

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**W.P.No.34747 of 2003andW.P.M.P.No. 42219 of 2003

Chennapuri Annadana Samajam
 Represented by its Honorary Secretary
 D.G.Masilamai,
 76, Nyniappa Street, Park Town,
 Chennai – 600 003.

...Petitioner

Vs.

1. Government of Tamil Nadu
 represented by the Commissioner of
 Land Reforms,
 Chepauk, Chennai – 600 005.

2. The Assistant Commissioner,
 (Urban Land Tax), T.Nagar
 345, Arcot Road, Kodambakkam,
 Chennai – 600 024.

3. State Bank of India Staff Cooperative Housing Society Ltd.,
 represented by its Special Officer,
 State Bank of India buildings,
 Chennai – 600 001.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the Notification issued by the second respondent in No.VI/1 (116)/92 dated 13.12.1991 published at page No.93 in the Tamil Nadu Government Gazette No.4, dated 29.1.1992, and the Notice dated 25.09.2003 in C/113/2001, issued by the second respondent, and to

quash the said orders dated 13.12.1991 and 25.09.2003 and consequently direct the second respondent to drop all proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 against the land and building situated in R.S.No.15/2 Block No.4, Mambalam Village, Mambalam Guindy Taluk, Chennai District measuring 2286 sq.metres.

For Petitioner : Mr.S.Periyasamy

For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1 & R2
Mr.M.R.Murugan
for R3.Government Advocate

ORDER

The petitioner has filed this Writ Petition seeking to quash the Notification issued by the second respondent in No.VI/1 (116)/92 dated 13.12.1991 published at page No.93 in the Tamil Nadu Government Gazette No.4, dated 29.01.1992, and the Notice dated 25.09.2003 in C/113/2001, issued by the second respondent dated 13.12.1991 and 25.09.2003 and consequently direct the second respondent to drop all proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 against the land and building situated in R.S.No.15/2 Block No.4, Mambalam Village, Mambalam, Guindy Taluk, Chennai District measuring 2286 sq.metres.

2. The case of the petitioner is that it is a registered Association incorporated under the Tamil Nadu Societies Registration Act (Act 21 of 1860) formed in the year 1890 itself. The prime object of the petitioner is to render service to the less fortunate members of the Society, by supplying food and clothing to the aged people and handicapped. That apart, it runs a number of educational institutions and orphanages. The work of the petitioner is being carried on with the help of endowments made by the individual philanthropists as well as grants from the Government institutions such as the Adi Dravidar Welfare Department and the Social Welfare Board. One such endowment is Badur Sundarachariar's Estate. The late Badur Sundarachariar, in and under his Will and Testament dated 11.02.1933, bequeathed all his properties, which consisted of four immovable properties in the city of Madras, in favour of the petitioner. Letter of Administration with the Will annexed was granted in favour of the then Secretary of the petitioner. As per the terms of Will, the petitioner Institution has to conduct poor feeding on stated occasions and also perform certain religious charities.

3. The learned counsel appearing for the petitioner would submit that one of the items comprised in the estate of late Badur Sundarachariar is premises No.21, Station Road, Old Mambalam with open land to the extent of 13 grounds 554 sq.ft. with two buildings

situated in S.No.15 of West Mambalam Village. He further submitted that the property was fetching very low income i.e Rs.450/- per month, which is not sufficient even to meet the Corporation Tax and Urban Land Tax etc. The tenants in occupation of the property have been giving eternal trouble to the petitioner with the result of that, the petitioner had to spend huge sum for Court expenses, and therefore the Board of Management thought fit to sell the said property. Accordingly, they filed an application for such sanction before this Court and this Court by its order dated 19.03.1976 agreed for the sale of the property and directed the petitioner to invite offers and placed the same before this Court. In the offers, the State Bank of India Staff Cooperative Housing Society Ltd., the third respondent herein wanted to purchase the land and put up construction for its officers and staffs, which is worth about Rs.2,93,750/- and it was the highest offer. The Managing Committee of the petitioner agreed to sell the property for a sum of Rs.2,93,750/- to the third respondent and filed a suit in C.S.No. 355 of 1978 before this Court praying for permission to sell the property in favour of the third respondent. This Court, by judgment and decree dated 14.08.1978, accorded the necessary sanction authorizing the petitioner to sell the suit property to the third respondent for the said sum and directed the petitioner to deposit the said amount in the State Bank of India. As per the order of this Court, the petitioner also sold the property in favour of

the third respondent vide sale deed document No. 322/81 dated 05.01.1981 registered in the Sub Registrar Office, T.Nagar.

