

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 04.11.2019	Orders Pronounced on 06.12.2019
----------------------------------	------------------------------------

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.24445, 24446 and 24447 of 2002

and

W.P.M.P.Nos.561, 562, 564, 565, 567 and 568 of 2010

and

WMP No.33161 of 2018 in W.P.Nos.24445 of 2002

W.P.No.24445 of 2002

1. K.Rohia Beevi (died)

2. K.Nabisa Salima

(Second Petitioner is
impleaded/substituted as L.R. of the
deceased petitioner as per order dated
18.12.2008 in W.P.M.P.No.1890 of 2008
in W.P. No.24445 of 2002)

... Petitioner

..vs..

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

2. The Competent Authority
Urban Land Ceiling
Tirunelveli - 2.

... Respondents

W.P.No.24446 of 2002

1. T.P.M.E.Anwar Peer Mohideen (died)

2. Ibrahim

3. Sinda Mohammed Nizam

4. Mohammed Nawaz

(Petitioners 2 to 4 are impleaded as
L.Rs. of the deceased petitioner as per
order dated 17.09.2018 in W.M.P.No.70
of 2017 in W.P.No. 24446 of 2002)

... Petitioners

..vs..

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

2. The Competent Authority
Urban Land Ceiling
Tirunelveli - 2.

... Respondents

W.P.No.24447 of 2002

M.K.H.Jaiboon Beevi

... Petitioner

..vs..

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

2. The Competent Authority
Urban Land Ceiling
Tirunelveli - 2.

... Respondents

Writ Petition No.24445 of 2002 has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 27.06.1979 in SRA.23/1978 under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and his subsequent notification under Section 11(3) of the Act gazetted on 04.06.1980 and quash the same and consequently, to direct the respondents to forbear from interfering with the petitioner's right, title, possession and enjoyment of the lands in Survey Nos.776/1, 772/2A, 813/1B1, 813/2B1 measuring 0.72.34, 0.66.12, 0.16.44, 0.93.58 hectares respectively in Suthamalli Village, Tirunelveli District.

Writ Petition No.24446 of 2002 has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 04.02.1980 in SRA.22/1978 under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and his subsequent notification under Section 11(3) of the Act gazetted on 03.12.1980 and quash the same and consequently, to direct the respondents to forbear from interfering with the petitioner's right, title, possession and enjoyment of the lands in Survey No.831 measuring 1.00.36 hectare in Sathanvelli Village, Tirunelveli District and in Survey Nos.194/1, 195/1, 195/3, 196/1, 197/1 measuring 0.56.25, 0.01.21, 0.62.73, 0.75.68, 0.21.02 hectares respectively in Narasinganallur Village, Tirunelveli District.

Writ Petition No.24447 of 2002 has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 10.07.1979 in SRA.78/1978 under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and his subsequent notification under Section 11(3) of the Act gazetted on 24.12.1980 and quash the same and consequently, to direct the respondents to forbear from interfering with the petitioner's right, title, possession and enjoyment of her lands in Survey Nos.774/1, 775/1, 815, 776/2B, 777/1, 813/1A, 813/2A measuring 0.48.16, 0.61.92, 1.99.91, 0.17.36, 0.20.02, 0.03.95, 0.22.46 hectares in Sathamalli Village, Tirunelveli District and in Survey Nos.185, 186, 187 measuring 0.51.39, 0.57.46, 0.28.33 hectares respectively in Narasinganallur Village, Tirunelveli District.

(Prayers in all the three Writ Petitions amended as per order dated 29.04.2013 in WPMP No.560/2010, 563/2010 and 566/2010 in W.P.Nos.24445, 24446 and 24447 of 2002).

For Petitioner in : M/s.T.M.Hariharan
all W.Ps.

For Respondents : Mrs.Narmadha Sampath
in all W.Ps. Additional Advocate General
assisted by
Mrs.K.Bhuvaneswari
Additional Government Pleader

COMMON ORDER

Writ Petitions are filed praying to quash the Final Statement of the second respondent in SRA No.23/1978 dated 27.06.1979, SRA.22/1978 dated 04.02.1980 and SRA.78/1978 dated 10.07.1979 respectively under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the subsequent Notification under Section 11(3) of the said Act, gazetted on 04.06.1980, 03.12.1980 and 24.12.1980 respectively and for consequential direction to the respondents to forbear from interfering with the petitioners' right, title, possession and enjoyment of their lands.

