

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.Nos. 3318 to 3320 and 3322 & 6668 of 2006
and W.P.M.P.Nos.3501, 3502 & 3504 and 7203 of 2006

1. K.Rajaraman ...Petitioner in WP 3318/2006
2. B.Vijayakumar Sivam ...Petitioner in WP 3319/2006
3. B.Subramanian ...Petitioner in WP 3320/2006
4. K.Saravanan ...Petitioner in WP 3322/2006
5. Smt.S. Malathi ...Petitioner in WP 6668/2006

Vs.

1. State Government of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The Assistant Commissioner (ULT) and
the Competent Authority and Urban Land
Ceiling, T.Nagar, Chennai - 600 024.
3. The Tahsildar,
Mambalam-Guindy Taluk,
Chennai - 600 078. ...Respondents (in all WPs)

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare the proceedings of the 2nd respondent in RC.C2/3823/1993 dated 30.09.1993 culminating in issue of the notification under section 11 (3) of Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 published in the Tamil Nadu Government Gazette No.13, dated 08.04.1998 at page 495, declaring the excess vacant land in T.S.No.2 Part, Block No.8 of Velacherry Village as null and void and abated in so far as it relates to Mr.H.Santharam is concerned and consequently directing the 3rd respondent to delete the name of State Government as owner of the land in the Land Register maintained by him.

For Petitioners	:	Mr.V.Venkkatasamy
(in all WPs)		
For Respondents	:	Mr.K.Ravikumar
(in all WPs)		Additional Government Pleader

C O M M O N O R D E R

As the issue involved in these writ petitions are similar in nature, they are taken up together and disposed of by way of a common order.

2. The petitioners have filed these writ petitions seeking issuance of Writ of Declaration declaring that the proceedings of the second respondent in RC.C2/3823/1993, dated 30.09.1993 culminating in issue of the notification under Section 11(3) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter will be referred to as the 'TNUL (C&R) Act') published in the Tamil Nadu Government Gazette No.13, dated 08.04.1998 at page 495, declaring the excess vacant land in T.S.No.2 Part, Block No.8 of Velacherry Village as null and void and abated in so far as it relates to Mr.H.Santharam is concerned and consequently to direct the third respondent to delete the name of State Government as owner of the land in the Land Register maintained by the Government.

3. Brief of the common petition averments set out in the Writ Petition Nos. 3318 to 3320, 3322 and 6668 of 2006 are as follows:

The case of the petitioners is that one Mr.A.P.Palaniyappa Mudaliar owned an extent of 6 acres 50 cents (in all WPs) of punja and nanja land comprised in Survey Nos.110 & 111 of Velacherry Village under a registered Partition Deed dated 11.03.1942. The said A.P.Palaniyappa Mudaliar died on 20.10.1952, leaving behind his legal heirs viz., Sarojini Ammal, Somasundaram, Tamilselvan and Selvakumar. The legal heirs of A.P. Palaniappa Mudaliar sold one acre of land to two persons H. Santharam and H.Murthy each measuring an extent of 50 cents of land comprised in Survey Nos.110 & 111 of Velacherry Village under two separate registered Sale Deeds dated 05.01.1983 and the same was registered as Document Nos.27 and 28 of 1983 on the file of the Joint Sub-Registrar-II, Saidapet, Chennai. After purchase of the said land Mr.H.Santharam sold four portions in the land purchased by him each measuring an extent of 2400 sqft., of land in S.Nos.110 and 111 of Velacherry Village under registered sale deeds to four different persons. But, however, the said Mr.H.Santharam did not sell the portion of land after converting the agricultural land as Urban Land and subsequently on 09.05.1983 the said Mr.H.Santharam sold two more portion of land each measuring an extent of 2400 sqft., to two persons and the remaining land was sold on 22.10.1983 to two more persons. Thus, eight persons purchased the entire land from the above said H.Santharam in the year 1983 itself. The petitioners purchased the property measuring an extent of 2400 sqft., of

land from one Mr.M.V.Venkatak Krishnan, under a registered sale deed dated 11.02.2002. The petitioner's vendor is one among the eight persons who purchased the land from one H.Santharam in the year 1983 itself.

