

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2019

DATE OF DECISION : 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.9103 of 2009 & 38351 of 2004

W.P.No.9103 of 2009:

M.T.S.Raghavan (deceased)
Ms.Amrit Malini Raghavan
(Substituted as L.R., as per
order dated 2.3.2015 in M.P.No.1/15
in W.P.No.9103/2009 ... Petitioner

-vs-

1. The Special Commissioner and
Commissioner of ULC & ULT
Chepauk
Chennai 600 005
2. The Principal Secretary /
Commissioner of Land Reforms
Chepauk
Chennai 600 005. Respondents

Petition under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for
the records in Rc.10344/2008 G3 dated 16.03.2009 on the file of
the second respondent and quash the same as illegal and direct
the respondents to release the property to the petitioner.

For Petitioner :: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.N.Viswanathan

For Respondents :: Mrs.P.Rajalakshmi
Additional Government Pleader

W.P.No.38351 of 2004:

1. S.Ramasamy
2. K.Palani

3. K.Veerachamy
4. P.Muniasamy
5. S.Annadurai
6. E.Murugan
7. P.Ramanathan

... Petitioners

-vs-

1. The Government of Tamil Nadu
Secretary to Government
Revenue Department
(Dept.of Urban Land Reforms and Ceiling)
Secretariat, Fort St.George
Chennai 600 009

2. The Special Commissioner & Commissioner
of Land Administration (Urban Land Ceiling)
Government of Tamil Nadu
Ezhilagam
Chennai 600 005

3. The Assistant Commissioner
Department of Land Ceiling
T.Nagar Division
345, Arcot Main Road
Kodambakkam
Chennai 600 024

... Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents from initiating any proceedings under Tamil Nadu Urban Land Ceiling and Regulation Act, 1978 and to drop all further proceedings if any already initiated under the said Act, in respect of the petitioners' respective lands at Ramnagar Extension, comprised in Survey No.339/1A of Velacherry Village, within the sub-registration district of Velacherry and within the registration district of Chennai South.

For Petitioners :: Mr.R.Neelakandan for
Mr.N.Sreenivasalu

For Respondents :: Mrs.P.Rajalakshmi
Additional Government Pleader

ORDER

Writ Petition No.9103 of 2009 has been filed challenging the impugned order dated 16.3.2009 passed by the Principal Secretary/Commissioner of Land Reforms in-charge, the second respondent herein holding that the case of the petitioner falls

under Section 3(1)(a) of the Repeal Act 20 of 1999, where the Repeal of the Principal Act shall not affect the land vested with the Government under Section 11(3) of the Act, because possession of the land has already been handed over to the Revenue Department, hence, the endorsement issued stands cancelled.

1.1. Writ Petition No.38351 of 2004 seeks for issuance of a mandamus forbearing the respondents from initiating any proceedings under the Tamil Nadu Urban Land Ceiling and Regulation Act, 1978 and to drop all further proceedings, if any, already initiated under the said Act, in respect of the petitioners' respective lands at Ramnagar Extension, comprised in Survey No.339/1(A) of Velacherry Village, Chennai South District.

2. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner in W.P.No.9103 of 2009 argued that Mr.M.T.S.Raghavan became the owner of the property bearing Survey No.339/1A measuring about 3804 sq.mts., in Velacherry village by purchasing the property from Mr.A.S.L.Raja Nadar and Mr.Raja Pandiya Nadar under a registered sale deed dated 4.4.64 bearing Document No.954 of 1964 and from the date of purchase, he had been in possession and enjoyment of the same and subsequently, as he passed away during the pendency of the writ petition, his legal representative has been brought on record. Adding further, Mr.Sundaresan argued that an extent of 2300 sq.mts., in Survey No.339/1A of Velacherry village was acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, but the possession of the property was not taken over and continuously vested with the writ petitioner. Even as per Section 3(1)(a) read with Section 4 of the Repeal Act, if the possession of the property is vested with the land owner, then the proceedings would lapse and the property would be free from encumbrances and this apart, entire acquisition proceedings have been vitiated on the ground that Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act was not complied with, since no notice was issued to the petitioner. In view thereof, the petitioner's father approached this Court with W.P.No.23565 of 2008 seeking a direction against the first respondent to consider his representation dated 19.9.2008 and pass orders on merits. This Court, considering the limited prayer, directed the first respondent to consider the representation of the petitioner and pass orders on merits. Consequently, the first respondent, on receipt of the order of the High Court, has passed the order dated 23.10.2008 and dropped the proceedings. Accordingly, the petitioner got back the land admeasuring 2300 sq.mts., in Survey No.339/1A free from all encumbrances from the Tamil Nadu Urban Land (Ceiling and Regulation) Act. Subsequently, after the order of the first respondent dated 23.10.2008, the petitioner's

