

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON: 17.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.17425 of 2004

and

WPMP. No.437 of 2008

Smt.Anjala Ammal

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by its Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.

2.The Principal Commissioner
and Commissioner,
Land Reforms,
Chepauk,Chennai-600 005.

3. The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling,
No.5, Sannathi Street,
Poonamallee,
Chennai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the respondents especially the order of the third respondent under Section 9(5) dated 17.04.1997 and Section 11(5) dated 10.12.1998 vide ref. 995/96/D & RC 2043/98D respectively in respect of lands in Survey No.39/1B and 40/1 Amadurmedu Village, Poonamallee Taluk, measuring about 5700 Sq. mts and to quash the same and treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, Repeal Act 20/99.

For Petitioner : Mr.V.Ramesh

For Respondents : Mrs.Narmadha Sampath, AGG
Assisted by Mr.G.B.Ramesh, GA

O R D E R

The petitioner herein was the owner of the property comprised in Survey Nos.39/1 & 40/1 in Amadhurmedu Village, Poonamallee Taluk, measuring an extent of hectares 0.57.0, among other lands. The respondents herein had declared the aforesaid lands be in excess of the ceiling limit prescribed under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, Act 24 of 1978 (hereinafter referred to as 'the Act') and thereby, initiated proceedings under the Act. According to the respondents, the acquisition under the said Act were concluded as per the procedure contemplated and physical possession of the surplus lands were also taken over by the Government. The petitioner herein claims to be ignorant of the acquisition proceedings initiated under the Act and claims to be in physical possession of the same till date and therefore has filed the present Writ Petition, seeking to quash the proceedings.

2. Heard Mr.V. Ramesh, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Additional Advocate General appearing on behalf of the respondents.

3. Mr.V.Ramesh, learned counsel for the petitioner submitted that the notice under Sections 9(1) & 9(4) of the Act were not served in accordance with the procedure contemplated under Rule 8. According to him, when the initial procedure itself has been violated, the subsequent proceedings initiated under the Act, including taking of possession of the lands, will have no legs to stand. Even otherwise, the learned counsel for the petitioner submitted that the procedure adopted for taking possession of the land under Section 11(5) is illegal. In support of his contention, the learned counsel relied upon various decisions.

4. Mrs.Narmada Sampath, learned Additional Advocate General appearing for the respondents submitted that notices under Sections 9(1) & 9(4) of the Act were duly sent and served as per the provisions of the Act. Pursuant to the notice under Sections 9(1) & 9(4), the proceedings under Section 9(5) of the Act also came to be passed, which was served on the petitioner's daughter. The learned Additional Advocate General further submitted that the notification under Section 11(1) of the Act was issued on 30.06.1998 and duly published in the Tamil Nadu Government Gazette on 26.09.1998. The notification under Section 11(3) of the said Act, vesting the land with the Government with effect from 01.11.1998 was issued on 28.09.1998 and was published in the Tamil Nadu Government Gazette on 04.11.1998.

5. With regard to taking possession of the acquired land is concerned, the learned Additional Advocate General submitted that notice under Section 11(5) of the said Act was issued on 10.11.1998 and served by affixture, since the land owner had refused to receive the notice. Thereafter, the possession of the excess vacant land was handed over to the Revenue Authorities on 14.06.1999. By placing reliance on certain decisions of the Hon'ble Apex Court, as well as the Hon'ble Division Bench of this Court, the learned counsel submitted that the procedure adopted for taking possession of the land under Section 11(5) was duly complied with and therefore, there was no infirmity in the entire proceedings. Hence, the dismissal of the Writ Petition was sought for.

6. I have given careful consideration to the submissions made by the respective counsels.

7. The Hon'ble Supreme Court, as well as this Court, in a catena of decisions, have held that land ceiling proceedings would abate in all cases, where factual possession has not been taken by the State Government before the date of coming into force of the Repeal Act. Such a proposition has attained finality. One of the main grounds raised in the present Writ Petition is that the factual possession of the subject lands have not been taken over by the State Government and that the petitioner herein is still in physical possession of the said lands and hence, in view of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, the entire proceedings are deemed to have abated.

8. On this position of law, this Court has already taken a view with regard to the mode of taking physical possession of the lands, pursuant to the vesting of the lands with the State Government, in an order dated 20.03.2019 passed in W.P.No.11968 of 2004 [Mrs.Kausalya Ramalingam V. The Special Commissioner and Commissioner for Urban Land Ceiling and Land Tax, Ezhilagam, Chepauk, Chennai 600 005 & another]. The relevant portions of the said order reads as hereunder:-

"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 Shrotriya 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."

