

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.11.2018
Pronounced on : 21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.Nos.11627 and 15563 of 2004

W.P.No.11627 of 2004

C.N.Govindaraj

... Petitioner

Vs

1. The Principal Commissioner and
Commissioner for Land Reforms,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner for
Urban Land Tax,
Tiruvallur District,
Poonamallee Zone,
Chennai - 600 056.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Competent Authority (Urban Land Ceiling) and Assistant Commissioner (Urban Land Tax), Poonamallee, Chennai - 600 056 and issued in S.R.No.545/94/D, dated 23.05.1995 under Section 9(5) of the Tamil Nadu Act, 24 of 1978 and the Final Statement issued in Form III under Section 10(1) of the said Act in Rc.1879/95/dated 05.08.1995 and culminating in issue of notice under Section 11 (5) of the said Act and quash the same and consequently forbearing the respondents herein or anybody claiming or acting through them from in any manner proceeding with or in and enjoyment of the lands by the petitioner herein and comprised in S.No.503/2, Paruthipattu village, Sriperumbatur Taluk in an extent of 27 cents as the proceedings initiated by the second respondent has abated in view of the Repealing Act 20/1999.

W.P.No.15563 of 2004

1. C.N.Punniyakodi Naicker

2. Dhanalakshmi

3. Vijay

... Petitioners

Vs

1. The Principal Commissioner and
Commissioner for Land Reforms,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner for
Urban Land Tax,
Tiruvallur District,
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For Petitioners: Mr.V.Ramesh for
Mr.N.Damodharan
in both the writ petitions

For Respondents :Mrs.Narmadha Sampath,
Additional Advocate General-VIII
Assisted by Mr.M.Elumalai, Govt. Advocate
in both the writ petitions

C O M M O N O R D E R

The prayer sought for in W.P.No.11627 of 2004 is for a writ of certioraified mandamus, calling for the records relating to the proceedings of the Competent Authority (Urban Land Ceiling) and Assistant Commissioner (Urban Land Tax), Poonamallee, Chennai - 600 056 and issued in S.R.No.545/94/D, dated 23.05.1995 under Section 9(5) of the Tamil Nadu Act, 24 of 1978 and the Final Statement issued in Form III under Section 10(1)

of the said Act in Rc.1879/95/dated 05.08.1995 and culminating in issue of notice under Section 11(5) of the said Act and quash the same and consequently forbearing the respondents herein or anybody claiming or acting through them from in any manner proceeding with or in and enjoyment of the lands by the petitioner herein and comprised in S.No.503/2, Paruthipattu village, Sriperumbatur Taluk in an extent of 27 cents as the proceedings initiated by the second respondent has abated in view of the Repealing Act 20/1999.

2. The prayer sought for in W.P.No.15563 of 2004 is for a writ of certiorarified mandamus, calling for the records relating to the proceedings of the Competent Authority (Urban Land Ceiling) and Assistant Commissioner (Urban Land Tax), Poonamallee, Chennai - 600 056 and issued in S.R.No.545/94/D, dated 23.05.1995 under Section 9(5) of the Tamil Nadu Act, 24 of 1978 and the Final Statement issued in Form III under Section 10 (1) of the said Act in Rc.1879/95/dated 05.08.1995 and culminating in issue of notice under Section 11(5) of the said Act and quash the same and consequently forbearing the respondents herein or anybody claiming or acting through them from in any manner proceeding with or in and enjoyment of the lands by the petitioner herein and comprised in S.No.503/2, Paruthipattu village, Sriperumbatur Taluk in an extent of 27 cents as the proceedings initiated by the second respondent has abated in view of the Repealing Act 20/1999.

3. Since the issue raised in both the writ petitions is one and the same, as it arises out of same cause of action, i.e., proceedings initiated and concluded by the respondents under the Urban Land Ceiling Act and the prayer sought for herein also in both the writ petitions is one and the same, with the consent of the parties, both the writ petitions were heard together and are disposed of by this common order.

4. W.P.No.11627 of 2004 :

The necessary facts which are to be noticed, in so far as this writ petition, for the disposal of the same are as follows :

(i) That the landed property in S.No.503/2 at Paruthipattu village, Sriperumbatur Taluk, to an extent of 1.07 acres was purchased by the petitioner's father, one Natesa Naicker sometime in 1942. The said Natesa Naicker was having 4 sons by name, (1) Punniyakodi (2) Krishnan (3) Srinivasan and (4) Govindaraj, the petitioner in this writ petition.

(ii) According to the petitioner, among the four brothers, there had been oral partition in respect of joint family properties and subsequently there had been a registered partition deed, dated 04.07.1979, which was registered as Doc.No.2249/79 at the concerned Registration Office.

(iii) As per the said partition, the land in question consisting of 1.07 acres had been divided into four, therefore each brother will have 27 cents of the said property. Accordingly, the petitioner also had inherited through the said partition, an extent of 27 cents of the property in question, at least right from 04.07.1979.

(iv) While that being so, in December 2003, when the petitioner ploughing at the lands in question, the revenue authorities came and objected stating that, the subject land already been vested with the State Government by virtue of the provisions of Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978 (In short, "The Act").

(v) It is the further case of the petitioner that, in so far as the petitioner's portion of 27 cents of the subject land, not only the petitioner but also his wife, two sons and two daughters are the owners of the property and all were residing along with the petitioner.

(vi) Thereafter the petitioner on enquiry, came to understand that, the second respondent claimed to have issued a notice to one of his brother, one Punniyakodi (the first petitioner in other writ petition) and pursuant to which, it seemed that the second respondent had proceeded to issue statement under Section 9(1) of the Act, demanding objection from the other brothers and thereafter, orders were passed under Section 9(5) of the Act, as if that, the holding of the entire extent of 2150 sq.mts, i.e., 54 cents, out of the 1.07 acres belonging to the said brother, namely Punniyakodi, after allegedly determining that the said Punniyakodi was entitled to retain only 500 sq.mts by virtue of the provision of the Act and thereby it seems that, the second respondent had erroneously found that, the remaining land, i.e., 1650 sq.mt. or 40.77 cents were excess.