father approached the revenue authorities to make proper mutation entries in the revenue records. In the meanwhile, the petitioner's father received a letter of cancellation of the second respondent dated 16.3.2009. Therefore, the first respondent passed the cancellation order without issuing notice to the petitioner. The order of cancellation stated that the petitioner's father had given his willingness on 30.4.79 for surrendering the vacant land in Survey No.339/1A of Velacherry village and to receive the compensation fixed by the Government. However, the petitioner's father had not handed over possession of the property to the Government and it was in his continuous physical possession. Hence, the petitioner is entitled to be in possession of the property free from all encumbrances under Section 3(1) (a) of the Repeal Act 20 of 1999.

3. The learned Senior Counsel further submitted that it may be true that the petitioner's father has given his willingness to surrender the land, but there is no document thereon to show that the Government has taken over the possession of the land in question, hence, the petitioner is eligible for the benefit of Section 3 of the Repeal Act 20 of 1999. Again challenging the act of the second respondent as illegal, it is further contended that the second respondent ought to have issued notice to the petitioner before cancelling the order, whereas the second respondent without observing the procedures contemplated under law, wrongly passed the order against the principles of natural justice. Therefore, when the petitioner has been wrongly deprived of the property by not adopting due process of law and without affording reasonable opportunity, the impugned order is liable to be set aside. Again referring to the order dated 25.9.2008 passed by this Court in W.P.No.23565 of 2008 filed by Mr.M.T.S.Raghavan, the father of the petitioner for issuance of a mandamus directing the first respondent to dispose of his representation dated 19.9.2008 in accordance with law, as the possession of the land continued with the petitioner's father, has stated that pursuant to the order of this Court directing the Special Commissioner and Commissioner of Urban Land Ceiling to consider the petitioner's representation, the first respondent in Rc.No.10344/2008(G3) dated 23.10.2008, passed an order stating that an extent of 2300 sq.mts., in Survey No.339/1A of Velacherry village acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act stood abated under Section 3(1) (a) read with Section 4 of the Repeal Act 20 of 1999, since notice under Section 11(5) was not served to the urban land owner. The said order also further states that further action in this regard was also dropped. Therefore, when the order dated 23.10.2008 itself is very clear that the land in question is free from the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and the Repeal Act 20 of 1999, the subsequent impugned proceedings dated 16.3.2009 issued by the

Principal Secretary/Commissioner of Land Reforms in-charge stating that the case of the petitioner falls under Section 3(1) (a) of the Repeal Act 20 of 1999 where the repeal of Principal Act shall not affect the land vested with the Government under Section 11(3) of the Act, because possession of which has already been taken and handed over to the Revenue Department, is wholly untenable and unsustainable in law. Therefore, the writ petition deserves to be allowed, he pleaded.

4. The petitioner has also filed written submissions reiterating his stand that final notice under Section 11(5) of the Act has not been served on the owner of the land. Moreover, the land owner never surrendered possession of the acquired land and therefore it is the duty of the respondents to show that whether there was any forcible possession of the land taken by the respondents by resorting to Section 11(6) of the Act. In the meanwhile, since the Repeal Act has come into force with effect from 16.6.99, as per Sections 3 & 4 of the Repeal Act read with Section 11(5), 11(6), 12 to 16 of the Principal Act, it could be made clear that vesting of any vacant land under the Principal Act is saved only when the State Government is able to show documentary proof for the voluntary surrender of the land to be taken possession by the State Government or surrender of the land against a notice issued under Section 11(5) of the Act or otherwise forcibly taking possession of the land by the Government under Section 11(6) of the Act. If this is not proved by the State Government, then the proceedings of land acquisition stand abated. On this score, it has been further pleaded that although the petitioner has been paid with the compensation, the respondents shall indicate the amount payable by the petitioner and on payment of such amount within reasonable time to be fixed by them, the revenue authority should carry out necessary changes in the revenue records.

