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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 16.08.2021

Orders Pronounced on : 07.09.2021

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.18340 of 2008

and

M.P.No.1 of 2008 and M.P.No.1 of 2014

T.Rukmani

... Petitioner

Vs.

1. The Government of Tamil Nadu,
rep.by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.

2. The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

3. The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling (Tambaram),
Karuneeakar Street,
Adambakkam,
Chennai - 600 088.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the orders duly issued in proceedings No.R.C.1657/81-D under Section 9 (5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 dated 04.03.1983 and the consequent issue of notice under Section 11 (5) in Form No.7, dated 29.04.1987 in seeking delivery of possession duly passed by the Assistant Commissioner/Competent Authority, Urban Land Ceiling, (Tambaram), Karuneeakar Street, Adambakkam, Chennai - 600 088, the third respondent herein in respect of the lands in all measuring 1 acre 30 cents comprised in Survey No.49/1 and 2, situated at Village No.164, Pulikoradu Village bearing patta No.134, within the Tambaram Panchayat Limits, then Saidapet Taluk and within Tambaram Taluk, Kancheepuram District within the Sub Registration of Tambaram and within the Registration District of South Madras and quash the same and direct the



respondents to treat the land as falling outside the provisions of the Act 24 of 1978 by virtue of Section 4 of Act 20 of 1999.

For Petitioner : Mr.M.Sriram

For Respondents : Mr.R.Shanmugasundaram
Advocate General
Assisted by
Mr.Richardson Wilson
Government Advocate

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O R D E R

This petition has been filed seeking to quash the proceedings No.R.C.1657/81-D under Section 9 (5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as 'the Act', for short) dated 04.03.1983 and the consequential issuance of notice under Section 11 (5) in Form No.7, dated 29.04.1987 in seeking delivery of possession duly passed by the Assistant Commissioner/Competent Authority, Urban Land Ceiling, (Tambaram), Karuneeakar Street, Adambakkam, Chennai - 600 088, the third respondent herein in respect of the lands in all measuring 1 acre 30 cents comprised in Survey Nos.49/1 and 2, situated at Village No.164, Pulikoradu Village bearing patta No.134, within the Tambaram Panchayat Limits, then Saidapet Taluk and within Tambaram Taluk, Kancheepuram District within the Sub Registration of Tambaram and within the Registration District of South Madras and direct the respondents to treat the land as falling outside the provisions of the Act 24 of 1978 by virtue of Section 4 of Act 20 of 1999.

2. The case of the petitioner is that she owned the property ad-measuring 1.30 acres comprised in S.Nos.49/1 and 2, situated at Village No.164, Pulikoradu Village bearing Patta No.134, now within the limits of Tambaram Panchayat. She purchased the said properties by two registered sale deeds dated 05.02.1987 and 27.02.1987, vide Document Nos.443 and 881 of 1987, purchased by one S.Lakshmipathy. The petitioner's vendor purchased the said properties from one A.R.Devasahayam by the registered sale deed dated 03.09.1980, vide Document No.4213 of 1980. When she applied for issuance of patta in her name before the Revenue Authorities, she came to know about the fact that the land had been acquired under the Act and the properties stood in the name of the said A.R.Devasahayam. Thereafter, she applied for certified copies and the orders were passed under Sections 9(5) and 11(5) of the Act and the same were furnished to her on 09.01.2008. Both the orders are challenged in the present Writ Petition.