(vii) It is the further case of the petitioner herein that, the second respondent seems to have issued the statement under Section 10(1) of the Act on 05.08.1995, where first time, the name of the petitioner had been included. However, no notice, final statement whatsoever was served upon the petitioner nor his family members. It is further understood by the petitioner that, the second respondent also issued notification under Section 11(3) and notice-cum-order under Section 11(5). However, none of the proceedings, starting from 7(2) notice under the Act till the notice-cum-order under Section 11(5) of the Act had been served to the petitioner or his family members. Therefore in that circumstances, after obtaining the copy of the Section 9 (5) order, dated 23.05.1995 and also the consequential final statement under Section 10(1) of the Act, dated 05.08.1995 culminating the issuance of the notice under Section 11(5) of the said Act, the petitioner has filed this writ petition with the aforesaid prayer.

5. W.P.No.15563 of 2004 :

The necessary facts which are to be noticed for the disposal of this writ petition are as follows :

(i) The first petitioner herein was one of the four brothers as referred to in the other case. Therefore by virtue of the partition, dated 04.07.1979, the first petitioner inherited 27 cents of land at S.No.503/2, Paruthipattu village, Sriperumbatur Taluk, which was allotted to him by virtue of the said partition.

(ii) It is the case of the petitioners that, the first petitioner is having one daughter and son, who are the second and third petitioners herein and the second petitioner, daughter born in the year 1961 and the third petitioner, son born on 05.05.1967. The first petitioner also states that, he had been in possession and enjoyment of the land comprised in S.No.503/2 to an extent of 27 cents and had been carrying on agricultural operations.

(iii) It is the further case of the first petitioner that, during the year 1994 and 1995, he had been suffered with various ailments and because of that, he was forced to take treatment at Stanley Medical College Hospital, Chennai and for a long period he had been bed-ridden. The second petitioner got married in 1979 and started living separately at Chennai. Therefore the first petitioner alone was residing in the village and looking after the properties including the land in question.

(iv) Even though a partition had been made and 1/4th of the share alone had been allotted to the first petitioner, the second respondent on an erroneous consideration treated the entire extent of 2150 sq.mt equal to 54 cents belong to the first petitioner and accordingly determined that, the first petitioner was having the excess urban land of 1650 sq.mt and accordingly 9(1) proceedings as well as 9(4) proceedings were issued and thereafter 9(5) notification was issued.

(v) It is the further case of the petitioner herein that, the final statement under Section 10(1) of the said Act also was issued on 05.08.1995, subsequently, 11(3) notification as well as 11(5) notice-cum-order was issued.

(vi) However it is the case of the petitioner that, the land has been continuously with the petitioner and his family members and at any point of time, the possession physically has not been handed over to the respondents, nor it was taken forcibly by invoking provisions of Section 11(6) of the Act. Only in that circumstances, the petitioners also had come out with this writ petition challenging the proceedings issued under Section 9(5) of the Act followed by the final statement under Section 10(1) of the Act culminating in issuance of notice under Section 11(5) of the Act.

6. Mr.V.Ramesh, learned counsel appearing for the petitioners in both the writ petitions has made three fold submissions. Firstly the learned counsel submits that, even though a registered partition had been taken place among the brothers in the year 1979, i.e., well before the initiation of the proceedings under the Act by issuing notice under Section 7 (2) of the Act on 29.08.1993, the second respondent has not taken into account the said partition taken place and acted upon among the brothers. He further submits that, as per the partition, the total extent of the land of 1.07 acres had been partitioned into four equal shares among the four brothers, therefore, the petitioner in the first writ petition, Govindaraj and the first petitioner in the second writ petition Punniyakodi were allotted 27 cents respectively under A and D schedule properties, as per the 1979 registered partition deed and accordingly, they inherited the respective allotted portion of the land in question.

7. In this context, the learned counsel would further submit that, when Section 7(2) notice dated 25.08.1993 was issued, it had been jointly issued in the name of Punniyakodi and Govindaraj, i.e., the first petitioner in the second writ petition and the petitioner in the first writ petition. This was continued when 9(1) statement and 9(4) notice was issued. When 9 (5) notification was issued on 23.05.1995, which is the impugned order herein, even though in the reference column, the second respondent mentioned about 9(4) notice, dated 17.04.1994, the said 9(5) proceedings, dated 23.05.1995 was addressed only to Punniyakodi, i.e., the first petitioner in the second writ petition and nothing has been mentioned about the petitioner in the first writ petition, i.e., Govindaraj.

8. Relying upon these documents, the learned counsel for the petitioners would submit that, the respondents ought not to have invoked the provisions of the Act as under the misconception that, the entire land belongs to only one person among the four brothers, which has been wrongly proceeded. Further, though initial notices were sent jointly in the name of both the brothers, the 9(5) notification, dated 23.05.1995 alone had been first sent in the name of one brother, namely Punniyakodi, the first petitioner in the second writ petition. Therefore based on these documents, at least the proceedings initiated against the petitioner in the first writ petition, i.e., Govindaraj is unlawful and therefore it gets vitiated.

9. Secondly, the learned counsel appearing for the petitioner would submit that, right from Section 7(2) notice till Section 11(5) notice, none of the notices, proceedings and orders under various provisions of the Act had been served to the petitioner in the first writ petition, namely Govindaraj or

his family members. In so far as the second writ petition is concerned, it is the submission of the learned counsel for the petitioner that, even though it was claimed by the respondents that, notices had been served either on the first petitioner of the second writ petition or his family members, such service claimed by the respondents cannot be construed as a valid service within the meaning of Rule 8 of the Rules made therein and therefore the said service, namely affixature cannot be accepted to be a valid service and hence there had been no notice at any point of time or at any stage of the proceedings under the Act either to the petitioner in the first writ petition or to the petitioners and family members of the second writ petition and therefore on that ground also, the impugned proceedings culminated in alleged Section 11 (5) notice gets vitiated.

