

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.759 of 2015

- 1 P.Babu  
S/o.Parasuraman Plot No.10 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 2 V.Natesan  
S/o.Vellaichamy Plot No.11A II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 3 Senbagavalli  
W/o.Sundaramurthy Plot No.83 (33C) II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.
- 4 P.Murugan Chitra  
S/o.Perumal Naidu Plot No.133 (26) II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.
- 5 R.Varalakshmi  
W/o.A.Ramamurthy Plot No.21 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

- 6 S.Claramma  
W/o.Salamon Plot No.30A V Cross Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 7 R.Sarala  
W/o.Ravi Plot No.31 V Cross Nehru Nagar  
Olandai Village Mudaliarpet Puducherry-605  
004.
- 8 A.Rajendran  
S/o.Arulappan Plot No.30 V Cross Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 9 Jenitha Mary  
W/o.Yesudoss Plot No.36 V Cross Street  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 10 B.Anandu  
S/o.Balaugur Plot No.44 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 11 M.Maheswari  
W/o.Malyavelavan Plot No.28A (73) 28B (74)  
II Main Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.
- 12 Vittal Nayak  
S/o.T.S.Vasudev Nayak Plot No.37 Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

- 13 Geetha Dhanasekar  
W/o.Dhanasekar Plot No.81 V Cross Street  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 14 N.Mayavan  
S/o.Narayanasamy Plot No.80 V Cross Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 15 Sahayamarie Rosa  
W/o.Senthulpat Plot No.36A VI Cross Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 16 K.Manohar  
S/o.K.Kannan Plot No.19 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 17 Velvizhi Mardy  
W/o.Jaishankar Mardy Plot No.20 II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.
- 18 Geethabai  
W/o.Jayabalan Plot No.33 V Cross Street  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 19 N.Vijaya  
W/o.Nandakumar (Natarajan) Plot No.26 IV  
Cross Street Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.

- 20 Rajesh Babu  
S/o.Radhakrishnan Plot No.8 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 21 G.Ramesh  
S/o.Ganesan @ Venkatesan Plot No.4 II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.
- 22 R.Kumaravel  
S/o.Rathinasamy Plot No.22 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 23 Kumar  
S/o.Perumal Naidu Plot No.25 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 24 R.Balachandran @ Balu  
S/o.V.Ramaiyan Plot No.12 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 25 Karunamoorthy  
S/o.Ponnusamy Plot No.49A II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 26 Diraviyaraj  
S/o.Vijayarangan Plot No.24 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

27 J.Thennarasi  
W/o.Jayagokulabalan Plot No.45 46 II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.

28 J.Vijayasree  
W/o.Jayabal II Main Road Nehru Nagar  
Olandai Village Mudaliarpet Puducherry-605  
004.

29 Dhanabaggiyam  
W/o.Ganesan @ Venkatesan Plot No.4A II  
Main Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.

30 A.Vasuki  
W/o.P.Arumugam Plot No.15 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

31 E.Malarkodi  
W/o.S.Eswaran Plot No.(132) 20 II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.

32 Jeevarathinammal  
W/o.N.Manimaran Plot No.27 28 V Cross  
Street Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.

33 S.Ravindranath  
S/o.Subramanian Plot No.29 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

34 Bhama  
W/o.Sreedhar Plot No.42 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

35 S.Meghala  
W/o.Shankar Plot No.39 VI Cross Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

36 Meghaladevi  
W/o.Kannan.C Plot No.40 VI Cross Street  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

37 Vijayathilakam Made  
W/o.S.M.Made Plot No.38 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

38 D.Suseela  
W/o.Dhanraj Plot No.34A(85) II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

39 S.Raja  
S/o.G. Selaththan Plot No.14 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

40 S.Ravi  
S/o.Subramanian Plot No.18 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.

- 41 Saravana Kumari  
W/o.Venkatesan Plot No.6 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 42 Gowri Radhakrishnan  
W/o.Radhakrishnan Plot No.7 II Main Road  
Nehru Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 43 T.Sujatha  
W/o.Thirumurugan Plot No.32(86) II Main  
Road Nehru Nagar Olandai Village  
Mudaliarpet Puducherry-605 004.
- 44 P.Saradha  
W/o.Perumal Plot No.13 II Main Road Nehru  
Nagar Olandai Village Mudaliarpet  
Puducherry-605 004.
- 45 Farhana Begum  
W/o.Abdul Kadar Mohamed Ali Plot No.138  
(21) II Main Road Nehru Nagar Olandai  
Village Mudaliarpet Puducherry-605 004. .. Petitioners
- Vs

- 1 The Union of India  
Rep. by the Secretary to Government  
Department of Revenue and Disaster  
Management Government of Puducherry  
Puducherry-605 013.
- 2 The Sub Collector (Revenue-  
North) Government of Puducherry Puducherry-  
605 013.

