

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9338 of 2006

and

WPMP.Nos.1934 &1935 of 2007

1.Uthirakumari (died)
2.R.Parasuraman
3.P.Geetha
4.P.Pramila
5.P.Sivakumar
6.P.Renuka
7. P.Vinothini
8. P.Usha ... Petitioners
* P2 to P8 are substituted as legal heirs of the
deceased P1-Uthirakumari, as per order dated
19.04.2018 in WMP.No.26193/2017

Vs.

1. The State of Tamil Nadu
Rep. by the Secretary
Revenue Department
Fort St.George, Chennai-600 009.
2. The Special Commissioner and Commissioner for
Land Ceiling and Urban Land Tax
Chepauk, Chennai-600 005.
3. The Assistant Commissioner for Urban
Land Tax and Ceiling (Competent Authority)
Tambaram Zone, Adambakkam,
Chennai-600 088.
4. The Tahsildar
Saidapet, Chennai.
5. Rani
W/o.Late Ramadoss
6. Chandra
W/o.Kasi

7. Jothi
W/o.Late Loganathan

8. Lakshmi
W/o.Benny

9. Vanaja
W/o.Devan

... Respondents

* R5 to R9 are impleaded vide order
dated 29.04.2019 made in WPMP.No.
599 of 2011

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to declare that the proceedings of the third respondent in Na.Ka.4981/88B dated 08.02.1994 holding that lands of an extent of 15 ares in S.No.87/7A and 39 ares in S.No.91/2 in Zamin Pallavaram, Saidapet Taluk, Madras, standing in the name of Annammal, wife of Arumugham are surplus, and the consequential symbolic possession are null and void and consequently, effect a Gazette notification in view of the Repealed Act 20/99 that the proceedings are abated.

For Petitioner : Mr.D.Gopinathan

For Respondents: Mr.J.Ramesh
Additional Government Pleader

O R D E R

This writ petition has been filed seeking Mandamus, directing the respondents to declare that the proceedings of the third respondent in Na.Ka.4981/88B dated 08.02.1994 holding that the lands of an extent of 15 ares in S.No.87/7A and 39 ares in S.No.91/2 in Zamin Pallavaram, Saidapet Taluk, Madras, standing in the name of Annammal, wife of Arumugham are surplus, and the consequential symbolic possession are null and void and consequently, effect a Gazette notification in view of the Repealed Act 20/99 that the proceedings are abated.

2.The disputed land measuring 96 cents in S.No.91/2 and 50 cents in S.No.87/7 in 158, Jamin Pallavaram, was purchased by Annammal, who is the mother of deceased Uthirakumari, out of her meager income as agricultural coolie. The said Annammal was in enjoyment and possession of the said land. Annammal died on 12.03.1984 leaving her four daughters viz., Rani, Chandra, Jothi and Uthirakumari and two sons viz., Devan and Benny as legal

heirs. Benny died on 15.10.2001. The land continued to be an agricultural land and it was not divided among the legal heirs. While so, the legal heirs decided to sell the land and share the proceeds and approached the real estate agents for the same. To their shock and surprise, they came to know that out of 5900 sq.meters of land owned by their mother, only 500 sq.meter in S.No.87/7 is only available for them and 5,400 sq.meters were declared as surplus land by the Government under the Land Ceiling Act. Thereafter, the legal heirs of the said Annammal made enquiry and on enquiry it reveals that a notice under Section 7(2) of the Tamil Nadu Land (Ceiling and Regulation) Act 1978, has been issued in the name of Annammal on 15.04.1988, who died as early as on 12.03.1984. Since no returns were filed under Section 7(1), further proceedings under Sections 9(1) and 9(4) were continued with and on 29.08.1988, draft statement was sent for 500 sq.meter of land and the same was served in the name of deceased person. Since no objection was received, an order under Section 9(5) was passed on 31.10.1991 in respect of 5400 sq.meter and further notice in Form VII under Sections 11 (5) has been issued that the land vested with the State Government on and from 25.02.1993 without even informing the owner of the land or her legal heirs. Aggrieved by the same, the petitioners have filed the present petition with the aforesaid prayer. Pending this writ petition, the petitioner also died and hence her legal heirs were substituted by an order dated 19.04.2018 in WMP.No.26193/2017.