10. Thirdly, the learned counsel appearing for the petitioner would submit that, assuming that in so far as the second writ petition is concerned, Section 11(5) notice had been received by some family members of the first petitioner, namely Punniyakodi, in that writ petition, the possession had never been surrendered by either the owner or the holders of the land in question and admittedly there was no notification of Section 11(6) of the Act for taking forcible possession and therefore the possession said to have been taken as claimed by the respondents between the two departments, namely the second respondent Urban Land Tax Department and the Revenue Department cannot be accepted as a possession within the meaning of the provisions of the Act and therefore by virtue of the provisions of the Repealing Act (Act 20 of 1999), the land in question would admittedly get vest with the owner of the land or holder of the land and therefore on that ground also, the entire proceedings which are impugned herein would get vitiated.

11. By making these grounds, the learned counsel for the petitioner would urge that, the law has been well settled in this regard and in this context, the learned counsel appearing for the petitioner has relied upon the following Judgments :

- (1) 2012-4-LW 289 in the matter of The Government of Tamil Nadu & others v. M/s. Mecca Prime Tannery and others.
- (2) 2013-1-LW 970 in the matter of The Competent Authority (ULC) & another v. Dr.S.Anandalakshmy.
- (3) (2013) 4 SCC 280 in the matter of State of U.P v. Hari Ram.
- (4) 2015-2-LW 391 in the matter of State of Tamil Nadu & others v. Sumathi Srinivas.
- (5) (2005) 13 SCC 477 in the matter of Competent Authority v. Barangore Jute Factory.

12. By relying upon these decisions, the learned counsel appearing for the petitioner would contend that, since the

second respondent / ULC authorities has not followed the procedure contemplated under the Act, especially the mandatory provisions of the Act, having regard to the improper service of notices or non-service of notices and also having regard to not following the mandatory procedure invoking Section 11(6) of the Act for taking forcible possession of the land in question from the owners or holders of the land, the proceedings initiated and culminated under various provisions of the Act in respect of these two writ petitions are completely vitiated and therefore both the writ petitions are to be allowed.

13. However on the contrary, Mrs.Narmadha Sampath, learned Additional Advocate General appearing for the respondents would make the following submissions :

(i) The learned Additional Advocate General would submit that, in so far as the claim that, partition has been effected among the brothers in the year 1979 is concerned, the said partition can only be considered as a sham and nominal, as the said partition allegedly taken place among the brothers was only to defeat the provisions of the Act, which is impermissible by virtue of Section 6 of the Act.

(ii) The learned Additional Advocate General would submit that, assuming that there had been partition among the brothers in the year 1979, nothing has been mutated in the revenue records and therefore ULC authorities on the basis of the mutation available in the revenue records could have proceeded. Once the Act provides for compulsory submission of land details by making the statement under Section 7(1) of the Act, long after the Act came in the year 1978, since the petitioner had not come forward to make the statement, the authorities were forced to invoke Section 7(2) and thereby issued notice to them. Merely because 7(2) notice was issued subsequent to the alleged partition, that would not any way cure the defect of non-filing the statement under Section 7(1) and also that would not give any shelter to the petitioners to claim that they have partitioned the land prior to Section 7(2) notice.

(iii) In so far as the further grounds urged by the petitioner side that, any notice under various provisions of the Act at any point of time has been served to any of the petitioners is concerned, the learned Additional Advocate General would submit by relying upon the averments made in support of the writ petitions and the counter filed by the respondents in both the writ petitions as well as by relying upon the records that, it is not the claim of the petitioners in the second writ petition that, notice has not been served on him. Notice had been served periodically under various provisions of the Act and in order to show the same, the very own admissions made by the petitioner in this regard in the affidavit can be taken into account.

(iv) Further by relying upon the relevant document, learned Additional Advocate General would submit that, in so far as the 7(2) notice is concerned, it has been made by way of affixture and in respect of 9(1) and 9(4) notice and statements are concerned, it has been served on the petitioners and in so far as the 11(5) notice is concerned, it has been served on the family member of one of the petitioner. By making these submissions, the learned Additional Advocate General would submit that, therefore the contention of the petitioner that, notices under various provisions as contemplated under the Act had never been served on the petitioners cannot be accepted.

(v) The learned Additional Advocate General would further submit that, Rule 8 contemplates that serving notice by way of affixture is one of the acceptable method. Therefore by invoking such method, notice have been served on the petitioners and at some point of time, notices had been served on the petitioners in person and in this regard, the learned Additional Advocate General would submit that, the records would show that, there had been acknowledgement of the family members of one of the petitioner, for having receipt of certain notices, including the notice under Section 11(5).

(vi) To meet the ground urged by the petitioner side, that assuming that there had been service of 11(5) notice, that would not automatically enable the respondents to assume that possession has been handed over and unless the possession is voluntarily surrendered by the owner or holder of the land or the same had been forcibly taken by invoking the provisions of Section 11(6) of the Act, the claim of the respondents that, the possession had been taken cannot be accepted is concerned, the learned Additional Advocate General would submit that, as per Section 11(5), notice had been served on the petitioner and in this context, she was able to produce the relevant record to show that the wife of the first petitioner in the second writ petition, has put her LTI which itself show that, the notice under Section 11(5) had been served on the petitioners.

(vii) In this context, the learned Additional Advocate General would further enlarge her argument by stating that, once Section 11(5) notice is served duly on the owner of the land or family members of the owner of the land and no resistance had been shown by them, it shall be deemed that, the possession has been peacefully delivered by the owners and after having taken over the possession in that manner, it had been further entrusted to the Revenue Department and in this regard, the land delivery receipt has made it clear that, the possession taken peacefully from the owners of the land had been entrusted to the Revenue Department by the Urban Land Ceiling Authorities and therefore in this context, the learned Additional Advocate

General would submit that, there was no need to invoke Section 11(6) of the Act in the cases in hand.