5. Learned counsel for the petitioners in W.P.No.38351 of 2004 has also stated that the petitioners are in occupation of the properties constructed in Survey No.339/1A of Velacherry village for more than three decades and their properties have also been assessed to property, water and sewerage taxes and also enjoying the electricity service connection to their premises. While so, they received a letter dated 22.2.2000 from the Assistant Commissioner, Department of Land Ceiling, T.Nagar Division stating that the land in question had already been taken under the Urban Land Ceiling Act, 1978, when the petitioners were not aware of any proceedings under the Land Ceiling Act, as no notice was served on them till the year 2000. Although the petitioners were informed that the land occupied by them were handed over to the Department of Social Welfare in the year 1982 itself, the respondents have not produced any

documentary evidence to show that possession of the land was already taken over by the Government before the Repeal Act 20 of 1999 came into force. When the petitioners were under the threat of eviction, they have filed the writ petition seeking a mandamus forbearing the respondents from initiating any proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and to drop all further proceedings, if any, already initiated under the said Act in respect of the petitioners' lands situate at Ramnagar Extension in Survey No.339/1A of Velacherry village, as they are entitled to the benefit of abatement of proceedings under Section 4 of the Repeal Act 20 of 1999.

6. Detailed counter affidavits have been filed by the respondents. In addition thereto, they also filed written arguments. Mrs.P.Rajalakshmi, learned Additional Government Pleader for the respondents in both the writ petitions submitted that Mr.M.T.Srinivasa Raghavan being the original owner of the land in question, was issued with the notice by the Assistant Commissioner, Urban Land Tax, Alandur at Saidapet in his S.R.252/78A requesting him to appear for enquiry on 23.4.79 with relevant documents in respect of the land owned by him. Pursuant thereto, he appeared for enquiry on 30.4.79 and gave his statement that his family consisted of himself, his wife and one minor daughter and that he was willing to surrender surplus land in Survey No.339 situated in Velacherry village and also willing to receive the compensation to be fixed by the Government. In view of the willingness expressed to receive the compensation for the excess land to be acquired, after allowing an extent of 1500 sq.mts., an extent of 2304 sq.mts., was determined as excess land and notice under Section 9(4) and statement under Section 9(1) of the Act were issued on 14.5.79. Thereafter, final notice under Section 10(1) dated 12.7.79 was also sent by RPAD, which was also duly received by the wife of the urban land owner on 20.7.79. Subsequently, draft notification under Section 11(1) and final notification under Section 11(3) were also published in the Tamil Nadu Government Gazette dated 14.11.79 & 5.3.80 respectively. The learned Additional Government Pleader further submitted that notice under Section 11(5) of the Act dated 24.10.80 was also sent to the urban land owner directing him to surrender the excess vacant land measuring 2300 sq.mts., declared as surplus under the provisions of the Act within 30 days of the notice. Since the urban land owner did not act on the notice even after a lapse of three months, the excess vacant land measuring an extent of 2300 sq.mts., was taken and handed over to Firka Revenue Inspector on 26.2.81 and thereafter, a notice dated 14.2.81 under Section 12(7) was also issued and the amount of compensation was also sanctioned under Section 12(6) of the Act. The said notice was also received by the urban land

owner on 13.5.2005. Arguing further, she stated that out of the total extent of 2300 sq.mts., an extent of 669 sq.mts., was allotted to the Social Welfare Department and the remaining extent of 1631 sq.mts., was allotted to the Tamil Nadu Civil Supplies Corporation vide G.O.Ms.No.1466, Revenue Department dated 26.8.82. Thereafter, the urban land owner has not filed any appeal before the second respondent, since 1980.