2. The case of the petitioners, in all the three Writ Petitions, is as follows:-

The second respondent initiated urban land proceedings, has purported to acquire the lands of the petitioners, under Section 33 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, to an extent of Hectares 2.48.48, 3.17.25 and 5.10.96 of

agricultural lands respectively from the holdings of the respective petitioners treating them as urban vacant land in excess of the ceiling limit. As against the said urban land proceedings, the respective petitioners preferred separate appeals on 12.04.1999 before the first respondent challenging the urban land proceedings on the ground that the entire lands are agricultural lands and hence, the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act are not attracted with respect to the petitioners' lands and the entire proceedings initiated under the Act are non-est and void in law and without jurisdiction. Subsequently, the above Act was repealed on 31.05.1999 and the Repealing Act came into force on 01.06.1999. Since the possession is with the petitioners and the possession is not taken in the manner known to law and the petitioners are in continuous possession, the petitioners filed the present Writ Petitions.

3. Learned counsel for the petitioners would submit that though the urban land proceedings was initiated in the year 1979, final statements under Section 10(1) of the Act were issued on 27.06.1979, 04.02.1980 and 10.07.1979 respectively and notifications under Section 11(3) of the Act were gazetted on 04.06.1980, 03.12.1980 and 24.12.1980 respectively.

4. Learned counsel for the petitioners would further submit that though initially the petitioners filed Writ Petitions for Mandamus directing the first respondent to dispose of the Appeal Petition dated 12.04.1999 with the petition to condone the delay, within the time to be fixed by this Court, subsequently, the petitioners in the above Writ Petitions filed Amendment Petitions in WPMP No.560/2010, 563/2010 and 566/2010 and as per the common order of this Court dated 29.04.2013, the original prayer in Writ Petition No.24445 of 2002 was amended as follows:

"Certiorarified Mandamus calling for the records of the second respondent dated 27.06.1979 in SRA.23/1978 under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and his subsequent notification under Section 11 (3) of the Act gazetted on 04.06.1980 and quash the same and consequently, to direct the respondents to forbear from interfering with the petitioner's right, title, possession and enjoyment of the lands in Survey Nos.776/1, 772/2A, 813/1B1, 813/2B1 measuring 0.72.34, 0.66.12, 0.16.44, 0.93.58 hectares respectively in Suthamalli Village, Tirunelveli District.

and the original prayer in Writ Petition No.24446 of 2002 was

amended as follows:

"Certiorarified Mandamus calling for the records of the second respondent dated 04.02.1980 in SRA.22/1978 under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and his subsequent notification under Section 11 (3) of the Act gazetted on 03.12.1980 and quash the same and consequently, to direct the respondents to forbear from interfering with the petitioner's right, title, possession and enjoyment of the lands in Survey No.831 measuring 1.00.36 hectare in Sathanvelli Village, Tirunelveli District and in Survey Nos.194/1, 195/1, 195/3, 196/1, 197/1 measuring 0.56.25, 0.01.21, 0.62.73, 0.75.68, 0.21.02 hectares respectively in Narasinganallur Village, Tirunelveli District.

and the original prayer in Writ Petition No.24447 of 2002 was amended as follows:

"Certiorarified Mandamus calling for the records of the second respondent dated 10.07.1979 in SRA.78/1978 under Section 10(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and his subsequent notification under Section 11(3) of the Act gazetted on 24.12.1980 and quash the same and consequently, to direct the respondents to forbear from interfering with the petitioner's right, title, possession and enjoyment of her lands in Survey Nos.774/1, 775/1, 815, 776/2B, 777/1, 813/1A, 813/2A measuring 0.48.16, 0.61.92, 1.99.91, 0.17.36, 0.20.02, 0.03.95, 0.22.46 hectares in Sathamalli Village, Tirunelveli District and in Survey Nos.185, 186, 187 measuring 0.51.39, 0.57.46, 0.28.33 hectares respectively in Narasinganallur Village, Tirunelveli District."

