

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 25864 of 2009
and
M.P. 2 of 2009

1. M.Alliammal
2. P.Bakkiam Ammal
3. P.Natarajan
4. R.Allimuthu Ammal
5. R.Sundararaj
6. D.Kamalam Ammal
7. K.Kandasamy
8. K.Kandasamy
9. L.Kandasamy
10. S.Thangammal
11. V.Pachiappan
12. R.Rajkumar
13. K.Kamalam Ammal
14. M.Akilandam Ammal
15. P.Sundaram
16. M.Sendayammal
17. G.Sarasu
18. M.Muthu
19. V.Thangavel
20. M.Tamilarasan
21. K.Muthusamy
22. R.Dhanasamy
23. R.Mariappan
24. A.Periyasamy
25. C.Renukadevi
26. V.Sarasu
27. A.Pachiammal
28. R.Chinnammal

29. J.Jagan
30. P.Sarasu
31. A.Mathivanan
32. P.Nallammal
33. P.Manokaran
34. M.Selvi
35. D.Chinnasamy
36. V.Radhakrishnan

... Petitioners

Vs

1. The State by its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai.
2. The Competent Authority,
Urban Land Ceiling and
Assistant Commissioner,
Urban Land Tax Salem now at
Erode, Erode District.
3. The Joint Commissioner,
Land Reforms,
Erode, Erode District.
4. The District Collector,
Salem District,
Salem.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Tamil Nadu Government Gazette Notification dated 26.11.1997 issued under Section 11(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in S.R.No.84/91/A1 Form-V passed by the

2nd respondent and the Tamil Nadu Government Gazette Notification dated 01.04.1998 issued under Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 passed by the 2nd respondent herein in proceedings in S.R.No.84/91/A1 in Form VI declaring an extent of 78 acres (1.93 acres) of land as excess vacant land in S.No.195/12 of Annathanapatti Village, Salem District, quash the same and consequently direct the respondents herein to issue separate patta to the individual house sites in the name of the respective petitioners.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.J.Ramesh,
Addl. Govt. Pleader

ORDER

This Writ Petition has been filed challenging the impugned order of the 2nd respondent dated 26.11.1997 and quash the same and consequently direct the respondents herein to issue separate patta to the individual house sites in the name of respective petitioners.

2. The case of the petitioners is that originally, the extent of 1.93 ares (1.93 acres) had been assigned as Survey No.195/11, Annathanapatti Village, Salem District, later it was sub-divided

into two parts viz., (i) 78 ares in S.No.195/12 and (ii) 15 ares in S.No.195/11. The petitioners have purchased the properties as house sites in the year 1974 and 1977 from one Muthu Gounder and his son Rangasamy Gounder. Thereafter, the petitioners have converted the lands into residential portions and started living there from the date of purchase and they came to know that the urban land ceiling authorities have initiated urban land ceiling proceedings against the original owner. After came to know about the same, the present Writ Petition has been filed by the petitioners challenging the urban land ceiling proceedings of the respondents.

3. The learned counsel appearing for the petitioners would submit that though the Tamil Nadu Urban Land (Ceiling and Regulation) Act (hereinafter called as 'Act') was enacted in the year 1978, however, the Act came into force on 03.08.1976, all the petitioners have purchased the property prior to the Act. Hence, without verifying the purchasers, issuing the notice against the original owner and taking possession of the property is unsustainable one and further, the learned counsel would submit that the Act itself repealed in the year 1999 by repealing Act 20/1999 on 16.06.1999. Hence, once the Act is repealed, this

Court in categorical decisions has held that in view of the repealing act, entire proceedings stands abated.

4. The learned Addl. Government Pleader appearing for the State would submit that though the Act was repealed on 16.06.1999, however, the possession was taken on 15.06.1999, one day prior to the date of repealing Act and the learned Addl. Government Pleader would further submit that for the welfare of innocent purchasers, the Government passed a Government Order in G.O.Ms.No.565, Revenue Department, dated 26.09.2008 to regularise the lands purchased by the innocent purchasers. In view of the G.O., the petitioners have to file an appropriate application before the authorities and the authorities have to pass suitable orders.

5. It is an undisputed fact that the petitioners have purchased the property from the year 1974 onwards and the Act came into force on 03.08.1976. Though the respondents have filed the counter stating that the notice under Sec.7(2) of the Act was issued to the landowner, the objections were not received from the landowners and after passing the order under Sec.9(5) of the Act, the final statement under Sec.10(1) of the Act was issued to the landowner. Thereafter, notification under Section

11 (3) of the Act was issued on 18.02.1998 and thereafter, notice under Sec.11(5) of the Act was issued to the landowners requesting to surrender or delivery the possession of excess vacant land. Thereafter, the possession was taken on 15.06.1999, one day prior to the date of Repealing Act came into force.

