

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11968 of 2004

and

W.P.M.P.No.14036 of 2004

Mrs.Kausalya Ramalingam

... Petitioner

Vs.

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

2. The Assistant Commissioner,
Competent Authority,
Urban Land Ceiling,
No.159, Sannathi Street,
Adambakkam, Alandur,
Chennai 600 016.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the entire records pertaining to the impugned order in No.3323/B2-B, dated 23.02.1985 of the second respondent served to the petitioner on 13.12.2003 and to quash the same.

For Petitioner : Mr.A.Ramu

For Respondents : Mrs.K.Bhuvaneswari, AGP

O R D E R

This petition is filed to quash the order of the second respondent dated 23.02.1985 in No.3323/B2-B.

2. The challenge in the present Writ Petition is to the proceedings initiated by the respondents herein under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The main grounds raised by the learned counsel for the petitioner is that the possession of the land in Survey No.234/1A1A1A2 of Kottivakkam Village measuring 900 sq.mt., which was declared as excess vacant land, has not been taken by the respondents herein and the petitioner is in continuous possession till date.

3. The learned counsel for the petitioner submitted that the notice under Section 11 (5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act was not served on the petitioner. Since the Act has already been repealed and the respondents have become functus officio, they are disentitled to take possession after the repeal.

4. The learned Additional Government Pleader appearing for the respondents vehemently opposed the said submission and stated that the declaration of the subject land as excess vacant land and the delivery were properly done by following the procedures contemplated under the Act.

5. According to the learned Additional Government Pleader, the said land was purchased by the petitioner as a vacant land. When the petitioner had opted to surrender the excess vacant land in the return filed before the second respondent, an action was initiated to acquire the excess vacant land, viz., a draft statement under Section 9 (1) with notice under Section 9 (4) were issued on 13.02.1982. The petitioner had also acknowledged the notice under Section 9 (1). Thereafter, when the petitioner had sent representation raising objections, the second respondent had issued a notice to her to appear for an enquiry on 28.03.1983, in connection with the objections. Since the petitioner did not attend the enquiry, her objections were duly considered and an order was passed under Section 9 (5) of the Act, determining 900 sq.mts. as excess vacant land in Survey No.234/1A1A1A2 of Kottivakkam Village, after allowing 1600 sq.mts. for family entitlement. The final statement under Section 10 (1) was received by one T.T.Rathinam on 08.03.1985.

6. The learned Additional Government Pleader also submitted that the notifications under Sections 11 (1) and 11 (3) of the Act were issued on 02.02.1988 and 23.09.1988 respectively, which was published in the Tamil Nadu Government Gazette on 19.10.1988. The final notice under Section 11 (5) was issued on 09.12.1988 requesting the urban land owner to hand over the possession of the excess vacant land. Consequently, the excess vacant land was acquired and possession was handed over to the Revenue Inspector, Pallikkaranaï on 23.08.1989. The compensation under Section 12 (6) was determined and 25% of the amount was also kept in the Revenue deposit on 12.03.1992.

7. The learned Additional Government Pleader strenuously argued that since the subject land is a vacant land and the procedures contemplated under the Act have been duly followed and possession was also taken by the respondents, this Writ Petition deserves to be dismissed.

8. By way of reply to the submissions made by the learned Additional Government Pleader, the learned counsel for the

petitioner stated that the notice under Section 11 (5) was never issued or received by the petitioner herein.

9. Before addressing the issue as to whether a notice under Section 11(5) of the Act was sent to the petitioner, what could be the mode of service for a notice contemplated under Section 11(5) requires consideration. Section 11(5) of the Act does not prescribe the mode of service of the notice provided therein. Likewise, the Tamil Nadu Urban Land (Ceiling and Regulation) Rules also do not provide the mode of service for a notice under Section 11(5). After excess lands becomes vested with the Government on a publication under the Gazette under Section 11(3) of the Act, it is mandatory for the department to take possession of such lands. Mere vesting of lands to the Government will not amount to possession and that is the reason as to why Section 11(5) and Section 11(6) has been provided under the Act. Under these two provisions, possession can be taken either peacefully or forcibly.

10. Reading of Section 11(5) goes to show that the notice is intended to be served on the urban land owner. When such is the intention of the legislature that the notice requires to be addressed to the urban land owner, the only mode in which the respondents can establish that they had taken steps to serve a notice on the urban land owner, would be service either in person with due acknowledgment or through a registered post with an acknowledgment. Else, there are probabilities wherein records could be created by showing that notices have been dispatched or notice have been affixed in the premises. Incidentally, Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 provides for the mode of service for a notice under Section 9(1) or 9(4) of the Act, wherein such notice is required to be sent to the urban land owner by registered post with due acknowledgment. Though there is no rule specifically provided for a notice under Section 11(5) to be sent by a registered post, in view of the language employed under Section 11(5), wherein the notice is intended to the urban land owner, an analogy can be drawn from Rule 8 and held that a notice under Section 11(5) also requires to be sent only by a registered post with an acknowledgment.