- 3 The Sub Collector (Revenue-cum -Competent Authority)  
(Urban Land Ceiling and Regulation Act 1976)  
Government of Puducherry,  
Puducherry-605 013.
- 4 The District Registrar  
Registration Department Government of  
Puducherry Puducherry-605 013.
- 5 The Tahsildar  
Taluk Office Government of Puducherry  
Puducherry
- 6 The Deputy Collector (Revenue- North),  
Government of Puducherry  
Puducherry .. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration to declare the notification issued by the second respondent dated 26.02.1992 bearing ref: No.2090/87/ULC/E2, in Gazette No.12, dated 24.03.1992, stood abated and consequently direct the respondents to treat the lands of the petitioners in T.S.No.18, R.S.No.111, Olandai Village, Block No.12, Ward J in the layout known as Nehru Nagar, Puducherry Taluk, as their patta lands and receive all the documents presented by the petitioners for registration.

For petitioner

: Ms.G.Thilakavathy, SC  
for Mr.Kamala Kumar

For Respondents

: Mr.N.Mala, AGP

**ORDER**

Heard Ms.G.Thilakavathy, learned Senior counsel, assisted by Mr.Kamala Kumar, learned counsel for the petitioner, and Ms.N.Mala, learned Additional Government Pleader for the respondents.

2. This writ petition has been filed by 45 petitioners praying for issuance of writ of declaration to declare the Notification issued by the second respondent dated 26.02.1992 under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (in short "the Act"), a Central Act, as abated, and consequently to direct the respondents to treat the lands of the petitioners in T.S.No.18, T.S.No.111, Olandai Village, Block No.12, Ward J, in the layout known as Nehru Nagar, Puducherry Taluk, as their patta lands and receive all the documents presented by the petitioners for registration.

3. The total extent of the land comprised in T.S.No.18 was developed into a layout consisting of 50 plots and the average size of the plot ranged between 700 sq.ft. to 1200 sq.ft. and few of the plots are little larger extent. The layout plan was not approved by the competent authority and the

original land owner, namely, Thiru.Sridharan had sold the plot to various persons and among them, 45 purchasers are before this Court.

4. It is seen that the petitioners have purchased the property during the period from 1989 to 2008. The question would be as to whether the proceedings initiated under the Act are valid in the eye of law.

5. The respondents have filed a counter affidavit and all the material documents have been placed before the Court.

6. The short question to be considered in this case is whether the petitioners are entitled to the benefit of Urban Land Ceiling Repeal Act, 1999 (in short "Repeal Act"). To decide this question, the first aspect to be seen is whether the respondents had taken over the actual physical possession of the lands in question. If the actual possession has not been taken over, then the benefit of the Repeal Act will automatically stand extended to the petitioner.

7. In this regard, it is worthwhile to refer to a decision of the Division Bench of this Court in the case of *Government of Tamil Nadu & others Vs. M/s.Mecca Prime Tannery and others* [2012 (4) LW 289]. Though the said judgment arose under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the legal principle laid down in the said decision would equally apply to the Central Act. Operative portion of the judgment reads as follows:-

“32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Section 11(5) and Section 11(6) of the Act. Section 11(5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any

person duly authorised by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under [Section 11\(6\)](#) of the Act.

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 interest 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."*

8. From the counter affidavit, it is seen that the provisions under the Act were commenced as against the urban land owner Thiru.Sridharan and a draft statement was prepared under Section 8(1) of the Act and notice under Section 8(3) of the Act was issued declaring 1.06.25 hectares as excess land held by the land owner as on 25.08.1989 and the urban land owner was granted 30 days time to file objection. The respondents stated that three summons have been served on the land owner granting him opportunity as required to be granted under Section 8(4) of the Act, but, the land owner did not turn up for enquiry. It is further stated, subsequently, notification was issued under Section 10(1) of the Act on 10.12.1991 regarding the proposed acquisition of the surplus land belonging to Thiru.Sridharan and the same was published in the Government Gazette dated 31.12.1991 and also in Tamil Daily dated 13.12.1991 inviting objections from the interested parties within 15 days of such publication.

The respondent would further state that no objections were received from any of the interested person. Therefore, the Sub Collector-cum-authorized Officer, declared the excess vacant land as surplus land and the possession was taken over on 31.12.1991 vide Notification dated 26.02.1992 and the same was published in Tamil Daily on 28.02.1992. The respondents would further state that the land was declared as Government Poramboke land on 31.12.1991.

9. It is not clear as to how the possession was taken over in the year 1991, when a declaration was issued declaring excess vacant land in the year 1992. Be that as it may, it needs to be seen as to whether the actual physical possession was recovered from the urban land owner or other persons who stated to be in possession. It is not disputed by the respondents that a notice under Section 10(5) of the Act was issued on 19.03.1992 and served on the urban land owner Thiru.Sridharan and the said land owner filed W.P.N.o.6563 of 1992 and obtained an order of interim stay. Thus, it is clear that the urban land owner was not dispossessed of the land nor the actual physical possession was taken over from him. The fact remains that ever since 1989, the land has been sold to various parties and many of the persons who had purchased the property from

1989 to 1992 have sold either whole of the property or part thereof.