4. It appears that on 05.02.1991, the second respondent had initiated proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 in respect of land purchased by H.Santharam, for issuing notice under Section 7(2) of the Act. On failure of the returned, the second respondent had sent a notice under Section 9(4) of the Act along with statement under Section 9(1) of the Act on 15.06.1993 to Mr.H.Santharam. Since the said H. Santharam sold the entire land in question to different persons, he did not send any reply or objection to treat 1523 sq.mts of land as excess vacant land in T.S.No.2 part of Velacherry Village. It is further averred that the said H.Santharam did not appear for an enquiry under section 9(5) of the Act and the second respondent passed an order in his proceedings in RC.No.C2/3823/1993 dated 30.09.1993 declaring an extent of 1523 sq.mts of land in T.S.No.2 Part, Block No.8 of Velacherry Village (Old Survey Nos.110 & 111) as excess vacant land held by him and it was ordered to be acquired under Section 9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978. Subsequently, notification under Section 11(3) was also published in the Tamil Nadu Government Gazette No.13, dated 08.04.1998 declaring that the alleged excess vacant land in T.S.No.2 Part, Block No.8 of Velacherry Village shall be deemed to be acquired by the Government. As against the said notification, the present writ petitions have been filed.

5. Brief of the common averments set out in the counter affidavit filed in Writ Petition Nos. 3318 to 3320, 3322 and 6668 of 2006 are as follows:

The counter affidavit filed by the respondents stating that Thiru.H.Santharam owned land to an extent of 9 grounds in T.S.No.2 Part, Block No.8 of Velacherry Village (2023 sq.mts). He did not file return under Section 7(1) of the TNUL (C&R) Act. Hence, a notice under Section 7(1) of the TNUL (C&R) Act and sent to the Urban Land Owner. It was returned by the postal department stating that 'No Such Person' on 13.02.1991. Thereafter, the field staff of the office of the 2nd respondent herein, inspected the site and prepared sketches. The field staff of the second respondent found that the urban land owner was residing at Plot No.27, 3rd Avenue, Sundar Nagar, Madras-97. Again a notice under Section 9(4) of the TNUL (C&R) Act along with draft statement under section 9(1) of the TNUL (C&R) Act were issued by the Assistant Commissioner (ULT). The second respondent herein, on 15.06.1993 to the above address on 15.07.1993 by Registered Post with Acknowledgment Due.

Subsequently, the land was inspected by the Assistant Commissioner (ULT), the second respondent herein, on 19.08.1993 and was found to be vacant. Thereafter, an enquiry notice was also sent on 17.09.93 by Registered Post with Acknowledgment Due which was acknowledged on 24.09.1993. Hence, no objection was received from the Urban Land Owner and orders under Section 9(5) of the TNUL (C&R) Act were issued on 30.09.1993 by the second respondent, determining the excess vacant land as 1523 sq.mts., after allowing 500 sq.mts towards entitlement to the Urban Land Owner. The said notice was received by one Ms.N.Sujatha on behalf of Santharam on 11.10.1993. But no objection was received. Later, final statement under Section 10(1) of the TNUL (C&R) Act was issued on 14.07.1995 and the same was affixed on 28.08.1995 as the Urban Land Owner refused to receive it. Thereafter, notification under section 11(1) of the TNUL (C&R) Act was issued on 25.09.1997 and the same was published at page No.1395 of Tamil Nadu Government Gazette No.42, Part VI Section I dated 29.10.1997, for which an errata was also published in Tamil Nadu Government Gazette No.50 dated 24.12.1997. Thereafter, notification under Section 11(3) of the TNUL (C&R) Act was published in the Tamil Nadu Government Gazette No.13, dated 08.04.1998. After following the due process of law a notice under Section 11(5) of the TNUL (C&R) Act was issued on 28.08.1998. The possession of the excess vacant land was handed over to the Revenue Inspector IV of Mambalam-Guindy Taluk, on 21.12.1998.