4.The further averment of the petitioner is that they had approached the competent Authority seeking permission to transfer the property to the third respondent. However, the second respondent has not considered the said application and no orders have been passed by the second respondent on the application for permission to sell the property. Thereafter, the third respondent approached the competent authority and obtained permission and sanction plan and also put up constructions over the said land and also allotted to its officers' and staffs. While so, the second respondent herein issued a notice dated 11.05.1983 under Section 9(4) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as 'the Act') enclosing a draft statement under Section 9(1) of the Act stating that 2286 square meters is excess vacant land and called for objection from the petitioner. The petitioner sent a detailed objections to the second respondent on 30.05.1983 stating that since the petitioner is a Society registered under the Tamilnadu Societies Registration Act, the provisions of the Act would not apply to the land in question in view of clause Vii of subsection-1 of Section 20 of the Act. Further the purchaser of the land and building i.e., third respondent, which is a co-operative housing society is also

exempted as per clause IV of subsection-I of section 20 of the Act. He further submitted that after sale of the said land, the third respondent also put up constructions. However, the second respondent without considering the objections made by the petitioner issued notice dated 18.11.2002 in Form No.XIV under Section 12(7) of the Act for making the claim for payment of amount for vacant land acquired. The said notice was also published in the Government Gazette No.4 on 29.01.1992. The learned counsel for the petitioner further submitted that at any point of time no compensation was received by the petitioner and also that no declaration under Section 11(3) was published by the Second respondent. Therefore, the acquisition proceedings after 16.06.1999 is unsustainable. Accordingly, he prays for quashing of the notifications by the second respondent.

5. The learned Additional Government Pleader had produced the records before this Court today, which reveals that though the sale is under Section 6 of the Act, the Authority did not answer the query raised by the petitioner, whether the allowances is exempted from the Act or not.

6. Per contra, the learned Additional Government Pleader submitted that the petitioner was holding an extent of 2780 Sq.mts of land in T.S.No. 15, Block No.4 of Mambalam Village. The Land Owner sold the land to the State Bank of India Staff Co-op. Housing Society vide dated 05.11.1981 in violation of the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Therefore, necessary action was taken under the provisions of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978. Notice under Section 9(4) along with draft statements under Section 9(1) was sent to the Urban Land Owner in letter No. A2/1935/83 dated 11.05.1983 for the proposed acquisition of 2286 Sq.mts. of excess vacant land. After conducting enquiry, orders under Section 9(5) were passed and an extent of 2286 Sq.mts. of excess vacant land was ordered to be acquired under the provisions of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 vide proceedings dated 26.12.1989. Final statement under Section 10(1) of the Act was issued in C1/1935/83 dated 19.02.1990. The urban land owner filed an appeal before the Special Commissioner and Commissioner of Land Reforms and the Judicial Officer, in his proceedings dated 02.05.1990 rejected the appeal as time barred. The urban land owner again filed an appeal on 13.02.1990 and the Special Commissioner and Commissioner of Land Reforms, in his proceedings dated 17.06.1991 rejected the appeal petition. Notification under Section 11(1) of the Act was issued

dated 13.12.1991. Notification under Section 11(3) of the Act was issued dated 06.03.1992 and was published in Tamil Nadu Government Gazette dated 15.04.1992. Notice under Section 11(5) was issued to the urban land owner dated 28.05.1992 requiring to surrender or deliver possession of the land. The petitioner had received the same on 08.06.1992. Therefore, the petitioner is well aware of the acquisition proceedings. Hence, he prays for dismissal of this petition.

7. On perusal of the records produced by the Junior Assistant of the Urban Land Ceiling Authority before this Court, it is seen that no communication is available to show that 11(5) notice was issued to the petitioner.

