IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	27/11/2017
PRONOUNCED ON	23/01/2018

Coram

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

W.A.No.557 of 2016

Indian Bureau of Mines
Rep. by Regional Controller of Mines,
Ministry of Mines,
Government of India,
C-4A, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090. .. Appellant/3rd party

Vs.

1.Banu Sundaram
2.K.Sundar Raj
3.The Government of Tamil Nadu,
Rep. by Secretary, Revenue Department,
Fort St. George, Chennai - 600 009.

4.The Assistant Commissioner,
Urban Land Ceiling and Tax,
Mambalam-Guindy Taluk,
Arcot Road, Chennai - 600 024.

5.The Tahsildar,
Mambalam-Guindy Circle,
K.K.Nagar, Chennai - 600 078. .. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 10.12.2013 made in W.P.No.30396 of 2013, on the file of this Court.
Prayer in Writ Petition No.30396/2013: Writ petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the 3rd respondent herein to issue Patta in respect of the petitioners land situated at Survey No.130/2 Block No.1 to the extent of 2 grounds and 600 square feet situated at 100 feet road (Jawaharlal Nehru Salai) chennai 97 pursuant to the order of this Honourable High Court in W.P. No.6674 and 6675 of 2000 dt 2.9.2009 and the representation of the petitioner dt 2.5.2013 as well 7.10.2013 for issue of patta.

For Appellants : Mr.G.Rajagopalan
Additional Solicitor General of India
For Mr.Venkatasamy Babu

For Respondents : Mr.K.M.Vijayan, Senior Counsel
For M/s.K.M.Vijayan Associates for R1 & R2

Ms.A.Srijayanthi
Special Government Pleader for R3 to R5

J U D G M E N T

P.VELMURUGAN, J.

The writ appeal challenges the order dated 10.12.2013 made in W.P.No.30396 of 2013.

2. The Facts culled out in brief, necessary for the disposal of the writ appeal are as follows:-

2.1 The case of respondents 1 and 2 / petitioners is as follows:-

The original landowner-Dr.Shanthakumari had sold a portion of the land measuring 2 grounds and 600 sq.ft in Ekkattuthangal village in favour of one K.Chandran, under a registered sale deed dated 29.04.1983. The said K.Chandran sold the property to Mrs.Banu Sundaram and K.Sundararaj, the respondents herein on 02.05.1985, much before passing the notification under 11(1) and 11(3) of the Principal Act. Aggrieved against the notification issued by the Assistant Commissioner of Urban Land Tax, declaring the acquisition of excess land, the respondents 1 and 2 (hereinafter referred to as "land owners") filed Writ Petitions before this Court in W.P.Nos.5605 & 5606 of 1990 and obtained interim injunction against dispossession. When the Tamil Nadu Land Reforms Special Appellate Tribunal was formed by an Act of State, the Writ Petitions relating to urban land ceiling pending before the High Court were transferred to the said Tribunal. Accordingly, the Writ Petitions filed by the land owners were transferred and renumbered as TRP.Nos.23 & 24 of 1999. The Tribunal by a common order dated 20.01.2000, dismissed the said petitions. Aggrieved against the order passed by the Tribunal, the land owners have filed Writ Petitions before this Court in W.P.Nos.6674 & 6675 of 2000. This Court by order dated 02.09.2009, set-aside the order passed by the Tribunal and disposed of the Writ Petitions. Since the order passed by the Tribunal was set-aside by this Court, the land owners made representations on 02.05.2013 as well as on 07.10.2013 to the Government for issuance of patta. Since there was no response, the land owners filed another Writ

Petition before this Court in W.P.No.30396 of 2013 and this Court by order dated 10.12.2013, disposed of the Writ Petition, by directing the Government to consider the applications.

