

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.32700 of 2003

1. Sathiyavathi
2. L. Sathanam
3. Sasikala
4. Sankari
5. Sarala

... Petitioners

Vs

1. The Principal Commissioner and
Commissioner of Urban Land Ceiling,
Chepauk, Chennai-5.
2. The Assistant Commissioner,
Urban Land Ceiling,
Tambaram.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 2nd respondent in Na.Ka.No.C.U.321/97C dated 03.11.1997 issued on 21.02.2003, and quash the same; and forbear the respondents from in any manner interfering with the possession and rights of the petitioners' land in extent of 2000 sq.meters in S.No.126/4, in Tambaram Village.

For Petitioners : Mr.A.R.L.Sundaresan
Senior Counsel
for Ms.AL.Ganthimathi

For Respondents : Mr.S.T.S.Moorthy
Additional Advocate General V for R1
Mr.K.S.Suresh
Government Advocate for R2

O R D E R

The prayer sought for herein is for a writ of certioratified mandamus, to call for the records pertaining to

the order of the 2nd respondent in Na.Ka.No.C.U.321/97C dated 03.11.1997 issued on 21.02.2003 and quash the same and forbear the respondents from in any manner interfering with the possession and rights of the petitioners' land in extent of 2000 sq.meters in S.No.126/4 Tambaram Village.

2. The necessary facts which are to be noticed for the disposal of this Writ Petition are as follows:

(i) The land property to an extent of 2000 Sq.mts. in Survey No.126/4, Tambaram Village, originally belonged to the mother of the petitioners, one late Krishnaveni Ammal. All the petitioners herein are the legal heirs of the deceased Krishnaveni Ammal. She was in possession and enjoyment of the said property and after her death on 21.04.1997, the petitioners had been in continuous possession and enjoyment of the said land.

(ii) While that being so, the petitioners reliably came to understand that, the lands were sought to be acquired by the respondents, by invoking the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 (herein after refer to as "the Act"). After coming to know of the said fact, the petitioners applied to the respondent authorities for the certified copy of the proceedings issued or orders passed in this regard by the respondents. In pursuance of the said request made by the petitioners, the respondents had issued the certified copy of the proceedings dated 03.11.1997, issued under section 9(5) of the Act only on 21.04.2003 and after receipt of the said certified copy of the proceedings dated 03.11.1997, they came to know that the proceedings had been issued by invoking the provisions of the said Act and therefore, challenging the said proceedings issued Under Section 9(5) of the Act on 03.11.1997, the petitioners have filed this writ petition with the aforesaid prayer.

3. Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the petitioners would submit that, it is the fact that the land in question belongs to one Krishnaveni Ammal, who was the sole owner of the property, who died on 21.04.1997. As per the dates given in the impugned order dated 03.11.1997, it is the claim of the Respondent Department that, only on 02.08.1997, notice was issued under Section 7(2) of the Act. Thereafter, proceedings were issued under Section 9(1) and 9(4) of the Act on 18.08.1997 and it was claimed that the inspection of the land was undertaken on 03.09.1997 and thereafter notification under Section 11(1) of the Act, was published in the Official Gazette on 09.02.1998 and thereafter notification under Section 11(3) of the Act was issued only on 24.03.1999 and thereafter it was claimed that the possession was taken over on 07.06.1999.

4. In the background of these dates and events as claimed by the Respondent Department, the learned Senior Counsel would

submit that, since the owner of the land Krishnaveni Ammal died on 21.04.1997, the initiation of the proceedings under the Act especially under Section 7(2) of the Act was made only after four months of the death of the owner, i.e., on 02.08.1997.

5. It is the further submission of the learned Senior Counsel that, even according to the respondents, the notice under Section 7(2) was not served on the owner of the property, i.e., the petitioners herein, who are the legal heirs of the Krishnaveni Ammal, who died prior to the issuance of the notice. It is the own admission on the part of the respondents that, notice have not been sent by Registered post and there is no proof to show that the notice sent by Registered post was returned unserved and based on which only, they invoked Rule 8 (2)C of the Tamil Nadu Urban Land(Ceiling and Regulation) Rules 1978 (herein after refer to as "the Rule") made under the Act and pasted the notice in the land and the last known residence of the owner of the land.