8. A similar case has been dealt with by the Division Bench of this Court in W.A.No. 1552 of 2017, dated 15.02.2018, it has been held as follows;

" 18. Notice to any persons who may be in possession does not include any encroacher or trespasser of the land.

19. Section 6 itself would go to show that after the commencement of the principal Act if any sale is made, the same is not valid. Whereas in this case only after the

commencement of the Principal Act i.e., after 03.08.1976 A.Heera has submitted her statement under Form-I and representation dated 21.01.1977 and before publication under sub section (1) of Section 11 of the Principal Act i.e., 25.11.1983, she executed the sale deed in favour of the respondent on 13.12.1980. The competent authority passed an order on 12.10.1981 rejecting the claim of A.Heera. Against the said order, she preferred an appeal under Section 33 of the Act and the same was also dismissed by the Commissioner of Land Reforms on 11.07.1983, she has not challenged the order passed by the appellate authority.

20. In fact, it is settled that the statute must be read as a whole in its context. When a question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context entirety. Such context means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. Therefore, the Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute besides comparing the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

21. In this context, it is worthwhile to refer various decisions of the Hon'ble Apex Court, which are mentioned herein below :-

1. In the case of State of West Bengal V. Union of India

reported in AIR 1963 SC 1241 (V 50 C 188) the Hon'ble Supreme Court has referred to the judgment of the privy council in the case of Province of Bombay v. Municipal corporation of the City of Bombay reported in (AIR) 1947 PC 34, it is held as follows :-

In considering the true meaning of words or expression used by the Legislature the Court have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

2. In the case of The State of Punjab v. The Okara Grain buyers syndicate ltd and others reported in AIR (1964) SC 669 (V 51 C 81) the Constitution bench of the Hon'ble Supreme Court has also referred to the judgment of the privy council in the case of Province of Bombay v. Municipal corporation of the City of Bombay reported in (AIR) 1947 PC 34 (cited supra) and the earlier judgment of the six judges in the case of State of West Bengal V. Union of India reported in AIR 1963 SC 1241 (V 50 C 188) (cited supra)

3. In the case of Attar Singh V. Inder Kumar reported in AIR (1967) SC 773 (V 54 c 163) the Hon'ble Supreme Court has held under:-

7. We are of opinion that the contention raised on behalf of the appellant is correct, and the view taken by the High Court in the case of Municipal Committee Abohar [ILR (1959) Punjab 1131] cannot be sustained. It is true that in sub-clause (a) the words for his own use are not qualified

and at first sight it may appear that a landlord can ask for eviction from rented land if he requires it for his own use, whatever may be the use to which he may put it after eviction. Now if sub-clauses (b) and (c) were not there this would be the correct interpretation of sub-clause (a). This interpretation has been put by the High Court in *Municipal Committee Abohar*[ILR (1959) Punjab 1131] ; but in that case the High Court has not considered the effect of sub-clauses (b) and (c) on the meaning to be given to the words for his own use in sub-clause (a) and seems to have proceeded as if sub-clauses (b) and (c) were not there at all. We are of opinion that sub-clause (a) has to be read in this provision along with sub-clauses (b) and (c) and it has to be seen whether the presence of sub-clauses (b) and (c) makes any difference to the meaning of the words for his own use in sub-clause (a), which is otherwise unqualified. Now if sub-clauses (b) and (c) were not there, a landlord can ask for an order directing the tenant to put him in possession in the case of rented land if he required it for his own use. In such circumstances it would have been immaterial what was the use to which the landlord intended to put the rented land after he gets possession of it so long as he uses it himself. But as the provision stands, the landlord cannot get possession of rented land merely by saying that he requires it for his own use (whatever may be the use to which he may put it after getting possession of it); he has also to show before he can get possession, firstly, that he is not occupying in the urban area concerned for the purpose of his business any other such rented land. If (for example) he is in possession of any other rented land in the urban

area concerned for the purpose of his business he cannot ask for eviction of his tenant from his rented land, even though the rented land of which he may be in possession for the purpose of his business may not be his own land and he may only be a tenant of that land. This shows clearly that though the words for his own use in sub-clause (a) are not qualified, the intention of the legislature must have been that if the landlord is in possession of other rented land, whether his own or belonging to somebody else, for his business he cannot evict a tenant from his own rented land. It clearly follows from this that the intention when the words for his own use are used in sub-clause (a) is that the landlord requires the rented land from which he is asking for eviction of the tenant for his own trade or business. Otherwise we cannot understand why, if it is the intention of the legislature that the landlord can ask for eviction of his tenant of rented land for any purpose whatever, he should not get it back if he is in possession of other rented land for his business. This to our mind clearly implies that sub-clause (a) has to be read in the light of sub-clause(b), and if that is so, the words for his own use must receive a meaning restricted by the implication arising from sub-clause (b).

