

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.14442 of 2003

Mr.A. Arjunan

.... Petitioner

Vs.

1. The Competent Authority,
Tamil Nadu Urban Land (Ceiling & Regulation) Act,
Tambaram, Chennai - 600 088
 2. The Assistant Commissioner,
Tamil Nadu Urban Land (Ceiling & Regulation) Act,
Tambaram, Chennai - 600 088
 3. The Director,
Urban Land Ceiling and Regulation Act,
Chennai - 600 005
 4. The Tahsildar,
Tambaram,
Chennai
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the Second Respondent relating to the proceedings of the Second Respondent's Proceedings in C.No.174/95B dated 27.08.1997 and quash the same.

For Petitioner : Mr.Sankar Ramasamy

For Respondent : Mr.K.S. Suresh
Government Advocate

ORDER

1. Heard Mr. Sankar Ramasamy, the Learned Counsel appearing for the Petitioner and Mr. K.S. Suresh, the Learned Government Advocate appearing for the Respondent.

2. According to the Petitioner, he is in possession of 50 cents of land in S.No. 23/2B4 in Vengadamangalam village in Chenglepet

Taluk, which has been assigned to him vide Deed of Assignment bearing No. MRIV/207/70 dated 12.02.1980 executed by the Government of Tamil Nadu under the provisions of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. The Petitioner claims to have received a certified copy dated 29.05.2002 of an order bearing C.P. No. 194/95B dated 27.08.1987 passed by the Second Respondent under Section 9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter referred to as 'the Principal Act' for short) stating that an extent of 1,050 sq.m. in excess of the permissible limit of 500 sq.m. of the aforesaid land of the Petitioner was proposed to be acquired under the provisions of the Principal Act. That order is challenged by the Petitioner in this Writ Petition on the ground that the Respondents had not intimated him of any acquisition proceedings under the Principal Act when it was in force and hence, the impugned order with which he has been furnished after the coming into effect of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (hereinafter referred to as 'the Repeal Act' for short) on 16.06.1999, cannot be sustained in law.

3. Though notice had been ordered to the Respondents in the Writ Petition as early as 16.06.2003, no Counter-Affidavit has been filed. However, on the directions issued by this Court, the Respondents have produced the file containing the records including the impugned order.

4. It is urged by the Learned Government Advocate appearing on behalf of the Respondents that the proceedings for the acquisition of the vacant land of the Petitioner under the Principal Act had been completed when it was in force and in pursuance thereof, possession of that land has also been taken before the Repeal Act came into effect and hence, the Petitioner cannot now question the impugned order. Buttressing that contention, it is further sought to be brought to the notice of this Court from the records in the file produced of the existence of a Notice bearing R.C. No. 1467/98B dated 08.01.1999 issued under Section 11(5) of the Principal Act along with an undated document titled as 'Land Delivery Receipt'.

5. On a mere perusal of the contents of the impugned order, it is evident that the Second Respondent has proceeded on the premise that the Petitioner was not residing in the village where the land was situated and as his present address was not known, the Notice dated 18.12.1995 issued under Section 7(2) of the Principal Act and the Notice dated 20.06.1997 issued under Section 9(4) of the Principal Act were affixed in the aforesaid land of the Petitioner. In this context, Learned Counsel for the Petitioner submits from the Ration Card of the Petitioner for the period from 1998-2003 showing that he had been a resident of Door No. 328/10, Mettu colony, Vengadamangalam, Chenglepet

Taluk, Kancheepuram District, that the claim of the Second Respondent in the impugned order that the Petitioner is not residing in that village, cannot be believed.

6. It requires to be pointed out here that before passing an order under Section 9(5) of the Principal Act, it is incumbent upon the Competent Authority in terms of Section 9(4) of the Principal Act read with Rule 8 of the Tamil Nadu Urban Land (Ceiling & Regulation) Rules, 1978, to serve on the person concerned the draft statement prepared in accordance with Sections 9(1) and 9(2) of the Principal Act together with a notice that any objection thereto shall be preferred within 30 days, by sending the same by registered post at his last known address and when the efforts to serve the same are not successful for the reasons other than that it has been returned as 'refused', the same shall be served by affixing copy of the same in a conspicuous place in the office of the Competent Authority and upon some conspicuous part of the house in which the concerned person is known to have last resided or carried on business or personally worked for gain. It cannot be gainsaid that the aforesaid mandatory provision in the statute, which prescribes the manner of service of such notice, attracts the celebrated rule in Taylor -vs- Taylor that has stood the test of time and has been recognized by the Hon'ble Apex Court in various decisions including in Ramchand Keshav Adke -vs- Govind Joti Chavare [AIR 1975 SC 915], that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performances are necessarily forbidden. Viewed from that perspective, Learned Government Advocate appearing on behalf of the Respondents is not in a position to show from the records in the file produced that the notice under Section 9(4) of the Principal Act had been attempted to be served on the Petitioner at his last known address by registered post as per the aforesaid statutory requirement before affixing that notice in the land of the Petitioner. This would suffice to hold that the impugned order issued under Section 9(5) of the Principal Act in consequence thereof is vitiated as non-est for that reason.