6. The learned Senior Counsel would further submit that, the very same mode of service was adopted while invoking Section 9(1) and 9(4) of the Act and even though it was claimed that, on 18.08.1997, notices had been sent under Section 9(1) and 9(4) of the Act, absolutely there is no proof to show that such attempt has been made by the respondents in the manner known to law.

7. The learned Senior Counsel would point out that, even in the impugned order, it has been specifically admitted by the respondents that, notice under Section 9(1) and 9(4) had not been sent to the owners of the land, but it had been pasted only at the land in question. When that being so, the order under Section 9(5) of the Act, which is the order impugned herein, had been passed on 03.11.1997.

8. The learned Senior Counsel would further argue that, based on the claim made by the respondents, as has been reflected in the counter affidavit, after the invocation of the provisions of Section 7 and Section 9, notification as required under Section 11(3) of the Act was published only on 24.03.1999 and immediately or straight away, without invoking Section 11(5) and 11(6) of the Act, they claim to have taken over the possession of the land on 07.06.1999. In this regard the learned Senior Counsel would submit that, taking over the possession of the land is not automatic. By issuance of notification under Section 11(3) of the Act, the authorities can take steps to get voluntary surrendering of possession from the owner of the land, for which a notice under Section 11(5) should have been issued to the owner or holder of the land to voluntary surrender and deliver possession of the land to the State Government within 30 days of the service of the notice. Even after such notice being issued under Section 11(5) of the Act, if the owner or holder of the land did not come forward to surrender or

deliver the possession of the land to the Government, then the authorities can invoke Section 11(6) to forcibly take possession of the land by using the force.

9. In this regard, the learned Senior Counsel would submit that, in the case on hand, none of the procedure, as contemplated under various provisions of the Act, had been followed. Admittedly no possession had been taken in the manner known to law, especially in the context of Section 11(5) or 11(6) of the Act and straight away the authorities since claimed the possession of the land was taken over on 07.06.1999, after the notification under Section 11(3) of the Act was issued on 24.03.1999, the said claim made by the respondents with regard to taking over possession, shall not be treated as lawful act in taking possession by invoking the provisions of the Act.

10. In support of his contention, the learned Senior Counsel would heavily rely upon the Division Bench decision of this Court reported in 2015 (5) CTC 823 in the case of A.N.Visalakshi and others vs The Special Commissioner, Urban Land Ceiling and Land Reforms and others. In the said decision, the learned senior counsel has relied upon paragraph Nos.12,13, 14 and 15 in support of his contention, which are extracted herein.

"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 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 9(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) of 12 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 falls under sub-section (6) and not under sub-section (5) of Section 10 and sub-sections (5) & (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, and order under Section 11(5) of the State Act was passed and Notice issued to the Landowners. The Land owner 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 for taken over, is not in accordance with law and the Government are not deemed to be in possession of the land in question.

15. In the light of the above, we have no hesitation to hold that the possession said to have been taken over by the Revenue Department, pursuant to the land Delivery Receipt cannot be construed as possession taken in accordance with law the therefore, cannot confer any right on the Department/Government and the Landowners are held to be continued to possession and consequently, the proceedings initiated under the Urban land Ceiling Act stand abated in the light of the coming into force of the Repealing Act, Act 20 of 1999".

11. Apart from that, the learned Senior Counsel would also submit that, in view of the failure on the part of the respondents in complying with the provisions, especially 11(5) of the Act, the entire proceedings would be vitiated. In support of his contention, the learned Senior Counsel would also rely upon yet another Division Bench decision of this court reported in 2011 (3) CTC 843 in the case of The Government of Tamil Nadu represented by its Secretary to Government, Revenue Department and others Vs. Nandagopal and others. The learned Senior Counsel would rely upon Para 6 and 7 of the said judgment, which reads thus:

"6. By that Rule, the draft statement together with the notice referred to in sub-section (4) of section 9 shall be served on the holder of the vacant lands, and all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands by sending the same by

Registered Post addressed to the person concerned. Only in the event the notice sent through Registered Post could not be served for any reason, the question of affixture would arise.

7. In order to find out as to whether the notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the Respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the Competent Authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the Respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the Respondents must be accepted''.

