



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.Nos.16766, 7409 of 2019
and WMP No.16376 of 2019

V.Krishnaram

...Petitioner in both WPs

-Vs-

1. The District Collector,
Thiruvallur District Collectorate,
1st Floor, Master Plan complex,
NH 205,
Thiruvallur - 602 001.
2. The Tahsildar,
Maduravoyal Taluk Office,
Ganesh Nagar,
Porur, Thiruvallur District,
Chennai 600 116.
3. The Assistant Commissioner,
Urban Land Tax, Kundrathur,
No.15, Karuneegar Street,
Adambakkam, Chennai 600 088

....Respondents in both WPs

Prayer in WP No.16766 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in proceedings S.R.No.635/87 dated 20.05.1987 issued by the 3rd respondent under the Provisions of Tamil Nadu Urban Land (Ceiling and Regulations) Act in respect of property situated at Plot No.223/1, Velan Nagar, 4th Street, Velan Nagar, Valasaravakkam, Chennai 600087, comprised in Survey No.6/3 part, measuring an extent of 1425 Sq.ft situated at Valasaravakkam Village, Maduravoyal Taluk, Thiruvallur District.

Prayer in WP No.7409 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to issue the petitioner patta for my property situated at Plot No.223/1, Velan Nagar, 4th Street, Velan Nagar, Valasaravakkam, Chennai 600 087, comprised



in Survey No.6/3 Part, measuring an extent of 1425. Sq.ft, situated at Valasaravakkam Village, Maduravoyal Taluk, Thiruvallur District.

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For Petitioner : Mr.D.Saravanakumar
in both WPs

For Respondents : Mr.Senthil Vel.
In both WPs Additional Government Pleader

O R D E R

A common issue is involved in both the writ petitions and therefore, both the writ petitions are taken up together and a common Judgment is passed.

2. The petitioner became the owner of the subject property by virtue of a registered Sale Deed dated 25.03.2013. This property was purchased by the petitioner along with his wife. The petitioner submitted an application requesting for patta. At that point of time, the petitioner was directed to get a No objection Certificate from the Assistant Commissioner of Urban Land Tax. The petitioner approached the said authority and he was informed that no such certificate can be issued. Aggrieved by the same, the petitioner filed WP No.7409 of 2019, seeking for a direction to the 2nd respondent to issue patta for the property.

3. When the above writ petition was pending, a counter affidavit came to be filed by the 2nd respondent in which, the 2nd respondent had made reference to the property being acquired under the Urban Land Ceiling Act and the entire particulars were given in the counter affidavit.

4. The petitioner therefore filed one more writ petition in WP No.16766 of 2019, questioning the proceedings on the ground that the same has abated, in view of the fact that possession was not taken till the Act was repealed.

5. Mr.V.Lakshmi Narayanan, learned counsel for the petitioner submitted that no notice was served on the original owner of the property under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulations) Act, (herein after called the Act), and no compensation was also received by any one. The learned counsel submitted that the petitioner is in possession of the property and he has also put up a building and is in possession and enjoyment of the same. The learned counsel submitted that the proceedings initiated under the Urban Land Ceiling Act, stood abated in the light of the coming into force



of the Repealing Act, Act 20 of 1999. The learned counsel submitted that since the possession had not been taken over by the respondents, before the Repealing Act came into force, the proceedings stood abated and the petitioner is therefore entitled for the patta to the property.

6. The learned counsel in order to substantiate his submissions, relied upon the Judgment of the Hon'ble Supreme Court in [State of Uttar Pradesh Vs. Hari Ram] in Civil Appeal No.2326 of 2013. The relevant portions in the Judgment is extracted hereunder :-

14. We notice even after the coming into force of the Repeal Act, the competent authority under the Act 33 of 1976 vide its letter dated 10th June, 1999 informed the Bandobast Chakbandi Adhikar that the surplus land declared as per the notification issued under the Act had vested in the State Government free from all encumbrances and, therefore, in the revenue records the name of State Government be entered and name of the respondent be mutated. The competent authority vide its notice dated 19.6.1999 issued under Section 10(5) of the Act directed the respondent to handover possession of the land declared as surplus to duly authorized persons on behalf of the Collector.