Thereafter in 2018, the petitioner in W.P.No.24445 of 2002 filed another amendment petition in WMP No.33161 of 2018 and the said amendment petition is still pending and hence, this Court appropriate order in the amendment order of the Writ Petition.

5. Further, learned counsel for the petitioners would submit that though the acquisition proceedings were completed in the year 1980 and since the urban land ceiling authorities have not taken possession in the manner known to law, till date the petitioners are continuing possession. On enactment of Tamil Nadu Act 20 of 1999 - the Repealing Act, the proceedings under the Principal Act abate and the petitioners are ready and

willing to return the compensation amount with interest as stipulated under Section 3(2)(b) of the Repealing Act.

6. Learned counsel appearing for the petitioners would also submit that the acquired lands are agricultural lands and not urban vacant lands. The lands have been acquired as they remained uncultivated during the relevant point of time. In fact, the revenue authorities assessed the said lands as agricultural lands and collected kist and accordingly, they issued adangal receipts in favour of the respective petitioners and their parents. Hence, all the materials itself are sufficient to hold that the entire lands are agricultural lands and the respondent authorities have no jurisdiction to acquire the agricultural lands and since without jurisdiction the Urban Land Ceiling Authorities acquired the agricultural lands as urban vacant lands, the acquisition is unsustainable one and the illegality can be cured at any point of time and the delay in filing the Writ Petitions is not a matter.

7. Further, learned counsel for the petitioners submitted that though the procedures contemplated under Sections 11(3) and 11(6) of the Act are not followed, on the enactment of Repeal Act, particularly Section 3(2)(b) of the Repeal Act, entire proceedings initiated under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 would abate and hence, prayed for allowing the Writ Petitions. In support of his contentions, learned counsel relied upon the following decisions:-

- (i) 2012 - 4 - LW. 289 (The Government of Tamil Nadu and others ..vs.. M/s. Mecca Prime Tannery and others);
- (ii) (2007) 2 Supreme Court Cases 355 (Hasham Abbas Sayyad ..vs.. Usman Abbas Sayyad and others);
- (iii) (1964) 6 SCR 294 : AIR 1965 SC 304 (Kothamasu Kanakarathamma ..vs.. State of Andhra Pradesh);
- (iv) (1955) 1 SCR 117 : AIR 1954 SC 340 (Kiran Singh and others ..vs.. Chaman Paswan and others);
- (v) Unreported judgment of this Court dated 11.09.1997 made in W.P.No.15171 of 1988 (M.Muthuramalingam ..vs.. State of Tamil Nadu represented by Special Commissioner, Land Reforms and others); and
- (vi) 2015 SCC OnLine Mad 13913 : AIR 2015 Mad 243 : (2015) 5 CTC 823 (A.N.Visalakshi & others ..vs.. The Special Commissioner, Urban Land Ceiling and Land Reforms, Chennai).

8. Per contra, Mrs.Narmadha Sampath, learned Additional Advocate General, would reiterate the counter and submit that the petitioners, on the same contentions raised in the appeal petitions filed before the first respondent stating that the lands are agricultural lands, have filed these Writ Petitions

before this Court, which is an afterthought and belated by 22 years. The entire process was completed during the year 1980 and 1981 itself. The land owners, after a lapse of more than 20 years, even after the receipt of the compensation amount, filed these Writ Petitions. The lands have already been allotted to Government Departments. Hence, the petitioners have no legal validity to file these Writ Petitions pertaining to the above lands. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 is repealed and this case falls under Section 3(1)(a) of the Repeal Act, 20/99. The Writ Petitions challenging the acquisition by ceiling is also barred under Limitation Act and it should be dismissed in limini.