(viii) By making all these submissions, the learned Additional Advocate General would submit that, therefore the grounds urged by the petitioners in all respects are not only untenable but also unfounded, as the record would show that, the respondents has scrupulously followed all the procedures contemplated under various provisions of the Act and absolutely there had been no violation of the mandatory requirement under the Act. Hence, the land in question which had already been vest with the Government and the possession which had been taken over long back cannot be questioned once again by these petitioners. Therefore both the writ petitions are liable to be dismissed.

14. I have considered the submissions made by the learned counsel appearing for both sides and also perused the materials placed before this Court including the relevant file produced by the learned Additional Advocate General for perusal.

15. In so far as the first writ petition, i.e., W.P.No.11627 of 2004 is concerned, it is the definite case of the petitioner that, at no point of time, any notice right from Section 7(2) notice till 11(5) notice, nothing has been served on him. In support of the said contention, the learned counsel for the petitioner had submitted that, even according to the typed set of documents filed by the respondents, which are photo copies of the original files, no where it is suggested that, those notice and proceedings have been served on the petitioner in the first writ petition.

16. In order to meet this point, I had perused those documents produced by the respondents side including the original file.

17. Since there had been a registered partition on 04.07.1979, the respondents, Urban Land Ceiling Authorities should have taken into account such partition and accordingly notices under various provisions of law should have been served against the actual owner of the properties. Here in the case in hand, among the four brothers, they have no quarrel between two brothers, as they sold the properties to third parties. For the remaining two brothers, Govindaraj and Punniyakodi are concerned, they have inherited or were allotted the respective share of the property in question, which comes only 27 cents for each of the petitioners.

18. The respondents are not able to substantiate that notices under Section 7(2) had been served on the said Govindaraj, who is the petitioner in the first writ petition. Like that, the statement under Section 9(1) and the notice under

Section 9(4) also had not been served on the said Govindaraj. While so, by impugned proceedings issued under Section 9(5) of the Act, dated 23.05.1995, even it has been addressed only to one brother, namely Punniyakodi and the name of Govindaraj has not been mentioned therein. Like that in any of the proceedings, such as notice under Section 10(1), notification under 11(3) and notice under Section 11(5), there is no whisper to state that, it had been issued or served to the petitioner, namely Govindaraj. Therefore in so far as the petitioner in the first writ petition, namely Govindaraj is concerned, the contention of him that, no notices had been served on him even though he is the exclusive owner of 27 cents of land by virtue of the partition, dated 04.07.1979 is well founded and therefore the same can be accepted.

19. At the same time, whether the plea made by the other petitioners, i.e., the petitioners in W.P.No.15563 of 2004, that notices under various provisions of the Act have not been served under any of the provisions on the petitioners in this writ petition is concerned, the averments made in the affidavit filed in support of the said writ petition makes it clear that, notice was sent to the first petitioner, namely Punniyakodi and in this regard, the following averments made in the affidavit filed by the third petitioner in that writ petition, on behalf of the petitioners, can be usefully referred to :

"As such the first petitioner alone was looking after the family properties. While so it seems that the second respondent issued notice to the first petitioner and sent draft statement under Section 9(1) of the said Act on 15.04.1994."

20. In so far as the claim made by the petitioners that, Section 11(5) notice itself was not served on the petitioners is concerned, pursuant to the stand taken by the respondents, the learned Additional Advocate General was able to draw the attention of this Court on the relevant portion of the record, whereby, Section 11(5) notice, dated 10.09.1996 was received by one Radha, wife of Punniyakodi on 05.11.1996 by affixing her LTI. This factor cannot be denied by the petitioners in the second writ petition. Therefore the fact remains that, in so far as the petitioner in the first writ petition, i.e., W.P.No.11627 of 2004 is concerned, the claim of the petitioner that, no notices have been served on him can be accepted. However, at the same time, the very same claim made by the petitioners in the second writ petition cannot be accepted, for the reason that, the very petitioners in the second writ petition admitted in their affidavit that, notices had been served on the first petitioner and the learned Additional Advocate General has produced the file, which discloses the fact that 11(5) notice had been served to the first petitioner, through his wife in the

second writ petition.

21. With these background, the legal position in the context of the issue raised herein can be looked into.

22. In so far as the serving of notice is concerned, it is the submission of the learned Additional Advocate General that, the notices had been served at various point of time to the petitioners, either by direct delivery or by way of affixture. However, the learned counsel appearing for the petitioner would submit that, how the notice have to be served and under which manner and how it could be considered to be a valid service, is contemplated under Rule 8, and in accordance with the said Rule, whether any notices have been served on the petitioner have to be looked into.

23. In order to ascertain the same, Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 is extracted here under :

"8. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same. - (1) Every draft statement prepared under sub-section (1) of section 9 shall contain the particulars specified in Form III.

(2) (a) The draft statement together with the notice referred to in sub-section (4) of section 9 shall be served on -

(i) the holder of the vacant lands,
and

(ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands,

by sending the same by registered post addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance to sub-section (1) of section 7, and

(ii) in the case of other persons, at their last known addresses.

(b) Where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on

any other person referred to in clause (a), in the manner specified in that clause are not successful for reasons other than the reason referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the Competent Authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

(3) the notice under sub-section (4) of section 9 shall be in Form IV".

24. According to the said Rule, first attempt has to be made to serve the notice by registered post with acknowledgement due. Once the notice is served or it is returned with the endorsement refused to receive, it can be taken as a valid service. However, the notice sent through registered post is not able to be served for any other reason, then the authorities can proceed further to serve the notice by affixing the notice as contemplated under the aforesaid Rule.

25. Here in the case in hand, there is no whisper to show that attempt has been made by the respondents to serve notice by registered post. However in the second writ petition, the affidavit averment contains that, some notices had been received by the first petitioner in the second writ petition and the learned Additional Advocate General was able to produce the file to show that, at least Section 11(5) notice was served on the wife of the first petitioner in the second writ petition.