4. In the case of M/s. Punjab Beverages Pvt Ltd., Chandigarh v. Suresh Chand and another reported in (1978) 2 SCC 144 the Hon'ble Supreme Court has held under It is well-settled rule of interpretation of statutes that no one section of a statute should be read in isolation but it should be construed with reference to the context and other provisions of the statute so as, as far as possible, to make

a consistent enactment of the whole statute. The Court, must, therefore, have regard not only to the language of [Section 33\(2\)\(b\)](#) but also to the object and purpose of that provision, the context in which it occurs and other provisions of the Act in order to determine what the Legislature intended should be the effect of contravention of [Section 33\(2\)\(b\)](#) on the order of dismissal.

5. In the case of [Union of India V. Elphinstone Spinning and weaving co. ltd and others](#) reported in (2001) 4 SCC 139 the Hon'ble Supreme Court has held under :

When the question arises as to the meaning of a certain provision in a statute it is only legitimate but proper to read that provision in its context. The context means the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy.

6. In the case of [Steel Authority of India Limited v. Sutni Sangam and others](#) reported in (2009) 16 SCC 1 the Hon'ble Supreme Court has held under :

It was contended that a statute must be read as a whole and then chapter by chapter, section by section, and then word by word. For the said purpose, the scheme of the Act must be noticed. If the principle of interpretation of statutes resorted to by the Court leads to a fair reading of the provisions, the same would fulfil the conditions of applying the principles of purposive constructions.

7. In the case of [Pallawi Resources Limited v. Protos Engineering Company Private Limited](#) reported in (2010) 5 SCC 196 the Hon'ble Supreme Court has held under :-

17. A cardinal principle of statutory interpretation is that a

provision in a statute must be read as a whole and not in isolation ignoring the other provisions of that statute. While dealing with a statutory instrument, one cannot be allowed to pick and choose. It will be grossly unjust if the court allows a person to single out and avail the benefit of a provision from a chain of provisions which is favourable to him. Reference may be made to a Constitution Bench decision of this Court in [Prakash Kumar v. State of Gujarat](#) [(2005) 2 SCC 409 : 2005 SCC (Cri) 518] . The Court in para 30 of that judgment observed as follows: (SCC p. 427)

30. By now it is a well-settled principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.

19. From these authorities, it is amply clear that a provision in a statute ought not to be read in isolation. On the contrary, a statute must be read as an integral whole keeping in view the other provisions which may be relevant to the provision in question in order to correctly arrive at the legislative intent behind the provision in question. Applying this principle to the case at hand which involves an interpretation of [Section 17](#)(4-A), it will not be appropriate for us to read sub-section (4-A) of [Section 17](#) ignoring the other relevant provisions.

24. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and

careful in its choice of language. Thus, if a statutory provision is enacted by the legislature in a certain manner, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to the recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana [(2009) 3 SCC 553].

8. In the case of Raheja Universal Limited v. NRC Limited and others reported in (2012) 4 SCC 148 the Hon'ble Supreme Court has held under :

64. It is a settled principle of interpretation of statutes that every word and expression used by the legislature has to be given its proper and effective meaning as the legislature uses no expression without purpose or meaning. The maxim *lex nil frustra jubet* i.e. law commands nothing vainly further elucidates this principle. Of course, the power to make this declaration as already noticed is controlled by limitation of time as specified in the proviso to the section. Lifting of such declaration by lapse of time or otherwise or in accordance with the provisions of Section 22(4) shall bring the status quo ante as if such declaration had never been made.

9. In the case of State of Uttarakhand and others v. Guru

Ram Das Educational Trust Society reported in (2012) 11 SCC 648 the Hon'ble Supreme Court has held under :-

6. The question before us is: whether a charitable trust is covered by the expression any person occurring in Section 154(1) of the 1950 Act?