14. We notice even after the coming into force of the Repeal Act, the competent authority under the Act 33 of 1976 vide its letter dated 10th June, 1999 informed the Bandobast Chakbandi Adhikar that the surplus land declared as per the notification issued under the Act had vested in the State Government free from all encumbrances and, therefore, in the revenue records the name of State Government be entered and name of the respondent be mutated. The competent authority vide its notice dated 19.6.1999 issued under Section 10(5) of the Act directed the respondent to handover possession of the land declared as surplus to duly authorized persons on behalf of the Collector.

15. Before examining the impact of the Repeal Act on Act 33 of 1976, particularly, Section 3 of the Repeal Act on sub-section (3) to Section 10 of the Act, let us examine whether possession could be taken following the procedure laid down in sub-section (3) to Section 10 of the Act. Section 6 casts an obligation on every person holding vacant land in excess of ceiling limit to file a statement before the competent authority and after following all the statutory procedures, the competent authority has to pass the order under Section 8(4) on the draft statement. Following that, a



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final statement has to be issued under Section 9 on the person concerned. Sub-section (1) to Section 10 states that after the service of statement, the competent authority has to issue a notification giving particulars of the land held by such person in excess of the ceiling limit. Notification has to be published for the information of the general public in the Official Gazette, stating that such vacant land is to be acquired and that the claims of all the persons interested in such vacant land be made by them giving particulars of the nature of their interests in such land.

16. Sub-section (2) of Section 10 states that after considering the claims of persons interested in the vacant land, the competent authority has to determine the nature and extent of such claims and pass such orders as it might deem fit. Sub-section (3) of Section 10 states that after the publication of the notification under sub-section (1), the competent authority has to declare that the excess land referred to in the Notification published under sub-section (1) of Section 10 shall, with effect from such date, as might be prescribed in the declaration, be deemed to have been acquired by the State Government. On publication of a declaration to that effect such land shall be deemed to have been vested absolutely in the State Government, free from all encumbrances, with effect from the date so specified.

Legal Fiction

17. Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a 'deeming provision'. In interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in *Delhi Cloth and General Mills Company Limited v. State of Rajasthan* (1996) 2 SCC 449 held that what can be deemed to exist



under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

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18. James Lords Justice in Ex-parte, Walton, In re, Levy (1881) 17 Chance. D. 746 speaks on deeming fiction as:

"When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to".

19. In Szoma v. Secretary of State for the Department of Work and Pensions (2006) 1 All E.R. 1 (at 25), court held, it would be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. The intention of a deeming provision, in laying down a hypothesis is that the hypothesis shall be carried so far as necessary to achieve the legislative purpose but no further. (see also DEG Deutsche Institutions and another v. Kosby (2001) 3 All E.R. 878.

20. Let us test the meaning of the expression "deemed to have been acquired" and "deemed to have been vested absolutely" in the above legal settings. The expression "acquired" and "vested" are not defined under the Act. Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in Organo Chemical Industries v. Union of India (1979) 4 SCC 573 that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the Judgment of this Court in Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC

440. Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, it is associated on the context but are read together and construed in the light of the purpose and object of the Act.



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21. This Court in *S. Gopal Reddy v. State of U.P.* (1996) 4 SCC 596 held:

"it is well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The Courts must look to the object, which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary....."

22. In *Jugal Kishore Saraf v. M/s Raw Cotton Co. Ltd.* AIR 1955 SC 376, Justice S.R. Das stated:

"The cardinal rule of construction of statutes is to read the statute literally that is, by giving to the words used by legislature their ordinary natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

23. The expression "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word "vest" has different meaning in different context; especially when we examine the meaning of vesting on the basis of a statutory hypothesis of a deeming provision which Lord Hoffmann in *Customs and Excise Commissioners v. Zielinski Baker and Partners* (2004) 2 All E.R. 141 (at 11) described as "heroic piece of deeming".

24. The word "vest" or "vesting" has different meaning. Legal Glossary, published by Official Language (Legislative) Commission 1970 Edition at Page 302:



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"Vest: 1. To give a person a legally fixed, immediate right or personal or future enjoyment of (an estate), to grant, endow, clothe with a particular authority, right of property, 2. To become legally vested; (T.P. Act.) "Vesting order: An order under statutory authority whereby property is transferred to and vested, without conveyance in some person or persons;

Black's Law Dictionary (Sixth Edition) 1990 at page 1563:

"Vested: Fixed; accrued; settled; absolute; complete; Having the character or given the rights of absolute ownership; not contingent, not subject to be defeated by a condition precedent. Rights are "vested" when rights to enjoyment present or prospective has become property of some particular persons or persons as present interest;

mere expectancy or future or contingent interest in property founded on anticipated continuance of existing laws does not continue "vested right" Vaughan v. Nadel; 228 Kan. 469, 618 p. 2d 778, 783. See also Accrue Vest and specific typed of vested interest infra." Webster's Third New International Dictionary, of the English Language unabridged, Volume III S to Z at page 2547 defines the word "vest" as follow:

"vest" vest To place or give into the possession or discretion of some person or authority (the regulation of the waterways to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) (a deed that vests a title estate in the grantee and a remainder in his children), b. to grant endow, or clothe with a particular authority right or property to put (a person) in possession of land by the feudal ceremony of investiture to become legally vested (normally) title to real property vests in the holder of a property executed deed.)"

25. Vest/vested, therefore, may or may not include "transfer of possession" the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions.

26. What is deemed "vesting absolutely" is that "what is deemed to have acquired". In our view, there must be express words of utmost clarity to persuade a court to hold that the legislature intended to divest possession also, since the owners or holders of the



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vacant land is pitted against a statutory hypothesis. Possession, there is an adage "nine points of law" In *Beedall v. Maitland* (1881) 17 Ch. D. p.183 Sir Edward Fry, while speaking of a Statute which makes a forcible entry an indictable offence, stated as follows:

"this statute creates one of the great differences which exist in our law between the being in possession and the being out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession, he may use force to keep out a trespasser; but if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance."

27. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in hands of few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words 'acquired' and 'vested' have different meaning and content. Under Section 10(3), what is vested is de jure possession not de facto, for more reasons than one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.

Voluntary Surrender

28. The 'vesting' in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in *Maharaj Singh v. State of UP*



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and Others (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that 'vesting' is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in Rajendra Kumar v. Kalyan (dead) by Lrs. (2000) 8 SCC 99 held as follows:

"We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. Coverdale v. Charlton. Stroud's Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well."

29. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

30. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.



Peaceful dispossession

31. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

32. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

33. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section

10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by



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use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to Section 10. Sub-sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), than "forceful dispossession" under sub-section (6) of Section 10.

34. Requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word 'may' has been used therein, the word 'may' in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'.

36. Above-mentioned directives make it clear that sub-section (3) takes in only de jure possession and not de facto possession, therefore, if the land owner is not surrendering possession voluntarily under sub-section (3) of Section 10, or surrendering or delivering possession after notice, under Section 10 (5) or dispossession by use of force, it cannot be said that the State Government has taken possession of the vacant land.

37. The scope of Act 33 of 1976 came up for consideration before this Court on few occasions, reference may be made to certain judgments, even though there has been no elaborate discussion of the provision of the Act and its impact on the Repeal Act. Reference may be made to Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. and Others (2000) 6 SCC 325, Ghasitey Lal Sahu and Another v. Competent Authority, Under the Urban (Ceiling and Regulation Act, 1976), U.P. and Another (2004) 13 SCC 452, Mukarram Ali Khan v. State of Uttar Pradesh and Others (2007) 11 SCC 90 and Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority and Others



(2012) 4 SCC 718.

Effect of the Repeal Act

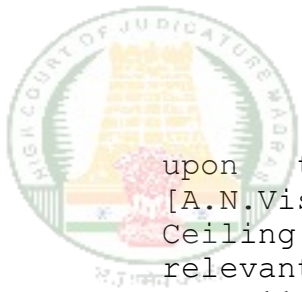
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38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.

40. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order as to costs.

6. The learned counsel also placed reliance upon the judgment of this Court in WP No.8658 & 8659 of 2012 dated 04.03.2016. The learned counsel submitted that this Court relied



upon the Division Bench Judgment of this Court in [A.N.Visalakshi & Ors., Vs.Special Commissioner of Urban Land Ceiling and Land Reforms and others] in WP No.2998 of 2004. The relevant portions in the Judgment is extracted hereunder :-

11.To have the benefit of the Repeal Act, the petitioners had to establish that they are in actual physical possession of the land in question when the Repealing Act came into force.

12. At this stage, it would be relevant to refer to the decision in the case of A.N.Visalakshi & Ors., (supra), in which some what identical circumstances arose for consideration and the Court dealt with the manner in which the competent authority should proceed pursuant to action initiated under Section 11(5) of the Act. The relevant portion of the decision is quoted herein below:-

12. The facts of the case on hand is also one such case where the competent authority issued notice under Section 11(5) of the Act, and did not take any action under Section 11(6) and consequently, the second respondent cannot be deemed to have handed over possession nor the Revenue Department could claim to have taken over possession. The land delivery receipt can at best be construed as a "paper delivery", not authorized by law.

