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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

W.A.(MD)Nos.511 to 521 of 2019

and

CMP(MD)Nos.4376 to 4395 of 2019

WA(MD) . 511/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,

Urban Land Tax, Madurai

at No.15, Plot No.4, Ist St., Kk.Nagar East,

Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

- Vs. -

G.D.Vaithiyalingam

... Respondent/Petitioner

Prayer in WA(MD) . 511/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 18.07.2014 made in WP(MD)No.10963 of 2014

Prayer in WP(MD)No.10963 of 2014

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the 1st respondent from taking physical possession of the approved housing Plot Nos. 83, 140 and 142 at Arjuna Nagar, Comprised in S.No.53/2 pt.S.No.54/2 and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA 8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plot.



WA (MD) . 512/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

- Vs. -

K.Gowri

... Respondent/Petitioner

Prayer in WA(MD) . 512/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 18.07.2014 made in WP(MD)No.10964 of 2014

Prayer in WP(MD) . 10964/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the 1st respondent from taking physical possession of the approved housing Plot No. 30 at Arjuna Nagar, comprised in S. No. 53/2 pt, S. No. 54/2 and S. No. 55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA 8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plot.

WA (MD) . 513/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents



Vs. -

S.Muthiah

.. Respondent/Petitioner

Prayer in WA(MD). 513/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.2010 of 2015.

Prayer in WP(MD). 2010/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or order or direction more in the nature of Writ of Mandamus forbearing the 1st respondent from taking physical possession of the approved housing Plot No.221, at Arjuna Nagar comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/Pt situated at Melapalayam Village, Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

WA(MD). 514/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,

Urban Land Tax, Madurai

at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

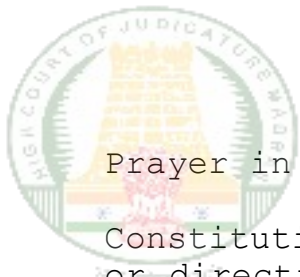
Vs -

S.Krishnan

... Respondent/Respondent

Prayer in WA(MD). 514/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.2011 of 2015



Prayer in WP(MD). 2011/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or order or direction more in the nature of Writ of Mandamus forbearing the 1st respondent from taking physical possession of the approved housing Plot NO.220, at Arjuna Nagar comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

WA(MD). 515/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

- Vs. -

S.Ramasamy

... Respondent/Petitioner

Prayer in WA(MD). 515/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.2012 of 2015.

Prayer in WP(MD). 2012/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or order or direction more in the nature of Writ of Mandamus forbearing the 1st respondent from taking physical possession of the approved housing Plot NO.70, at Archana Nagar comprised in S.No.54/2 pt, situated at Melapalayam Village, Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

**WA (MD) . 516/ 2019 :**

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

Vs. -

1. V.Palaikumar

2. V.C.Lakshmanakumar ... Respondents/Petitioners

Prayer in WA(MD) . 516/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.2013 of 2015.

Prayer in WP(MD) . 2013/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or order or direction more in the nature of Writ of Mandamus forbearing the 1st respondent from taking physical possession of the approved housing Plot NO.28, Arjuna Nagar comprised in S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioner on the basis of the order passed in R.C.A.2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of the petitioner for the above plots.

WA (MD) . 517/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents



- Vs. -

1.M.Parvathy
2. M.Sankari

... Respondents/Petitioners

Prayer in WA(MD). 517/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.20049 of 2014

Prayer in WP(MD). 20049/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus ,forbearing the 1st respondent from taking physical possession of the approved housing Plot Nos. 94,95,215,216,243,244 and 245, At Arjuna Nagar comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plots and thus render justice.

WA(MD). 518/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk., Tirunelveli .. Appellants/Respondents

Vs. -

S.Murugan ... Respondents/Petitioners

Prayer in WA(MD). 518/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.20050 of 2014



Prayer in WP(MD). 20050/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus , forbearing the 1st respondent from taking physical possession of the approved housing Plot No.76, at Arjuna Nagar Comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plots and thus render justice.

WA(MD) . 519/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,

Urban Land Tax, Madurai

at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

- Vs. -

S.Balasubramanian

... .. Respondent/Petitioner

Prayer in WA(MD). 519/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.20051 of 2014

Prayer in WP(MD). 20051/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the 1st respondent from taking physical possession of the approved housing Plot No.13, at Arjuna Nagar Comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plots and thus render justice.

