

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27423 of 2008

And

M.P.No.2 of 2008

G.Vijayakumar

... Petitioner

Vs.

1.The Competent Authority,
Tamil Nadu Urban Land
(Ceiling & Regulation) Act,
Tambaram, Chennai 600 088.

2.The Assistant Commissioner,
Tamil Nadu Urban Land
(Ceiling & Regulation) Act,
Tambaram, Chennai 600 088.

3.The Director,
Urban Land Ceiling and Regulation Act,
Chennai - 600 005.

4.The Tahsildar,
Tambaram, Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 2nd respondent vide proceedings in Na.Ka.No.R.184/95 D dated 31.03.1997, which was signed on 18.07.2008 and Notice in RC.No.2596/97B dated 26.06.1998 in Form VII signed on 18.07.2008, pertaining to the land of the petitioner to an 2600 sq.mtrs., in S.No.23-2B5 of Venkadamangalam Village and quash the same.

For Petitioner : Mr.G.Arulmurugan

For Respondents: Mr.J.Ramesh

Additional Government Pleader

O R D E R

This petition arises out of the Urban Land (Ceiling and Regulation) Rules, 1976. Challenging the proceedings of the second respondent in Na.Ka.No.R.184/95 D dated 31.03.1997, which was signed on 18.07.2008 and the notice in RC.No.2596/97B dated

26.06.1998 in Form VII signed on 18.07.2008, pertaining to the land of the petitioner to an extent of 2600 sq.mtrs. in S.No.23-2B5 of Venkadamangalam Village, the present writ petition has been filed.

2.The case of the petitioner is that he is the absolute owner of the property to an extent of 76 cents of land in S.No.23-2B5 of Venkadamangalam Village in patta No.2035, having purchased the same from one A.L.Venugopal through sale deed dated 20.06.1998 and is in peaceful possession and enjoyment of the same and carrying on agricultural activities.

3.It is the further case of the petitioner that the petitioner's vendor was granted assignment of 76 cents of land in S.No.23-2B5 in the year 1992 and he paid the full amount of the value of the land assigned to him as fixed by the Authorities. The petitioner's vendor was granted patta in the year 1992 and he was in occupation of the said lands till 1998 and thereafter, the petitioner is in possession of the lands after his purchase. While being so, the second respondent has passed the impugned proceedings, without any notice to the petitioner's vendor or to the petitioner. Hence, this petition.

4.The learned counsel for the petitioner would submit that the Urban Land (Ceiling and Regulation) Rules, 1976, particularly Rule 8 makes it clear that the Authority has to send notice through registered post to the persons concerned and thereafter should initiate the other proceedings, in the manner known to law. However, in the present case, the impugned proceedings reflect only to effect eviction and the notice has been passed without following the due process of law and hence, the same are vitiated. He would further submit that the petitioner was very well available in the property and hence, on the sole ground the writ petition deserves to be allowed.

5.This Court also heard the learned Additional Government Pleader appearing for the respondents.

6.Perusal of the records did not reflect anything with regard to the issuance of notice to the petitioner or to his vendor. In view of the above, the respondent Authority has not followed the procedure contemplated under the Urban Land (Ceiling and Regulation) Rules, 1976. Hence, this Court has no hesitation to arrive at a conclusion that the Authorities have violated the procedures contemplated under the Rules, particularly, Rule 8, with regard to effecting service on the land owners. Furthermore, the Act itself was repealed in the year 1999.

7.Further the Hon'ble Apex in the decision reported in (2013) (4) SCC 280 (State of Uttar Pradesh Vs. Hari Ram) has dealt with pari materia provisions contained in the Urban Land (Ceiling and Regulation) Act, 1976, viz-a-viz the effect repeal

made by the Urban Land (Ceiling and Regulation) Repeal Act, 1999, in which the legal position has been succinctly explained as follows:

"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."

8. On a perusal of the above decision it is clear that the State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under Section 11 (5) of the Urban Land (Ceiling and Regulation) Act, 1976 or forceful dispossession under Section 11 (6) of the Urban Land (Ceiling and Regulation) Act, 1976. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 4 of the Repeal Act.

9. As per Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978, to serve on the person concerned the draft statement prepared in accordance with Sections 9 (1) and 9 (2) of the Principal Act together with a notice that any objection thereto shall be preferred within 30 days, by sending

the same by registered post at his last known address and when the efforts to serve the same are not successful for the reasons other than that it has been returned as 'refused', the same shall be served by affixing copy of the same in a conspicuous place.

10.In the present case, the respondents did not place sufficient materials with regard to taking possession of the land either forcibly or by voluntary surrender. Hence, the statutory procedures have not been followed and this Court is not inclined to accept the impugned proceedings and notice and they are liable to be quashed.

11.In the result, the writ petition is allowed and the impugned proceedings and notice are set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Competent Authority,
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(Ceiling & Regulation) Act,
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Chennai - 600 005.
- 4.The Tahsildar, Tambaram, Chennai.

+1cc to Mr.G.Arulmurugan, Advocate, S.R.No. 49075
+1cc to the Government Pleader, S.R.No. 50141

W.P.No.27423 of 2008

And

M.P.No.2 of 2008

SS (CO)
GN(20/08/2019)