3. The respondents have filed counter affidavit and stated that the petitioner is the subsequent purchaser of the subject properties and has no locus standi to question the acquisition proceedings, that too, after a lapse of 19 years. Originally, the land owner, the said late A.R.Devasahayam, had expired on 31.12.1981 and all subsequent orders and notices were issued in the name of his son viz., Issac Samuel who is only the legal heir of the land owner. On receipt of the notice, he has neither appeared for enquiry, nor given any details of the sales as stated by the petitioner. The sale made after the introduction of the Act, is hit by Section 6 of the Act and hence, it is not valid and the subsequent purchasers were not entitled for any notice in the acquisition proceedings as per the provisions of the Act. The said A.R.Devasahayam filed his Return under Section 6 (1) of the Act for the lands owned by him, which is after commencement of the Act. Accordingly, the draft statement under Section 9(1) with notice under Section 9 (4) of the Act, was issued to the said A.R.Devasahayam dated 30.12.1981. It was returned as 'party died'. Therefore, the draft statement under Section 9(4) of the Act was sent through Special Messenger and it was received by his son, the said Issac Samuel on 25.02.1982. He filed a letter on 13.04.1982 stating that his father sold the properties and details and documents would be submitted during the enquiry. Thereafter, he neither appeared for enquiry, after due notices and opportunities, nor submitted any details, nor produced any documents. Thereafter, the final statement under Section 10 (1) of the Act was issued on 04.03.1983 and the Notification under Section 11(1) of the Act was issued on 20.03.1983. After due notice to the said Issac Samuel, he failed to handover possession and it was taken over and handed over to the Revenue Authorities on 16.06.1989, viz., 10 years before the Repeal Act. Then the notice under Section 12 (7) of the Act was issued on 09.03.1990 for determining the amount payable under Section 12 (6) of the Act and the amount was also received by his wife viz., Ragini Issac on behalf of the the said Issac Samuel on 26.03.1990. Therefore, there are no procedural lapses in acquiring the land. The said land was acquired from the original owner and proceedings continued only with the legal heir, after the death of the original owner. The possession of the subject properties was taken and handed over to the Revenue Department, as early as in 1989, following due process of law. The petitioner being the subsequent purchaser, the subsequent sales are not valid under Section 6 of the Act and the petitioner has no locus-standi to question the proceedings.

4. The learned counsel for the petitioner submitted that the subject properties being agricultural lands, cannot be acquired and the same are excluded from the provisions of the Act, under Section 3(o) and 3(p). The authority concerned never conducted inspection and enquiry in respect of the subject properties.



Even in the order passed under Section 9 (5) of the Act, no personal hearing had been extended to the owner viz., the petitioner and there was no reference with regard to the inspection of the land prior to the issuance of the order. The draft statement under Section 9 (1) and notice under Section 9 (4) of the Act were addressed to a dead person viz., the petitioner's vendor's vendor A.R.Devasagayam. Hence, the said notice was returned as 'un-served'. Therefore, further communication had been issued in the name of his son, viz., Issac Samuel and he had issued reply in the year 1982 by claiming that the lands in question had been already sold out by his vendor and after such alienation, he had also died. He further submitted that others, who have purchased sizeable portion of the lands at Pulikoradu Village, had sought for exemption and the same had been rejected by the Government. Therefore, the third respondent ought to have issued notice to the present owner of the subject properties, that too on the said Issac Samuel, to the effect that his father is no more and the lands in question had already been sold out. He further submitted that on the relevant day, a notice under Section 11 (3) of the Act was published and the petitioner was lawful owner by virtue of the sale deeds registered in her favour prior to the proceedings. Admittedly, only symbolic possession had been taken and as such, the petitioner and her predecessor-in-title S.Lakshmipathy were running Blue Metal industry right from the year 1981. The physical possession continued to vest with the petitioner and the subject properties are the subject matter of mortgage and though the Pollution Control Board has initiated proceedings against the petitioner for violation of pollution norms; on inspection was conducted by the Pollution Authority, the license was also granted to run the Blue Metal industries. Therefore, the physical possession has not been transferred and the petitioner prayed for quashment of the impugned proceedings. In support of his contentions.

5. The learned counsel for the petitioner further submitted that in respect of the connected matters under the very same proceedings in respect of the property comprised in S.No.42/2A of Pulikoradu Village, Tambaram Taluk, the purchasers have challenged the acquisition proceedings initiated under the Act in W.P.Nos.46091 and 46189 of 2002 and both the Writ Petitions were allowed by this Court by an order dated 29.01.2007. Aggrieved by the same, the respondents therein preferred appeals in W.A.Nos.759 and 760 of 2011 and both the Writ Appeals were dismissed. In support of his contentions, the learned counsel for the petitioner relied upon the judgments reported as follows:-

- (i) 2006 (4) LW 159 (Vijay Foundation (P) Ltd., vs. The Principal Commissioner & Commissioner of Land Reforms and others)
- (ii) 2012 Writ L.R.861 (C.Govindaraj & others vs. The



Government of Tamilnadu & others)

(iii) 2019-1-L.W.703 (C.N.Govindaraj vs. The Principal Commissioner and Commissioner for Land Reforms & another) and

(iv) 2018-4 L.W.762 Division Bench of this Court (State of Tamil Nadu & others vs. P.B.K.Thilagar & another).

