IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12414 of 2013
and M.P.Nos. 2 of 2013 & 1 of 2015
and WMP.No.22123 of 2019

1. Mr.P.J.Sudhakar
2. Mrs. P.S.Nalini
3. Mr.P.J. Prabhakar
4. Mrs. P.P. Malini .. Petitioners

-vs-

1. The Special Commissioner and
Commissioner for Urban Land Ceiling and Urban Tax,
Chepauk, Chennai - 600 005.

2. The Assistant Commissioner for
Urban Land Tax cum Competent Authority, Tambaram,
Alandur, Chennai - 600 009. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent, pertaining to the order bearing No.Na.Ka.C.Pa.No.197/97C dated 29.09.1997 and quash the same and consequentially forbear the respondents from interfering with the petitioner's peaceful possession of the properties morefully described in the schedule to the writ petition.

For Petitioners : Mr.Srinath Sridevan

For Respondents : Mr.N.Srinivasan
Additional Government Pleader

ORDER

With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

2. This writ petition has been filed praying for issuance of a writ of certiorarified mandamus, to quash the proceedings of the second respondent dated 29.09.1997, which is an order passed under Section 9(5) of the Tamil Nadu Urban

Land (Ceiling and Regulations) Act, 1978 (hereinafter referred to as "the Act") issued in the name of one late Egambaram. The petitioners also seek for a consequential direction to forbear the respondents from interfering with the petitioner's possession of the property in question. Egambaram was the original owner of the property in question by virtue of sale deed dated 07.11.1952 registered as document No.1993 of 1952. The said Egambaram died on 27.04.1987 and as per the legal heir ship certificate, there are eight legal heirs. The petitioners herein have purchased the said property from the legal heirs of the said Egambaram under four sale deeds dated 25.03.1996 registered as document Nos.1453, 1454, 1455, 1456 of 1996. After purchase of the property, the petitioners came to know that the second respondent authority had passed an order under Section 9(5) of the Act in the name Egambaram, since deceased. Therefore, the petitioners filed writ petition before this Court in W.P.No.25156 of 2006 to quash the order passed under Section 9(5) of the Act dated 29.09.1997. When the writ petition was entertained, an order of status quo was granted on 25.09.2007.

3. Subsequently, Special Commissioner and Commissioner (ULC & ULT), Chennai passed an order dated 23.10.2008 stating that an extent of 3250 sq.mts. in Survey No.8/2B of Tambaram village acquired from the dead person Egambaram gets abated under Section 3(1)(a) read with Section 4 of the Repeal Act 20 of 1999 and further action is dropped. Since this order was passed by the competent authority, namely, the first respondent, the petitioner withdrew his writ petition. After the writ petition was dismissed as withdrawn, the petitioners came to know that the superior authority to the first respondent had exercised his revisional power suo-motto and cancelled the order dated 23.10.2008 passed by the 1st respondent.

4. This order having been passed without notice to the petitioner, the petitioner approached this Court once again and filed a writ petition in W.P.No.18639 of 2011 to implement the endorsement order dated 23.10.2008 and give the benefit of G.O.(M.S)No.602, Revenue ULC I (1) Department, dated 17.10.2008, where under similar relief was granted to identical placed persons. The said writ petition was withdrawn with liberty to the petitioner to challenge the order under Section 9(5) of the Act and this is how the present writ petition has been filed challenging the order dated 29.09.1997 passed under Section 9(5) of the Act.

5. I have elaborately heard Mr. Srinath Sridevan, learned counsel for the petitioner and Mr.N.Srinivasan, learned Special Government Pleader for the respondents and carefully perused the counter affidavit and all the averments set out by the respondents therein.

