sq.mts. of perungudi village, as abated, so as to enable the 3rd respondent in incorporate the name of the petitioner as owner in respect of available extent of about 5 1/2 grounds in survey No.161 of Perungudi village, Tambaram Taluk, Kancheepuram district in the revenue records.

For Appellants : Mrs.A.Srijayanthi
Special Government Pleader

For Respondent : Mr.V.Ramesh
For Mr.T.Thiyagarajan

J U D G M E N T

P.VELMURUGAN, J.

The challenge in this writ appeal is to the order dated 17.09.2012 in W.P.No.15924 of 2007, quashing the proceedings under the Urban Ceiling Act on the ground that possession was not taken till the Repeal Act came into force.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the respondent for issuance of a Writ of Certiorari Mandamus calling for the records of the fourth respondents, especially the order of the second respondent dated 18.04.1997 under Section 9(5) vide Ref.Rc.469/96A and the final statement under Section 10(1) dated 23/07/1997 and quash the same and direct the appellants 1 and 2 and treat the proceedings relating to the acquisition of land in Survey No.161 measuring an extent of 6250 sq.mts. of Perungudi Village, as abated, so as to enable the third appellant to incorporate his name as owner in relation to the available extent of about 5 1/2 grounds in Survey No.161 of Perungudi Village, Tambaram Taluk, Kancheepuram District, in the revenue records.

3. Facts culled out in brief for the disposal of the writ appeal are as follows:-

The subject land to the extent of 1.67 acres in Survey No.161, Perungudi village, Sholinganallur Taluk, was purchased by the respondent on 09.04.1975. It was an agricultural land, as seen from the Adangal extract. Notice under Section 7(2) of the Act was issued on 12.02.1993. There is no record to show that the said notice was served on the respondent. Notice under Section 9(4) together with draft statement under Section 9(1) of the Act was sent in person on 01.11.1996 to the respondent and later by Registered Post with Acknowledge Due, which was returned by the postal department, with endorsement, 'not claimed'. The order under Section 9(5) of the Act, by which, an extent of 6,250 sq.mt. of land was declared as excess vacant land after allowing 500 sq. meters for family entitlement, was passed on 18.4.1997. The order was received by the respondent on 25.04.1997. Against the said order, the respondent sent a letter

dated 13.05.1997 giving details about the family members and stating that the lands have been sold, except about 5½ grounds retained by him. The respondent also submitted a copy of the said letter to the first appellant. However, on 25.07.1997, final statement under Section 10(1) of the Act was issued and the same was sent to the respondent by RPAD, which was received by him on 25.07.1997. The notifications under Sections 11(1) and 11(3) of the Act were published on 14.10.1998 and 30.12.1998 respectively. On 10.02.1999, notice under Section 11(5) of the Act was issued directing the respondent to hand over possession of the land. The notice was alleged to be served upon the respondent by affixture. Finally, on 01.06.1999, possession of the land was alleged to have been taken and handed over to the revenue department.

4. After hearing the arguments of both the learned counsel, the learned Single Judge has allowed the Writ Petition. Aggrieved against the order, the appellants have filed the present Writ Appeal.

5. The learned Special Government Pleader appearing for the appellants would submit that the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20/1999 is not applicable to the facts of the case, since the acquisition was saved under the Act. She would further submit that the urban landowner refused to receive the statement and notices were issued under Section 9 (1) and 9(4) of the Act. Both the orders under Section 9(5) and Final Statement under Section 10(1) of the Act were received by the respondent by RPAD on 25.06.1997 and in person on 25.07.1997 respectively. In spite of receiving all the notices, the respondent neither filed objection nor availed the appeal provisions. The appellants after following all the procedures contemplated under the Act, determined the excess vacant land of 6250 sq.mts in S.No.161/2 of Perugudi Village and it was handed over to the Revenue Authorities on 01.06.1999. She would further submit that the learned Single Judge failed to note that the land was already converted into house site plots in the name and style of "Thamarai Nagar" and it was not maintained as agricultural land as claimed by the respondent. She would submit that the learned Single Judge ought to have dismissed the Writ petition considering the objection made by the Government before the Writ Court on the ground of delay of 8 years and laches. The learned Single Judge also failed to note that after publication of the Notification under Section 11(3) of the Act, the land vested with the Government and possession of the land was taken over and handed over to the Revenue Department on 01.06.1999 and the proceedings have attained finality and this was all well before the Repeal Act came into force. She would further submit that the learned Single Judge failed to note that even on receipt of orders under Section 9(5) of the Act, the respondent did not avail the appeal provision under Section 33 of the

Principal Act and only after the repeal of the Act in the year 1999, the Writ Petition was filed in the year 2007. Hence, the learned Special Government pleader prays for allowing the Writ Appeal.