9. Learned Additional Advocate General would also submit that the subject lands mentioned were not maintained as agricultural lands, hence the second respondent/competent authority (Urban Land Ceiling), Tirunelveli has taken action under Sections 9 to 11 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. As per the procedure in the Act and Rules, the second respondent has allowed family entitlement of 4000m² in the case lands and then, determined an extent of 24848m² in the case of petitioner in W.P.No.24445 of 2002, 31725m² in the case of petitioner in W.P.No.24446 of 2002, 51096m² in the case of petitioner in W.P.No.24447 of 2002 as excess vacant land in Survey Numbers as stated supra at Suthamalli Village and Narasinganallur Village, Tirunelveli District. As stated by the petitioners, if the lands are in agricultural activities, such plea would have been taken during the proceedings of declaration of ceiling lands by the Assistant Commissioner (Urban Land Ceiling & Urban Land Tax), Tirunelveli and would have been recorded in the Revenue records and the second respondent would have dropped the acquisition against those survey numbers at Suthamalli Village and Narasinganallur Village.

10. Learned Additional Advocate General would further submit that the petitioners in their Writ Petitions have repeated their contentions raised in the Appeal Petitions filed on 12.04.1999 before the first respondent ie., Principal Commissioner and Commissioner of Land Reforms. The Appeal Petitions filed are also belated one ie., filed after a delay of more than eighteen years from the date of possession taken over by the Government and the same is clearly an afterthought. And in the very first time when Appeal Petitions were filed in 1981, the plea should have been for non-acquisition of the lands claimed as agricultural, whereas no such plea has been made and only plea of enhanced amount payable as compensation was made. Further, no survey number details, documents regarding the lands claimed agriculture are submitted even in Writ Petitions and

only exact extent of ceiling is claimed as agriculture which is a deliberate claim and clearly it is a false claim.

11. Learned Additional Advocate General would also submit that the petitioners themselves admitted that the lands were lying vacant. If the lands were agriculture in nature, the lands would not have been lying vacant. Since no agriculture operation was going on, the character of the land has changed and it cannot be taken as agriculture land. Since the lands are not agriculture in nature, the subject lands comes under the ambit of Tamil Nadu (Urban Land Ceiling and Regulation) Act, 1978 and on the above said lands, action has been taken to acquire the excess urban vacant land as per the provisions of the Act.

12. Further, learned Additional Advocate General would submit that the petitioners have given no details of years, for which kist is paid or upto which Fasli, it is paid nor submitted any supporting documents. The Agriculture Income Tax on the lands stated paid is again without any details of demand, year, amount paid and on which land and for what agriculture production. Further, again no supporting documents are there. It is hence, obvious that the petitioners are attempting to mislead this Hon'ble Court by making veiled statements. The contentions of the petitioners are, hence, without basis and false. The records show that after issue of notices under the provisions as required as per law only, the action has been taken to acquire the excess vacant land from the petitioners. The petitioners have not made this claim earlier during the process or availed the opportunities available at every stage of the process to appeal or filing of appeal under Section 33 after the receipt of 9(5), 10(1) orders etc., from the year 1979 & 1980 itself. In the absence of objection/appeal, the excess vacant lands of the respective petitioners were taken over by the Government on 15.12.1980, 20.02.1981 and 20.02.1981 respectively after due process of law and subsequent action/orders passed under Section 12(6) of the Act for the amount payable for the acquired lands to the petitioner by the second respondent. It is further submitted by the learned Additional Advocate General that no orders could be passed by the first respondent on the Appeal Petitions or any reminders for orders as consequent on the Repeal Act 20/99, the first respondent had become functus officio.

13. In support of her contention, learned Additional Advocate General relied upon the following decisions:-

(i) (2010) 10 Supreme Court Cases 677 (Ritesh Tewari and another ..vs.. State of Uttar Pradesh and others); and

(ii) (2015) 5 Supreme Court Cases 321 (State of Assam .. vs.. Bhaskar Jyoti Sarma and others).

14. Learned Additional Advocate General would also submit that urban land proceedings were initiated in the year 1979 and concluded in the year 1980/1981 and hence, no records were available and since all the records were destroyed, with the available records, the Government has filed the counter affidavit and hence, she is not able to produce the original urban land proceedings before this Court.