2.2 The case of appellant / Indian Bureau of Mines is as follows:-

The appellant wrote a letter dated 12.08.1998 to the Chief Secretary, Government of Tamil Nadu for allotment of 2 hectares of vacant site for construction of office and residential building. The Government of Tamil Nadu, vide G.O.Ms.No.371, dated 20.03.1989, stipulating some conditions, directed the Special Commissioner and Commissioner of Land Reforms to send the valuation report of the vacant lands, for approval to the Government. The Deputy Secretary to Government, sent a letter bearing Letter No.40001/3/89-3, dated 21.07.1989, informing that the Government have allotted the vacant land measuring 600 sq.mets in S.No.130/2 of Eakkatuthangal Village, to the Regional Controller of Mines, Indian Bureau of Mines for the construction of residential accommodation for its officers and staff and office building by fixing the total land value at Rs.16,800/- and directed to collect the above land value of Rs.16,800/- from the Regional Controller of Mines, Indian Bureau of Mines and hand over possession of land after observing usual formalities. The Regional Controller of Mines sent a letter dated 30.11.1989, enclosing a UCO Bank Pay Order No.912741, dated 30.11.1989, for a sum of Rs.16,800/-. Thereafter, Transfer of Charge Certificate was issued to Indian Bureau of Mines for the construction of residential accommodation for officers and Staff and the office building. The possession of the excess vacant land has already been taken over by the State Government and it was handed over to the Tahsildar, Mambalam-Guindy on 31.08.1988. Notice under Section 12(7) of the Principal Act was received by Dr.Shanthakumari on 29.12.1988 and pursuant to G.O.Ms.No.371 Revenue Department, dated 20.03.1989, the land was allotted to the Indian Bureau of Mines and they are in possession. The land owners are the subsequent purchasers. Though in the earlier petitions in T.R.P.Nos.23 & 24 of 1999 and the subsequent Writ Petitions in W.P.N.6674 & 6675 of 2000, the Indian Bureau of Mines, was a party, in W.P.No.30396 of 2013 filed for a direction to consider the representation for issuance of patta, the appellant was not made a party and they came to know the proceeding only after receiving notice from the fifth respondent on 24.04.2015. According to the appellant, the learned Single Judge has not gone into the merits of the case and the applicability of the Act and disposed of the Writ Petition only on the ground that as the Principal Act was repealed on 16.06.1999, the order passed by the Tribunal got abated.

3. After the disposal of the Writ Petitions in W.P.Nos.6674 & 6675 of 2000, the land owners filed representations to the Government for issuance of patta since it was orally informed by the Tahsildar, Mambalam, to get NOC from the Land Ceiling Authority and as they could not get the NOC, they filed a Writ Petition. The learned Single Judge, was pleased to dispose of the Writ Petition concluding as hereunder:-

> "In view of the submission made by the learned counsel for the petitioners as to the limited extent of directing the 3rd respondent to consider the application of the petitioner, this writ petition is disposed of with a direction to the 3rd respondent Tahsildar, Mambalam to consider and dispose of the applications submitted by the petitioners on 02.05.2013 and 07.10.2013 respectively, on merits and as per law taking into account the order dated 02.09.2009 passed in W.P.Nos.6674 and 6675 of 2000. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs."

4. Since the subject land was allotted to the Regional Controller of Mines, Indian Bureau of Mines and they are in possession and being an interested party, the appellant filed the appeal after taking leave.

5. The learned Additional Solicitor General appearing for the appellant would submit that as per Section 6 of the Principal Act, any sale effected by a person holding excess vacant land after the commencement of the Principal Act is null and void, and therefore, the first and second respondents are not entitled to legal protection and they cannot make any claim under void documents. Hence, the order passed by the learned Single Judge is liable to be set-aside. He would further submit that the order of the learned Single Judge is liable to be set-aside also on the ground that the orders in the Writ Petition was obtained behind the back of the appellant. Since the appellant is an allottee of the subject land and person in possession of the land and a person interested, the appellant ought to have been made a party. He would submit that the actual possession was taken over by the appellant in the year 1990 after making due payment to the State Government and in fact Dr.Shanthakumari delivered possession of the land in question even before the Repeal Act. He would further submit that the learned Single Judge failed to consider the fact that the Tribunal by its order dated 20.01.2000 had categorically held that the first and second respondents have failed to challenge the order dated 20.03.1989 which was a subsequent order

