

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W.P.No.12907 of 2004
&
WPMP.No.15039 of 2004

M/s. MAC PAC Industries
123/2, Pooneri Road,
Manali Puthu Nagar,
Vaiyakadu, Chennai - 600 103
Rep. By its Partner G.Ramalingiswara Rao

.... Petitioner

Vs.

Asst. Commissioner (ULT)
Madhavaram, Chennai - 600 099.

.... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified of Mandamus, calling for the records of the respondent in Na.Ka.2267/93/A dated 6.04.2004 and to quash the same and to forbear the Respondent from taking any act on affecting the right of possession and enjoyment of the lands by the petitioner as absolute owner thereof in the light of the provisions of Tamil Nadu Act 20 of 1999.

For Petitioner : Mr.P. Jagadeesan
For Respondent : Mr.K.S. Suresh
Government Advocate

सत्यमेव जयते
O R D E R

The Government of Tamil Nadu by G.O. Ms. No. 787 Revenue ULC 3(1) Department, dated 22.08.1997 issued under Section 21(1) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, (hereinafter referred to as 'the Principal Act' for short) exempted the vacant lands in S.Nos. 123/2 and 123/3 in Vaikadu Village in Saidapet Taluk, belonging to the Petitioner, from the provisions of the Principal Act. Thereafter, the Principal Act was repealed by the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1999, (hereinafter referred to as 'the Repeal Act' for short), which came into effect from 16.06.1999.

2. Subsequently, the Government of Tamil Nadu by G.O. Ms. No. 556 Revenue ULC 21 dated 26.12.2002 had withdrawn the earlier exemption granted to the aforesaid vacant lands of the Petitioner and a notice dated 09.06.2003 under Section 9(4) of the Principal Act was issued to the Petitioner informing that it was proposed to take further action under the Principal Act, which was followed by a Notification bearing Na.Ka.No. 2267/93/A dated 06.04.2004 under Section 9(5) of the Principal Act.

3. In that factual backdrop, the Petitioner has filed this Writ Petition challenging the aforesaid Notification dated 06.04.2004 passed by the Respondent and to forbear the Respondent from taking any action affecting the possession and enjoyment of the lands by the Petitioner as absolute owner thereof in light of the provisions of the Repeal Act.

4. The Respondent has filed counter affidavit dated 23.02.2005 contending that the exemption granted on 22.08.1997 to the Petitioner under Section 21(1) of the Principal Act had been withdrawn on 26.12.2002 since the Petitioner had not fully utilized the exempted land and had let out the building measuring 15,000 sq.feet to C.P. India Pvt. Ltd., for 5 years as per Document No. 3861 of 1992 dated 27.10.1997, which was treated as violation of the conditions of the exemption granted and hence, the Respondent was entitled to invoke the provisions of the Principal Act for acquiring the lands of the Petitioner, relying on Section 3(1)(b) of the Repeal Act.

5. Heard Mr. P. Jagadeesan, Learned Counsel for the Petitioner and Mr. K.S.Suresh the Learned Government Advocate for the Respondent.

6. In order to understand the effect of repeal of an enactment, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in Gajraj Singh -vs- State Transport Appellate Tribunal [(1997) 1 SCC 650], wherein it has been held as follows:-

"Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the

record of the Parliament as if it had never been passed it, it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not an actual reality and which the law recognises and the court accepts as a reality. Therefore, in case of legal fiction the court

believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances."

Applying the aforesaid principles to the facts of the instant case, it would necessarily follow that by withdrawal of the exemption on 26.12.2002 after the Repeal Act came into force on 16.06.1999, the Respondent could not initiate proceedings for acquisition of the land under the Principal Act and as such, the consequential impugned notification dated 06.04.2006 issued under Section 9(5) of the Principal Act cannot be sustained.

7. The Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Hari Ram [(2013) 4 SCC 280] while dealing with pari materia provisions contained in the Urban Land (Ceiling & Regulation) Act, 1976, viz-a-viz the effect repeal made by the Urban Land (Ceiling & Regulation) Repeal Act, 1999, has succinctly explained the legal position as follows:-

"38. Let us now examine the effect of Section 3 of the Repeal Act 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. The Repeal Act has, however, retained a saving clause. The question whether a

right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.03.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act."

In the light of the aforesaid dictum laid down in these binding decisions of the Hon'ble Apex Court, it has to be held that unless the State establishes that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under Section 11(5) of the Principal Act or forceful dispossession under Section 11(6) of the Principal Act before 16.06.1999, the urban land owner is entitled to claim the benefits of abatement of the proceedings for acquisition conferred by the Repeal Act. This would mean that by operation of law in those cases where physical possession of the acquired land had not been taken by the State till 16.06.2009 in the aforesaid manner, the deemed vesting of ownership of the land in the State under Section 11(3) of the Principal Act would stand effaced and the ownership of that land in favour of the urban land owner would get revived instantaneously, and the State cannot disturb the continuation of physical possession of that land by the urban land owner under the guise of the proceedings made under the Principal Act.

8. It is also fairly brought to the notice of this Court by the Learned Government Advocate that after the filing of this Writ Petition, the Government of Tamil Nadu by G.O. Ms. No. 111, Revenue (ULC I(1)) Department, dated

03.03.2007 has passed an order accepting the legal position that Section 3(1)(b) of the Repeal Act would not have any application to actions taken under Section 21(2) of the Principal Act, and has directed that all actions taken for withdrawal of exemption under the said provision shall abate and further actions to be dropped in view of the Repeal Act. Moreover, by Letter (Ms). No. 392 of Revenue Department dated 24.07.2007, clarifications have been issued by Government of Tamil Nadu on the aforesaid Governmental Order and for the purpose of this case, Point (v) therein may be referred, which is extracted below:-

"Point (v): There are cases where urban land owners filed Writ Petition against the orders of withdrawal of exemption and the action taken to acquire the excess vacant land are pending in High Court, Madras. Further action in these cases may have to be dropped.

Clarification: Government accept the above views."

9. In view of the aforesaid reasons, the Writ Petition is allowed. The Petitioner is entitled to claim the benefits of abatement of the acquisition proceedings conferred by the Repeal Act, the impugned Notification bearing Na.Ka. No. 2267/93/A dated 06.04.2004 issued by the Respondent under Section 9(5) of the Principal Act is quashed, and the Respondent shall not disturb the physical possession of the aforesaid lands held by the Petitioner by invoking the provisions of the Principal Act. Connected miscellaneous petitions are closed. No costs.

sr

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ULT)
Madhavaram, Chennai - 600 099.

+1 cc to Mr.P.JAGADEESAN Advocate SR.NO.44671
+1 cc to GOVERNMENT ADVOCATE SR.NO.45363

W.P.No.12907 of 2004
&
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AR (CS-VII)
ASK(06/08/2018)