6. The learned counsel appearing for the petitioners would submit that though the property was initially owned by A.P.Palaniappa Mudaliar, after death of A.P.Palaniappa Mudaliar, the petitioners vendor purchased the property from the legal heirs of A.P. Palaniappa Mudaliar, in the year 1983 itself. Thereafter, the said H.Santharam, alleged urban land owner executed sale deed in favour of eight persons. From that person, the petitioners purchased the property in the year 2002 dated 24.12.2008, after perusing the Encumbrance Certificate issued by the Registration Department. On perusal of the encumbrance certificate it did not reflect any acquisition proceedings initiated by the respondent under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978. In the absence of any encumbrance in the land in question, the purchase of the property by the petitioner not void.

7. The learned counsel appearing for the petitioners would further submit that after purchase of the property the petitioners have constructed house after obtaining planning permission from the Local Body Authorities. Hence, the title as well as physical possession are with the petitioners. The said Act also repealed on 16.06.1999, since the physical possession of the land is not handed over to the Government and the land is

not vested with the Government, the entire proceedings initiated by the respondent is vitiated. When the Act was repealed via., 16.06.1999 the physical possession of the land in question was not taken in the manner known to law.

8. The learned counsel appearing for the petitioners relied upon the following decisions;

(i) The decision of this Court reported in 2006 (5) CTC 52 [Vijay Foundation (P) Ltd., represented by its Director, R.Thiagarajan Vs. The Principal Commissioner of Commissioner of Land Reforms], the relevant portion of which reads as follows:

"7. The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Sections 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands have not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents.

8. Admittedly, the possession of the land is with the petitioner ever since the date of purchase continuously and this Court considering it at the time of admission of this Writ Petition protected the same by issuing interim order, which is also in force till date. Moreover, the above said Act was also repealed on 16.09.1999, hence, it is not open to the respondents to proceed against the petitioner."

(ii) The decision of this Court reported in [2016 (3) CTC 668], The Secretary to Government, Revenue Department v. B. Anand Kumar, the relevant portion of which reads as follows:

"8. The issue as to whether possession is deemed to have been taken, came into consideration in a batch of Writ Appeals arising from the Land Acquisition proceedings. A Division Bench of this Court in The Tamil Nadu Housing Board, rep. by its Managing Director, No.331, Anna Salai, Nandanam, Chennai - 600 034 and Anr v. iGate Global Solutions Limited and Anr, 2016 (2) CTC 241 (DB) [W.A.Nos.1101 of 2014, etc. batch cases], by Judgment dated 26th February, 2016, held as under:

"60. The ratio deducible from the aforestated judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the Revenue Authorities must establish by producing some evidence, i.e., either preparation of Panchanama in the presence of the Witnesses or some other documents. The Transfer Certificates subsequently prepared by the Revenue Authorities for delivering possession of the land in question to the Housing Board in absence of a Witness or Landowner, will not be sufficient to establish that possession of the lands was taken over from the Landowners..."

(iii) The decision of this Court rendered in the case of State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and 3 Ors v. Sumathi Srinivas in W.A. No.1746 of 2014, dated 17th February, 2015, the relevant portion of which reads as follows:

"34. It is to be noted that although the Appellant/Respondents claim that the possession of the land in question was vested with the Government under Section 11(3) of the Act on 18.11.1998 and subsequently handed over on 09.04.1999, the purported possession being handed over on 09.04.1999 in the form of Land Receipt, in law, is only a symbolic possession and as a matter of fact, actual/real possession was not taken. As such, the resultant possession is either the Landowner-Lakshmi Kanthammal or anybody for that matter had not handed over the physical possession and also when the Appellants had only taken a symbolic possession and in reality, when the actual/real possession of the land in issue is in the hands of the Respondent/Petitioner, the Respondent/Petitioner is entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999."

(iv) The decision of this Court reported in 2015 (5) CTC 823, [A.N. Visalakshi v. The Special Commissioner, Urban Land Ceiling and Land Reforms, Ezhilagam, Chepauk, Chennai-5], the relevant portion of which reads 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 or 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 (3) 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) to Section 10, to surrender or deliver possession. Sub-section (5) of 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 fails under sub-section (6) and not under sub-section (5) of Section 10 and sub-sections (5) and

(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 or taken over, is not in accordance with law and the Government are not deemed to be in possession of the land in question."