15. Heard both sides and perused the available records.

16. Learned counsel for the petitioners argued the case mainly on two folds. The main ground urged by the learned counsel for the petitioners is that the acquired lands are agricultural lands as per the Adangal Receipt issued by the revenue authorities right from 1935 onwards till 2008 and the Chitta clearly shows that the lands are agricultural lands and that when the land is agricultural land as per the revenue records, the urban land ceiling authority has no power to acquire the agricultural land. The second ground raised by the learned counsel for the petitioners is that the possession was not taken in the manner known to law and the petitioners continued to be in possession. For that purpose, learned counsel for the petitioners submitted that chitta was issued on 26.02.1999 and 31.07.1999 and other tax receipts itself are sufficient to hold that the respective petitioners are in possession of their respective lands and since the petitioners are in possession, as per the Repealing Act the entire proceedings stand abated.

17. In respect of the first contention, it is relevant to mention the date of urban land proceedings in the above cases as follows:-

W.P.No.	Date of Final Statement under Section 10(1) of the Act	Surplus Extent notified	Date of publication of vesting notification under Section 11(3) of the Act in the Gazette	Date of notice under Section 11(5) of the Act
24445 of 2002	27.06.1979	Hectare 2.48.48 Suthamalli Village	04.06.1980	01.09.1980

W.P.No.	Date of Final Statement under Section 10(1) of the Act	Surplus Extent notified	Date of publication of vesting notification under Section 11(3) of the Act in the Gazette	Date of notice under Section 11(5) of the Act
24446 of 2002	12.02.1980	Hectare 3.17.25 Suthamalli and Narasinganallur Village	03.12.1980	30.12.1980
24447 of 2002	10.07.1979	Hectare 5.10.96 Suthamalli and Narasinganallur Village	24.12.1980	04.11.1980

18. The vacant land taken over by the Revenue Department on 15.12.1980, compensation was paid on 03.03.1981.

19. On perusal of the above details, it reveals that the urban land proceedings was initiated in the year 1979 and the same was concluded in the year 1980-81 and it is also an undisputed fact that the petitioners received compensation in the relevant point of time and further, the counter reveals that the petitioners preferred Appeals under Section 13(4) of the Act against the proceedings of the second respondent dated 03.03.1981 issued under Section 12(6) for payment of compensation and the same was dismissed by the first respondent on 06.12.1983 and the excess vacant lands acquired by the Urban Land Ceiling Authority were allotted to Tamil Nadu Fire Service Department, Tamil Nadu Housing Board, Tamil Nadu Slum Clearance Board, Rehabilitation Department, Tamil Nadu Electricity Board etc., in the year 1989 itself, which is evident from G.O.Ms.No.869 Revenue Department dated 12.05.1988, G.O.Ms.No.1189 Revenue Department dated 23.06.1988, Letter No.57611/Na.Ni.Voo.1(2)/95 dated 21.02.1997 and letter No.6742/T2/93-16 dated 29.01.1996, Tirunelveli District Collector's letter to the Special Commissioner (Land Reforms), Chennai, in Na.Ka.No.A4.73934/88 dated 10.04.2000 G.O.(Ms) No.254 Revenue Department dated 22.03.2006 and thereafter, after a lapse of 11 years, the petitioners allegedly claimed that they filed Appeals on 12.04.1989 and the same were received by the first respondent on 15.04.1989 and as against the inaction, the petitioners initially filed present Writ Petitions with the prayer to dispose of the appeals, however, subsequently, it is amended whereby challenging the urban land proceedings.

20. As per the scheme of Act, the Urban Land Ceiling Authorities intended to initiate Urban Land Ceiling proceedings, firstly they issued notice calling upon the petitioners to produce the records, whether the land is urban land or agricultural land and initial opportunity was given to the petitioners under relevant provisions of the Act in the year 1979 itself and from the inception of the Urban Land Ceiling proceedings, the petitioners did not raise any issue, and hence, after a lapse of 30 years, the petitioners are not entitled to raise the issue before this Court, since this Court being the Constitutional Court cannot adjudicate the disputed question of facts whether the petitioners' lands are agricultural lands or not. It is for the original authority or the appellate authority to consider the said issue at the relevant point of time.