**WA (MD) . 520/ 2019 :**

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents

- Vs. -

N.Ulaganathan

... Respondent/Petitioner

Prayer in WA(MD) . 520/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.20052 of 2014.

Prayer in WP(MD) . 20052/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus ,forbearing the 1st respondent from taking physical possession of the approved housing Plot No.20,at Arjuna Nagar Comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plots and thus render justice.

WA (MD) . 521/ 2019 :

1.The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

.. Appellants/Respondents



- Vs. -

L.Kathiresan

... Respondent/Petitioner

Prayer in WA(MD). 521/ 2019 :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the common order dated 10.07.2017 made in WP(MD)No.20053 of 2014.

Prayer in WP(MD). 20053/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus ,forbearing the 1st respondent from taking physical possession of the approved housing Plot No.23,at Arjuna Nagar Comprised in S.No.53/2 pt, S.No.54/2, and S.No.55/pt situated at Melapalayam Village, Tirunelveli District from the petitioners on the basis of the order passed in R.C.A. 2.8448/86 SRA.8/88 dated 29.11.88 under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and further direct the 2nd respondent to effect change of patta in the name of petitioner for the above plots and thus render justice.

For Appellants .. Mr,V.R.Shanmuganathan
Special Government Pleader
(in All Cases)

For Respondents .. Mr.H.Arumugam
(in All Cases)

COMMON JUDGMENT

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

All these writ appeals are filed by the Assistant Commissioner, Urban Land Ceiling, Tirunelveli and the Tahsildar, Palayamkottai Taluk challenging the common order passed by the Writ Court in W.P(MD)Nos.2010 to 2013 of 2015 etc., dated 10.07.2017. Those writ petitions were filed by the respective land owners for Mandamus forbearing the Assistant Commissioner, Urban land Ceiling, Tirunelveli, from taking physical possession of the respective property under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 with further direction to the second respondent/Tahsildar to effect change of patta in the name of the petitioner for the above subject matter property.

2.The main contention raised by the respective petitioner before the Writ Court is that even though Urban Land Ceiling proceedings were initiated against the subject matter lands, physical possession of the property continuous to be with the respective petitioner and therefore, in view of the Repeal Act 1999, more particularly, under Section 4 of the said Act, the entire Urban Land proceedings get lapsed, as the possession has not



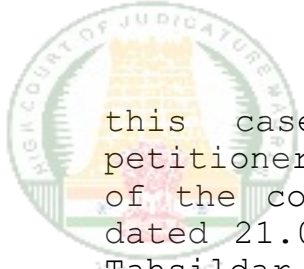
been taken from the land owners. Therefore, it is contended that now, the Urban Land Ceiling authority is not entitled to take physical possession from the petitioners. The Writ Court, after considering the claim raised by the petitioners and by following the Division Bench decision of this Court reported in **2007(1) MLJ 750 (V.Somasundaram and others vs. Secretary to Government, Revenue Department, Chennai)** and the decision of the learned single Judge reported in **2006(5) CTC 52 (Vijay Foundation (P) Ltd., vs. The Principal Commissioner and Commissioner of Land Reforms)**, allowed the writ petitions with further direction to the second respondent/Tahsildar to pass appropriate orders on the request of the petitioners regarding the issuance of patta.

3.The learned Special Government Pleader vehemently contended that the petitioners are not entitled to the relief as sought for in the writ petitions, since the subject matter lands were already taken possession under the Urban Land Ceiling Act proceedings. In support such contention, the learned Special Government Pleader invited this Court's attention to the possession certificates dated 21.09.1989 made available in the typed set of papers.

4.On the other hand, the learned counsel appearing for the writ petitioners/respondent in these writ appeals submitted that such certificate is an unilateral document to which, these petitioners are not parties and therefore, such symbolic possession taken by the official respondents cannot be considered as a physical possession. In support of his contention, the learned counsel relied on two Division Bench decisions of this Court reported in **2015(1) CWC 388 (The Government of Tamil Nadu vs. Aalim Muhammed Salegh Trust)** and **2015(2) CWC 20 (R.Siddiah vs. State of Tamil Nadu)**.

5.We heard both sides and perused the materials placed before this Court.