9. The learned Additional Government Pleader appearing for the respondents would submit that the respondent based on the revenue records issued notice to one Mr.H.Santharam, who owned the land measuring an extent of 9 grounds in T.S.No.2/98, Block No.8, Velacherry Village and initiated proceedings in the year 1991. Thereafter, following due process of law the respondents took possession of the land and possession was handed over to the Revenue Officials. However, the learned Additional Government Pleader fairly conceded that there is no record available for taking the physical possession of the property. As per Section 11 (5) of the Act requires the physical possession has been taken after due process of law. In the present case, after preparing the draft statement, notice was served to the legal heirs of H.Santharam. However, the said H.Santharam neither filed a statement nor objected the Urban Land Proceedings. After due process of law, the excess land was acquired and the same was handed over to the Revenue Authorities.

10. Heard the learned counsel appearing for the petitioners as well as the learned Additional Government Pleader appearing for the respondents.

11. I have carefully considered the submissions made by the learned counsel appearing for the petitioners and the learned Additional Government Pleader for the respondents.

12. Admittedly, as per section 4 of the TNUL (C&R) Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit. The person holding vacant land in excess of the ceiling limit was filed the statement under Section 7(2) of the Act. On receipt of the said statement, the Authority shall consider their objection if any under Section 9 of the TNUL (C&R) Act and pass appropriate orders under Section 9(5) of the Act. Thereafter, the Authority prepared the final statement under Section 9 and taken possession under Section 11(5) of the Act.

13. Though, the Act was introduced in the year 1978, the said Act was extended to Velacherry Village. However, on perusal of the Encumbrance Certificate filed along with typed set shows that the alleged excess land owner Mr.H.Santharam, purchased the property from the legal heirs of A.P.Palaniyappa Mudaliar in the year 1983. The said land was converted into plots. The said plots were sold to different persons in the year 1983 itself. Plot No.1 (2400 sqft.,) was sold to one Sundari; plot No.2 was sold to one Krishnamurthy; plot No.3 was sold to one Parameshwaran; plot No.5 was sold to one Sethuraman; plot No.6 was sold to one Venkatakrishnan; plot No.7 was sold to one Basheer Ahmed; plot No.8 was sold to one Kandasamy and plot No.14 was sold to one Prameshwaran. All those plots were sold under different Sale Deeds in the year 1983 itself. However, without verifying all those things the respondents issued notice under Section 7(2) of the TNUL (C&R) Act in the year 1991 against the person who is not an owner of the property. Apart from the above, the mandatory provision under Section 7(2) (12) were not followed by the respondent. The statutory condition for the purpose of acquiring the lands have not been followed in all these cases. No doubt, if the physical possession of land is not acquired in the manner known to law, the entire proceedings initiated by the respondent is vitiated. Moreover, the Act itself was repealed in the year 16.09.1999. Hence, it is not open to the respondents to proceed against the petitioners.

14. The petitioners' vendor purchased the property in the year 1983 itself from the original owner and the petitioners' vendor and other persons constructed the land into plots and the petitioners thereafter purchased the property. However, urban land ceiling proceedings were initiated in the year 1991 without ascertaining the original owners of the property. Hence, the

decision of this Court reported in 2006 (5) CTC 52 [Vijay Foundation (P) Ltd., represented by its Director R.Thiagarajan Vs. The Principal Commissioner and Commissioner of Land Reforms] squarely applies to the present case on hand.

15. In view of the above discussions and the decisions cited (supra) the entire Urban Land proceedings initiated by the respondents in respect of the petitioners property is quashed.

16. Accordingly, all the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Secretary,
State Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The Assistant Commissioner (ULT) and
the Competent Authority and Urban Land
Ceiling, T.Nagar, Chennai - 600 024.
3. The Tahsildar,
Mambalam-Guindy Taluk,
Chennai - 600 078.

+ 2 ccs to Mr.V. Venkkatasamy, Advocate Sr.30300

+ 1 cc to Mr.Government Pleader Sr.30717

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(CCC)
EU(27/06/2018)

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