allotting the lands in favour of the appellant and the same is fatal. He would further submit that the learned Single Judge has not considered that the possession of excess vacant land was taken over by the State Government and it was handed over to the fifth respondent on 31.08.1988 and notice under Section 12(7) of the Act was received by Dr.Shanthakumari on 29.12.1988. The land was allotted to the appellant pursuant to G.O.Ms.No.371, Revenue Department, dated 20.03.1989. Hence, the learned Additional Solicitor General prays for allowing this Writ Appeal, by setting aside the order passed by the learned Single Judge.

6. The learned Senior Counsel appearing for the first and second respondents would submit that the property in dispute was sold by Dr.Shanthakumari as early as on 09.04.1983 to Mr.K.Chandran, who in turn sold the same to the land owners on 02.05.1985, much before the publication of notifications under 11(1) and 11(3) of the Principal Act. The landowners herein were the owners of the property and person in possession of the land. Since the Urban Land Ceiling Act was repealed, the learned single Judge was correct in directing the Government to consider the claim made by the land owners.

7. We have also heard the learned Special Government Pleader on behalf of the Government.

8. A perusal of the records would reveal that the subject land in Survey No.105, T.S.No.130/part of an extent of 1100 Sq.Metre situated at Ekattuthangal Village originally belonged to one Dr.Shanthakumari. The statutory proceedings were initiated under the Urban Land (Ceiling and Regulation) Act 1978 (hereinafter referred to as the "Principal Act"). The said Dr.Shanthakumari, filed a statement under Section 7(1) of the Principal Act and made an application for exemption under Section 21(1)(b) of the Principal Act. The said application was rejected by the Government by order dated 26.10.1978. Thereafter, draft statement under Section 9(1) along with notice under Section 9(4) was issued on 07.12.1978. The urban landowner filed an objection and the same was rejected and orders under section 9(5) of the Act was passed on 28.03.1981 to acquire the excess vacant land of 600 Sq.Meters, after allowing 500 Sq.Meters towards entitlement. Aggrieved by the said order, the urban landowner filed an appeal under Section 33 of the Principal Act before the Commissioner of Land Reforms, which was dismissed on 10.01.1984. During the pendency of the above proceedings final statement under Section 10(1) of the Principal Act was issued on 29.06.1981 and it was served by RPAD on the urban landowner on 03.07.1981. On receipt of the said order,

the urban landowner again applied for exemption on 01.02.1982, which was once again rejected by the Government on 14.10.1983. Notification under Section 11(1) of the Act was issued and it was published in the Government Gazette on 29.10.1986. Similarly, Notification under Section 11(3) of the Principal Act was published on 12.08.1987. Thereafter, Notice under Section 11 (5) was issued on 01.12.1987, directing the urban landowner Dr.Shanthakumari to surrender the possession of the land and this notice was served on 13.05.1988. Since she did not hand over possession and there was no resistance, the possession of excess vacant land was taken over on 31.08.1988 and it was handed over to the Revenue Department. Notice under Section 12 (7) was served on her on 29.12.1988 and 25% of the compensation amount fixed under Section 12(6) of the Act was deposited in the Revenue Account, as the urban landowner refused to receive the said amount. Subsequently, the land was allotted to the appellant herein and possession was handed over on payment of the amount determined by the Government.

9. According to the respondents 1 and 2, the original landowner-Dr.Shanthakumari had sold a portion measuring 2 grounds and 600 sq.ft in Ekkattuthangal village in favour of one K.Chandran, under a registered sale deed dated 29.04.1983. The said K.Chandran sold the property on 02.05.1985 in their favour on 02.05.1985, much before initiating the proceedings under 11(1) and 11(3) of the Principal Act.