6. The learned counsel for the respondent would submit that as against the order passed by the learned Single Judge in the connected Writ Petition in W.P.No.14499 of 2007, on 17.09.2012, the Government preferred an appeal and the same was dismissed by this Court vide order dated 11.12.2017 in W.A.No.1030 of 2015. The writ petition in W.P.No.15924 of 2007 filed by the respondent was also allowed by the learned Single Judge, against which, this Writ Appeal has been filed by the Government. Therefore, this Writ Appeal is also liable to be dismissed on the ground of dismissal of the connected Writ Appeal.

7. The main contention of the learned counsel for the respondent is that since the connected Writ Appeal in W.A.No.1030 of 2015 was dismissed by the Division Bench, this Writ Appeal also should be dismissed in limine. It is pertinent to mention here that the Writ Appeal No.1030 of 2015 was dismissed on the ground that though one Ramadas was having land only to an extent of 1180 sq.feet equivalent to 0.027 acre, the Government served notice on him as if he was in ownership and possession of 1500 sq.mt equivalent to 0.38 acres. But, no notice was served on the landowners there in. Notice was served on a wrong person and the landowners having title were not aware of the proceedings. Whereas, in this case, notice under Section 7(2) of the Act was issued on 12.02.1993. The notice under Section 9(4) together with the draft statement under Section 9 (1) of the Act was sent in person on 01.11.1996 and later by Registered Post with Acknowledgment Due, which was returned by the postal department with endorsement 'not claimed'. Thereafter, the order under Section 9(5) of the Act, by which, an extent of 6250 sq.mt. of land was declared as excess vacant land, after allowing 500 sq. meters for family entitlement, was passed on 18.04.1997. The said order was received by the respondent on 25.04.1997. After receiving the order, the respondent sent a letter dated 13.05.1997 giving details about the family members and stating that except 5½ grounds he sold the remaining lands. The respondent also submitted a copy of the said letter to the first appellant. The final statement under Section 10(1) of the Act was issued on 25.7.1997 and the same was sent to the respondent by Registered post, which was also received by him on 25.07.1997. The notifications under Sections 11(1) and 11(3) of the Act were published on 14.10.1998 and 30.12.1998 respectively. On 10.02.1999, notice under Section 11 (5) of the Act was issued directing the respondent to hand over possession of the land and it was alleged to have been served upon him by affixture. Finally, on 01.06.1999, possession of the land is alleged to have been taken and handed over to the

revenue department. The competent authority has taken possession of land and it was handed over to the Revenue Department well before the Repeal Act came into force. The respondent has not challenged the said proceedings. There was no proceedings pending as on the date on which the Repeal Act came into force. Further, the respondent even after the receipt of notice under Section 9(5) of the Act, did not file any statutory appeal under Section 33 of the Principal Act. It is not in dispute that only eight years after the repeal Act came into effect in 1999, and 10 years after passing the impugned orders, the respondent has belatedly filed the Writ Petition in the year 2007. Therefore, this writ appeal cannot be equated with the facts of the Writ Petition in respect of which an order was passed in the alleged connected writ appeal in WA.No.1030 of 2015. There is absolutely no explanation forthcoming from the respondent for not challenging the impugned orders at the earliest point of time.

8. Therefore, we are of the considered view that the order passed by the learned Single Judge warrants interference insofar as the present Writ Petition in W.P.No.15924 of 2007 is concerned. The order passed by the learned Single judge in W.P.No.15924 of 20007, dated 17.09.2012 is liable to be set-aside and accordingly, the same is set-aside.

9. In the result, the Writ Appeal is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Commissioner and
Commissioner of Land reforms,
Chepauk, Chennai - 5.

2.The Assistant Commissioner /
Competent Authority (Urban Land Ceiling),
Sannadhi Street, Alandur, Chennai - 88.

3.The special Deputy Tahsildar,
Tambaram, Chennai - 45.

+1cc to the Government Pleader, S.R.No. 9408

Pre Delivery Order made in
W.A.No.1104 of 2016 &
C.M.P.No.14327 of 2016

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TR(19/02/2018)



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