7. In the meanwhile, Mr.S.Ramasamy and six others, the petitioners in W.P.No.38351 of 2004, being the encroachers of the said land, filed the said writ petition and obtained an order of interim injunction in W.M.P.No.45886 of 2004 by order dated 23.12.2004. Therefore, the original land owner Mr.M.T.Srinivasa Raghavan filed the petition dated 2.8.2008 before the Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax, Chennai, the first respondent herein and the said petition was pending. In the meanwhile, he has also filed W.P.No.23565 of 2008 for a direction to consider his representation. The Special Commissioner, the first respondent herein, without even realizing the fact that the urban land owner had received the entire compensation amount and the land has been taken over and handed over to the Social Welfare Department and also the Tamil Nadu Civil Supplies Corporation Limited in G.O.Ms.No.1466, Revenue Department dated 26.8.82, made the endorsement dated 23.10.2008 stating that notice under Section 11(5) of the Act was not served to the urban land owner and that the possession of the excess vacant land was also with the urban land owner, therefore, the proceeding initiated under the Act stood dropped. But after examination of the record, the Principal Commissioner and Commissioner of Land Reforms has issued an endorsement in Rc.No.10344/2008(G3) dated 16.3.2009 cancelling the endorsement dated 23.10.2008, making it clear that the land in question falls under Section 3(1)(a) of the Repeal Act 20 of 1999 where repeal of Principal Act shall not affect the land which already vested with the Government under Section 11(3) and possession of which was already handed over to the Revenue Department. The learned Additional Government Pleader also submitted that after a lapse of 28 years from the date of handing over of the land and after ten years from the enactment of the Repeal Act, the land owner has wrongly filed W.P.No.9103 of 2009 against the acquisition of the excess vacant land, for which he had already received the full compensation, which is purely an after-thought. Therefore, both the writ petitions are liable to be dismissed, she pleaded.

8. This Court fully agrees with the submissions made by the learned Additional Government Pleader for the respondents, for the following reasons. Firstly, on perusal of the original file

produced by the respondents, it is seen that after the statement under Section 9(1) and notice under Section 9(4) were issued in SR No.252/78 dated 14.5.79 to the urban land owner, final notice under Section 10(1) of the Act was issued to the land owner on 12.7.79 and the said notice has also been acknowledged by Mrs.Raghavan, W/o Mr.M.T.S.Raghavan on 20.7.79. Thereafter, after the issuance of notifications under Sections 11(1), 11(3) and the notice under Section 11(5), which has not been acknowledged by the land owner, after the land has been handed over to the Revenue Department on 26.2.81, the land owner had received the compensation amount under Section 12(6) of the Act upto 15 installments. When the land owner had the knowledge of all these proceedings, it is not known why the urban land owner kept quiet for a period of 28 long years, much before the Repeal Act came into force with effect from 16.6.99, to file the present W.P.No.9103 of 2009 without any explanation whatsoever, as he filed the W.P.No.23565 of 2008 for the first time seeking for disposal of his representation. Secondly, the stand of the respondents disproves the claim made by the petitioner with regard to the taking over of the land, as the compensation amount has been paid by way of 15 installments till 13.5.2005, which have been acknowledged by the land owner and out of the total extent of 2300 sq.mts., acquired under the Act, an extent of 669 sq.mts., was allotted to the Social Welfare Department and the balance extent of 1631 sq.mts., was allotted to the Tamil Nadu Civil Supplies Corporation Limited vide G.O.Ms.No.1466, Revenue Department dated 26.8.82. Thirdly, the lapses committed by the original land owner shows that he did not file any appeal before the second respondent since 1980 onwards.

