

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.12959 of 2019
and
MP No.1 of 2015

T.Rajendran

...Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary,
Revenue Department,
Fort St.George,
Chennai 600 009.

2.The Special Commissioner &
Commissioner,
Land Reforms,
Chepauk, Chennai 600 005.

3.The Assistant Commissioner/Competent
Authority,
Urban Land Ceiling,
No.153, Karuneegar Street,
(Old No.16, Sannadhi Street),
Adambakkam, Chennai 600 088.

4.The Taluk Tahsildhar,
Tambaram Taluk Office,
Chennai 600 045.

5.The Village Administrative Officer,
Karapakkam,
Chennai 600 097.

...Respondents

Prayer:writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to forbear the respondents 1 to 4 pertaining to the impugned proceedings of the third respondent in its Ref.No.SR.459/97-A, dated 24.08.1998 in respect of the petitioner land in Survey No.138/1B of an extent of 1900 square meters (or) 20,691 sq.ft. situated in Karapakkam Village No.117, (presently Village No.147) Tambaram

Taluk, Kanchipuram District and declare the same as "abated" in terms of Section 4 of the Urban Land Ceiling & Regulation Act, Repeal Act 20 of 1999.

For Petitioner : Mr.M.S.Mani

For Respondents : Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioner is aggrieved against the proceedings of the third respondent dated 24.08.1998 and to declare the same as abated in terms of Section 4 of the Urban Land Ceiling & Regulation Act, Repeal Act 20 of 1999.

2.The short facts, which led the petitioner to file the present writ petition are as follows:

The petitioner inherited the subject matter property from his ancestors and the patta is also standing in his name. The third respondent initiated urban land ceiling proceedings in respect of an extent of 1900 sq.mts. of lands situated in Karapakkam Village No.117, Tambaram Taluk, Kanchipuram District. The petitioner was served with a notice under Section 7(2) of the Urban Land Ceiling & Regulation Act on 27.01.1997. Thereafter, the petitioner was not served with any other notice or communication. However, the petitioner approached financial institutions to raise loan in the month of August 2014 for putting up a residential house in the said property. He was informed that he should get computerized patta. Therefore, the petitioner approached the fifth respondent for getting computerized patta. However, to the petitioner's shock and surprise, he was informed that an extent of 1900 sq.mts. out of 2400 sq.mts. of land has been declared as surplus and transferred in the name of the State Government in the revenue records. Thereafter, the petitioner obtained the records related to the urban land ceiling proceedings through RTI application. Except a notice under Section 7(2) of the Act dated 27.01.1997, the petitioner was not issued with any other notice thereafter. The petitioner is living in the subject matter property all along and he was not dispossessed till date. He was also not issued with any notice either to deliver possession or for taking delivery of possession. Therefore, the petitioner is continuously in possession and enjoyment of the subject matter land all along. Subsequently, the Urban Land Ceiling Repealing Act 20 of 1999 came into force and in view of Section 4 of the Repealing Act, the entire proceedings deemed to have been abated, since the petitioner was not dispossessed from the subject matter property till this day. Hence, the present writ petition is filed with the relief as stated supra.

3. A Counter affidavit is filed by the respondents, wherein it is stated that a notice under Section 7(2) of the Act was issued on the petitioner on 27.01.1997 and accepted by him and however, he failed to file the return under Section 7(1) of the said Act. Before passing orders under Section 9(5) of the Act, the land was inspected by the Assistant Commissioner and an extent of 1900 sq.mts. was arrived as an excess vacant land and the same was acquired as per the procedure laid down in the Act. The urban land owner on receipt of notice under Section 7(2) should have filed return under Section 7(1) of the Act. Since the address of the urban land owner was not known and he was not residing in the village, all notices and order were served by affixture in the said land, which is an accepted mode of service as per the provisions of the Act. The petitioner was served with notice under Section 11(5) of the Act on 08.04.1999 to surrender possession of the excess vacant land and the same was served by affixture. As there was no objections from the petitioner, the possession of the excess vacant land was handed over by the Revenue Authorities on 01.06.1999 by signing in the Land Delivery Receipt. Thereafter, necessary changes have been carried out in the revenue records in the name of the Government.

4. Learned counsel for the petitioner submitted that the entire proceedings initiated by the respondents under the Urban Land Ceiling Act, got abated in terms of Section 4 of the Repealing Act, 20 of 1999, as the possession of the subject matter land continues to be with the petitioner. He further submitted that in the absence of physical possession taken from the petitioner, the respondents are not entitled to contend as if they have taken possession. He further submitted that even if they have made records in their name as if they have taken possession, that could be only a symbolic possession and not physical possession. In support of the above contention, the learned counsel relied on the two Division Bench decisions of this Court reported in 2015 (2) CWC 20 (Mad), R.Siddiah vs. State of Tamilnadu and 2015(1) CWC 388, The Government of Tamilnadu vs. Aalim Muhammed Salegh Trust, Rep. by its Managing Trustee, arising out of same issue.