7. It may be immediately noticed that the expression used in Section 154(1) is :

154. Restriction on transfer by a bhumidhar. to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 ha (12.50 acres) in Uttar Pradesh. (emphasis supplied) A close look at the above expression would show that the legislature intended to cover only natural person. It is so because the words any person are followed in the sentence by the words his family. Family is explained in the Explanation appended to Section 154 which means the transferee, his or her wife or husband, as the case may be, and minor children and where transferee is a minor, his or her parents. This makes it clear that a legal person is not intended to be included in the expression any person. The word person, in law, may include both a natural person and a legal person. Sometimes it is restricted to the former. Having regard to the text of Section 154(1) and also the scheme of that provision, there remains no doubt that the expression any person refers to a natural person and not an artificial person. This is fortified by the fact that in 1997 the legislature inserted the Explanation by U.P. Act 20 of 1997 declaring that in sub-section (1) the expression person shall include and be deemed to have been included on 15-

6-1976 a cooperative society. Had the expression person included artificial person, no explanation was necessary. Since the expression person in [Section 154](#) did not include legal or artificial person, the legislature brought in cooperative society by way of an explanation. The Explanation came to be added in 1997 in a declaratory form to retrospectively bring cooperative society within the meaning of expression any person.

22. From the above decisions of the Hon'ble Apex Court, the core question that arises before us is whether the words any person who may be in possession of it mention in sub section (5) of [Section 11](#) is restricted to the person in any one of the said capacities mentioned in section 3(l) of the Principal Act.

23. In this regard, it is pertinent to refer the judgment of the Hon'ble Supreme Court in the case of [State of Uttar Pradesh v. Hari Ram](#) reported in (2013) 4 SCC 280. The relevant paragraphs 18 to 24, 41 and 42 are reproduced hereunder :-

18. The legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of [Section 10](#) contained two deeming provisions such as deemed to have been acquired and deemed to have been vested absolutely. Let us first examine the legal consequences of a deeming provision. In interpreting the provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and

consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan [(1996) 2 SCC 449] held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

19. *James, L.J. in Levy, In re, ex p Walton* [(1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA)] speaks on deeming fiction as: (Ch D p. 756) When a statute enacts that something shall be deemed to have been done, which in fact and [in] truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.

20. In *Szoma v. Secy. of State for Work and Pensions* [(2006) 1 AC 564 : (2005) 3 WLR 955 : (2006) 1 All ER 1 (HL)] the Court held: (AC p. 574, para 25) 25. it would be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further. (See also *DEG Deutsche Investitions und Entwicklungsgesellschaft mbH v. Koshy* [(2001) 3 All ER 878 (CA)] .)

21. Let us test the meaning of the expressions deemed to have been acquired and deemed to have been vested absolutely in the above legal settings. The expressions acquired and vested are not defined under the Act. Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed

in the light of the general purpose of the Act. As held by this Court in Organo Chemical Industries v. Union of India [(1979) 4 SCC 573 : 1980 SCC (L&S) 92] that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the judgment of this Court in Directorate of Enforcement v. Deepak Mahajan [(1994) 3 SCC 440 : 1994 SCC (Cri) 785] . Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, they are associated on the context but are read together and construed in the light of the purpose and object of the Act.

22. This Court in S. Gopal Reddy v. State of A.P. [(1996) 4 SCC 596 : 1996 SCC (Cri) 792] held: (SCC p. 607, para 12) 12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.

23. In Jugalkishore Saraf v. Raw Cotton Co. Ltd. [AIR 1955 SC 376] , S.R. Das, J. stated: (AIR p. 381, para 6)

6. The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction

is possible, the court must adopt the ordinary rule of literal interpretation.

24. The expression deemed to have been acquired used as a deeming fiction under sub-section (3) of [Section 10](#) can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under [Section 2\(l\)](#) of the Act. The word vested has not been defined in the Act, so also the word absolutely. What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word vest has different meaning in different context; especially when we examine the meaning of vesting on the basis of a statutory hypothesis of a deeming provision which Lord Hoffmann in [Customs and Excise Commissioners v. Zielinski Baker and Partners Ltd.](#)[(2004) 1 WLR 707 : (2004) 2 All ER 141 (HL)] , All ER at para 11 described as heroic piece of deeming.