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6. Per contra, the learned Advocate General assisted by the learned Government Advocate appearing for the respondents submitted that the subject lands were originally owned by the said A.R.Devasahayam. He filed his Return under Section 6 (1) of the Act showing the subject properties in Pulikoradu Village as his holdings. As per the Revenue entries, the said A.R.Devasahayam was the original owner of the properties. Thereafter, on 07.11.1981, the third respondent inspected the subject properties and it was found that the subject properties have High Tension Wires and they are not used for agricultural purpose. He submitted that the land comprised in S.No.258, was found to be agricultural land. On 30.12.1981, the draft statement under Section 9 (1), with notice under Section 9 (4) of the Act were issued to the owner of the property and the same was returned as 'party died'. Therefore, by a special messenger, notice was served on the legal heir viz., the said Issac Samuel, by letter dated 13.04.1982, who informed the authorities that his father died and he sold out some properties. The details of the said document were not submitted during the enquiry. However, the said Issac Samuel did not appear for enquiry and also failed to produce any records. However, the sale made after commencement of the Act, is hit by Section 6 of the Act. Hence, the sale is not valid. Therefore, the subsequent purchaser cannot challenge the acquisition proceeding at any cost. The Notification was issued under Section 9(5) of the Act in the name of Issac Samuel and the same was duly received by him on 09.03.1983. Following the same, the final statement under Section 10 (1) of the Act was issued on 04.03.1983 and thereafter, Notification under Section 11 (1) of the Act was issued on 20.03.1983. On 29.04.1987, the Notification under Section 11 (3) of the Act was published in the Tamil Nadu Government Gazette. Therefore, after issuance of Notification under Section 11 (3) of the Act, the petitioner purchased the subject properties by way of two sale deeds on 05.02.1987 and 27.02.1987. Thereafter, on 11.11.1987, the notice under Section 11 (5) of the Act was issued to the said Issac Samuel and the same was duly served on him. On 16.06.1989, the possession was taken over and handed over to the Revenue Authorities. Thereafter, on 09.03.1990, the notice under Section 12 (7) of the Act was issued to the said Isaac Samuel for determining the value of the land as contemplated under Section 12 (6) of the Act. It was duly received by his wife on 26.03.1990 and the value of Rs.33,252/- was determined under Section 12 (6) of the Act. Accordingly, the said amount determined under Section 12(6)



of the Act, was received on 24.09.1990 by the Said Issac Samuel. Therefore, there are no procedural lapses in acquiring the lands and he prayed for dismissal of the Writ Petition.

7. Heard the learned counsel for the petitioner as well as the learned Advocate General appearing for the respondents.

8. The subject lands are agricultural lands and they cannot be acquired, since they are excluded from the provisions of the Act under Sections 3 (o) and 3(p) of the Act, which is evident from a perusal of the records, and recital of the sale deeds. In the event of acquisition, the third respondent ought to have inspected the subject properties and conducted an enquiry. In the proceedings under Sections 9(5) and 11 (5) of the Act, there was no reference pursuant to the inspection of the lands or about the enquiry conducted by him. Admittedly, the notice was sent to the dead person viz., the original owner of the subject properties. On receipt of the same, the said Isaac Samuel, the legal heir of the original owner/A.R.Devesahayam, had sent his letter dated 13.04.1982 stating that his father sold some of the properties, which were under acquisition and thereafter, he died and he submitted that he would produce all the documents during the enquiry. Thereafter, he did not appear before the Authority concerned for enquiry and failed to produce any records. The subject properties were purchased by the petitioner's vendor, viz., S.Lakshmipathy by the sale deed dated 03.09.1980, vide registered Document No.4213 of 1980. Due to scarcity of water, the agricultural portion was affected and other activities like stone crushing had been done in the subject properties. Even now, the subject properties are lying vacant with a small thatched shed. However, the third respondent inspected the subject properties on 07.11.1981 and found that there was High Tension Wires in the subject properties. Thereafter, on 30.12.1981, the draft statement was issued under Section 9 (1) of the Act and the notice under Section 9(4) of the Act was issued to the said A.R.Devasahayam, who was the original owner of the properties. Notice was returned by the postal authority as the original owner died. Therefore, no notice was issued in the name of the predecessor-in-title, viz., S.Lakshmipathy. No enquiry was conducted on the said S.Lakshmipathy.