6. The question to be decided is as to whether the order passed under Section 9(5) of the Act can be stated to be a valid order. In the considered opinion of this Court, to decide this issue, there need not be much deliberation as the legal position was rightly understood by the first respondent while passing the order dated 23.10.2008. It is not known under what circumstances, this order was reviewed by the superior authority. The first respondent while passing the order dated 23.10.2008 correctly understood effect of the Repeal Act 20 of 1999. Therefore, there was absolutely no reason to review the order dated 23.10.2008.

7. Be that as it may, the respondent does not dispute the fact that the order passed under Section 9(5) of the Act vide proceedings dated 29.09.1997 was issued in the name of a dead person, Egambaram. On the date, when the order was passed he was not the owner of the land and physical possession remained with the petitioners. If such is the undisputed factual position, then automatically the provisions of the Repeal Act would apply to the petitioners case.

8. In the counter affidavit filed by the second respondent elaborate averments have been set out as regards the procedure, which was adopted under the provisions of the 1978 Act. Conspicuously, in paragraph 4, it has been stated that the original owner died on the date when the order was passed. It is admitted that the notice was returned stating that the land owner was not residing in the village and therefore, the order was served by affixture. It is not known as to how the affixture could not have been affected.

9. The second respondent in the counter affidavit, more particularly, in paragraph 8, has accepted the fact that the names of the legal heirs of the deceased land owner were not informed to their office. This would go to show that on the date when the proceedings were initiated and order was passed under Section 9(5) of Act, the land owner was no more, which fact was well within the knowledge of the second respondent Department. Further, with regard to taking over of physical possession is concerned, counter affidavit proceeds on the premise that it is not necessary to take over actual physical possession or in other words, it is sufficient to take paper possession of the land and the lands can be transferred to the Revenue authorities.

10. In the considered opinion of this Court, the submission in the counter affidavit does not reflect the correct legal position, which has been settled in several decisions.

11. This Court in the case of Gurusamy Naidu and Ors. vs. The Principal Commissioner & Commissioner of Land Reforms, Chepauk and Ors. [reported in Manu/TN/0157/2016] had an occasion to consider a similar issue and after referring to

the judgment of the Division Bench pointed out that paper delivery cannot be equivalent to taking over actual physical possession in terms of the provisions of the Act i.e., following the provisions of Section 11 of the Act. The operative portion of the order reads as follows:

> "18.That apart, steps for calculating the compensation has been taken only in 2011. The law on the subject has been well settled in various decisions and it would be worthwhile to refer to the decision of the First Bench of this Court in Government of Tamil Nadu, Rep. by the Commissioner and Secretary to Government, Revenue Department, Secretariat, Chennai - 9 and Ors. Vs. Mecca Prime tannery, Rep.by its Managing Director Tmt. V.Jayakoki, Chennai 44 And ors. {2016 (6) MLJ - 273}, wherein the Division Bench, considered the very same issue and held in paragraph 33 as follows:
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> > "The phrases 'shall be deemed to have been acquired' and 'shall be deemed to have been vested absolutely in the State Government' occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and invested is vested in the State Government by notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.
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> 19. In a recent decision, the effect of the Land Delivery Receipt, prepared by the revenue official, as in the instant case, as found in page No.117 of the file was considered by the Honourable First Bench in A.N.Visalakshi and 3 ors Vs. The Special Commissioner, Urban Land Ceiling and Land Reforms, Ezhilagam, Chepauk, Chennai 5 and 2 ors. {Manu/TN/2571/2015:2015 CTC - 823}, wherein it was held as follows:
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> > "11. It is to be noted that the landowner's signature does

not find place in the Land Delivery Receipt. In page 327 of the same file, we find a representation of the landowner, dated 13.2.1998, requesting the second respondent to keep in abeyance, the notice issued under Rule 10(3) of the Rules on the ground that Appeal is pending before the first respondent. The file discloses that no action has been taken on the said representation and the officials appear to have mechanically recorded a Land Delivery Receipt. The question would be as to whether the procedure adopted by the second respondent for handling over possession is in accordance with law. This question was considered by the Division Bench of this Court in the case of Mecca Prime Tannery and Anr. (supra). The Division Bench pointed out that in cases where the competent authority issued Notice under Section 11(5) of the Act to the landowners or persons in possession to surrender or deliver possession of the land, but the landowners or the persons in land possession fails to deliver the land and continues to be in possession of such land and the Authority of the State Union (Urban land Ceiling Authority) did not take any action under Section 11(6) of the Act for taking deliver of the possession, in such cases the State Government shall not be deemed to be in possession of those lands.