26. Therefore in so far as the first writ petition is concerned, on facts, it is well founded that, the contention of the petitioner that no notice had been served on him in the first writ petition is to be accepted. However, in so far as the second writ petition is concerned, such an allegation made against the respondents that, notice have not been served cannot be accepted. Assuming that the first attempt to send the notice through registered post as contemplated under Rule 8 had not been followed by the respondents, at some point of time, some notices had been served directly on the petitioners in the second writ petition, especially in one case, the first petitioner, namely Punniyakodi in the second writ petition and in other occasion, on his behalf, his wife had received the same [Section 11(5) notice] by making her LTI impression.

27. In respect of the ground urged so far as the claim of the respondents that, the possession has been taken peacefully or voluntarily from the petitioners are concerned, the law is

well settled in this regard. In order to meet out this point, I can straightaway rely upon (2013) 4 SCC 280, Hariram's case (cited supra), wherein the Hon'ble Apex Court has held as follows :

"Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force—as may be necessary—can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of

which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

28. Relying upon the aforesaid decision of the Hon'ble Apex Court, a Division Bench of this Court in 2015 (5) CTC 823 in the case of A.N. Visalakshi and others v. The Special Commissioner, Urban Land Ceiling and Land Reforms and others, has held as follows :

"12. The facts of the case on hand is also one such case where the Competent Authority issued Notice under Section 11(5) of the Act, and did not take any action under Section 11(6) and consequently, the Second Respondent cannot be deemed to have handed over possession nor the Revenue Department could claim to have taken over possession. The Land Delivery Receipt can at best be construed as a 'paper delivery', not authorized by law.

13. In this regard, it is beneficial to refer to the recent decision of the Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Hari Ram, 2013 (4) SCC 280, among several issues, the Hon'ble Supreme Court considered the distinction between the vesting of right, title

or interest from that of delivery/transfer of peaceful de facto possession. Three types of delivery of possession was considered namely, voluntary surrender, peaceful dispossession and forceful dispossession. On voluntary surrender, it was pointed out that the word 'vesting' takes in every interest of the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act). With regard to peaceful dispossession, the Hon'ble Supreme Court pointed out that if de facto possession has already passed on to the State Government by the two deeming provisions under sub-section 9(3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section(5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10, can be voluntary so that the person may get the Compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue Notice in writing under sub-section (5) of Section 10, visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10, contemplates a situation of forceful dispossession. With regard to 'forceful dispossession', it was held that the Act provides for forceful dispossession, but only when a person refuses or fails to comply with an Order under sub-section (5) of Section 10. It was pointed out that Section 10(6) of the Act speaks of "possession", which says, if any person refuses or fails to comply with the Order made under sub-section (5), the Competent Authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. It was further pointed out that sub-section (6), contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the Competent Authority may take possession by use of force. Thus, it was held that forcible dispossession of the land, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10 and sub-sections (5) & (6), therefore, they take care of both the situations i.e., taking

possession by giving Notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10. (Section 11(5) and Section 11(6) of the State Act are in pari materia with Section 10 (5) & (6) of the Central Act)

14. Admittedly in the instant case, an order under Section 11(5) of the State Act was passed and Notice issued to the Landowners. The Landowner by representation requested for keeping the proceedings under abeyance, since he has preferred an Appeal. The proceedings were not deferred, but the Respondent would state that they have taken over possession pursuant to a Land Delivery Receipt. In the preceding paragraphs, we have seen that the Land Delivery Receipt has been executed between the Urban Land Ceiling Department and the Revenue Department and the Landowner had not surrendered possession pursuant to the order under Section 11(5) of the State Act. Therefore, if the Respondents claim that they have taken over possession, then they should have resorted to the procedure under section 11(6) of the Act which has not been done and the manner in which the possession is sought to be recorded for taken over, is not in accordance with law and the Government are not deemed to be in possession of the land in question.

15. In the light of the above, we have no hesitation to hold that the possession said to have been taken over by the Revenue Department, pursuant to the Land Delivery Receipt cannot be construed as possession taken in accordance with law and therefore, cannot confer any right on the Department/Government and the Landowners are held to be continued in possession and consequently, the proceedings initiated under the Urban Land Ceiling Act stand abated in the light of the coming into force of the Repealing Act, Act 20 of 1999".

29. Yet another Judgment of a Division Bench of this Court reported in 2011 (3) CTC 843 in the matter of The Government of Tamil Nadu represented by its Secretary to Government, Revenue Department and others v. Nandagopal and others can also be usefully pressed into service, wherein it has been held as follows :

"6. By that Rule, the draft statement together with the notice referred to in sub-section (4)

of section 9 shall be served on the holder of the vacant lands, and all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands by sending the same by Registered Post addressed to the person concerned. Only in the event the notice sent through Registered Post could not be served for any reason, the question of affixture would arise.

7. In order to find out as to whether the notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the Respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the Competent Authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the Respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the Respondents must be accepted''.

30. In yet another Division Bench Judgment reported in 2012-4-LW 289, in the matter of The Government of Tamil Nadu & others v. M/s. Mecca Prime Tannery and others, a Division of this court has held as follows :

"32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section

11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Section 11(5) and Section 11(6) of the Act. Section 11(5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorised by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under Section 11(6) of the Act.

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."