21. Further, the counter reveals that the excess vacant lands were taken over by the Revenue Department during the year 1980-81 itself and thereafter, the excess lands were allotted to various other departments, viz., Fire Service Department, Housing Board, Slum Clearance Board etc. It is also undisputed fact that the petitioners received compensation from the Urban Land Ceiling Authorities and subsequently, they filed Appeals under Section 13(4) of the Act before the first respondent and the same were concluded in the year 1983 itself. In view of the above, the said counter makes it clear that the petitioners are well aware that the lands were taken over by the Urban Land Ceiling Authorities in 1980-81 itself and the petitioners are knowing very well that the Urban Land Ceiling proceedings were also initiated by the authorities. But, they have not chosen to challenge the same before the first respondent or the Tribunal, however their intention is to receive higher compensation. Accordingly, they filed Appeals under Section 13(4) of the Act and the same were disposed in the year 1983 itself. The petitioners' conduct intend to show that they are not challenging the Urban Land Ceiling proceedings.

22. It is relevant to extract Section 3 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, which reads as follows:-

"3. The Repeal of the Principal Act shall not affect -

(a) the vesting of any vacant land under subsection (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder.

(2) Where ---

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the Principal Act, but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the Principal Act pending immediately, before the commencement of this Act, before any Court, Tribunal or any authority shall abate :

Provided that this section shall not apply to the proceedings relating to Sections 12,13,14,15,15-B and 16 of the Principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

23. On perusal of the scheme of Repealing Act, it makes it clear that if possession is taken by the competent Authority, the application of Repealing Act may not effect. In the present case, possession was taken in the year 1981 itself and the petitioners also filed appeals for determination of compensation under Section 13(4) of the Act and subsequently, the land was allotted to the Government Departments. Hence, the petitioners are not entitled to the benefit of the Repealing Act.

24. The learned counsel vehemently relied upon the decision of the Hon'ble Division Bench of this Court reported in 2012 - 4 - LW.289 cited supra, wherein the Hon'ble Division Bench dismissed the Writ Appeals filed by the State Government and set aside the proceedings on the ground that the procedures contemplated under Sections 11(5) and 11(6) of the Act were not followed and possession is not taken over in the manner known to law. In the present case, possession was taken by the State Government in the year 1980 and 1981 itself and subsequently, the excess lands were allotted to various other departments.

The only contention raised by the learned counsel for the petitioners is that possession was not taken in the manner known to law. However, the respective petitioners have not challenged the violation in taking possession at the relevant point of time, but filed Appeals under Section 13(4) of the Act for enhancement of compensation. Hence, the decision cited supra is not applicable to the present cases on hand.

25. Similar issue was considered by the Hon'ble Apex Court. It is useful to extract paragraphs 16 and 17 of the decision of the Hon'ble Apex Court reported in 2015 (5) SCC 321 (cited supra), which reads as follows:-

"16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case ((2013) 4 SCC 280). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the word 'may' appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible

dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of law did not fall for consideration in that case. In our opinion, what [Section 10\(5\)](#) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under [Section 10\(6\)](#). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under [Section 10\(5\)](#) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of [Section 3](#) of the Repeal Act. That is because Bhabadeb Sarma-erstwhile owner had not made any grievance based on breach of [Section 10\(5\)](#) at any stage during his lifetime implying thereby that he had waived his right to do so."

26. Perusal of the above decision of the Hon'ble Apex Court makes it clear with regard to the procedure for taking possession and also whether the grievance of the petitioners could be made long after the alleged violation. In the above decision, it is held by the Hon'ble Apex Court that if the actual possession was taken over from the erstwhile owner as is alleged, any grievance based on [Section 10\(5\)](#) ought to have been made within a reasonable time of such dispossession and if the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time and the owner or the person in possession must be deemed to have waived his rights. Therefore, after a long time, the petitioners are not entitled to challenge the said action as impermissible one.

27. It is also useful to extract para - 26 of the judgment of the Hon'ble Apex Court reported in (2010) 10 SCC 677 (cited supra), which is as follows:

"26. The power under [Article 226](#) of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to

advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest are coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner."