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 take over possession. The land

Deliver Report can at best be construed as 'paper delivery' not authorised by law.

20. The legal position, as set out in the preceding paragraphs would squarely be applicable to the facts of this case and in the light of the above, the petitioners are entitled to the benefit of the Repeal Act.

21. Accordingly, this writ petition is allowed and the impugned order is quashed. The third respondent is directed to consider the petitioner's application, for grant of patta and proceed to take a decision, on merits and in accordance with law, within a period of three months, from the date of receipt of a copy of this order. The petitioners are directed to submit one more representation/application to the third respondent, along with the copy of this order, for compliance of the above direction. No costs. Consequently, the connected Miscellaneous Petitions are closed."

12. The judgment in the case of The Competent Authority (ULC) and Assistant Commissioner (ULT) and Anr. Vs. Dr.S.Anandalakshmy [reported in 2013 (1) L.W. 970] is also to the above effect, wherein it was held that actual physical possession ought to have been taken over by the Department and paper/symbolic possession will not be sufficient to conclude that actual possession was taken over.

13. Further, the decision in the case of Secretary to Government, Revenue Department and Ors. Vs. B.Anand Kumar [reported in (2016) SC Online Mad 6434] is also on the same lines. In the said decision, the Court had followed the judgments of the Division Bench in the case of Tamil Nadu Housing Board rep. by its Managing Director Vs. I. Gate Global Solutions Limited [W.A.Nos. 1101 of 2014 etc. dated 26.02.2016] and State of Tamil Nadu rep. by its Secretary to Government, Revenue Department Vs. Sumathi Srinivas [W.A.No.1746 of 2014 dated 17.02.2015]

14. All the above decisions hold that when actual/real possession of the land has not been taken over by the Department, the petitioner is entitled to avail the benefits of the Section 4 of the Repeal Act, 1999. The earliest decision is in the case of Vinayak Kashinath Shilkar Vs. Deputy Collector and Competent Authority and Ors. [reported in (2012) 4 SCC 718]. The Hon'ble Supreme Court held that when the appellant therein was remaining in possession of the land and at no point of time his possession was disturbed and the land was admittedly not taken over by the State authorities, the proceedings under Section 4 of the Urban Land Ceiling

Regulation Act, 1978 stood automatically abated, where possession of the land was not taken, on coming into force of the 1999 of the Repeal Act.

15. All the above decisions shall enure in favour of the petitioners and consequently it is to be held that the entire acquisition proceedings initiated in the name of the dead person Egambaram is not valid. The petitioners are entitled to remain in possession and enjoyment of the property in their own right.

16. In the result, the writ petition is allowed as prayed for and the order passed under Section 9(5) of the Act dated 29.09.1997 is quashed and consequently, the respondents are restrained from interfering with the petitioners possession and the enjoyment of the property in question. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Special Commissioner and
Commissioner for Urban Land Ceiling and Urban Tax,
Chepauk, Chennai - 600 005.

2. The Assistant Commissioner for
Urban Land Tax cum Competent Authority, Tambaram,
Alandur, Chennai - 600 009.

+1cc to Mr.Srinath Sridevan, Advocate SR.No.105007

+1cc to Government Pleader SR.No.104492

W.P.No.12414 of 2013
and M.P.Nos. 2 of 2013 & 1 of 2015
and WMP.No.22123 of 2019

SVI(CO)
GMY(30/01/2020)