31. In a similar circumstances, yet another Division Bench of this Court in 2013-1-LW 970, in the matter of The Competent Authority (ULC) & another v. Dr.S.Anandalakshmy, has held as follows:

"5. The learned single Judge after going through the pleadings, called for the files and perused the same and gave a specific finding that on going through the files and the statements made by the parties in the affidavit and counter affidavit, the stand of the appellants regarding taking possession of the property cannot be accepted. The learned Judge found that based on the materials available in the file during the period 1984, the writ petitioner was working as Director in Lady Irwin College, Delhi and at that point of time she authorised the writ petitioner's sister Kalyanalakshmi Bhanumurthy and that proceeding was concluded and the authorisation was not extended thereafter. The writ petitioner was corresponding with the authorities. The notice issued under section 11(5) of the Act seeking handing over of possession dated 30.5.1990 was replied stating that her residential address is No. A204, Manasarovar, 19 3rd Sea Ward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. The letter seeking exemption submitted by the writ petitioner was submitted and rejected on 25.7.1991 and on 20.6.1990 the land was said to be handed over to the sister of the writ petitioner. Learned Judge clearly held that it is not clear as to why Mrs. Kalyanalakshmi Bhanumurthy should sign the delivery receipt, as the address of the writ petitioner was clearly indicated in the letter dated

30.5.1990 and the Government also replied to the said address on 25.7.1991. The learned Judge also gave a finding that the respondent's mother was residing in the above address viz., No. A204, Manasarovar, 19 3rd Sea Ward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. The writ petitioner's mother viz. Jayalakshmi Subramanian died only on 30.8.1999 and the legal heirship certificate issued by the Tahsildar shows the above address mentioned, which apparently prove that the property was in possession and occupation of the writ petitioner and her mother. Learned Judge also noticed that the Corporation of Chennai granted demolition order for the old building for the purpose of reconstruction of the very same property. The sketch furnished also shows that the excess land is included within the premises of the writ petitioner's property as it is compounded and except with the permission of the land owner the access to the property is not feasible. Thus, possession is not taken from the writ petitioner or her mother and it was taken only from the neighbour. It is also stated in the order that when the writ petitioner and her mother are living in the very same premises, there was no justification on the part of the appellants to take delivery of the property from another person and admittedly the said Kalyanalakshmi Bhanumurthy alone signed the receipt who was not in possession of the property at that time. Thus, alleged possession taken from the said Kalyanalakshmi Bhanumurthy by obtaining her signature cannot justify taking over of possession. Thus, the learned Judge gave a finding based on the records that the plea that possession was taken over on 20.6.1990 cannot be accepted as valid and the possession continues to be with the writ petitioner. As possession has not been taken in a manner known to law, the proceedings initiated under Act 24 of 1978 abates as per Section 4 of the Repeal Act 20 of 1999 and allowed the writ petition as prayed for.

...

9. From the above narrated facts it is clear that a paper/symbolic possession was taken in respect of the excess land not from the writ

petitioner, who was the owner and also not from the mother of the writ petitioner, who was residing in the very same land and delivery of possession was recorded from writ petitioner's sister, who was not given any authority to deliver possession. Thus, the possession allegedly taken/recorded in the file is in contravention of Section 11(5) of the Act. Further Section 11(6) of the Act states that actual possession should be taken. In this case, the land is in actual possession of the writ petitioner and the Corporation of Chennai also granted demolition permission and excess land is inside the compound land, which goes to show that actual possession of the land is with the writ petitioner and not with the appellant department."

32. In a similar circumstances, where Section 11(6) was not invoked for completing the task of taking physical possession of the land by the ULC Authorities, a Division Bench of this Court in 2015-2-LW 391 in the matter of State of Tamil Nadu & others v. Sumathi Srinivas has held as follows :

"37. As far as the present case is concerned, since the Respondent/Petitioner is in possession and enjoyment of the land in question and admittedly, in view of the fact that the physical possession of the property was not acquired from her in the present case, we are of the considered opinion that the Respondent/Petitioner is entitled to avail the benefits of ingredients of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (20 of 1999).

38. In the upshot of qualitative and quantitative discussions as mentioned supra and also this Court bearing in mind the Letter No. 03.244/77 dated 10.01.1979 of Secretary (ULC & ULT), Board of Revenue, Madras-5 addressed to Saraswathi Bikeswaran, Madras - 59 wherein it was mentioned that the land in S. No. 72/4 and 99/1AB of Peerankaranai Village measuring 2225.500 Sq. mts in toto, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976 was repealed and replaced by the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and also that, the said lands were reported to be within the ceiling limit prescribed under the

new Act etc. and as such, no exemption from the urban ceiling land was necessary and further, no action in terms of Section 11(6) of the Act was taken with a view to secure actual physical possession of the land from the Respondent/Petitioner, this Court holds that the impugned orders of the 4th Respondent in Na. K.C.P. 81/97D under Section 9(5) and 14.12.98 in RC 1280/78D under Section 11(5) are clearly per se invalid and illegal one. Viewed in that perspective, the Writ Appeal fails."

33. I had an occasion to consider the similar issue raised by the land owners in yet another writ petition in W.P.No.32700 of 2003 in Sathiyavathi and others v. The Principal Commissioner and Commissioner of Urban Land Ceiling, Chepauk, Chennai and another by order, dated 27.08.2018, where after having considered some of the aforesaid Judgments and also by taking into account the factual matrix of that case, where also possession had not been taken by invoking Section 11 (6) of the Act, I have held as follows :

"26. As it has been rightly pointed out by the learned Senior Counsel appearing for the petitioners, the complete answer for this question, has been given by the Hon'ble Division Bench of this Court in A.N.Visalakshi case (cited supra), where the Division Bench has given a categorical finding, by following the decision of the Hon'ble Apex Court in the case of State of Uttar Pradesh Vs Hari Ram reported in 2013 (4) SCC 280, and has held that, if a notice under Section 11(5) of the State Act was issued to the land owners and the land owner's representation to keep the proceedings pending, as the owner was trying to go for an Appeal, since it has not been considered, even in that case the claim of the respondents that they have taken over possession had been negated. The reason being that, even if notice under Section 11(5) was issued pursuant to which, the land was not delivered by the owner, then the possession has to be taken only in the manner as contemplated under Section 11(6) of the Act and in the absence of any such procedure being adopted under Section 11(6) of the Act to take forcible possession, then it cannot

be construed that the possession has been taken by the authorities.