5. On the other hand, the learned Special Government Pleader for the respondents submitted that entire proceedings were initiated and culminated into, by taking over the possession of the petitioner's land by way of executing delivery receipt on 01.06.1999 and therefore, the petitioner is not entitled to claim that he is in possession. The learned Special Government Pleader also produced the original file before this Court.

6. Heard both sides.

7. It is seen that an extent of 1900 sq.mtrs. of the petitioner's land at Survey No.138/1B of Karapakkam Village

No.117, Tambaram Taluk, Kanchipuram District was declared as surplus land under the urban land ceiling proceedings. Though it is seen that such urban land proceedings ended in passing a declaration to declare the above extent of land as surplus, taking over of possession of such surplus land from the hands of the petitioner is disputed by the petitioner. In other words, it is his specific contention that physical possession continues to be with him till this day, even though the said land was declared as surplus. Therefore, the petitioner seeks protection under Section 4 of the amended Act to get a declaration that the entire proceedings as abated. Under these circumstances, this Court has to find out as to whether physical possession of the subject matter land has been taken from the petitioner on 01.06.1999, as claimed by the respondents or it still continues with the petitioner.

8. Perusal of the file produced before this Court would show that a Land Delivery Receipt dated 01.06.1999 made available therein, only indicates that a symbolic possession of the land was taken over by the Revenue Officer, Pallikaranai and handed over to the Deputy Tahsildar, (Urban Land Ceiling). In the very same Certificate, a column shown as "urban land owner" is left blank without having his signature. Therefore, it is evident that the urban land owner has not signed the delivery receipt to indicate that he has handed over possession of land to the Revenue Official. On the other hand, the Delivery Receipt produced before this Court would show that it is only a record of symbolic possession taken by of the Revenue Officials, as if the possession was taken over by the Revenue Inspector and handed over to the Deputy Thasildar. Hence, the said Certificate at the best can be treated only as a proof of symbolic possession and not that of physical possession, especially, when, admittedly, the land owner has not signed the delivery receipt to establish that either he has handed over possession or that the revenue officials have taken possession in his presence and knowledge. The very same issue was considered by two decisions of the Division Bench of this Court in 2015(2) CWC 20 (Mad), R.Siddiah vs. State of Tamilnadu and 2015(1) CWC 388, The Government of Tamilnadu vs. Aalim Muhammed Salegh Trust, Rep. by its Managing Trustee, (wherein I am a party) in which this Court found that paper possession cannot be construed as that of possession as required under the Act, since symbolic possession is different from physical possession. It is also found therein that there should be a proof of voluntary surrender of vacant land or forceful dispossession under Section 10(6) of the said Act and in the absence of such proof, it cannot be construed that physical possession has been taken from the land owner. It is not the case of the respondents that the petitioner has voluntarily handed over possession or that they have dispossessed him forcefully by resorting to procedure

contemplated under Section 10(6) of the said Act. Hence, it is evident that the physical possession continues with the petitioner.

9. In 2015(2) CWC 20 (Mad), R.Siddiah vs. State of Tamilnadu, at paragraph Nos.8,9,10,11, it is observed as follows:

"8. The issue as to whether taking over of the land by symbolic possession can be construed as possession taken and based on such act, whether the authorities can claim right over the land after the Repeal Act, has already been considered and decided by the Hon'ble Supreme Court in the case of State of U.P. vs., Hari Ram reported in 2013-3-MLJ-408(SC) at para 38 and 39, which reads 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. 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. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act."

9. Likewise in a decision rendered by the Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu vs., Mecca Prime Tannery reported in 2012-6-MLJ-273, it has been held at para 33 to 35 as follows:-

"33. 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 interest 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.

34. There are cases where after notice under Section 11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the land owner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the land owner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

35. However, there are cases where although the competent authority issued the notice under Section 11 (5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands. "

10. From the perusal of the above said decisions, it is very clear that the mere vesting of land under sub-section (3) of Section 10 of the said Act would not confer any right on the State Government, in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession under sub-section (6) of Section 10 of the said Act. Symbolic possession is totally different and distinct from physical possession. It is only a paper possession, which cannot be treated or construed as that of possession as required under the Act.

11. Therefore, we are of the view that appellants/petitioners are justified in their contention

that no possession was taken from them at any point of time in respect of the land, which was declared 'surplus'. If actual possession is not taken and it continues with the appellants, then they are entitled to have the benefit of the Repealing Act, wherein it is contemplated that if possession is not taken over by the State Government, then the same to be retained by the land owner and the entire proceedings should be treated as lapsed. Therefore, the finding of the learned Single Judge that the possession has been taken over by the authorities, is factually incorrect."

