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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.14000 of 2004

Pamela Seelan

..Petitioner

-Vs-

1. The Secretary
Revenue Department
Government of Tamilnadu
Fort St.George, Chennai 600 009.
2. The Special Commissioner
and Commissioner for Land Reforms
Chepauk, Chennai 600 005.
3. The Thasildar
Office of the Thasildar
Tambaram at Adambakkam
Chennai 600 088.
4. Shri.Joseph Leo Mirinda
5. Smt.K.Muniammal (Deceased)
6. K.Veeraparthiban
(R6 impleaded as per order dated
26.07.2017 in WMP 183/2014)

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents, leading upto the 1st respondent's notice dated 16.10.2002, 53607/Na.Nil-2/2000-2 and to quash the same as illegal and invalid and to direct the respondents 1, 2 and 3 to forthwith allot the land in question, namely 100 sq.metres in Survey No.252/6B2 in 155, Keelkattalai Village, Tambaram.



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For Petitioner : Mr.S.Silambanan, Senior Counsel
for M/s.Jayaraman Associates

For Respondents: Ms.Akila Rajendran, Government Counsel
-for RR 1 to 3

Mr.V.R.Ramesh - for R4
Mr.K.Muruganantham - for R6

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the respondents, leading upto the 1st respondent's notice dated 16.10.2002, 53607/Na.Nil-2/2000-2 and to quash the same as illegal and invalid and to direct the respondents 1, 2 and 3 to forthwith allot the land in question, namely 100 sq.metres in Survey No.252/6B in 155, Keelkattalai Village, Tambaram.

2. The immovable property being vacant land of 100 Sq.m in Survey No.252/6B, No.155, Keelkattalai Village, Tambaram is the subject matter herein.

3. The petitioner is the daughter of the fourth respondent. On 21.02.1976, the fourth respondent settled the landed property of 2351 Sq.ft of vacant land to and in favour of the petitioner, which was registered as Document No.530/76 at the hands of the Sub Registrar Office, Pallavaram. At the time of settling the property, the petitioner was minor. However, subsequently she attained majority on 27.09.1977. In the meanwhile, the Tamil Nadu Urban Land Ceiling Act (hereinafter referred to as 'the Act') came into force with retrospective effect from 03.08.1976. As per the provisions of the said Act, the fourth respondent filed returns under Section 7(1) on 09.08.1978 mentioning the name of the petitioner as minor. Thereafter, on 09.08.1978, the fourth respondent made a request to the Government to exempt the excess vacant land of 118.76 Sq.m at S.No.252/6B of Keelkattalai Village.

4. Thereafter, the Assistant Commissioner, Urban Land Tax, by order dated 29.10.1985 stated that, though the order to acquire the excess land was to an extent of 118.76 Sq.mts, which is held as surplus vacant land of the fourth respondent, and according to the fourth respondent the excess land was only 100 Sq.m, an appeal can be preferred before the Special Commissioner of Land Reforms. Thereafter, on 25.11.1985, the fourth respondent filed an appeal before the Special Commissioner, Land Reforms, who, on 20.03.1986 rejected the appeal stating that, the appellant can approach the Government for cancellation of the order of acquisition.



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5. On 11.11.1986, the acquisition of the excess land of the fourth respondent was notified in the Government Gazette dated 03.12.1986. As per the provisions of the Act, in view of the notification issued, the excess land belonging to the fourth respondent was deemed to have been acquired by the State Government and vested with the Government.

6. Subsequently, on 07.09.1987 notice in Form VII under Section 11(5) of the Act calling upon the fourth respondent to surrender and deliver possession of land had been issued.

7. However, pursuant to the Section 11(5) notice, no surrender of possession had been made by the fourth respondent. Therefore, on 19.11.1987, the respondents have recorded the handing over and taking over of the possession by way of a land delivery receipt signed by the Deputy Tahsildar, Urban Land Tax (hereinafter referred to as 'ULT') as if that he has handed over the possession to the Revenue Inspector, Alandur, as if that he has taken over the possession.

8. Thereby, according to the official respondents, the land declared as excess land under the Urban Land Ceiling Act, after following the procedures established under various provisions of the Act, had been taken over the possession from the fourth respondent by the ULC authorities and handed over the same to the revenue authorities within the meaning of Section 11(5) of the Act.