6.The only point for consideration in these writ appeals is that whether the possession of the subject matter lands has been taken from the respective writ petitioner so as to sustain the Urban Land Ceiling proceedings against the writ petitioners. It is to be noted at this juncture that there are two types of possession of property viz., symbolic and physical. While the former is a paper possession, the latter is actual one. It is not in dispute that Urban Land Ceiling Proceedings were initiated against the subject matter lands. However, it is the categorical contention of the respective writ petitioner that they are continuously in possession and enjoyment of the subject matter property and they were not dispossessed at any point of time. If the writ petitioners were not dispossessed physically and on the other hand, they are continuously enjoying the property, the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, comes to their rescue to declare the entire urban Land Ceiling proceedings as abated. Therefore, the question, which has to be considered in



this case, is as to whether physical possession from the petitioners is taken or not?. The only document filed in support of the contention of the appellant is the possession certificate dated 21.09.1989. Perusal of the same would show that the Deputy Tahsildar has signed the said certificate as if, he has handed over the possession of the land to the Revenue Inspector, who in turn signed the said certificate by stating as though taken charge. Admittedly, these writ petitioners are not signatories to the said possession certificate. Therefore, it has to be construed the said certificate is the unilateral document of the revenue officials when the land owners are admittedly not parties to the same. In other words, at the best, the certificate can be construed as a document in support of symbolic possession and not actual/physical possession. If actual possession is not taken, these writ petitions are entitled to protect under the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. The Division Bench of this Court considered the very same issue in **2015(1) CWC 388** (cited supra) at paragraphs 10 to 13 as follows:-

"10. In our considered view, all the above issues need not be gone into at this stage, as the only relevant issue for consideration is as to whether the land owner was dispossessed by the appellants in pursuant to the impugned proceedings or not. For such purpose, we have perused the files. The files disclose that a notice under Section 11(5) of the Act was issued on the said Baskara Pillai on 28.12.1992, calling upon him to surrender or deliver possession of the subject matter lands. Further, the competent authority addressed the District Collector of the then Chengalpet-MGR District at Kancheepuram, through proceedings dated 28.12.1992, requesting that the Tahsildar, Saidapet may be instructed to take possession of the lands from the urban land owner. Similar proceedings were also addressed to the Tahsildar of Saidapet on the very same day. Thereafter, there is nothing in the files to show that the land owner has either voluntarily surrendered the possession or the authorities have taken steps to take physical possession of the lands forcibly as per the procedures contemplated under the Act. On the other hand, only a Land Delivery Receipt, dated 24.2.1994 is available in the files, which shows that the subject matter lands have been handed over by the Revenue Inspector, Poonamallee and taken over by Firka Revenue Inspector, Mori Firka. The said Land Delivery Receipt does not show anywhere that the said Baskara Pillai delivered the possession of the lands on his own or he was dispossessed forcibly, except showing him as the owner. Therefore, it is evident from the perusal of the files that only a symbolic or paper possession was taken by the Revenue officials of the appellants and factual and physical possession was never taken from the hands of the original owner or from the writ petitioner at any



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"33. The phrases shall be deemed to have been acquired and shall be deemed to have been vested absolutely in the State Government occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and invested is vested in the State Government by notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

34. There are cases where after notice under Section 11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the land owner, either comes into possession of the same or allots those lands to other persons, then in such cases, even thereafter, if the land owner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

35. However, there are cases where although the competent authority issued the notice under Section 11(5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11 (6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands. "

10. From the perusal of the above said decisions, it is very clear that the mere vesting of land under sub-section (3) of Section 10 of the said Act would not confer any right on the State Government, in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession under sub-section (6) of Section 10 of the said Act. Symbolic possession is totally



different and distinct from physical possession. It is only a paper possession, which cannot be treated or construed as that of possession as required under the Act."

12. Further, the Honourable Supreme Court in the case reported in 2014 (2) CTC 665 (SC) (Gajanan Kamlya Patil Vs. Addl. Collector & Competent Authority), held in paragraphs 12 and 13 as follows:

"12. We may indicate, apart from the affidavits filed by the officials in this case, no other document has been made available either before the High Court or before this Court, either showing that the Appellant had voluntarily surrendered or the Respondents had taken peaceful or forcible possession of the lands.....

13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed."

13. Considering all the above facts and circumstances, we are of the view that the impugned order of the learned single Judge in quashing the impugned proceedings, does not warrant any interference. Accordingly, the impugned proceedings are held to be abated, in view of the Repealing Act, on the reason that the physical possession of the subject matter lands from the hands of the land owner, was not at all taken and it



continues with the writ petitioner-Trust, the respondent herein.