12. He also relied upon yet another Division Bench decision of this court reported in 2012 (6) CTC 273 in the case of Government of Tamil Nadu represented by the Commissioner and Secretary to Government, Revenue Department and others vs Mecca Prime Tannery represented by its Managing Director and others. In the said case, factually, even though the Competent Authority under the Act, had issued notice under Section 11(5) of the Act, directing the owner or holder of the land to deliver the possession of the land, the owner did not comply for the same and he had been continuously in possession of the land. However the fact remains that, the Competent Authority did not invoke Section 11(6) of the Act for taking compulsory or forcible possession of the land by using the force as has been permitted therein. In that factual background, the Division Bench held that, since the possession had been continuously with the owner of the land, in spite of Section 11(5) notice was issued, then it cannot be construed that the possession has been taken over by the Competent Authority and therefore, by virtue of the provisions of the Repealing Act, the benefit has to be conferred in favour of the owner of the land. By relying upon these

decisions, the learned Senior Counsel would submit that, in the case on hand, admittedly, no notice had been served on the owner of the land, as the original owner died even prior to the notice under Section 7(2) of the Act. Therefore the legal heirs of the original owner, who are the petitioners herein, have not been served with any notice. Though 11(3) notification was issued on 24.03.1999, no notice under Section 11(5) was issued nor action was taken invoking Section 11(6) of the Act. When that being the position, since none of the procedures as contemplated under various provisions of the Act, as has been submitted above, since had been followed or complied with, the entire proceedings initiated under the provisions of the Act is completely vitiated and therefore, the impugned order cannot be sustained in the eye of law, hence the same is liable to be interfered with.

13. Per contra, Mr.S.T.S.Moorthy, learned Additional Advocate General, appearing for the respondents, by relying upon the counter affidavit filed by the respondents would submit that, as per the provisions of the Act, especially Section 7(1), it is the duty of the owner of the urban land to file a statement within the prescribed time as the Act came into force from 03.08.1976. Since for long years no statement had been filed by the owner of the land, the Competent Authority had invoked Section 7(2) and notice was issued. However, the owner was not available in the known address and present address of the owner was not known to the authority. Therefore invoking Rule 8(2)C of the Rules made under the Act, 7(2) notice was pasted in the land in question and thereafter, proceedings under Section 9(1) and 9(4) were issued on 18.08.1997 and thereafter separate inspection was undertaken on 03.09.1997.

14. Since no objection had come from anyone for the notices issued by the Competent Authority, after finding that there had been an excess urban land, notification under Section 11(1) of the Act was published on 09.12.1998, before which, after inspection dated 03.09.1997, the Competent Authority had issued proceedings under Section 9(5) for acquisition of the excess land which was found to be 1500 Sq.mts. Thereafter 11(3) notification vesting the land, which was found to be excess, had been issued on 24.03.1999 and thereafter also since there was no response to deliver the vacant possession of the land on voluntary basis by the owner of the land, the respondents/Competent Authority had taken over possession of the land on 07.06.1999 and this has been recorded.

15. In this regard, the learned Additional Advocate General even though has expressed the inability of the Department concerned to produce the relevant file before this court as according to the Department, an official instruction was given to the learned Additional Advocate General that the relevant file is not available, but had produced a register

called ACULT Tambaram Zone Register, where the important dates in respect of each of the urban land ceiling case had been noted, which had Pages 120 wherein Sl.No.462, the dates and details of the subject land had been mentioned, according to which, the area is Tambaram, the owner of the land was one Krishnaveni Ammal, Survey No.126/4, the extent of the land is 2000 Sq.mts. and thereafter certain dates have been mentioned such as 18.08.1997, 03.11.1997, 29.04.1998, 28.10.1998, 09.12.1998 and 12.01.1999. By relying upon these dates, learned Additional Advocate General would submit that, on 03.11.1997, section 9(5) proceedings was issued, which is the impugned order herein and on 29.04.1998, 10(1) proceedings was issued and on 28.10.1998, 11(1) proceedings was issued and on 12.01.1999 11(3) notification was issued.

16. The learned Additional Advocate General has further argued that, since the original records were not available with the respondents office, however, based on this register only, where certain important dates pertaining to each of the land ceiling cases has been noted down, the said stand taken by the respondents in the counter affidavit has been justified.