6. On perusal of the counter, it reveals that all the notices were sent to the landowners, however, no notice was served to the petitioners, who have purchased the property from the year 1974 onwards and subsequently, the Act was repealed. Hence, the entire proceedings stands abated. Further, immediately after the issuance of notification under Section 11(3) of the Act, the notice has to be issued as per Section 11(5) of the Act in favour of owner or person interested. In the present case, the petitioners have purchased the property in the year 1974 from the owners as well as persons interested and occupied the land by constructing the house sites. Hence, necessary notice has to be issued under Section 11(5) of the Act, however, no records were produced for the notice issued under Section 11(5) of the Act in favour of the petitioners. The very same issue was came up before this Court in the case of V.Somasundaram and others Vs. The Secretary to Government, Revenue Department,

Chennai and others reported in 2007 (2) L.W. 109 and this Court has held as follows :-

“6. The main contention urged by the learned counsel for the appellants is that the appellants are interested persons as they have purchased the lands from the 3rd respondent and are in possession of their respective extent of land and hence, the 2nd respondent ought to have issued notice to the appellants, who are the real owners and therefore, the action of the respondents are in violation of Sections 9(4), 10(1) and 11(2) of the Act. The learned counsel ultimately argued that the vesting of the lands in question with the Government cannot be accepted in view of the non-compliance of the specific provisions contained in section 11(5) of the Act, which reads as follows :-

“Section 11(5) where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the

State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice."

Citing the said provision of the Act, the learned counsel argued that even according to the respondents, possession was taken only on 30.04.1999 i.e. long after purchase of the land by the appellants from 1991 to 1995 and non-issuance of the notice to the appellants vitiates the entire proceedings of vesting of lands with the Government.

9. From the perusal of the file, it is clear that proceedings were initiated against the 3rd 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 3rd 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 30.04.1999 by the 2nd respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 16.09.1999, 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.

10. Similar issue was considered by a learned single Judge of this Court (A.Kulasekaran, J.) in the decision reported in 2006 (5) CTC 52 = 2006-4-L.W 159 (Vijay Foundation (P) Ltd. Vs. The Principal Commissioner and Commissioner of Land Reforms) and in para 7 the learned Judge held as follows:-

“7. The respondents herein have initiated acquisition proceedings against the person, who is not at all owner of the lands. The above quoted mandatory conditions mentioned in

Section 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and no such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid

ground. Based on the proceedings initiated against a wrong person, the lands of the petitioner cannot be acquired by the respondents."

We are in entire agreement with the said decision of the learned Judge."

7. In view of the above decision and the reasons stated supra, this Writ Petition stands allowed. However, the petitioners are at liberty to make appropriate application before the respondent authorities and if any application is filed, the respondent authorities are directed to pass orders in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

18.07.2019

Index:Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order
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To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai.

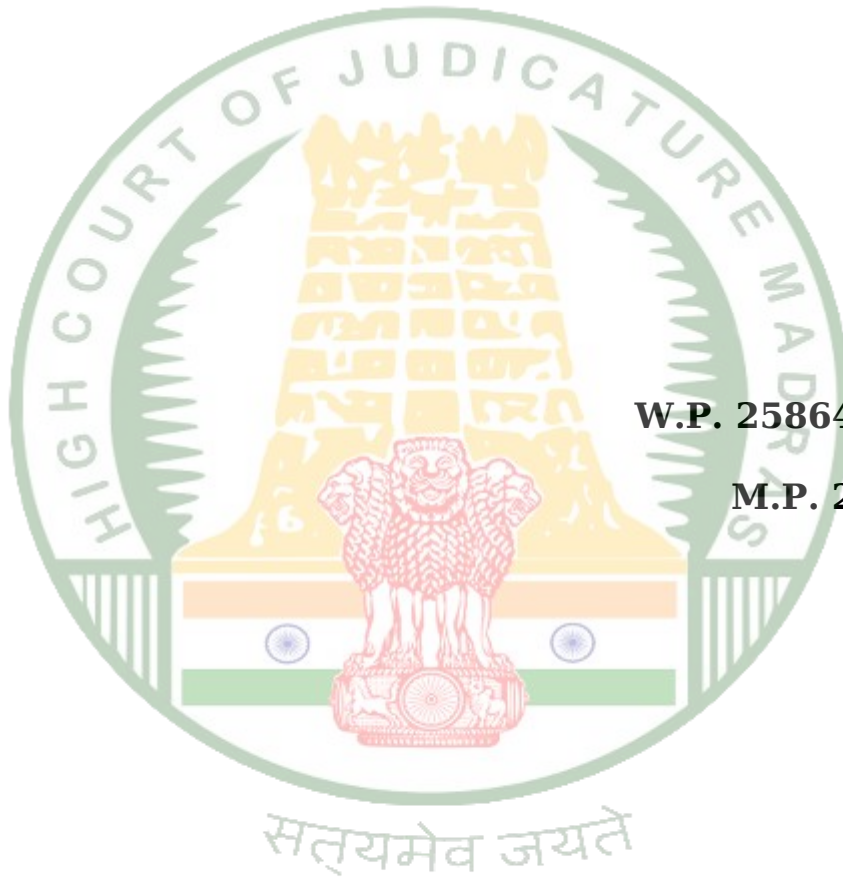
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