

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
RESERVED ON : 28.03.2019  
PRONOUNCED ON : 23.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Review Appln. No.67 of 2019  
in WA.No.1667 of 2017

N.Vijayalakshmi .. Applicant  
Vs.

1.The Special Commissioner,  
Commissioner of Land Reforms,  
Chepauk, Chennai-5.

2.The Assistant Commissioner,  
Competent Authority,  
Urban Land Ceiling,  
Kundrathur, Chennai.

3.The Tahsildar,  
Sriperumbudur. ... Respondents

PRAYER : Review Application is filed under Order XLVII  
Rule 1 read with Section 114 of CPC to review the  
judgment dated 28.06.2018 made in WA.No.1667 of 2017.

Prayer in WA.No.1667 of 2017:

It is therefore prayed that this Hon'ble Court may  
be pleased to allow the Writ Appeal and set aside the  
order dated 20.06.2013 in WP.NO. 6259 of 2008.

Prayer in WP.NO. 6259 of 2008:

Writ Petition filed under Article 226 of the  
Constitution of India Praying for issuance of a Writ of  
Certiorari Mandamus Calling for the records of the  
respondents especially the order of the 2nd respondent  
dt 13.3.1997 in Ref.Na.Ka.2158/96A under section 9(5)  
in respect of lands in Survey No.737 738/1B and 740  
measuring an extent of 59 cents 59 cents and 80 cents  
respectively of Kundrathur village Sriperumbudur taluk  
Chingleput district and quash the same and treat the  
proceedings as abated under section 4 of the Tamilnadu  
Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act  
20 of 1999) and to direct the 3rd respondent to  
incorporate the name of the petitioners as owners of  
lands in Survey No.737,738/1B and 740 measuring an extent  
of cents,59 cents and 80 cents respectively of Kundrathur

Village, Sriperumbudur Taluk, Chingalpet District in all the revenue records like patta, chitta and adangal.

For applicant : Mr.V.Ramesh.

For respondents : Mrs.A.Srijayanthi, Spl.GP.  
for P.B.Ramanujam.

#### ORDER

P. VELMURUGAN, J.

The review applicant filed a writ petition before this Court in WP.No.6259 of 2008 to call for the records of the respondents, especially the order of the 2<sup>nd</sup> respondent dated 13.03.1997 in ref.Na.Ka.2158/96A under Section 9(5) in respect of land in Survey No.737, 738/1B and 740 measuring an extent of 59cents, 59 cents and 80cents respectively of Kundrathur village, Sriperambudur Taluk, Chingleput District and quash the same and treat the proceedings as abated under Section 4 of the Tamil Nadu urban land (ceiling & Regulation) Repeal Act, (Act 20 of 1999) and to direct the 3<sup>rd</sup> respondent to incorporate her name as owners in lands in Survey No.737, 738/1B and 740 measuring an extent of 59cents, 59 cents and 80 cents respectively of Kundrathur Village, Sriperumbudur Taluk, Chingleput District in all the revenue records like patta, chitta and adangal. The learned single judge after hearing both sides allowed the writ petition on 20.06.2013 by setting aside the order passed by the competent authority. Challenging the said order of the learned single judge, the respondents herein filed WA.No.1667 of 2017 before this Court. This Court after hearing and perusing the records allowed the writ appeal by setting aside the order passed by the learned single judge.

2. Now the applicant has filed this review application for the following grounds :-

The Division Bench failed to see that notice under Section 11(5) & 11(6) for taking physical possession shall be taken to the land owner or person in possession, whereas admittedly notice was sent only to the earlier owner, Elumalai Chettiar and not to the actual owner on the relevant date. The notice was sent to Elumalai Chettiar based on the revenue records which are not conclusive materials to sent the notice of case of acquisition of land, which belongs to the applicant. The land owner has surrendered possession voluntarily immediately when notice under Section 11(5) was served by way of affixture. Notice was not issued for voluntary surrender of the land to the applicant. The applicant has not voluntarily surrendered the land. The respondents have not invoked Section 11(6) of the Act. The applicant

continued to be in possession by cultivating the lands. No notice was served on the previous owner or to the applicant. Since possession was not taken from the applicant as on the date of repeal Act which came into force on 16.06.1999, all the proceedings got abated. This fact has not been considered by this Court. Therefore, the error apparent on the face of the record is liable to be corrected.

3. Heard both sides and perused the material records.

4. The applicant filed the writ petition and the same was allowed on 20.06.2013. Challenging the said order, the respondents /Government filed the writ appeal before this Court. On a careful scrutiny of the entire materials and the original records produced by the Government, this Court has given the findings that the property stands in the name of the original owner Thiru.Elumalai. As per the provisions of the Act, the original owner has not submitted any returns under Section 7(1) of the Act. During the inspection the competent authority found that the lands were kept as vacant land. Hence, it was treated as urban land and notice was sent to the original owner. The original owner after receiving notice did not file any objections or informed the authority that he sold the property to the applicant. Further, notice dated 13.03.1997 was served on the original owner. The original owner knowing fully aware of the urban land proceedings pending against the land sold it to the applicant. At the time of issuing notice to the original owner Thiru.Elumalai, revenue records does not reflect that the property stand in the name of the applicant. The original owner did not respond to the notice. Subsequently, notice was served by way of affixture. The declaration under Section 11(3) was issued. The land stood vested with the Government and on the date of taking possession, no one was in actual physical possession of the land. The revenue authority took over possession and handed over the property to the revenue inspector. The repeal Act came into force on 16.06.1999 whereas the possession was taken by the competent authority, much prior to the Repeal Act. The competent authority found the land as vacant land and declared it as urban vacant land. Since there was no response from the original owner declaration under Section 11(1) dated 11.08.1997 was issued and gazette notification under Section 11(3) dated 22.10.1997 declaring the urban land as vested with the Government was also issued.

5. On a perusal of all the revenue records on the date of repeal Act, there is no evidence to show that the

applicant was in possession of the said land. The appeal filed against the order of the competent authority under Section 33 of the Act was dismissed on 19.11.1998, much prior to the repeal Act. The order of the appellate authority was not challenged by the applicant. Even the revenue records filed by the applicant is for the year 1997-1998 and the repeal Act came into force on 16.06.1999. There are no records to show that while the repeal Act came into force, the applicant was in possession of the land. Further, the applicant has not challenged the notification published in the Gazette under Section 11(3) dated 22.10.1997. It is settled law that the possession follows title. As on the date of repeal Act, the property stood in the name of the Government. The possession was also with the Government. The applicant has not proved that on the date of repeal Act, she was in possession of the land. Therefore, there is no merit in the review application filed by the applicant. There is no error apparent on the face of the record so as to invoke the jurisdiction under Section XLVII Rule 1 of CPC. Even otherwise, the contrary view cannot be a reason to review the judgment which was passed on merits. We do not find any reason to entertain the review application.

6. The authorities cited by the learned counsel for the applicant at the time of arguing the writ appeal were all well considered by this Court while deciding the writ appeal. This Court while deciding the review cannot sit as an appellate Court and decide the issues once again.

7. In the result, the review application stands dismissed. No costs.

Sd/-  
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Commissioner,  
Commissioner of Land Reforms,  
Chepauk, Chennai-5.

2.The Assistant Commissioner,  
Competent Authority,  
Urban Land Ceiling,  
Kundrathur, Chennai.

3.The Tahsildar,  
Sriperumbudur.

+1cc to Mr.P.B.Ramanujam , Advocate SR.No. 88256

Rev.Appln.No.67 of 2019

A.SK(25/11/2019)