

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.09.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.28000 of 2019

and

W.M.P.Nos.27610, 27612, 27614 of 2019

1.C.Ramamoorthy
2.K.Manoharan
3.R.Sagadevan
4.K.Selvi
5.R.Kalpana

... Petitioners

/versus/

1.The State of Tamil Nadu,
Rep.by its Secretary to the Government,
Revenue Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Commissioner Urban land Ceiling &
Land Reforms,
Ezhilagam,
Chepauk, Chennai 600 005.

3.The Assistant Commissioner/Competent Authority,
Urban Land Ceiling & Land Reforms,
Office of the Urban Land Ceiling & Land Reforms,
Erode.

4.The Revenue Divisional Officer/
Competent Authority,
Urban Land Ceiling & Land Reforms,
Office of the Revenue Divisional officer,
Krishnagiri Taluk,
Krishnagiri District.

5.The Tahsildar,
Office of the Tahsildar,
Krishnagiri District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India seeking Writ of Certiorari calling for the records relating to the fourth respondent proceedings in Na.Ka.No.2595/2019/B dated 21.08.2019 in respect of land

comprised in survey Nos.223/1 situated at Kurubarapalli Village, Krishnagiri Taluk, Krishnagiri District and quash the same and consequently declaring the proceedings under the Tamil Nadu Urban Land(Ceiling and Regulation) Act, 1978 stood lapsed in so far as the petitioner's lands.

For Petitioners :Mr.R.Sagadevan
For Respondents :Mr.K.Ravikumar, AGP for
R1 to R5

O R D E R

By consent, the writ petition is taken up for final disposal, at the admission stage itself.

2. Heard Mr.R.Sagadevan, learned counsel appearing for the petitioners and Mr.K.Ravikumar, learned Additional Government Pleader, who takes notice for respondents 1 to 5. Perused the impugned order.

3. The prayer sought for in the writ petition is to issue a Writ of Certiorari calling for the records relating to the fourth respondent proceedings in Na.Ka.No.2595/2019/B dated 21.08.2019 in respect of land comprised in survey Nos.223/1 situated at Kurubarapalli Village, Krishnagiri Taluk, Krishnagiri District and quash the same and consequently declaring the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 stood lapsed in so far as the petitioner's lands.

4. The petitioners herein are the third party purchasers from the earlier purchasers of the land declared excess under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. After causing notice, the Authorised Officer has passed an order on 21.08.2019 holding that the petitioners have purchased the land subsequent to the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and they have converted the nature of the land without prior approval. Hence, the Authorised Officer has directed the petitioners to vacate the property and hand over the possession.

5. The learned counsel appearing for the petitioners referring the Division Bench Judgment of this Court in State of Tamil Nadu, rep.by its Secretary, Revenue Department, Fort St. George Chennai and others v. P.B.K.Thilagar & another reported in(2018-4-L.W. 762) would submit that the proceedings of the recovery of possession has been initiated, after 39 years and after the Ceiling Act repealed. The excess land was never taken possession by the Government and therefore, the impugned order per se illegal and even though there is an alternative appellate

remedy available under the statute, the same will not apply to the present case. Hence, this writ petition is filed seeking Certiorari to call for the records relating to the fourth respondent dated 21.08.2019 and to quash the same.

6. The impugned order indicates that 6.21 acres of land has been identified as excess land under the proceedings of the Assistant Commissioner of land Reforms, Erode vide order dated 29.09.1980. The land at present is found in possession of 14 different persons and therefore, notice has been caused to them to attend the enquiry on 21.08.2019. Except four persons remaining 10 persons attended the enquiry and after giving them the opportunity, the Authorised Officer has found that all of them have purchased the property after declaring the land as excess land under the Tamil Nadu Urban Land (Ceiling and Regulation Act, 1978. Since they have not obtained any prior permission, their possession is found to be illegal and inappropriate.

7. The contention of the learned counsel appearing for the petitioners is that the possession is the crux of the act. Till the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation Act, 1978 with effect from 16.09.1999, if the possession is not taken then the Act cannot be implemented.

8. To that effect, the learned counsel appearing for the petitioners would also rely upon the paragraph Nos.15 and 16 of the Division Bench judgment, which reads as below:

"15. Yet another submission made by the learned Senior Counsel appearing for the respondents/writ petitioners is that since the symbolic possession was taken on 20.05.1999 itself, the respondents/writ petitioners are not entitled to the benefits of the Repealing Act. Furthermore, as only symbolic possession has been taken in this case, the writ petitioners/land owners are in actual and real possession of the lands in question. In this regard, learned counsel for the respondents/writ petitioners relied on the decision of the Division Bench of this Court reported in MANU/TN 0927/2015(cited supra), wherein it has been held as follows:

"33.It is to be noted that although the appellants/respondents claim that the possession of the land in question was vested with the Government under Section 11(3) of

the Act on 18.11.1998 and subsequently, handed over on 09.04.1999, the purported possession being handed over on 09.04.1999 in the form of land receipt, in law, is only a symbolic possession and as a matter of fact, actual/real possession was not taken. As such, the resultant possession is either the land owner Lakshmi Kanthammal or anybody for that matter had not handed over the physical possession and also when the appellants had only taken a symbolic possession and in reality, when the actual/real possession of the land in issue is in the hands of the Respondent/Petitioner, the Respondent/Petitioner is entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999."