7. Likewise, in another decision reported in **2015(2) CWC 20** (cited supra). the Division Bench of this Court observed at paragraphs 6, 7, 10, 11 and 13 as follows:-

"6. Since taking over of possession from the appellants is disputed by the other side, we have directed the learned Special Government Pleader to produce the file to find out as to whether physical possession of the property has been taken from the appellants/land owners prior to the repealing Act. A perusal of the file would indicate as follows:

(i) Page No.325 of the file contains the proceedings dated 29.12.1998 in Form VII issued by the Assistant Commissioner of Urban Land Tax, Coimbatore to one C.B. Manickam calling upon him to surrender delivery of possession of the lands to the Collector of Coimbatore. In the very same proceedings it is also noted that the said Manickam had already died and the said fact was known only during the time of enquiry. It is also stated therein that as his adopted son is residing at Mysore and the subject property has been rented out, as has been stated by one A. Srimathi. Therefore, from the said proceedings dated 29.12.1998 it is evident that possession was not taken as on 29.12.1998.

(ii) Another proceedings dated 10.5.1999 found at page No.327 of the file shows that under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the competent authority has once again called upon said C.B. Manickam to hand over vacant possession of the land within thirty days, who was no more, even according to the file. That being the factual position as is evident from the above said proceedings, without there being any other documents to show that the possession has been handed over by the land owners or surrendered by them or forcible possession has been taken from them, a possession certificate is made available at page 341 of the file stating that possession has been handed over by the Special Deputy Tahsildar, Urban Land Tax, Coimbatore- South to the Firka Revenue Inspector of Annupperpalayam dated 4.6.1999 i.e. 12 days prior to the coming into force of the Repealing Act. Based on the said possession certificate another proceedings was issued on 29.6.1999 stating as if the possession has been taken from the land owners on 4.6.1999. Except these proceedings, there are no other proceedings to indicate that actual physical possession has



been taken from the land owners/persons in occupation of the above said property at any point of time.

7. From the perusal of those documents, it would show that only paper possession or symbolic possession was taken by the authorities, whereas, the physical possession was not at all taken from the land owners/persons in occupation of the property at any point of time. The file also does not show or reveal any proceedings indicating forcible dispossession of the appellants from the subject matter property.

10. From the perusal of the above said decisions, it is very clear that the mere vesting of land under sub-section (3) of Section 10 of the said Act would not confer any right on the State Government, in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession under sub-section (6) of Section 10 of the said Act. Symbolic possession is totally different and distinct from physical possession. It is only a paper possession, which cannot be treated or construed as that of possession as required under the Act.

11. Therefore, we are of the view that appellants/petitioners are justified in their contention that no possession was taken from them at any point of time in respect of the land, which was declared 'surplus'. If actual possession is not taken and it continues with the appellants, then they are entitled to have the benefit of the Repealing Act, wherein it is contemplated that if possession is not taken over by the State Government, then the same to be retained by the land owner and the entire proceedings should be treated as lapsed. Therefore, the finding of the learned Single Judge that the possession has been taken over by the authorities, is factually incorrect.

13. Considering all these facts and circumstances and by following the above decisions on the same issue, we hold that possession has not been taken from the appellants and consequently, they are entitled to succeed in this writ appeal as the entire proceedings initiated under the Urban Land Ceiling Act stands lapsed in view of the Repealing Act, namely, Tamil Nadu Act 20 of 1999.

8. In both the cases, one of us (KRCBJ) is a party to the Bench. Therefore, from the above decisions, which are in support of these writ petitions, it is evident that the appellants have not taken physical possession of the property in dispute from the petitioners and consequently, proceedings initiated earlier is deemed to have been lapsed. Therefore, the Writ Court has rightly considered the claim of the writ petitioners and allowed the writ petitions with which we find no infirmity.



9. Accordingly, these writ appeals are dismissed. The respondents are directed to comply with the order passed by the Writ Court within a period of eight weeks. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

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TO

1. The Assistant Commissioner,
Urban Land Ceiling, Tirunelveli.

Now,

The Assistant Commissioner.,
Urban Land Tax, Madurai
at No.15, Plot No.4, Ist St., Kk.Nagar East,
Madurai 625 020

2. The Tahsildar,
Palayamkottai Tk.,
Tirunelveli

+1CC TO MR.H.ARUMUGAM, Advocate Sr. No.68615

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 68479

W.A.(MD) Nos.511 to 521 of 2019
and

CMP(MD) Nos.4376 to 4395 of 2019
12.06.2019

SRK(CO)

TR (05.07.2019) 17P 5C