10. The learned Single Judge has not gone into the merits of the case and applicability of the Act. The learned single Judge disposed of the Writ Petitions in W.P.Nos.6674 and 6675 of 2000 on the ground that since the Principal Act was repealed on 16.06.1999, the order passed by the Tribunal would abate. At this juncture, it is useful to extract the relevant paragraphs of the said order dated 02.09.2009:-

> "4. A perusal of the Tamil Nadu Government Gazette Extraordinary would make it clear that the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was repealed by Act 20 of 1999 even as early as on 16.06.1999. If that is so, it is not known as to how the Tribunal passed the order on 20.01.2000 as against which the present Writ Petitions have been filed.
>
> 5. Section 4 of Act 20 of 1999 reads as follows:-
>
> > All proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall

abate.

6. In the light of the above judgment of the Supreme court and Section 4 of the Repeal Act 20 of 1999, all proceedings under the Act must be held to have abated. In view of the fact that the proceedings before the Tribunal abated because of Act 20 of 1999, the Writ Petitions filed as against the same also stand abated. Therefore, we are not inclined to go into the merits of the case."

11. It is relevant to extract Section 3 of Repeal Act:-

"3. Savings - (1) the repeal of the Principal Act shall not affect -

(a) the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorized by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(b) amount has been paid by the State Government with a respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

(emphasis supplied)

12. From the above quoted provision, it is clear that the repeal of the Principal Act shall not affect the vesting of any vacant land under sub-section (3) of Section 11 possession of which has been taken over by the State Government or any person duly authorized by the competent authority'. No doubt, in this case, notification under Section 11(3) of the Principal Act, declaring the acquisition of excess land was published in GO.Ms.No.C3 9898 of 1983, in the Tamil Nadu Government Gazette, dated 12.08.1987. The land owner Dr.Shanthakumari participated in the entire proceedings throughout. Section 11(5) notice was

also served on her. After receiving the notice neither she voluntarily surrendered the possession nor made any resistance. Since, there was no resistance competent authority had taken over the possession of land and it was handed over to the revenue department. At this juncture, it is pertinent to extract Section 4 of the Repeal Act :-

> "4. Abatement of legal proceeding.-
>
> All proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate.
>
> Provided that this section shall not apply to the proceedings relating to Sections 12, 13, 14, 15, 15-B and 16 of the Principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government of any person duly authorized by the State Government in this behalf or by the competent authority."
>
> (emphasis supplied)

13. It is not in dispute that notice under Section 12(7) of the Principal Act was issued on 29.09.1988 to determine the amount payable under Section 12(6) of the Act. The notice was sent by Registered Post with Acknowledgement Due. Dr.Shanthakumari on receipt of notice acknowledged on 29.12.1988 and it could be seen from the original records. Then, 25% of amount viz., Rs.750/- payable under Section 12(6) of the Act was deposited into the Revenue Account as the Urban Land Owner did not turn up to receive the amount.

14. The next question arises for consideration in this Writ Appeal is that though in the earlier petitions in T.R.P.Nos.23 & 24 of 1999 and the subsequent Writ Petitions in W.P.N.6674 & 6675 of 2000, the Indian Bureau of Mines, was one of the parties, the Writ Petition in W.P.No.30396 of 2013 filed for a direction to consider the representation for allotment of patta, the appellant was not made a party and they came to know about the proceeding only after receiving notice from the fifth respondent on 24.04.2015. The land owners with a view to obtain orders behind the back, kept the appellant in darkness.

15. The other question that arises for consideration in this Writ Appeal is the issue regarding possession. It is not in dispute that the Proceedings were initiated under the