16. On a reading of the above judgment, it is seen that mere symbolic possession is not sufficient. Therefore, the submission made by learned Government Advocate appearing for the appellants/State that since symbolic possession is with appellant, much prior to the repealing of the Act which came into force on 16.09.1999, and that respondents-writ 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, namely, the respondents/writ petitioners.

9. That is a case where the possession was with the land owners, who held land in excess to the Tamil Nadu Urban Land (Ceiling and Regulation) Act. But the petitioners herein are the persons, who are the third parties, admittedly had purchased the land after the order of identifying the excess land under the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The proceedings for payment of compensation and possession has been initiated long back and the impugned order is now passed after giving opportunity to the persons, who are in

possession pursuant to the transaction happened after the acquisition proceedings. Therefore, if at all any thing to be agitated further, the petitioners can only resort to the appeal remedy available to them under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the disputed facts has to be gone into only by the statutory appellate authority, if anything has not been properly considered by the appropriate authority. Therefore, this Court is not inclined to entertain this writ petition.

10. While the petitioners are at liberty to seek remedy before the Appellate Authority, any loss of time to the petitioners due to pursuing their remedy before the Court shall be taken into account by the appellate authority, while entertaining the appeal and condoned the delay. Two weeks time is granted to the petitioners to prefer the appeal. Till then, Status Quo is ordered.

11. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To:

1. The State of Tamil Nadu, Rep. by its Secretary to the Government,
Revenue Department, Secretariat, Fort St. George,
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Land Reforms, Ezhilagam, सत्यमेव जयते
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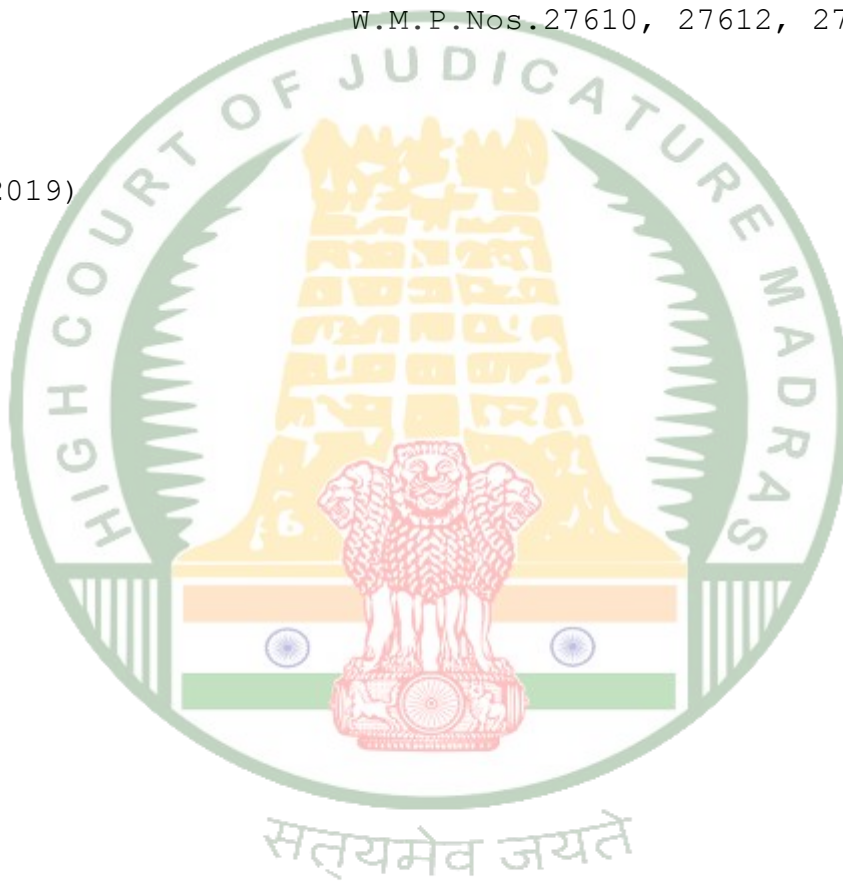
+1 CC to Govt. Pleader sr 82324.

+1 CC to Mr.R.Sagadevan, Advocate sr 81327.

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SST(CO)
SP(25/10/2019)



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