28. The power under Article 226 of the Constitution is discretionary and supervisory in nature and the extraordinary power in the Writ jurisdiction does not exist to set right mere errors of law, which do not occasion any substantial injustice. In the present cases, there is no forcible situation arisen for exercising power under Section 226 of the Constitution.

29. As per the scheme of the Act, no person is entitled to hold the vacant land in excess of the ceiling limit and as per Section (7) of the Act the person holding vacant land in excess has to file a statement. Every opportunity was given right from Sections 7 to 10 and in the present cases, Urban Land Ceiling Authority issued notice under Section 9 as well as under Section 10 and subsequently notification was issued under Section 11 of the Act and the Urban Land Ceiling cases were concluded in the year 1980 itself. Further, the petitioners, without availing the opportunity before the original authority at the time of inception, filed these Writ Petitions before this Court only after the Repealing Act came into force and that too, after a lapse of 20 years, which is untenable one. The intention of the petitioners is otherwise. Hence, this Court is not inclined to entertain these Writ Petitions.

30. Accordingly, all the above Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (C.O.)

/True Copy/

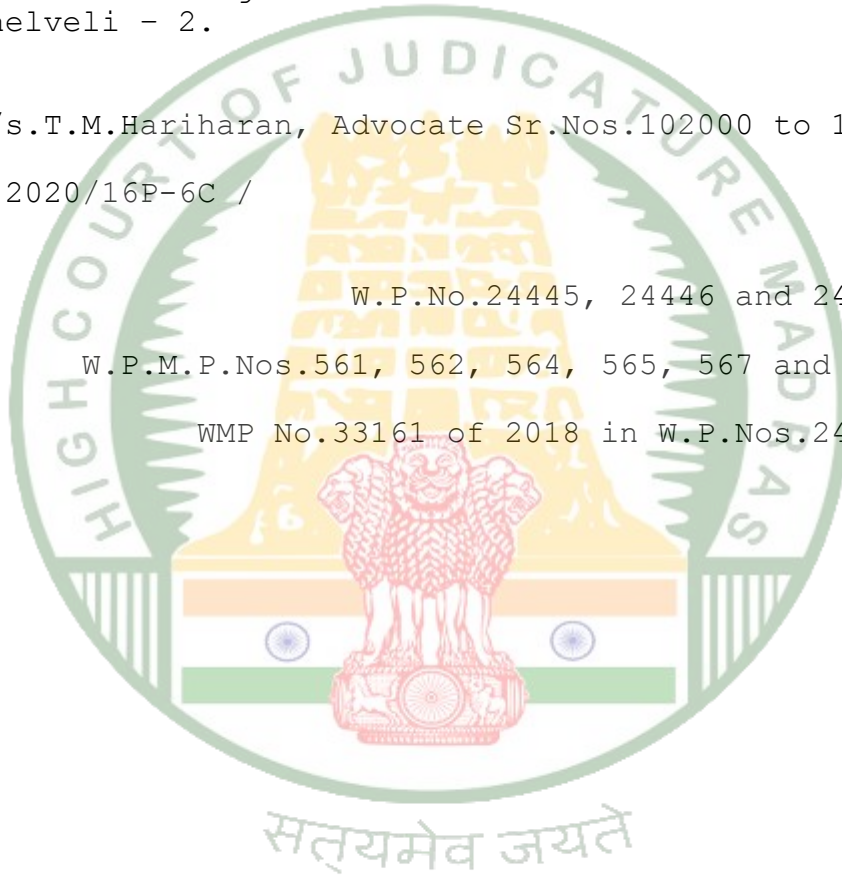
Sub Assistant Registrar

To

1. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk
Chennai - 600 005.
2. The Competent Authority
Urban Land Ceiling
Tirunelveli - 2.

+3cc to M/s.T.M.Hariharan, Advocate Sr.Nos.102000 to 102002

AKM/24.01.2020/16P-6C /



order in
W.P.No.24445, 24446 and 24447 of 2002
and
W.P.M.P.Nos.561, 562, 564, 565, 567 and 568 of 2010
and
WMP No.33161 of 2018 in W.P.Nos.24445 of 2002

WEB COPY