17. The learned Additional Advocate General would further submit that, in so far as the attempt made for assailing the impugned order, by the petitioners side, on the ground that right from invocation of Section 7(2) till the notification under Section 11(3) of the Act and even after that, the procedures as contemplated under the Act for serving the notice to the owner of the land or holder of the land, have not been followed, the learned Additional Advocate General would fairly rely upon Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules 1978. For the sake of clarity, Rule 8 in entirety is extracted here under:

"8. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same. - (1) Every draft statement prepared under sub-section (1) of section 9 shall contain the particulars specified in Form III.

(2) (a) The draft statement together with the notice referred to in sub-section (4) of section 9 shall be served on -

(i) the holder of the vacant lands,
and

(ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands,

by sending the same by registered post

addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance to sub-section (1) of section 7, and

(ii) in the case of other persons, at their last known addresses.

(b) Where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person referred to in clause (a), in the manner specified in that clause are not successful for reasons other than the reason referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the Competent Authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

(3) the notice under sub-section (4) of section 9 shall be in Form IV".

18. By relying upon this rule, the learned Additional Advocate General would submit that, no doubt the notice has to be sent by Registered Post and once the Registered Post sent to the holder or owner of the land is returned as 'refused', it shall be deemed to be duly served. Otherwise if the notice sent through Registered Post is returned, then the authorities can very well invoke sub-section (2)C of Section 8 of the Rule, where powers have been vested with the authorities to serve the notice by affixing copies in a conspicuous place in the office of the Competent Authority and also upon some conspicuous place on the part of the house, in which the holder of the vacant land or other persons is known to have last resided and carried on business and personal work for gain.

19. Only by invoking the said Rule i.e. Rule 8(2)C, these notices had been placed in the conspicuous place, as the address of the owner of the land was not known and the owner was not available for serving any notice, as contemplated under various provisions of the Act. Therefore, the learned Additional Advocate General would submit that, the said method of serving notice by pasting in conspicuous place is an acceptable method, within the meaning of 8(2)C of the Rule and therefore such

invocation of the said rule in serving the notice on the owner or holder of the land in the case on hand, cannot be found fault with, by the petitioners.

20. The learned Additional Advocate General would further submit that, the land in question, no doubt was an urban land and it has been kept as a barren land and there had been no document to show that the owner or holder of the land had been doing any agricultural activity in that land. Admittedly it was an excess land than the maximum ceiling available for an individual, i.e. 500 Sq.mts., and therefore the excess land to the extent of 1500 Sq.mts., in the urban area, since had to be declared as excess land and to be acquired for the purpose of re-distribution to landless persons, which is the object of the Act and therefore there is absolutely no infirmity or illegality in any of the procedures adopted by the respondents/Competent Authority, by invoking various provisions of the Act which culminated, in the vesting of the land and taking over possession of the land and therefore, the said proceedings issued under Section 9(5) of the Act dated 03.11.1997, which is impugned herein can very well be sustained and cannot be assailed upon and therefore no interference is required in the said impugned order.

21. I have considered the said submissions made by Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners as well as Mr.S.T.S.Moorthy, learned Additional Advocate General appearing for the respondents.

22. It is a fact that the owner of the land, one Krishnaveni Ammal died on 21.04.1997 and thereafter the petitioners, who are the legal heirs of the said Krishnaveni Ammal had inherited and had been in possession and enjoyment of the property in question. Admittedly, the Urban Land Ceiling proceedings was initiated by the respondents, by issuance of notice under Section 7(2) of the Act only on 02.08.1997. Therefore, at the time of the issuance of the notice under Section 7(2), the owner i.e. Krishnaveni Ammal was no more. However, it is the claim of the respondents that the notice was sent in the name of the said individual.

23. Further assuming that Rule 8(2)C can be invoked for the purpose of issuance of notice, as argued by the learned Additional Advocate General, in the case on hand, there is no proof to show that before invoking Rule 8(2)C, whether an attempt has been made by the respondents to serve notice by sending it through Registered Post to the owner or holder of the land. Since no such documents have been produced before this Court, it cannot be presumed that only after making such an attempt to send such notice through Registered Post, as contemplated under the Rule, the method of serving notice by pasting it in conspicuous place, as contemplated under Rule 8(2) C was invoked. Further, the very same procedure has been adopted

uniformly in every stage till the impugned order was passed.