3.Heard Mr.D.Gopinathan, learned counsel for the petitioners and Mr.J.Ramesh, learned Additional Government Pleader appearing for respondents 1 to 4.

4.The learned counsel for the petitioners submitted that no notice was served to them in the manner known to law and all the proceedings were initiated in the name of the deceased person viz., Annammal. Hence, he prays to allow this petition. In support of his contention, the learned counsel relied upon a decision rendered in the case of State of Tamil Nadu Vs. P.B.K. Thilagar reported in 2018(5) CTC 875.

5.An officer working in the 1st respondent Department appeared in person before this court and produced the original file relating to this issue. The learned counsel for the respondent submitted that a counter affidavit was also filed on behalf of the respondents. The relevant portion of the affidavit is extracted hereunder:

2.It is submitted that one Tmt.Annammal was found to be the owner of land in S.No.87/7 (2000 sq.mts) and 91/2 (3900 sq.mts) totally measuring 5900 sq.mts in Zamin Pallavaram Village, Tambaram Taluk as per

revenue records at the commencement of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred as the Principal Act 1978). Since the urban land owner failed to file return under section 7(1) of the Principal Act a notice under Section 7(2) of the Principal Act was issued on 15.04.1988 and served on Thiru M.Gopinath said to have been the grand son of the Urban Land Owner. Tmt.Annammal did not file the return under Section 7(1) of the Principal act on receipt of notice under Section 7(2) of the Principal Act Thiru.M.Gopinath, who appeared before the 3rd respondent on 2.5.1988 had given a written statement stating that his Grand mother Tmt.Annammal is aged about 70 years and she was not able to attend the enquiry and necessary documents would be produced on 9.5.1988. But the urban land owner did not file the records. Hence, a draft notice under section 9(4) of the principal act along with draft statement under section 9(1) of the Principal Act was issued by the 3rd respondent being the Competent Authority, Urban Land Ceiling, Tambaram in his Rc.B/4981/88, dated 29.8.88, calling for the objections to the proposed acquisition. The same was served on Tmt.Lakshmi daughter-in-law of the Urban Land owner. As the Urban Land Owner did not file objection to the draft statement, orders under section 9(5) of the principal Act was passed by the 3rd respondent vide his proceedings dated 31.10.91 declaring the excess vacant land as 5400 sq.meters after allowing 500 sq.meters towards entitlement. Order under Section 9(5) of the Principal Act was received by one Thiru.Benny, son of the Urban Land owner. Then, final statement under Section 10(1) of the Principal Act was issued on 31.5.1992 and served on 21.7.1992. Later, notification under Section 11(1) of the Principal Act was published in Tamil Nadu Government Gazette dated 14.10.1992 in part VI(1) 1625(92) at page 1157 of the Gazette. Notification under Section 11(3) of the Principal Act, vesting the land with Government was published in Tamil Nadu Government Gazette dated 28.4.93 in part VI(1)/409/93 at page 351/352 of the Gazette. Notice under Section 11(5) of the Principal Act was issued on 8.2.1994, requesting the Urban Land Owner to surrender possession of the land the same was served on Thiru.A.Benny, son of the Urban Land Owner. As the Urban Land Owner did not choose to surrender possession of the excess vacant land measuring 5400 sq.meters (S.No.87/7A-1500 sq.meters 91/2-3900 sq.meters) of Zamin Pallavaram Village, it was taken over and handed over to Firka Revenue Inspector,

Alandur n 15.10.1994 on behalf of the Government. Necessary changes have been made in the Revenue Accounts as per Tk.8A/1129/1404. After a lapse of 12 years, one Tmt.Uthirakumari has filed this writ petition in the Hon'ble High Court of Madras. The writ petition is liable to be dismissed as belated one."

