

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.07.2018

CORAM

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

W.P.No.28744 of 2003
and
WPMP No.35119 of 2003

Mohammed Ali

... Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005
2. The Competent Authority/
Urban Land Ceiling,
Kunrathur Zone,
Kancheepuram District
3. The Tahsildar,
Sriperumbudur Taluk,
Kancheepuram District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the Second Respondent herein in File No.R.C.B.352 of 1998 dated 09.02.1999 and the consequential order of the First Respondent made in Rc.No.11940/99-J1 dated 30.04.2003, quash the same and consequently forbear the Respondents from initiating any proceedings under the provisions of Urban Land Ceiling Act in respect of the lands of the Petitioner comprised in S. No. 430/1 forming part of the layout in PPD/LO/50/93 of Mangadu Village, Sriperumbudur Taluk, Kancheepuram District.

For Petitioner : Mr.P. Seshadri

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

ORDER

Heard Mr. S.Srinivasan, Learned Counsel appearing on behalf of the Petitioner and Mr. K.S.Suresh, Learned Government Advocate appearing for the Respondents.

2. The Petitioner had been served with Notice No. R.C.B. 352 of 1998 dated 09.02.1999 by the Second Respondent under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter indicated as "the Principal Act" for brevity) requiring the Petitioner to surrender or deliver the possession of his land comprised in S. No.430/1 forming part of the layout in PPD/LO/50/93 of Mangadu Village, Sriperumbudur Taluk, Kancheepuram District to the Tahsildar, Sriperumbudur Taluk within thirty days of the date of service of that notice. Thereafter, the Petitioner had preferred an appeal against the aforesaid order before the First Respondent /The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai, who had by Order No.N.K.J1/11940/99 dated 19.05.1999 granted interim stay of all further proceedings till the disposal of that appeal. However, when the said appeal was pending, the Principal Act was repealed by the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 (hereinafter indicated as "the Repeal Act" for brevity) which came into effect on 16.06.1999. The First Respondent then proceeded to dispose that appeal by order dated 30.04.2003 holding that since the Principal Act was repealed by the Repeal Act, the appeal under Section 33 of the Principal Act had abated and the appellate authority has become functus officio.

3. In that factual backdrop, the Petitioner has filed this Writ Petition challenging the aforesaid Notice No. R.C.B. 352 of 1998 dated 09.02.1999 issued by the Second Respondent as well as the order Rc.No.11940/99-J1 dated 30.04.2003 passed by the First Respondent and to consequently forbear the Respondents from initiating any proceedings under provisions of the Principal Act in respect of the lands of the Petitioner.

4. Though the Writ Petition has been admitted by this Court on 15.10.2003 and Rule Nisi has been issued calling for records from the Respondents, neither the same have been produced before this Court at the time of hearing nor any Counter Affidavit has been filed by the Respondents.

5. 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 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."

In the light of the aforesaid dictum laid down in that binding decision 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.

6. Applying the aforesaid principles to the facts of the instant case, it is evident that the Respondents could not claim to have taken physical possession of the land by use of force till the lapse of the period of thirty days from the date of service of the notice dated 09.02.1999 issued by the Second Respondent to the Petitioner under Section 11(5) of the Principal Act and again from 19.05.1999 when the First Respondent stayed the acquisition proceedings till 16.06.1999 when the Repeal Act came into effect. The Respondents have also not placed any material before this Court to show that the Petitioner had surrendered physical possession of the land at any time voluntarily after service of the said notice dated 09.02.1999, or that the Second and Third Respondents had taken physical possession of that land by use of force from the Petitioner under Section 11(6) of the Principal Act after the lapse of the period of thirty days from the date of service of the said notice dated 09.02.1999, till 19.05.1999 when the First Respondent stayed the acquisition proceedings. 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 orders and as such, the Petitioner is entitled to claim the benefits of abatement of the acquisition proceedings conferred by the Repeal Act as mentioned supra.

7. Accordingly, the Writ Petition is allowed on the aforesaid terms. Connected miscellaneous petitions are closed. No costs.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Principal Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005

2. The Competent Authority/
Urban Land Ceiling,
Kunrathur Zone,
Kancheepuram District

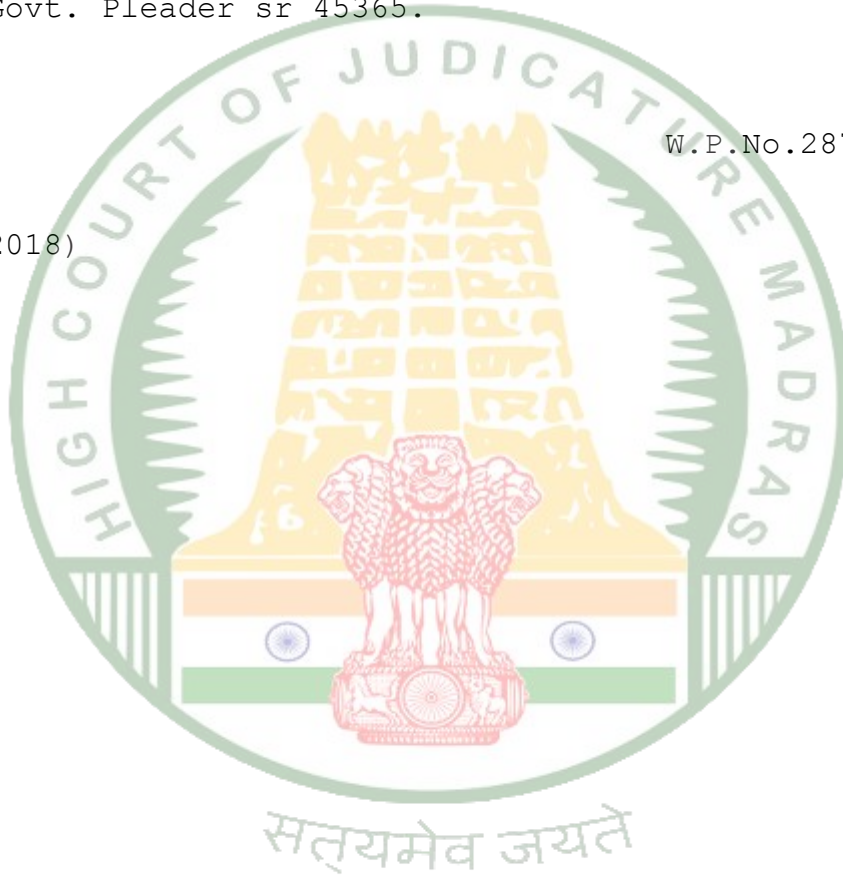
3. The Tahsildar,
Sriperumbudur Taluk,
Kancheepuram District

+1 CC to Mr.P. Seshadri, Advocate sr 45421.

+1 CC to Govt. Pleader sr 45365.

W.P.No.28744 of 2003

SPD(CO)
SP(06/08/2018)



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