In the aforesaid decision, this Court had taken a view that the proper mode of service of notice under Section 11(5) of the Act should be through a registered post with acknowledgement. In the present case, the respondents' claim that the notice under Section 11(5) has been effected by affixture on 10.12.1998, since the land owner had refused to receive it. Thereafter, it is claimed that the possession of the vacant land was handed over to the Revenue Authorities on 14.06.1999, which is just two days prior to the Repeal Act i.e., 16.06.1999. Since the procedure adopted for taking possession of the lands itself is contrary to the decision taken by this Court, I am unable to endorse the procedure adopted by the respondents under Section 11(5) and on this ground alone, the petitioner would be entitled to succeed.

9. Nevertheless, the learned Additional Advocate General submitted that the law laid down in certain other judgments on the aspect of possession has not been considered in my earlier order in W.P.No.11968 of 2004 dated 20.03.2019, which necessitates this Court to give a consideration to those judgments referred to by the learned Additional Advocate General.

10. The learned Additional Advocate General strenuously endeavoured to establish that possession of the land taken by affixture is in conformity with the provisions of the Act and such a possession would amount to actual delivery of possession of the right title and interest over the lands. In support of her contentions, the learned Additional Advocate General relied upon the decision of the Hon'ble Apex Court reported in 1976 (1) SCC 700 in the case of Balwant Narayan Bhagde V. M.D. Bhagwat & others and Punjabrao Krishi Vidyapeeth, Akola and others. Reliance was placed by the learned Additional Advocate General on the following findings in the said decision:

"10. On the facts and in the circumstances of this case it is difficult to accept the argument put forward on behalf of the appellant that the taking and giving of possession on 3- 4-1959 was only on paper and not on the spot .

16. In order to appreciate what is meant by taking possession of the land under section 16 or 17(1) of the Act and what is the mode of taking such possession in regard to the waste or arable land with which we are concerned in this case, it is necessary to refer to certain provisions of the Code of Civil Procedure—hereinafter called the Code, and some decisions thereon. Order 21, Rules 35, 36, 95 and 96 of the Code prescribe two modes of delivery of possession based upon the nature of the property concerned. The Code does not prescribe that in respect of a particular property there can be two modes of giving possession either to a decree-holder or to an auction-purchaser one, "...symbolical" and the other "actual". These Rules prescribe that if the property is in the occupation of the judgment-debtor or some-one on his behalf the possession shall be given if necessary by removing the judgment-debtor and placing the decree-holder or the auction purchaser in occupation of the same. On the other hand if the property is of such a nature that the judgment-debtor cannot be in actual occupation of it, as for instance, property in the possession of a tenant, the only mode of giving possession is by proclaiming on the spot that the possession has been given to the decree-holder or the auction-purchaser. In some decisions the former mode of possession has been called "actual" and the latter "symbolical". Really speaking even the delivery of so-called "symbolical" possession is delivery of "actual" possession of the right title and interest of the judgment-debtor. It completely dispossess him. It does not affect the physical occupation of the property by a person who is not bound by the decree or whose interest is not affected by sale of the judgment-debtor's interest in execution of a decree. If the property is land over which does not stand any building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land, or in case of resistance, by removing the person resisting unauthorisedly. A different mode of delivery is prescribed in the Code in the rules aforesaid in regard to a

building, with which we are not concerned in this case. Sometimes the expression symbolical or formal delivery of possession has been used in decisions to connote the actual delivery of possession effective against the judgment-debtor leading to his dispossession in the eye of law even though the duration of the dispossession may be momentary or temporary.

22. It would thus be seen that a symbolical or formal delivery of possession as understood in law has the effect of dispossessing the judgment-debtor from his right title or interest in the property. It does not dispossess the person in actual possession in his own right not liable to be evicted under the decree or in pursuance of the auction sale. A symbolical or formal delivery of possession against the judgment-debtor is giving of actual possession of the property in the eye of law and has the effect of dispossessing him although as a matter of fact he may have succeeded in resuming back, possession as before shortly after dispossession.

25. When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there would be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under section 47 of the Act if impeded in taking possession. On publication of the notice under section (1) claims to compensation for all interests in the land has to be made ; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under section 16 or 17 (1) it vests absolutely in the Government free from all incumbrances. It is, therefore, clear that taking of possession within the meaning of section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession ? The Act is silent on the point. Unless possession

is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority 10 SC 75-18 has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking, of possession is not necessary. No further notice beyond that under section 9(1) of the act: is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government."