10. In 2015(1) CWC 388, The Government of Tamilnadu vs. Aalim Muhammed Salegh Trust, Rep. by its Managing Trustee, it is observed at paragraph Nos.10,11 and 12 as follows:

"10. In our considered view, all the above issues need not be gone into at this stage, as the only relevant issue for consideration is as to whether the land owner was dispossessed by the appellants in pursuant to the impugned proceedings or not. For such purpose, we have perused the files. The files disclose that a notice under Section 11(5) of the Act was issued on the said Baskara Pillai on 28.12.1992, calling upon him to surrender or deliver possession of the subject matter lands. Further, the competent authority addressed the District Collector of the then Chengalpet-MGR District at Kancheepuram, through proceedings dated 28.12.1992, requesting that the Tahsildar, Saidapet may be instructed to take possession of the lands from the urban land owner. Similar proceedings were also addressed to the Tahsildar of Saidapet on the very same day. Thereafter, there is nothing in the files to show that the land owner has either voluntarily surrendered the possession or the authorities have taken steps to take physical possession of the lands forcibly as per the procedures contemplated under the Act. On the other hand, only a Land Delivery Receipt, dated 24.2.1994 is available in the files, which shows that the subject matter lands have been handed over by the Revenue Inspector, Poonamallee and taken over by Firka Revenue Inspector, Mori Firka. The said Land Delivery Receipt does not show anywhere that the said Baskara Pillai delivered the possession of the lands on his own or he was dispossessed forcibly, except showing him as the owner. Therefore, it is evident from the perusal of the files that only a symbolic or paper possession was taken by the Revenue officials of the appellants

and factual and physical possession was never taken from the hands of the original owner or from the writ petitioner at any point of time.

11. Whether symbolic or paper possession is a valid possession to sustain the proceedings initiated under the Act, has already come up for consideration before this Bench in Writ Appeal No.949 of 2013 and by judgment dated 3.9.2014, we have observed in paragraphs 8 to 10 as follows:

"8. The issue as to whether taking over of the land by symbolic possession can be construed as possession taken and based on such act, whether the authorities can claim right over the land after the Repeal Act, has already been considered and decided by the Hon'ble Supreme Court in the case of State of U.P. vs., Hari Ram reported in 2013-3-MLJ-408(SC) at para 38 and 39, which reads 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. 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. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act."

9. Likewise in a decision rendered by the

Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu vs., Mecca Prime Tannery reported in 2012-6-MLJ-273, it has been held at para 33 to 35 as follows:-

"33. 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 interest 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.

34. There are cases where after notice under Section 11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the land owner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the land owner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

35. However, there are cases where although the competent authority issued the notice under Section 11(5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands. "

10. From the perusal of the above said decisions, it is very clear that the mere vesting of land under sub-section (3) of Section 10 of the said Act would not confer any right on the State Government, in the absence of any proof that there was voluntary surrender of vacant land or there was

a forceful dispossession under sub-section (6) of Section 10 of the said Act. Symbolic possession is totally different and distinct from physical possession. It is only a paper possession, which cannot be treated or construed as that of possession as required under the Act."

12. Further, the Honourable Supreme Court in the case reported in 2014 (2) CTC 665 (SC) (Gajanan Kamlya Patil Vs. Addl. Collector & Competent Authority), held in paragraphs 12 and 13 as follows:

"12. We may indicate, apart from the affidavits filed by the officials in this case, no other document has been made available either before the High Court or before this Court, either showing that the Appellant had voluntarily surrendered or the Respondents had taken peaceful or forcible possession of the lands.....

13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed."

11. Perusal of the above decisions of the Division Bench of

this Court would show that the present facts and circumstances of the case would squarely fall within the ratio laid down in the above decisions in favour of the petitioner, as this Court in this case too finds that the respondents have not taken physical possession of the land from the petitioner at any point of time, except by recording a symbolic possession. Accordingly, the petitioner is entitled to get the benefit of Section 4 of the Repealed Act and consequently, the entire impugned proceedings are liable to be declared as abated. Thus, the writ petition is allowed and the impugned orders are set aside. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vri
To

- 1.The Secretary,Government of Tamilnadu,
Revenue Department, Fort St.George, Chennai 600 009.
- 2.The Special Commissioner & Commissioner,
Land Reforms,
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- 5.The Village Administrative Officer,
Karapakkam, Chennai 600 097.

+5 cc to Mr.M.S.Mani, Advocate, Sr.No. 41714
+1 cc to The Government Pleader, Sr.No. 42488

W.P.No.12959 of 2015&
W.P.No.12960 of 2015

CSL/19.06.2019