9. Subsequently, since the fourth respondent had made a request to the Government to allot the 100 Sq.m land, which was considered to be excess land under the holdings of the fourth respondent to and in favour of his daughter ie., the petitioner, the said request having been considered, was turned down by the Secretary to the Government, by a proceedings dated 16.10.2002, wherein the Government had stated that, the said land of 100 Sq.m had been acquired in the year 1993 under the Act and had been allotted to a third party.

10. The said proceedings issued by the Secretary to the Government dated 16.10.2002 is under challenge in this writ petition with the aforesaid prayer by the petitioner, who is the legal heir of the fourth respondent to inherit the property including the property in question, which has been declared to be excess land.

11. Heard Mr.S.Silambanan, learned Senior Counsel appearing for the petitioner, who would submit that, first of all there has been no excess land under the holding of the fourth respondent because the petitioner, even though attained majority on 27.09.1977, however when the fourth respondent had



filed returns under Section 7(1) of the Act on 09.08.1978 mentioning the name of the petitioner as if that she was minor.

12. Therefore, because of the said mistake committed by the fourth respondent, who was the land holder, who was none other than the father of the petitioner, the said land about 100 Sq.m was considered to be excess land, without taking into account the petitioner's claim, as she had by that time become major.

13. Apart from the said aspect, the learned Senior Counsel would further submit that, assuming that the land in question was considered to be excess land as on the date of the notification, whether the land in question had been taken possession from the fourth respondent or from the petitioner as contemplated or established under the various provisions of the Act, is a question.

14. In this context, the learned Senior Counsel pointed out that, on 07.09.1987, notice in Form VII under Section 11(5) of the Act was issued, whereby the official respondents wanted the fourth respondent to deliver the vacant possession of the land concerned on his own. However, pursuant to the said notice under Section 11(5) of the Act, the fourth respondent did not come forward to surrender possession. Therefore, the next course of action that should have been resorted to by the official respondents against the fourth respondent is that, they should have invoked Section 11(6) of the Act, thereby using the force which are required to be utilised, forceful possession should have been taken and that is what has been contemplated under the provisions of law and this position has been supported by a plethora of decisions of this Court as well as the Hon'ble Supreme Court, he contended.

15. In support of his contention, the learned Senior Counsel relied upon various decisions of this Court and the latest decision of a Division Bench of this Court in W.A.No.3632 of 2019 dated 20.01.2020 in the matter of "The Principal Commissioner and Commissioner for Land Reforms and another -Vs- B.Booshanam and another".

16. By relying upon this decision, the learned Senior Counsel would submit that, insofar as the taking over of the possession of the land is concerned, since it is the stand of the respondents that, they have taken the possession and handed over the same to the revenue authorities and in order to mark the same, the land delivery receipt dated 19.11.1987 has been recorded and if that being the only proof to show that they have taken possession of the land, it is the contention of the learned Senior Counsel that, the said method stated to have been adopted by the respondents for taking over possession under



Section 11(5) of the Act is not approved by law, as has been reiterated by various decisions of this Court, of course following the decision of the Supreme Court in this context.

17. Therefore, the learned Senior Counsel would submit that, in the eye of law, there has been no possession was taken as contemplated under Section 11(5) or 11(6) and therefore, that itself vitiates the entire proceedings and the fact remains that, the land in question has been still in the possession and enjoyment of the petitioner and this fact is not disputed or cannot be disputed. Therefore, giving the benefit of non-compliance of proper taking over of the possession of the land in question either under Section 11(5) or under Section 11(6) as has been held in number of cases cited, the land in question can be released to the petitioner by allowing the present writ petition, the learned Senior Counsel contended.

18. Per contra, Ms.Akila Rajendran, learned Government Counsel for the official respondents, on relying upon the written instructions given in this regard, would submit that, on 19.11.1987 ie., subsequent to the notice in Form VII under Section 11(5) dated 07.09.1987 was issued, since the fourth respondent ie., the land holder did not come forward to surrender possession of the land, as per the procedure which had been adopted uniformly in all these kind of cases under the Urban Land Ceiling Act, the respondents had gone to the spot and symbolically the land delivery receipt has been entered into between the ULC authorities and the revenue authorities and therefore, the said land delivery receipt dated 19.11.1987 shall be construed as a mark of taking over of possession under Section 11(5) of the Act and therefore, from that date the land has not only vested with the Government, but also had been taken over possession by the Government. Hence, the plea raised by the petitioner that the possession has not been handed over or taken over forcibly by the respondents cannot be accepted, she contended.