The learned counsel for the respondents submitted that the symbolic possession of the land was taken by the Government on 15.10.1994 itself. Hence, he prays for dismissal of the writ petition.

6. On perusal of the records, there is no doubt that the deceased 1st petitioner's mother viz., Tmt. Annammal is the owner of the lands in dispute. The said Annammal died on 12.03.1984 leaving behind her legal heirs. When the legal heirs tried to sell the property in dispute, they came to know that out of 5900 sq.meters of land, only 500 sq.meters of land was available to them and the rest of 5400 sq.meters of land was declared as about the land ceiling limit and was taken away by the Government. On perusal of records it is seen that a notice was sent on 15.04.1988 in the name of Annammal, who has already died in the year 1984 and no returns was filed under Section 7(1) of the Act. It is also seen from records that 7(2) notice was served on the legal heirs by affixure but not through RPAD as per Rules. All the notices were served only by affixure. It is also seen that 11(5) notice was served on the wife of Thiru. Benny, who is also one of the legal heir of the said Annammal. All the notices were served only in the name of the deceased person. It is relevant to extract the decision rendered by this Court in the case of State of Tamil Nadu Vs. P.B.K. Thilagar reported in 2018 (5) CTC 875:

"12. From the above submissions, we find that the entire Land Acquisition proceedings were intended and Notices(s) were issued only in the name of said Jayalakshmi, who died as early as in 1954. It is trite law that when the proceedings are initiated against a dead person and not against the real owner, the entire proceedings are invalid/vitiated. On this contention, a Reference could be placed on the above said Judgment relied on by the learned Senior Counsel appearing for the Respondents/Writ Petitioners, reported in V. Somasundaram, Nityakalyani and V. Sugandhi v. Secretary to Government, Revenue Department, Assistant Commissioner (Land Reforms and Urban Land Ceiling) and S. Pitchai, 2007(2) LW 109:2007(1) MLJ 750, wherein it has been observed as follows:

"9. From the perusal of the file it is clear that proceedings were initiated against the Third Respondent, who is the erstwhile owner of the lands

in question in respect of transfer of his land to the Appellants herein. Section 11(5)-Notice was also issued to the Third Respondent, who was not the real owner. As per Section 11(5) of the Act, the Competent Authority is bound to issue Notice in writing to any person, who may be in possession of the land, to surrender and delivery possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days time. No notice having been issued against the Appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the Second Respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the Authorities to proceed against the Appellants at this stage to rectify the non-compliance of Section 11(5) of the Act.

The above decision will squarely apply to the present case also and definitely the notices and notifications in this case has been issued only in the name of the dead person. Another submission made by the learned counsel for the respondent that the symbolic possession was taken by the respondent on 15.10.1994 itself. This contention was also clearly discussed in the decision cited supra, wherein it is held that mere symbolic possession is not sufficient. Therefore, the submission made by learned Government Advocate appearing for the respondent that since symbolic possession is with respondents, much prior to the repealing of the Act, which came into force on 16.09.1999, and that the petitioners are not entitled to the benefit of the Repealing Act, has no force in the eye of law. All along, the possession is only with the owner of the land i.e., the petitioners herein.

7. In view of the above decision, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu
Revenue Department
Fort St.George, Chennai-600 009.
2. The Special Commissioner and Commissioner for
Land Ceiling and Urban Land Tax
Chepauk, Chennai-600 005.
3. The Assistant Commissioner for Urban
Land Tax and Ceiling (Competent Authority)
Tambaram Zone, Adambakkam,
Chennai-600 088.
4. The Tahsildar
Saidapet, Chennai.
5. The Government Pleader,
High Court, Madras.

+2cc to Mr.P.B.Sampath Kumar, Advocate Sr.65573
+1cc to the Government Pleader Sr.65497

W.P.No.9338 of 2006

mg[co]
srg 13/08/2019

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