41. Let us now examine the effect of [Section 3](#) of Repeal Act 15 of 1999 on sub-section (3) of [Section 10](#) of the Act. [The Repeal Act](#), 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the [Repeal Act](#) have 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.

42. 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. The 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 landowner or holder can claim the benefit of Section 4 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 4 of the Repeal Act.

24. In this case, the respondent is not coming under the definition of Section 3(l) of the Principal Act. Therefore, he is not entitled to get the benefit under Section 4 of the Repeal Act. The respondent is one who purchased the land when the principal Act was in force and therefore, the sale is invalid under Section 6 of the Principal Act. The land, after being declared surplus under the 1978 Act, was acquired under Section 11 of the 1978 Act, and it is vested in the State absolutely free from all encumbrances. The land once vested cannot be divested.

25. The Hon'ble Supreme Court in the case of Sulochana Chandrakant Galande v. Pune Municipal Transport and others reported in (2010) 8 SCC 467, held that where possession of land is taken by the State, Repeal Act would not confer any benefit on the owner, and only those

proceedings would stand abated where possession has not been taken. Paragraphs 36 and 38 are extracted hereunder :-

36. Undoubtedly, the 1976 Act, stood repealed by the 1999 Act. However, it has no bearing on this case for the reason that proceeding pending in any court relating to the 1976 Act, stood abated, provided the possession of the land had not been taken from the owner. Therefore, in a case, where the possession has been taken, the repeal of the Act would not confer any benefit on the owner of the land. (*Vide Pt. Madan Swaroop Shrotriya Public Charitable Trust v. State of U.P.* [(2000) 6 SCC 325] , *Ghasitey Lal Sahu v. Competent Authority* [(2004) 13 SCC 452] and *Mukarram Ali Khan v. State of U.P.* [(2007) 11 SCC 90])

38. Therefore, the law, as it exists today, is that the land in dispute could be subjected to the provisions of the 1976 Act, with effect from 17-5-1976 i.e. the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any court would stand abated provided the tenure-holder was in possession of the land on the date of the commencement of the 1999 Act. The High Court has taken note of the fact that the appellant's revision had been entertained only on the basis of the judgment of this Court in *Atia Mohammadi Begum* [(1993) 2 SCC 546 : AIR 1993 SC 2465] , which stood overruled by the subsequent judgment in *N. Audikesava Reddy* [(2002) 1 SCC 227 : AIR 2002 SC 5].

26. In view of the statutory bar under Section 6 of the

Principal Act, the sale is void. The respondent is not in possession under a valid title.

27. The Hon'ble Apex Court in the case of [Hari Ram and others V. Babu Gokul Prasad](#) reported in 1991 Supp (2) SCC 608, observed thus:-

5. No proceedings for resumption were taken. Therefore the appellants became Bhumiswami by operation of law provided they held the land as ordinary tenants under [Section 185\(1\)](#) of 1959 Code. The High Court held otherwise. According to it, the tenancy being annual, it came to an end by efflux of time at the expiry of the year. Therefore the appellants were not holding the land as occupancy tenants on the date the Act came into force. The word holds is not a word of art. It has not been defined in the Act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title. That appears to be the meaning of the word in the context in which it has been used, as the requirements are that the land should be in Mahakoshal region, the person should be an ordinary tenant, and he must be holding the land on the date the Act came into force as such.

28. Again in [State of Andhra Pradesh v. Mohd. Ashrafuddin](#) reported in AIR 1981 SC 913, it was held as follows :- According to the Oxford Dictionary 'held' means to possess; to be the owner or holder of tenant of; keep possession of; occupy. Thus, 'held' connotes both

ownership as well as possession, and in the context of the definition it is not possible to interpret the term 'hold' only in the sense of possession.

29. The word 'holds' was again interpreted in [Hari Ram v. Babu Gokul Prasad](#) reported in 1991 (2) SCC (supp) 608 as it occurs in section 185(1) of the Madhya Pradesh Land Revenue Code, 1959. It was observed : the word 'holds' is not a word of art. It has been defined in the Act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary, it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title.