27. In the said case, which was dealt with by the Division Bench, in fact, 11(5) notice was issued. However the fact remains that in that case, in spite of 11(5) notice, possession was not delivered and therefore the next course of action which was available to the authorities was to invoke 11(6), which they have admittedly not invoked and therefore the claim of the respondents that, they have taken possession was not accepted by the Hon'ble Division Bench. The case in hand is somewhat better than the one dealt with by the Division Bench, as in this case even 11(5) notice was not at all issued.

28. Merely because 11(3) notification was issued, the respondents cannot claim that they have taken possession. Even though they have given a date to take possession as 07.06.1999, absolutely there is no proof or documents filed before this Court to satisfy that they have issued notice either under Section 11(5) on voluntary basis or invoking 11(6) proceeded for taking possession forcibly from the owners of the land in the manner known to law. Therefore in the absence of these documents to show that the possession had been taken either under Section 11(5) or under Section 11(6) of the Act, it can be safely concluded that the possession as claimed by the respondents that, it was taken on 07.06.1999, cannot be accepted and therefore it has to be held in favour of the petitioners and against the respondents."

34. In view of the aforesaid Judgments, where the law has been well settled that, the mere possession claimed to have been taken by the ULC Authorities by issuance of Section 11(5) notice itself cannot be accepted.

35. Here in the case in hand, the record shows that, Section 11(5) notice was issued to one of the petitioner as the said notice had been received by the wife of one of the petitioner on 05.11.1996.

36. By relying upon the said serving of notice under Section 11(5) of the Act, the learned Additional Advocate General has made vehement contention that, once the notice under Section 11(5) is served either to the owner of the land or to the family member of the owner and of such service of notice under Section 11(5), no resistance had been shown by them, it can be deemed

that they had agreed to give the possession of the land peacefully.

37. In that context, the learned Additional Advocate General would further submit that, since no opposition had been shown by the owners of the land after receipt of the notice under Section 11(5), it can very well be construed that, the owners of the land have been peacefully dispossessed and the possession had been in normal course taken by the respondents.

38. This Court is not able to accept the said proposition as projected by the learned Additional Advocate General.

39. The law as has been enunciated in Hari Ram's case (cited supra) had been reiterated in various subsequent decisions and in number of cases, more than one Division Bench of this Court has followed the dictum of Hari Ram's case and held in an unequivocal terms that, merely because Section 11(5) notice was issued, it cannot be construed that the possession has been automatically taken by the respondents unless there had been a proof to show that the voluntary surrender of the possession had been taken place by the owners of the land, otherwise forcible possession had been taken by invoking Section 11(6) of the Act. This has been made abundantly clear in A.N.Visalakshi's case (cited supra).

40. In this case, after issuance of Section 11(5) notice to one of the petitioners, nothing was forthcoming from the owners of the land and there has been absolutely no whisper to suggest that, the petitioners had voluntarily surrendered the possession. In fact the learned Additional Advocate General has pointed out that, the land delivery receipt, dated 29.08.1997 reads thus :

R.C.1879/95

LAND DELIVERY RECEIPT

Name of the District : M.G.R.District

Name of the Taluk : Poonamallee

Name of the Village : Paruthipattu

S.No.	Extent in	Boundaries			
	East	South	West		
503/2B1	0.16.50	504 &	501/1A1		
504/2C&	503/2A				
	503/2A	& 2C 2B2	& 462		

Name of the Land owner : Thiru Punniakotti
Naicker,

Paruthipattu

The above extent has been delivered by me on
and taken possession of by the Zonal Deputy
Tahsildar.

Handed over	Taken over
Sd/ xxx	Sd/xxx
Deputy Tahsildar	Zonal Deputy Tahsildar
(Urban Land Tax)	
Poonamallee	

41. I have perused the original also, where it is merely mentioned that, the Deputy Tahsildar, Urban Land Tax, Poonamallee handed over the possession and the Zonal Deputy Tahsildar of the Revenue Department had taken over the possession, as both the officials had put their signature in the land delivery receipt, dated 29.08.1997. This land delivery receipt has been heavily relied upon by the learned Additional Advocate General to mark that, the land has been delivered to the Revenue Authorities for best utilisation, as per the object of the Act.

42. This Court is not at all impressed with the said contention made by the learned Additional Advocate General on behalf of the respondents, for the simple reason that, the respondents are not able to establish the case that the possession of the land, either had been voluntarily delivered or had been taken over by forcible dispossession or eviction by invoking Section 11(6) of the Act.

43. In this context, the learned Additional Advocate General had argued that, once the 11(5) notice itself received peacefully and no resistance had been shown by either owners or holders or family members of the owners of the land, it can safely presumed or concluded that possession had been symbolically given by the owners of the land in peaceful manner. Therefore notice under Section 11(6) does not arise in such cases.

44. If the said argument of the learned Additional Advocate General is accepted, there is no need to have the provision of Section 11(6) in the Act.

45. In every case, if Section 11(5) notice is received by the owners of the land or the family members or holders of the land, there ends the matter, i.e., the very serving of the notice under Section 11(5) itself amounts to deeming provision symbolising the smooth handing over of the possession voluntarily by the owner of the land.

46. The said argument advanced by the learned Additional Advocate General is completely opposing to the law laid down by the Hon'ble Apex Court followed by various decisions of the Division Bench of this Court cited supra.

47. The land delivery receipt, dated 29.08.1997 extracted herein above cannot be construed or accepted as a symbol of delivery of possession and if we say in the language of the Division Bench of this Court in A.N.Visalakshmi's case, it is only a paper delivery not authorised by law.

48. Therefore this Court has no hesitation to hold that, there had been no delivery of possession either voluntarily or peaceful way of taking possession or delivery of possession under Section 11(5) of the Act or forcible eviction or taking over possession by invoking Section 11(6) of the Act. Accordingly, the arguments advanced in this regard on the side of the respondents are hereby rejected.