13. In this regard, it is beneficial to refer to the recent decision of the Hon'ble Supreme Court in the case of State of Uttar Pradesh vs. Hari Ram reported in (2013) 4 SCC 280, among several issues, the Hon'ble Supreme Court considered the distinction between the vesting of right, title or interest from that of delivery/transfer of peaceful or de facto possession. Three types of delivery of possession was considered namely, voluntary surrender, peaceful dispossession and forceful dispossession. On voluntary surrender, it was pointed out that the word "vesting" takes in every interest of the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976, (Central Act). With regard to peaceful dispossession, the Hon'ble Supreme Court pointed out that if de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) to Section 10. Surrendering or transfer of possession under sub-



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section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession. With regard to 'forceful dispossession', it was held that the Act provides for forceful dispossession, but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. It was pointed out that Section 10(6) of the Act speaks of "possession", 14 which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force-as may be necessary-can be used. It was further pointed out that sub-section (6), contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force, Thus, it was held that forcible dispossession of the land, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10 and sub-sections (5) and (6), therefore, they take care of both the situations i.e., taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10. (Section 11(5) and Section 11(6) of the State Act are in pari materia with Section 10(5) & (6) of the Central Act)

14. Admittedly in the instant case, an order under Section 11(5) of the State Act was passed and 15 notice issued to the land owners. The land owner by representation requested for keeping the the proceedings under abeyance, since he has preferred an appeal. The proceedings were not deferred, but the respondent would state that they have taken over possession pursuant to a land delivery receipt. In the preceding paragraphs, we have seen that the land delivery receipt has been executed between the Urban Land Ceiling Department and the Revenue Department and



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the land owner had not surrendered possession pursuant to the order under Section 11(5) of the State Act. Therefore, if the respondents claim that they have taken over possession, then they should have resorted to the procedure under Section 11(6) of the Act which has not been done and the manner in which the possession is sought to be recorded or taken over, is not in accordance with law and the Government are not deemed to be in possession of the land in question.

15. In the light of the above, we have no hesitation to hold that the possession said to have been taken over by the Revenue Department, pursuant to the land delivery receipt cannot be construed as possession taken in accordance with law and therefore, cannot confer any right on the Department/Government and the land owners are held to be continued to possession and consequently, the proceedings initiated under the Urban land Ceiling Act stand abated in the light of the coming into force of the Repealing Act, Act 20 of 1999.

16. In the result, the Writ Petition is allowed and the impugned order is set aside and consequently, proceedings initiated under the Parent Act are quashed. No costs.

13. The factual scenario in the instant case appears to be not in dispute. The lands which are subject matter of these Writ Petitions are not stand-alone properties, but they formed part of a contiguous extent with that of the lands owned by the other sister concerns of the petitioner. The fact that the land was mortgaged to Indian Bank and Indian Bank had transferred their security interest in favour of an asset reconstruction company, who have in turn appointed a State Government undertaking to act as the custodian of the property cannot be denied by the respondents. In fact ARCIL has advertised for sale of the immovable property stating that they are in possession of the property. The respondents have not raised any objections to such public notice. The files did not disclose taking over actual physical possession which in my view was virtually an impossibility in 17 the facts and circumstances of the



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case. The sketch produced before this Court clearly delineates the properties of the Writ Petitioners and they lie adjoining to the other properties owned by their sister concerns. In fact to approach the properties which are subject matter of these Writ Petitions, one has to go through the properties of the sister concerns. These are all factors, which clearly establish that actual physical possession was not taken over by the competent authority. Thus, the alleged handing over and taking over said to have been recorded by the competent authority, are all paper delivery receipts and can never be taken to be actual taking over of possession. Hence, it is factually established that the petitioners continued to be in actual physical possession of the lands in question and therefore, they are entitled to the benefit of the Repeal Act.