11. I am unable to endorse the views of the learned Additional Advocate General that the decision of the Hon'ble Apex Court in Balwant Narayan Bhagde's case (supra) is applicable to the present case in hand. Before addressing as to how this position would not be applicable to the facts of the case, it would also be relevant to mention that the Hon'ble Apex Court in the aforesaid decision did not lay down the law in regard to delivery of symbolical or actual possession of the lands. In Balwant Narayan Bhagde's (supra), the Coram consisted of three Judges namely, the Hon'ble Justice P.N.Bhagwati, Hon'ble Justice A.C.Gupta and Hon'ble Justice N.L.Untwalia. The judgment was pronounced by Hon'ble Justice N.L.Untwalia and was concurred by the other two Hon'ble Judges also. While concurring with the conclusion reached by Hon'ble Justice N.L.Untwalia, the other two Hon'ble Judges did not express their assent to the discussions in regard to delivery of symbolical and actual possession and had not subscribed to the findings which has been extracted above. The dissenting views of these aspects of delivery of possession by the majority of the two Hon'ble Judges is as follows:-

"P.N.BHAGWATI, (concurring) (for himself and Gupta, J.) J.-We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned brother Untwalia, J., in regard to delivery of 'symbolical' and 'actual' possession under rules 35, 36, 95 and 96 of Order XXI of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to

what has been said by our learned brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion' of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the]And in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the 'pot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was laying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking

of mere paper possession, without the occupant or the owner ever coming to know of it.

We are of the view, on the facts and circumstances of the present case, that the Tahsildar took actual possession of that part of the land which was waste or arable and handed it over to the Principal of the Agricultural College. It is true that the Special Land Acquisition Officer in his letter dated 13th December, 1961 to the Commissioner stated that possession of the entire land was still with the appellant and it was not actually taken possession of by the Principal, Agricultural College. But it is obvious that this statement was made by the Special Land Acquisition Officer because he thought that actual possession of the land could not be regarded as having been taken, unless the appellant was excluded from the land and since the appellant immediately, without any obstruction, entered upon the land and continued in possession, "the land was not Actually taken possession of by the Principal, Agricultural College". This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting. There can, therefore, be no doubt that actual possession of 19 acres 16 gunthas of waste and arable land was taken by the Tahsildar on 3rd April, 1959 and it became vested in the Government. Neither the Government nor the Commissioner could thereafter withdraw from the acquisition of any portion of this land under s. 48(1) of the Act."

Thus, it can only be said that the aforesaid discussions, insofar it relates to delivery of symbolical and actual possession is concerned, the law was not laid down and therefore the same cannot be applied to the present case.

12. Furthermore, it would be useful to add here that the judgment in Balwant Narayan Bhagde's (supra) arose under Land Acquisition Act, wherein, the procedure and mode of delivery of

the land under acquisition, is quite distinct to the mode contemplated under the Land Ceiling Act.

13. While the Land Acquisition Act does not require the presence of the owner or the occupant of the land to effectuate taking of possession nor is any notice required beyond the notice under Section 9(1) of the Land Acquisition Act, the Land Ceiling Act mandates a notice under Section 11(5) calling upon the person in possession of the land to surrender or deliver possession within a stipulated time and in case of refusal to comply with Sub Section 5, the Competent Authority is entitled to take forceful possession under Sub Section 6. Under the Land Acquisition Act, when the possession is taken under Section 16 or 17(1), the owner or the occupant of the land is dispossessed and the land vests in the Government. Whereas under the Land Ceiling Act, the vesting of the land takes place any time on or after the publication of the notification under Section 11(1) and delivery of possession occasions thereafter either under Sections 11(5) or 11(6). The aspect of taking of possession of land gains further importance under the Act in view of various challenges made to the Land Ceiling proceedings, pursuant to the Repeal of the Act. In other words, the possession of the land gains significant importance in view of the Repeal Act, wherein the procedure adopted for taking delivery of the lands under the Act should be clearly established by the authorities, evidencing that they have strictly adhered to the provisions of the Act. While dissenting on this part of the discussion in Balwant Narayan Bhagde's (supra), the two Hon'ble Judges had also observed that there can be no hard and fast rule laying down what act would be sufficient to constitute taking possession of the land and that there cannot be an absolute and inviolable rule that merely going on the spot and making a declaration otherwise would be sufficient to constitute taking of possession of land.