24. After several years, the petitioners who are the legal heirs of the owner of the property, came to understand that some proceedings had been issued under the Urban Land Ceiling Act, and they voluntarily made an application for certified copy of the impugned proceedings, which was furnished to them and thereafter, they challenged the same before this Court, in this writ petition.

25. It is the admitted case on the side of the respondents that, even 11(3) notification was issued on 24.03.1999 and thereafter the possession was taken over on 07.06.1999. Assuming that 11(3) notification was issued on 24.03.1999, whether subsequent notice under Section 11(5) was issued by the respondents to seek for delivery of possession is yet another question. In this regard, admittedly no notice under section 11(5) was issued. However, the Act says, after 11(3) notification, 11(5) notice has to be issued and if at all pursuant to 11(5) notice, the owner has not delivered the vacant possession of the land, then the Competent Authority can invoke 11(6) of the Act and proceed for taking forcible possession by using the force in this regard. The law is well settled in this regard.

26. As it has been rightly pointed out by the learned Senior Counsel appearing for the petitioners, the complete answer for this question, has been given by the Hon'ble Division Bench of this Court in A.N.Visalakshi case (cited supra), where the Division Bench has given a categorical finding, by following the decision of the Hon'ble Apex Court in the case of State of Uttar Pradesh Vs Hari Ram reported in 2013 (4) SCC 280, and has held that, if a notice under Section 11(5) of the State Act was issued to the land owners and the land owner's representation to keep the proceedings pending, as the owner was trying to go for an Appeal, since it has not been considered, even in that case the claim of the respondents that they have taken over possession had been negated. The reason being that, even if notice under Section 11(5) was issued pursuant to which, the land was not delivered by the owner, then the possession has to be taken only in the manner as contemplated under Section 11 (6) of the Act and in the absence of any such procedure being adopted under Section 11(6) of the Act to take forcible possession, then it cannot be construed that the possession has been taken by the authorities.

27. In the said case, which was dealt with by the Division Bench, in fact, 11(5) notice was issued. However the fact remains that in that case, in spite of 11(5) notice, possession was not delivered and therefore the next course of action which available to the authorities was to invoke 11(6),

which they have admittedly not invoked and therefore the claim of the respondents that, they have taken possession was not accepted by the Hon'ble Division Bench. The case in hand is somewhat better than the one dealt with by the Division Bench, as in this case even 11(5) notice was not at all issued.

28. Merely because 11(3) notification was issued, the respondents cannot claim that they have taken possession. Even though they have given a date to take possession as 07.06.1999, absolutely there is no proof or documents filed before this Court to satisfy that they have issued notice either under Section 11(5) on voluntary basis or invoking 11(6) proceeded for taking possession forcibly from the owners of the land in the manner known to law. Therefore in the absence of these documents to show that the possession had been taken either under Section 11(5) or under Section 11(6) of the Act, it can be safely concluded that the possession as claimed by the respondents that, it was taken on 07.06.1999, cannot be accepted and therefore it has to be held in favour of the petitioners and against the respondents.

29. Further, in this case starts from 7(2) notice till 11 (1) notification, wherever notice was required to be served in the manner known to law, has not been served to the owners of the land. Since it is the fact that the original owner Krishnaveni Ammal died on 21.04.1997, sincere attempt should have been made by the respondents to trace out the legal heirs of the original owner. It is the stand of the respondents, that the original owner Krishnaveni Ammal was not available for serving notice. However, the fact remains that the owner died four months before the proceedings was initiated. All these facts, would show that there had been no attempt on the side of the respondents to verify, who is the present owner or owners of the land and whether they are residing in the land or nearby area and what is the address presently or last known address and after ascertaining this, notice should have been given by sending it through Registered Post, which admittedly the respondents have not done.

30. It is the claim of the respondents that, since the address of the owner was not known and she was not available for serving notice, they invoked Rule 8(2)C and served the notice by pasting it in conspicuous place of the land in question itself.

31. In this regard, this Court wants to point out that, Rule 8(2)C does not contemplate such service of notice in the land to be acquired or to be declared as excess land under the Act. The language used in sub rule (C) is that, notice shall be served by affixing copies of the same in conspicuous place in the office of the Competent Authority and also in some conspicuous place in the part of the house (if any) in which

the holder of the vacant land or other person known to have last resided or carried on business or personally work for gain.