9. Yet another glaring fact shows that filing of W.P.No.38351 of 2004 by S.Ramasamy and six others seeking to forbear the respondents not to initiate any proceedings and to drop all further proceedings, clearly shows that the original land owner Mr.M.T.S.Raghavan was not in possession of the land, as it was already taken over by the respondents and handed over to the Social Welfare Department and Tamil Nadu Civil Supplies Corporation vide G.O.Ms.No.1466 Revenue dated 26.8.82. In addition thereto, when the petitioner in W.P.No.9103 of 2009 as an after-thought claimed that the land was in his possession, such possession must be backed with revenue records or any other acceptable document, which has not been produced before this Court. As rightly contended by the learned Additional Government Pleader for the respondents, the petitioners in W.P.No.38351 of 2004, who are the encroachers of the land comprised in Survey No.339/1A of Velacherry village, have filed the writ petition for the relief mentioned supra without any locus. Therefore, when Mr.M.T.S.Raghavan, the urban land owner himself was not in

possession of the land and the excess land had already been taken over by the Government and subsequently allotted to the Social Welfare Department and the Tamil Nadu Civil Supplies Corporation Limited vide G.O.Ms.No.1466, Revenue dated 26.8.82, the endorsement dated 23.10.2008 issued by the Special Commissioner and Commissioner of Land Ceiling and Urban Land Tax, Chepauk that the acquisition proceedings to an extent of 2300 sq.mts., in Survey No.339/1A of Velacherry village gets abated under Section 3(1)(a) read with Section 4 of the Repeal Act, being wholly not in order, has been rightly cancelled by the Principal Secretary/Commissioner of Land Reforms in-charge, Chepauk on verification of record. When the urban land owner has come to this Court after 28 long years of taking over possession of the land in question without any plausible explanation, the said huge delay cannot be lightly condoned by this Court.

10. For the aforementioned reasons, both the writ petitions fail and they are dismissed. Consequently, M.P.No.2 of 2015 and W.M.P.No.119 of 2018 are also dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Revenue Department
(Dept.of Urban Land Reforms and Ceiling)
Secretariat, Fort St.George
Chennai 600 009.

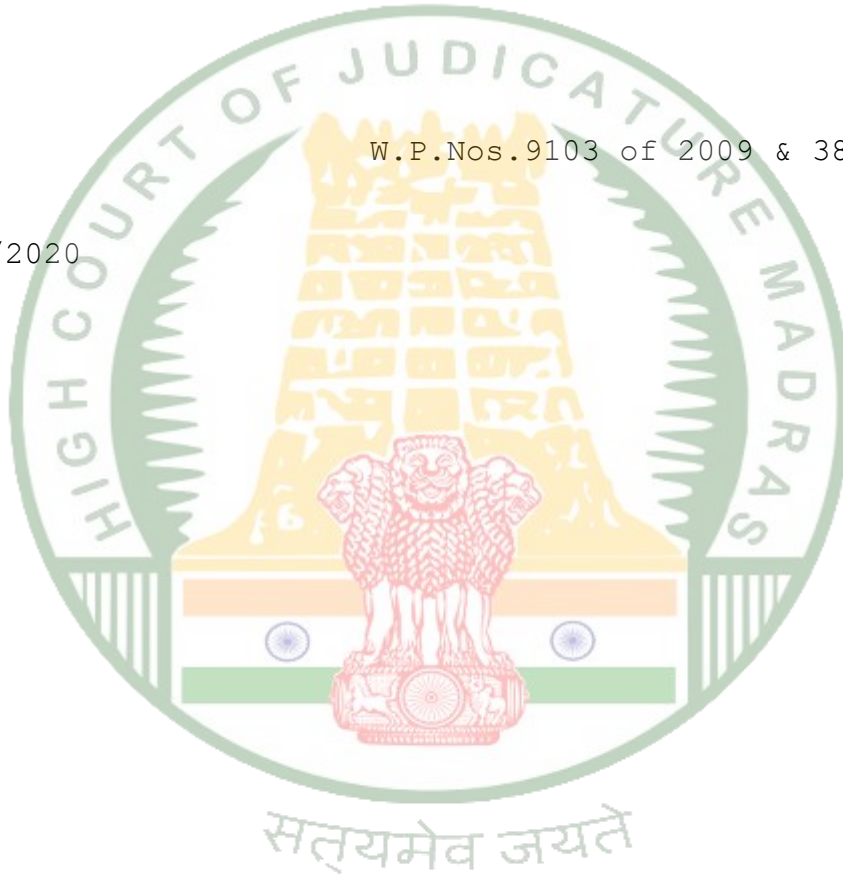
2. The Special Commissioner & Commissioner
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