49. The aforesaid discussions would make it abundantly clear that, absolutely there is no notice under various provisions of the Act to one of the petitioners namely, Govindaraj, who is the petitioner in the first writ petition, who is the owner of the 27 cents of land by virtue of partition deed, dated 04.07.1979. In so far as other 27 cents of land, for which the petitioners in the second writ petition are the owners, even though some notices had been served on them, which they have accepted in their affidavit and notice under Section 11(5) was also served, as the same was received by the wife of the first petitioner in the second writ petition, absolutely there had been no document or proof to show that the possession of the land has been delivered voluntarily by the owners or holders of the land. Since it is the admitted case that Section 11(6) had not at all been invoked in this cases, there could be no chance of taking forcible possession and therefore the delivery receipt relied upon by the respondents is only a paper delivery not authorised by law.

50. The learned Additional Advocate General after conclusion of the arguments has circulated two Division Bench Judgments of this Court (1) W.A.No.756 of 2015 in the matter of The Principal Secretary to Commissioner, Land Reforms, Chepauk, Chennai-5 and two others v. B.Govindammal, dated 13.12.2017 and (2) Writ Appeal No.1496 of 2017 in the matter of The Assistant

commissioner, Urban Land Tax / Competent Authority Urban Land Ceiling, Chennai -56 and three others v. D.Nagarajan, dated 28.06.2018.

51. By relying upon these two Judgments, the learned Additional Advocate General had emphasised her submissions that, on issuance of Section 11(5) notice for delivery of possession and if the said notice under Section 11(5) is received by the owner or holder of the land, it shall be deemed that the possession had been taken over and once such possession has been taken over by the ULC Authorities and handed over to the Revenue Authorities, it can be very well construed that, the possession has been voluntarily taken over from the owner or holder of the land by the ULC Authorities and therefore the question of invocation of Section 11(6) does not arise in those cases.

52. I have gone through the said two Division Bench decisions also.

53. In the first decision, i.e., W.A.No.756 of 2015, the Division Bench has held at para 15, which reads thus :

"It is a well settled principle that notice served on the adult members of the family, shall be construed as a due service.

....

As far as the service of possession, notice under Section 11(5) of the Act is concerned, the notice was refused by the land owner, and it was hence served by way of affixture, which is a deemed service. The possession was taken by the Deputy Tahsildar and it was handed over to the Zonal Deputy Tahsildar on 15.06.1999, i.e., prior to the Repeal Act."

54. There is no quarrel on the principle that, once notice is served on the adult member of the family, it shall be construed as a deemed service. Here in the case in hand, as detailed above, in the first writ petition, notice has not been served to the petitioner. In so far as the second writ petition, notices have been served either to the first petitioner or the family members of the first petitioner.

55. Therefore in so far as the second writ petition is concerned, I have already held that the notice has been served and only in respect of the first writ petition, notice has not been served.

56. However the Division Bench at para 15 of the Judgment referred as extracted above has held that, Section 11(5) notice was refused by the land owner, therefore by affixture it is served, which is a deemed service and the possession has been taken over by the Deputy Tahsildar and it was handed over to the Zonal Deputy Tahsildar on 15.06.1999.

57. By accepting the said factual matrix, the Division Bench has held that, the possession has been taken over prior to the Repealing Act.

58. As I have already discussed, by relying upon various Division Bench Judgments of this Court following the dictum of the Hon'ble Apex Court in Hariram's case (cited supra), mere delivery of possession and handing over the same by the ULC Department to Revenue Department can only be construed as a paper delivery and it cannot be construed as a actual taken over possession of the land within the meaning of the said Act.

59. In respect of the second case, W.A.No.1496 of 2017 is concerned, the Division Bench in para 15 of the said Judgment has held that, the land acquisition proceedings were completed on 12.08.1994 by issuing notice under Section 11(5) of the Act. The possession of the acquired land was handed over on 19.12.1995.

60. The aforesaid fact of the said case would reveal two things, one is that, by issuance of Section 11(5) notice itself, the proceedings came to an end, as recorded by the Division Bench, therefore there was no need for notice under Section 11 (6) in that case.

61. Secondly the possession of the acquired land was handed over on 19.12.1995. If the possession was handed over by the land owner or the holder of the land voluntarily and if there is enough proof shown that such voluntary possession has been given by owner or holder of the land, then it is very well be concluded that, the possession has been surrendered voluntarily by the owner or holder of the land, within the meaning of Section 11(5) of the Act, therefore question of Section 11(6) in that case would not arise.

62. However if there is no proof to show that volunteer surrender of possession has been taken place in the case in hand, certainly as per the law declared by the Hon'ble Apex Court, followed in number of decisions of Division Benches referred to above, Section 11(6) should have been invoked and forcible possession should have been taken and it should have been registered. In the absence of any such proof or contemplation under Section 11(6) of the Act, it cannot be

construed that, the possession has been either voluntarily given by the owner of the land or had been taken forcibly by the respondents.

63. Therefore the decision of the two Division Bench Judgments referred to above, as cited by the learned Additional Advocate General would no way help the respondents to advance their case in the present context both in law as well as the facts of the present case and therefore the said two Division Bench Judgments cannot be made applicable to the facts of this case.

64. By virtue of these position, the petitioners are entitled to get the benefit of the provisions of the Repealing Act as has been held in number of cases of similar nature referred to above.

65. For all these reasons, this Court is of the view that the impugned proceedings initiated, contemplated / concluded under the provisions of the Act are vitiated. Therefore, they are liable to be quashed.

In the result, the impugned proceedings are quashed. Both the writ petitions are allowed. Consequently, the petitioners shall be entitled to get the benefit under the provisions of the Repealing Act. Therefore they shall be free to deal with the property in question in accordance with law. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

tsvn

To

1. The Principal Commissioner and
Commissioner for Land Reforms,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner for
Urban Land Tax,
Tiruvallur District, Poonamallee Zone,
Chennai - 600 056.

+2 CC to Mr.N. Damodaran, Advocate sr 4141, 4140.

W.P.Nos.11627 of 2004 and
15563 of 2004

VGI (CO)
SP(06/02/2019)