32. Strictly speaking the claim made by the respondents that they have served notice by pasting only at the conspicuous place in the land in question, cannot be taken as a service, within the meaning of sub-rule C of Rule 8(2). Therefore, in that regard also the method adopted by the respondents cannot be approved as the said method is not in the said Rule 8(2)C.

33. Therefore, the fact remains that, provisions of the Act have not been followed, the procedures contemplated under the Act have not been followed, the procedures set out under the Rule for serving the notice has also not been followed.

34. The claim made by the respondents that they have taken possession has also not been proved. In such circumstances applying the principles laid down in the aforesaid judgments, this Court has no hesitation to hold that the entire proceedings initiated under the provisions of the Act ended in the impugned order and also subsequent events including alleged taken over of the possession, as claimed by the respondents, are completely vitiated, as the said procedure as adopted by the respondents cannot be approved in the eye of law.

35. In the result, the impugned proceedings is quashed. Consequential proceedings including the claim of taking over the land in question from the petitioners, are declared to be invalid. Therefore, by virtue of the Repealing act, the land shall vest with the owners of the land, who are the petitioners herein and they shall be free to deal with the said land in accordance with law.

36. With these directions, the writ petition is allowed. However there shall be no costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-V)

//True Copy//

WEB COPY

Sub Assistant Registrar

nsd/vji

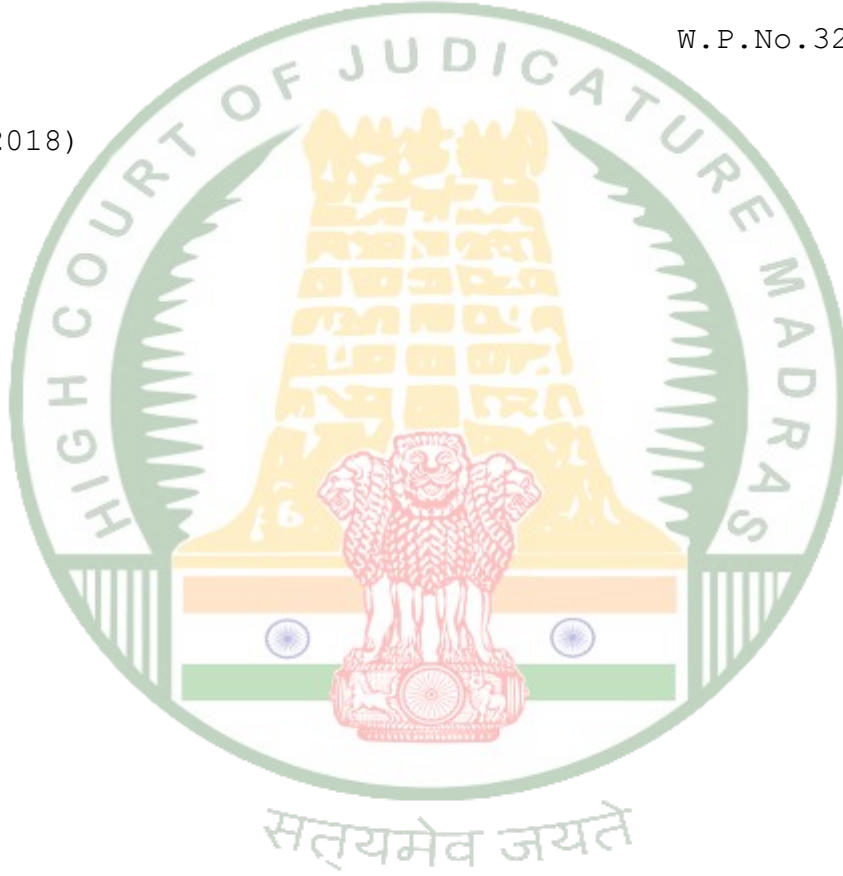
To

1. The Principal Commissioner and
Commissioner of Urban Land Ceiling,
Chepauk, Chennai-5.
2. The Assistant Commissioner,
Urban Land Ceiling,
Tambaram.

+1cc to Mr. A.L.Gandhimathi, Advocate, S.R.No. 58578
+1cc to the Government Pleader, S.R.No. 58814

W.P.No.32700 of 2003

GN(24/09/2018)



WEB COPY