30. In this case, as on the date of notification under [Section 11\(3\)](#) of the principal Act, the owner of the land Selvi.A.Heera was not in possession. The respondent was not the owner of the land, as the sale is void under Section 6 of the Principal Act. The respondent was not in possession in any one of the capacities mentioned in Section 3(l) of the Principal Act. Therefore, after the notification under [Section 11\(3\)](#) of the Act, the land stood vested with the Government. The respondent has been treated as encroacher.

31. In view of the above facts and the settled position of law, we are of the considered opinion that the order passed by the learned single judge warrants interference.

32. In the result, the writ appeal is allowed by setting aside

the order passed by the learned single judge in WP.No.1863 of 2003 dated 23.01.2009. No costs. Consequently, connected miscellaneous petition is closed. "

9. It is true that the second respondent has no jurisdiction to proceed with the acquisition under the Principal Urban Land Ceiling Act, as the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 came into force with effect from 16.06.1999. Therefore, the present Writ Petition is liable to be allowed.

10. Accordingly, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2019

Index:Yes / No
Internet: Yes / No
Speaking / Non-Speaking order
kmm

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To

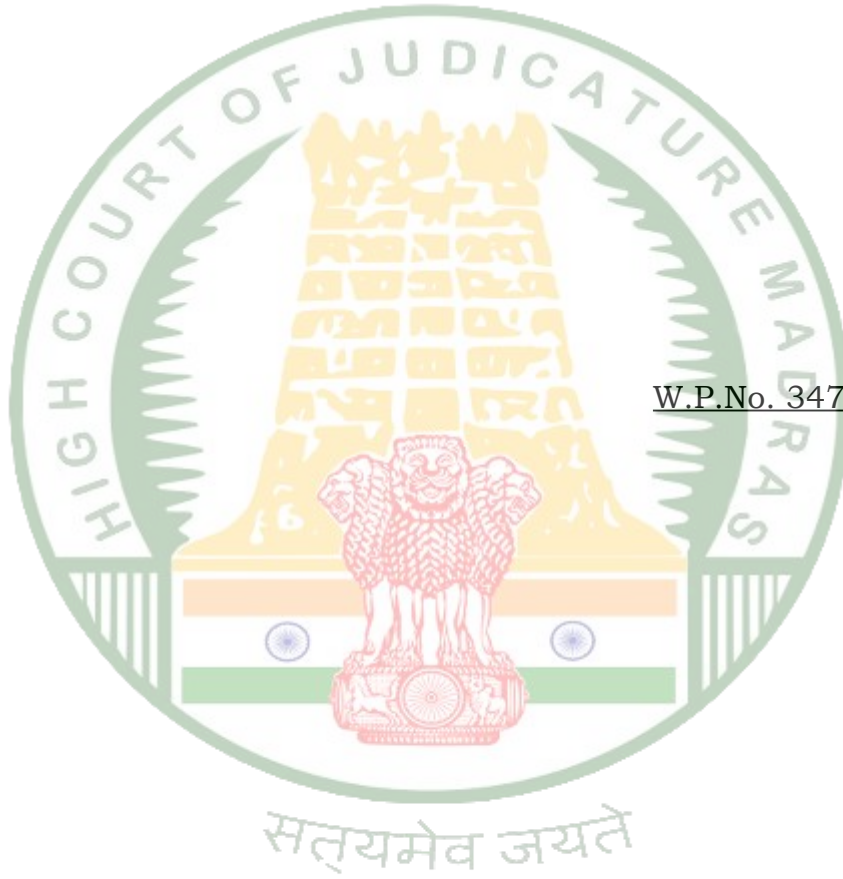
1. The Commissioner of Land Reforms,
Government of Tamil Nadu
Chepauk, Chennai – 600 005.
2. The Assistant Commissioner,
(Urban Land Tax), T.Nagar
345, Arcot Road, Kodambakkam,
Chennai – 600 024.
3. The Special Officer,
State Bank of India Staff Cooperative Housing Society Ltd.,
State Bank of India buildings,
Chennai – 600 001.



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M.DHANDAPANI, J.

kmm



W.P.No. 34747 of 2003

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12.07.2019