7. Be that as it may, having regard to the further contention of the Learned Government Advocate that the Second Respondent has already taken possession of the land when the Principal Act was in force and the Petitioner resultantly cannot claim the benefits of abatement of acquisition proceedings conferred by the Repeal Act, reference may be made to the decision of the Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Hari Ram [(2013) (4) SCC 280] 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, in which the legal

position has been succinctly explained as follows:-

"38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 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 18.3.1999. 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."

It is abundantly clear from the aforesaid dictum laid down in that binding ruling 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 specified 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. Applying to the aforesaid principles to the facts of the instant case, it requires to be pointed out here that Learned Government Advocate appearing on behalf of the Respondents is unable to show from the records in the file produced that the Notice under Section 11(5) of the Principal Act has been served on the Petitioner or that the undated document titled as 'Land Delivery Receipt' has been signed by the Petitioner. The Respondents have also not placed any acceptable material before this Court to show that the Petitioner has surrendered the physical possession of the land at any time voluntarily after the Notice dated 18.01.1999 under Section 11(5) of the Principal Act or that the Respondent had taken physical possession of that land by use of force from the Petitioner under Section 11(6) of the Principal Act after a lapse of a period of 30 days from the date of service of that notice dated 18.01.1999 till 16.06.1999 when the Repeal Act came into effect. The only possible conclusion that could be inferred from this incontrovertible fact situation borne out from the materials placed on record is that the Petitioner continued to be in physical possession of the land, which forms the subject-matter of this Writ Petition, despite the impugned order and the other self-serving records in the file produced, and the benefits of abatement of the acquisition proceedings conferred by the Repeal Act would enure to the Petitioner.

9. Learned Counsel for the Petitioner submits that the same view has been expressed by this Court in respect of the identical case of the uncle of the Petitioner, viz., G.Madhavan, in respect of the adjacent land situated in S.No. 23/2B3 in Vengadamangalam village in Chenglepet Taluk, in the order dated 07.06.2011 in W.P. No. 37138 of 2002.

10. Accordingly, the Writ Petition is allowed on the aforesaid terms. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

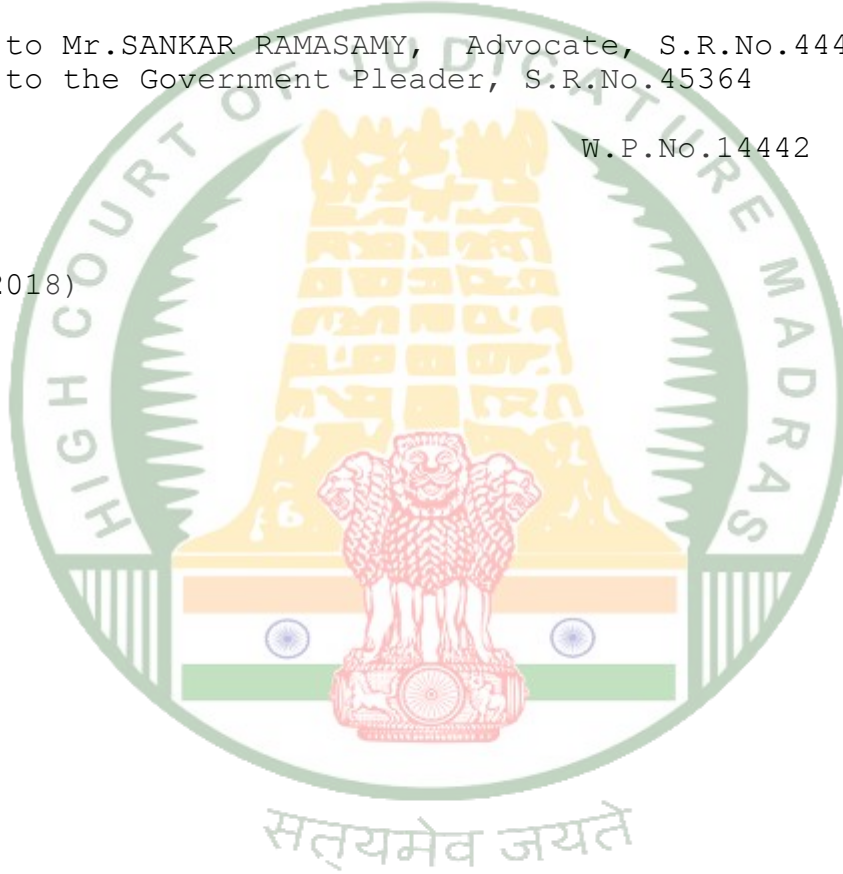
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Chennai

+1cc to Mr.SANKAR RAMASAMY, Advocate, S.R.No.44443
+1cc to the Government Pleader, S.R.No.45364

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BS (CO)
TR(07/08/2018)



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