9. In this regard, the learned counsel for the petitioner relied upon the judgment of this Court reported in 2006 (4) LW 159 (Vijay Foundation (P) Ltd., vs. The Principal Commissioner & Commissioner of Land Reforms and others, wherein this Court held that any acquisition proceedings against the persons who are not the owner of the lands, is not sustainable, as the mandatory conditions set out in the Act had not been followed. Hence, the alleged possession taken by the respondents herein are vitiated. Based on the proceedings initiated against the wrong person, the



lands of the petitioner cannot be acquired by the Government. Since the possession of lands is with the petitioner, ever since the date of acquisition and as the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, having been repealed on 16.06.1999, it is not open to the respondents to proceed against the petitioner. Further, while dealing with the effect of the provisions of the Tamil Nadu Urban Land Ceiling (Repeal) Act 20 of 1999, the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 would abate on the coming into force of the Tamil Nadu Urban Land Ceiling and Regulation Repeal Act, 1999, if the possession of the land had not been taken by the authorities concerned, prior to the Repeal and if the compensation had not been paid to the applicant.

10. In the case on hand, as no notice had been served in the acquisition proceedings and the Act in question having been repealed with the effect from 1999, and similarly, the possession of the lands in question also vested with the petitioner and as no compensation had been paid to any one, inclusive of the petitioner there shall be no interference by any one inclusive of the respondents herein. The connected Writ Petitions were allowed by this Court and aggrieved by the same, the respondents filed an Appeal in W.A.Nos. 759 and 760 of 2011 and a Division Bench of this Court dismissed the Writ Appeals on 23.07.2012, reported in 2012 (4) LW 284 (The Government of Tamil Nadu & others vs. M/s.Mecca Prime Tannery and others), in which it has been held as follows:-

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(iv) W.A.Nos.759 and 760 of 2011:

The State has preferred these writ appeals aggrieved by the orders of the learned single Judge both dated 29.01.2007 passed in W.P.Nos.46091 and 46189 of 2002. The writ petitions were filed by the petitioners therein to quash the acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of their lands in S.No.9/2C2 of Tambaram Village measuring an extent of 1750 sq.metres and S.No.43/2A of Pulikoradu Village, Tambaram Taluk measuring an extent of 27.908.72 sq. metres respectively. It was contented before the learned single Judge that the order of the competent authority does not refer to any inspection of lands or any enquiry conducted by him. It was silent about the character of the land in question. The notices were not served on the real owners of the land. The learned single Judge allowed the writ petitions holding that in view of the subsequent coming into force of the Repeal Act (Act 20 of 1999) the land acquisition proceedings



initiated cannot be sustained, and it gets abated in view of Section 4 of Act 20 of 1999.

In these appeals also, the learned Additional Advocate General failed to satisfy us that in the ceiling proceedings, possession of the land was taken over by the competent authority or any person authorized by him. Moreover, even the notices were not validly served upon the land owners. The impugned finding, therefore, cannot be interfered with. Theses appeals are also dismissed."

11. That apart, mere possession claimed to have been taken by the respondents, by issuance of Notification under Section 7 (5) of the Act, cannot be accepted. All the Notifications under Section (3) of the Act and 11 (5) were issued in the name of the said Isaac Samuel and subsequently, the notice under Sections 12 (7) and 12 (6) of the Act also were served on the said Isaac Samuel. Thereafter, his wife viz., Ragini Issac received the same. Therefore, the acquisition proceedings against the person, who is not owner, are not sustainable, as the mandatory conditions of the Act, have not been followed. Therefore, the impugned proceedings under the provisions of the Act are vitiated and they are liable to be quashed and the same are quashed.

12. In view of the above discussion, this writ petition is allowed. Consequently, the petitioner is entitled to get benefits under the provisions of the Repeal Act. The petitioner is at liberty to deal with the subject properties in accordance with law. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.



2.The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

3.The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling (Tambaram),
Karuneeakar Street,
Adambakkam,
Chennai - 600 088.

+1cc to the Government Pleader Sr No.45554

+1cc to Mr.M.Sriram, Advocate Sr No.45074

W.P.No.18340 of 2008

BS (CO)
PR (14/09/2021)