14. In view of this majority decision, the respondents' act of taking possession by affixture cannot be deemed to be proper taking of delivery, and thus the decision in Balwant Narayan Bhagde's case (supra), relied upon by the learned Additional Advocate General, would only support the case of the petitioner.

15. The learned Additional Advocate General had also relied upon two decisions of the Hon'ble Division Bench of this Court in W.A.No.756 of 2015 dated 13.12.2017 [The Principal Secretary to Commissioner, Land Reforms, Chepauk, Chennai-5 and 2 others V. B.Govindammal] and W.A.No.1496 of 2017 dated 28.06.2018 [The Assistant Commissioner, Urban Land Tax/Competent Authority, Urban Land Ceiling, No.5, Sannathi Street, Poonamallee, Chennai-56 and 2 others V. D.Nagarajan], for the proposition that the notices under Section 11(5) of the Act was in accordance with the procedure laid down under the Act and therefore, the

consequent act of taking possession was legal. In Govindammal's case (supra), the Hon'ble Division Bench of this Court had observed as follows:-

"16. The interesting point here is that the possession taken by the Government was admitted and confirmed by the husband of the respondent in his letter dated 18.01.2001. He has also given a statement before the officials on 31.01.2001, which clearly shows that the husband of the respondent has knowledge about the acquisition proceedings. The respondent taking advantage of all the above facts with the support of the sale deed approached the Court. She was not in a position to produce any valid documents or proof to show that the property is agricultural land and she was engaged in agricultural activities. The revenue officials have also inspected the property and submitted a report that the land in S.No.259/5 is not used for any kind of the agricultural purposes, but it was used for the purpose of brick work (kiln). During the currency of the Urban land ceiling Act, the respondent purchased the land and as such, in the acquisition proceedings she ought to have participated and raised objections effectively. The main stand taken by the respondent is that the holder of the lands for agricultural purposes need not file any written objection and another stand is that no notice was served on her. Whereas, the notices were served on the family members of the respondent (i.e, the husband and son) who are doing brick works (kiln) in the name of M/s.Suresh Brick Works in the same land. The officials were made to believe that the said land belongs to M/s.Suresh Brick Works and notice were served on the owner of the property Thiru. Babunaidu, who is the husband of the respondent. In fact, in the draft statement under Section 9(1) of the Act, the husband of the respondent described him as the owner of the land. It is not in dispute that Babunaidu is the husband of the respondent and M/s.Suresh Brick Works belongs to the respondent's family. Under such circumstances, the proceedings was not issued against the respondent and it was issued only against M/s.Suresh Brick Works. As per Section 7(1) of the Act, every person holding vacant land in excess of the ceiling limit at the

commencement of the Act shall, file a statement before the competent authority having jurisdiction specifying the land within the ceiling limit which he desires to retain. The respondent stated in the writ petition that the land is used for agricultural purposes. However, she has not shown any document to prove that she was carrying on agricultural activities."

In the aforesaid case, since the Division Bench was of the view that notice for taking possession of the lands were duly served on the family members, it was held that the possession was in conformity with the procedure. Such a factual possession is conspicuously absent in the present facts of the case, wherein the physical possession of the land is claimed to have been taken by the Government through affixture.

16. Likewise, in the Nagarajan's case (Supra), the notice under Section 11(5) was duly served and possession of the acquired land was handed over to the Government well before the Repeal Act. This fact is also contrary to the present facts in hand, wherein, such a notice was not duly served on the urban land owner or the family members but only through affixture. As such, the facts in the aforesaid two decisions, being different from that of the facts in the present case, cannot be relied upon to establish the proposition laid therein with regard to taking over possession.

17. For all the foregoing discussions, this Court is of the view that the physical possession of the land still vests with the petitioner and in view of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, the acquisition proceedings itself shall stand abated. Consequently, the orders of the third respondent under Section 9(5) dated 17.04.1997 and Section 11(5) dated 10.12.1998 vide ref. 995/96/D & RC 2043/98D respectively in respect of lands in Survey No.39/1B and 40/1 Amadurmedu Village, Poonamallee Taluk, measuring about 5700 Sq. mts is hereby quashed. The Writ Petition stands allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Secretary,
Government of Tamil Nadu,
Revenue Department, Fort St. George,
Chennai-600 009.

2.The Principal Commissioner
and Commissioner,
Land Reforms,
Chepauk,
Chennai-600 005.

3. The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling,
No.5, Sannathi Street,
Poonamallee, Chennai.

W.P.No.17425 of 2004
and
W.M.P.No.487 of 2008

VSN II (CO)

RRS (16/07/2019)



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