Principal Act against one Dr.Shanthakumari. It is also not in dispute that the said Dr.Shanthakumari, filed a Form-I statement under Section 7(1) of the Principal Act and made an application for exemption under Section 21(1)(b) of the Principal Act and the said application was rejected by the Government by order dated 26.10.1978. Thereafter, draft statement under Section 9(1) along with notice under Section 9(4) was issued on 07.12.1978. The urban landowner filed an objection and the same was rejected and orders under section 9(5) of the Act was passed on 28.03.1981 to acquire the excess vacant land of 600 Sq.Meters, after allowing 500 Sq.Meters towards entitlement. Aggrieved by the said order, the urban landowner Dr.Shanthakumari filed an appeal under Section 33 of the Principal Act before the Commissioner of Land Reforms, which was rejected on 10.01.1984. During the pendency of the above proceedings final statement under Section 10(1) of the Principal Act was issued on 29.06.1981 and it was served by RPAD on the urban landowner on 03.07.1981. On receipt of this order, the said urban landowner again applied for exemption on 01.02.1982, which was again rejected by the Government on 14.10.1983. Notification under Section 11(1) of the Act was issued and published in Government Gazette on 29.10.1986 and Notification under Section 11(3) of the Principal Act was published on 12.08.1987. Thereafter, Notice under Section 11(5) was issued on 01.12.1987, directing the urban landowner Dr.Shanthakumari to surrender possession and this notice was served on 13.05.1988. Since the urban landowner failed to hand over possession and there was no resistance, the possession of excess vacant land was taken over on 31.08.1988 and it was handed over to the Revenue Department. Notice under Section 12(7) was served on the urban landowner on 29.12.1988 and 25% of the compensation amount fixed under Section 12(6) of the Act was deposited in the Revenue Account. The possession was taken without resistance.

16. The next and final question to be considered in this case is whether the sale made by Dr.Shanthakumari to one Mr.K.Chandran, and the subsequent sale of property to the respondents 1 and 2 are legally valid under the Principal Act. At this juncture, it is useful to extract the language of Section 6 of the Principal Act:-

> "6.Transfer of vacant land.-
>
> No person holding in excess of the ceiling limit immediately before the commencement of this Act vacant land, shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 11; and any such transfer made in contravention of this provision shall be deemed to be

null and void."

17. It is not in dispute that the notification regarding the excess vacant land held by the urban land owner Dr.Shanthakumari has been published under Section 11(1) of the Act on 29.10.1986 and it was followed by a declaration made under Section 11(3) of the Act by making the publication of the notification in the Government Gazette dated 12.08.1987. When such is the factual position, the sale deed executed by Dr.Shanthakumari in favour of one K.Chandran under two registered sale deeds dated 09.04.1983 and 29.09.1983 are void under section 6 of the Principal Act. The land owners purchased the land during the prohibited period and that too from the earlier purchaser. The sale deed dated 02.05.1985 is also void under Section 6 of the Act. The vendors of the first and second respondents themselves do not have a valid title and possession and therefore, they cannot convey better title and possession to the land owners.

18. The Tribunal, after considering all the facts, rightly dismissed T.R.P.Nos.23 and 24 of 1999, against which, the respondents 1 and 2 filed Writ Petitions before a Division Bench of this Court in W.P.Nos.6674 of 6675 of 2000. The Division Bench of this Court, without going into the merits of the case, disposed of the Writ Petition indicating that all the proceedings under the Principal Act before the Tribunal stood abated and writ petitions filed as against the same also stands abated. It is needless to mention here that the Government has taken possession and it was handed over to the appellant well before the Repeal Act and therefore proceedings were not pending as on the date of repeal Act. Since possession was taken over by the Government prior to the repeal Act, Section 4 of the repeal Act would not apply. The factum of completion of all proceedings before the introduction of Repeal Act is borne out by records.

19. For all the above reasons, we are of the considered view that the order passed by the learned Single Judge warrants interference. Accordingly, the order in Writ Petition in W.P.No.30396 of 2013, dated 10.12.2013 is liable to be set-aside and the same is set-aside. There is no order as to costs.

20. The writ appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

r n s/tsh

To

1.The Secretary, Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Assistant Commissioner,
Urban Land Ceiling and Tax,
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Arcot Road, Chennai - 600 024.

3.The Tahsildar,
Mambalam-Guindy Circle,
K.K.Nagar,
Chennai - 600 078.

+1cc to Mr.Venkataswamy Babu, Advocate SR.No.5450
+1cc to Mr.K.M.Vijayan Associates, Advocate SR.No.4902
+1cc to Government Pleader SR.No.5499

W.A.No.557 of 2016

SSV(CO)
GN(06/02/2018)