10. As held by the Division Bench in *Mecca Prime Tannery's case* (*cited supra*), on and after the issuance of a notice under Section 10(5) of the Act, if the land owner fails to comply with the order passed under sub-section(5), then the competent authority should take possession of the land and for that purpose, use such force as may be necessary. Therefore, the competent authority should have initiated an action under Section 10(6) of the Act, which, admittedly, has not been done so. Thus, the actual physical possession is being continued with the urban land owner or the purchasers from him.

11. Learned Additional Government Pleader appearing for the respondents submits that in terms of Section 10(4)(i) of the Act, any transfer, which has been effected after the issuance of a Notification under the Act, shall be deemed to be null and void. In the considered view of the Court, it is not necessary to travel thus far, because, the benefit of the Repeal Act would enure in favour of the urban land owner as he has been in actual physical possession of the land in question. That apart, there is nothing on record to show that the

compensation was paid to the urban land owner.

12. Thus, for all the reasons stated above, the petitioners are entitled to the benefit of the Repeal Act and consequently, the relief sought for in the writ petition is liable to be granted in full. In the result, the writ petition is allowed as prayed for and the the respondents are directed to reckon the petitioners as owners of the property and effect necessary mutation in the revenue records and issue patta and if any sales or settlements are made by the petitioners, then the concerned Sub-Registrar shall accept the documents for registration, if the same are otherwise in order. No Costs. Consequently, connected miscellaneous petitions are closed.

06.02.2020

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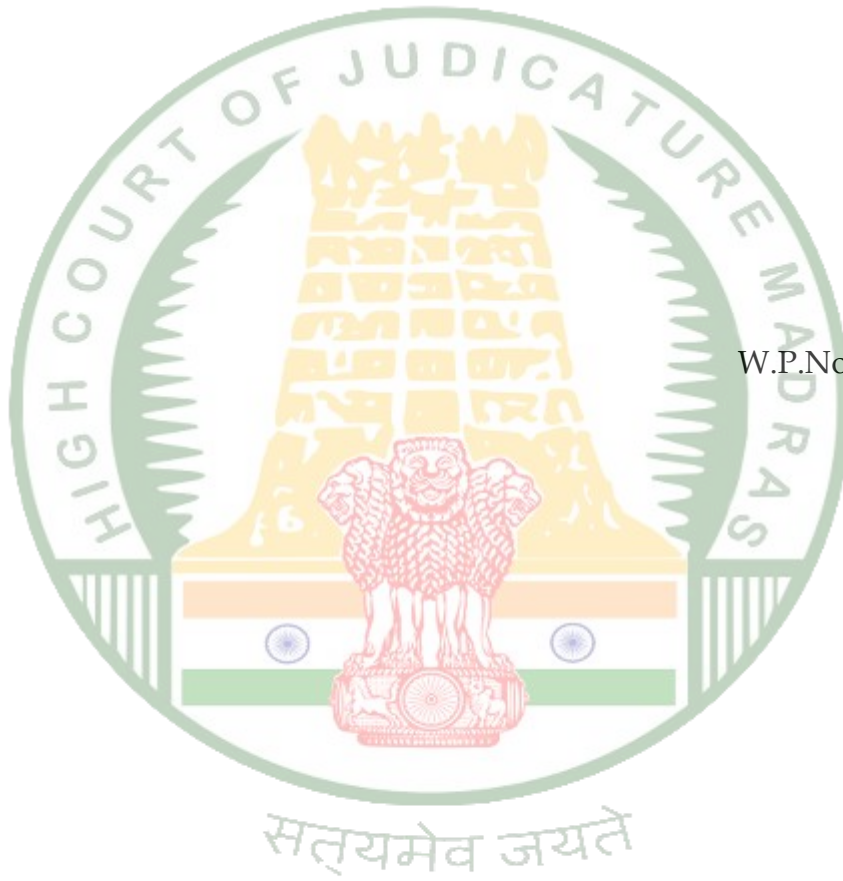
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To

- 1 The Secretary to Government  
Department of Revenue and Disaster  
Management Government of Puducherry  
Puducherry-605 013.
- 2 The Sub Collector (Revenue-  
North) Government of Puducherry Puducherry-  
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- 3 The Sub Collector (Revenue cum Competent Authority)  
(Urban Land Ceiling and Regulation Act 1976)  
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- 5 The Tahsildar  
Taluk Office Government of Puducherry  
Puducherry
- 6 The Deputy Collector (Revenue- North),  
Government of Puducherry  
Puducherry

**T.S.SIVAGNANAM, J.**  
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