11. In order to ascertain the statement and counter statement of both the counsels, the original records were called for and perused by this Court. Therein, it is seen that the notice sent under Section 11 (5) has been returned with an endorsement "always door locked". The return cover along with the acknowledgment are part of the file at page Nos.307 to 309 of the concerned file in R.Dis.No.3323 of 1982, dated 29.06.1992. This aspect is totally contrary to the statement made in the counter affidavit in paragraph 5, wherein it has been alleged that the notice under Section 11 (5), dated

19.12.1998 was issued to the petitioner herein.

12. In view of the fact that the notice has been returned and thereafter, the respondents herein have not taken any further steps to duly serve the notice on the petitioner, it cannot be said that the notice under Section 11 (5) of the Act has been duly served on the petitioner.

13. Insofar as possession is concerned, the land delivery receipt, which forms part of the original records in R.Dis.No.3323 of 1982, does not reveal that the land had been taken in the presence of the petitioner herein. The land delivery receipt only evidences the signatures of the Revenue Inspector and one Srinivas Ragavan, who is also an official of the Government. The receipt also does not evidence the mode in which the possession of the lands were taken from the petitioner. In other words, the transfer of lands has occurred between two officials of the Government, through a proper receipt. In order to effect this transfer, the pre-requisite is for the transferor to first have possession of the subject lands.

14. The learned Additional Government Pleader submitted that under Section 11 (3), the excess vacant land is deemed to have been vested absolutely with the Government, after publication of notification under Section 11 (1) in the gazette. Mere vesting of the land under Section 11 (3) will not confer any right on the Government to have de-facto possession of the land, unless there has been voluntary surrender of vacant land before the Repeal Act, i.e., 16.06.1999. Section 11 of the Act does not stop with vesting of the lands with the Government alone. It further provides for the mode in which physical possession of the lands is to be transferred from the urban land owner to the respondents. Hence, what is required to be established by the respondents is that possession was taken through voluntary surrender and delivery of peaceful possession under Section 11 (5) or forceful dispossession under Section 11 (6).

15. In the instant case, notice under Section 11 (5) itself has not been served on the petitioner in the manner known to law and it is not the case of the respondents that there was forceful dispossession under Section 11(6). As such, the possession is deemed to be still vested with the urban land owner. While that being so, the petitioner herein can claim the benefit of Section 3 of the Repeal Act. The Hon'ble Apex Court in a batch of appeals in Civil Appeal No.2326 of 2013, etc., dated 11.03.2013, in the case of State of U.P. vs. Hari Ram, had held as follows:

"37. The scope of Act 33 of 1976 came up for consideration before this Court on few occasions,

reference may be made to certain judgments, even though there has been no elaborate discussion of the provision of the Act and its impact on the Repeal Act. Reference may be made to Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. and Others (2000) 6 SCC 325, Ghasitey Lal Sahu and Another v. Competent Authority, Under the Urban (Ceiling and Regulation Act, 1976), U.P. and Another (2004) 13 SCC 452, Mukarram Ali Khan v. State of Uttar Pradesh and Others (2007) 11 SCC 90 and Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority and Others (2012) 4 SCC 718. Effect of the Repeal Act

38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

40. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and

hence, the respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order as to costs. "

16. The Division Bench of this Court also had an occasion to deal with a similar proposition and in a decision in W.P.No.2998 of 2004, dated 05.08.2015, in the case of A.N.Visalakshi and others vs. The Special Commissioner, the following observations were made:

"14. Admittedly in the instant case, an order under Section 11(5) of the State Act was passed and notice issued to the land owners. The land owner by representation requested for keeping the 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 land owner 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 or 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 land owners are held to be continued to 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."

17. Thus, following the proposition laid down by the Hon'ble Apex Court as well as the Division Bench of this Court in the aforesaid decisions as well as taking into account the fact that the possession has not been duly taken either peacefully or forcefully by the respondents and in the absence of service of notice under Section 11 (5), the petitioner would be entitled to the benefits of Section (3) of the Repeal Act.

For the purpose of convenience, Section (3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 is extracted hereunder:

"3. Savings.- (1) The repeal of the principal Act shall not affect-

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

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

(2) Where-

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

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

18. Thus, since the Act itself has been repealed, with effect from 16.06.1999 and since the possession of the subject land still vests with the petitioner herein and the compensation under Section 12 has also not been received by the petitioner herein, which is claimed to be lying in the Revenue Department, the petitioner will be entitled to the benefits of the Repeal Act. In view of Section 3 (2) (a) of the Repeal Act, the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, are liable to be quashed.

19. In view of the aforesaid findings, the petitioner is entitled to succeed in the Writ Petition. Consequently, the impugned order in No.3323/B2-B, dated 23.02.1985 passed by the 2nd respondent is quashed. Accordingly, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs

To

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

2. The Assistant Commissioner,
Competent Authority,
Urban Land Ceiling,
No.159, Sannathi Street,
Adambakkam, Alandur, Chennai 600 016.

+lcc to Mr.A.Ramu, Advocate, S.R.No.262471

+lcc to the Government Pleader, S.R.No.26866

W.P.No.11968 of 2004
and
WMP.No.14036 of 2004

RR(CO)

RRS (09/05/2019)



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