7. A Counter affidavit has been filed on behalf of the respondents. The relevant portions in the Counter Affidavit is extracted hereunder :-

7. It is submitted that as per the revenue records, Thiru.Elumalai Naicker was the owner of the land in S.No.6/1, 6/3, 7/1 and 113/1 of valasaravakkam Village, who was holding land in excess of ceiling limit. Since he did not file return under Section 7(1) of the Act, a notice under Section 7(2) of the Act was issued on 20.05.1987. Notice under Section 9(4) with draft statement under Section 9(1) of the Act was issued to the land owner on 17.07.1987, calling for objections, for the proposed acquisition of excess vacant land held by him and it was served on the urban land owner 31.07.1987. No objections were received. The land was then inspected by the 3rd respondent herein on 13.03.1990, it was found that the land was laid out into layout plots without getting prior permission from the Urban Land Ceiling Authorities. Hence, the orders under Section 9(5) of the Act was passed by the 3rd respondent in his proceedings No.2577/87/A dated 30.04.1990 determining an extent of 14000 Sq.mts. as excess vacant land after allowing 500 Sq.mts. Under Section 5(1) of the Act towards family entitlement. The final statement under Section 10(1) of the Act was issued on 21.01.1991.

8. It is further submitted that notification under Section 11(1) of the Act was issued on 19.04.1992 and published in Tamil Nadu Government Gazette dated 17.06.1992 @ pages No.698-699, Part VI-Section -1.



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Notification under Section 11(3) of the Act was issued on 20.07.1992 and got published in Tamil Nadu Government Gazette dated 26.08.1992 @ page No.107-1018, vesting the land with Government with effect from 01.09.1992. The final notice under Section 11(5) of the Act was issued to the urban land owner on 15.10.1992 to surrender the possession of the land. As the Possession of the land was not surrendered by the land owner, the same was handed over to the revenue authorities on 15.11.1993. Necessary changes were also carried out in the revenue records vide Tk./8A.862.1403, dated 09.11.1993. Notice under Section 12(7) of the Act was issued on 08.06.1994. Order under Section 12(6) of the Act was issued on 22.03.1995 for the amount payable for the excess vacant land acquired from the Urban land owner. Since the land owner had not turned up to receive the amount payable under Section 12(6) of the Act, it was kept in Revenue Deposit vide Challan No.437 dated 13.10.1995.

8. Mr.P.Senthilvel, learned Additional Government Pleader,

appearing on behalf of the Assistant Commissioner (Urban Land Tax) submitted that the possession of the petitioner will amount to encroachment, since the property has already vested with the Government.

9. During the pendency of this writ petition, a report was also filed by the Tahsildhar, Maduravoyal and he has specifically stated that the petitioner is in possession of the property.

10. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

11. It is clear from the Counter affidavit filed by the respondents and the report of the Tahsildhar that the possession was not taken from the original owner of the property at the time when the repealing Act came into force. At paragraph No.18 of the Counter Affidavit, it is clearly stated that the possession was not surrendered by the owner of the property after notice was issued under Section 11(5) of the Act.



Thereafter, a paper possession has been given to the revenue authorities.

12. It is clear from the above Judgments that where the competent authority has issued notice under Section 11 (5) of the Act and the possession was not handed over and thereafter did not take any action under Section 11(6) of the Act, possession cannot be deemed to have been handed over nor the Revenue department could claim to have taken over possession. The law on this issue is well settled.

13. In view of the above, it is clear that the petitioner has established the fact that he continuous to be in actual and physical possession of the property and therefore, he is entitled for the benefit of the Repeal Act.

14. In the result, both the writ petitions are allowed and the impugned proceedings issued by the 3rd respondent dated 20.05.1987, stands abated, insofar as the petitioner is concerned. Consequently, there shall be a direction to the Tahsildhar, Maduravoyal to consider the application made by the petitioner seeking for patta and pass appropriate orders, within a period of four weeks from the date of receipt of copy of this order and make necessary mutation in the revenue records. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

rka

To

1. The District Collector,
Thiruvallur District Collectorate,
1st Floor, Master Plan complex,
NH 205,
Thiruvallur - 602 001.



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2. The Tahsildar,
Maduravoyal Taluk Office,
Ganesh Nagar,
Porur, Thiruvallur District,
Chennai 600 116.

3. The Assistant Commissioner,
Urban Land Tax, Kundrathur,
No.15, Karuneegar Street,
Adambakkam, Chennai 600 088.

+1cc to Mr.M.Sathishkumar, Advocate SR.No.23308

+1cc to Government Pleader SR.No.23211

W.P.Nos.16766, 7409 of 2019
and WMP No.16376 of 2019

RR(CO)

GMV(13/07/2020)