19. To substantiate this contention, the learned Government Counsel would rely upon the written instructions given in this regard by the respondents under the heading "Procedure being adopted while taking over possession of the acquired land", which reads thus,

"Under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978, the land becomes vested with Government on and with effect from the date mentioned in the Notification issued under Section 11(3) of the Act. After publication of the above notification,



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notice under Section 11(5) of the Act is issued to the urban land owner requesting to surrender or deliver possession of the excess vacant land acquired, within 30 days from the date of receipt of notice. If the urban land owner fails to deliver or surrender the possession of the acquired land, the official of the competent Authority, shall go over to the land in question and after marking the structures available in the land, hand over the possession of the acquired land to the Revenue Authorities concerned, by signing the land delivery receipt by both the officials. This constitute the taking over possession of the excess vacant land acquired. This is the procedure being followed in taking over possession of the acquired excess vacant land."

20. In support of this stand of the official respondents, the learned Government Counsel has also relied upon a decision of the Honourable Supreme Court reported in 1976(1) S.C.C.700 "Balwant Narayan Bhagde -Vs- M.D.Bhagwat" , where the learned Government Counsel has relied upon the following passage.

"We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned brother Untwalia, J., in regard to delivery of 'symbolical' and 'actual' possession under rules 35, 36, 95 and 96 of Order XXI of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our learned brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion' of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question



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of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was laying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.

We are of the view, on the facts and circumstances of the present case, that



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the Tehsildar took actual possession of that part of the land which was waste or arable and handed it over to the Principal of the Agricultural College. It is true that the Special Land Acquisition Officer in his letter dated 13th December, 1961 to the Commissioner stated that possession of the entire land was still with the appellant and it was not actually taken possession of by the Principal, Agricultural College. But it is obvious that this statement was made by the Special Land Acquisition Officer because he thought that actual possession of the land could not be regarded as having been taken, unless the appellant was excluded from the land and since the appellant immediately, without any obstruction, entered upon the land and continued in possession, "the land was not actually taken possession of by the Principal, Agricultural College". This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting. There can, therefore, be no doubt that actual possession of 19 acres 16 gunthas of waste and arable land was taken by the Tehsildar on 3rd April, 1959 and it became vested in the Government. Neither the Government nor the Commissioner could thereafter withdraw from the acquisition of any portion of this land under s. 48(1) of the Act."

21. By relying upon the said decision of the Honourable Supreme Court, the learned Government Counsel would contend that, as per the said law, as held by the Supreme Court, the procedure uniformly being followed in these cases is that, if the land holder fails to deliver or surrender possession of the acquired land, an official of the competent authority shall go over to the land in question and after marking the structures available in the land, take over the possession of the land concerned by signing the land delivery receipt by both the



officials. This constitutes the possession of the excess vacant land acquired.

22. Therefore, the learned Government Counsel would vehemently contend that, the excess land having been declared so, had been taken possession as early as in the year 1987. When that being so, the question of releasing the land to and in favour of the fourth respondent or presently the petitioner, who is the legal heir of the fourth respondent does not arise. She would also submit that, the said procedure of taking over the possession of the land since has been approved in number of cases and that has been uniformly adopted in every such nature of cases, the said procedure since has been followed, has to be accepted. Hence, the learned Government Counsel would contend that, the said position having been taken note of by the Government, the present plea raised by the petitioner to give the excess land to and in favour of the petitioner was rejected through the impugned order. Therefore, the impugned order would be sustainable in the eye of law and hence, the petitioner cannot seek any indulgence from this Court in the pretext of the possession has not been handed over by the petitioner or not being taken over by the respondents in the manner known to law. Hence, the learned Government Counsel submits that, the writ petition is liable to be rejected.

23. I have considered the rival submissions made by the learned counsel appearing for both sides and have gone through the materials placed on record.

24. Insofar as the ground raised by the learned Senior Counsel appearing for the petitioner that, at the time of the notification the petitioner has become major, despite the fact it was wrongly declared by the fourth respondent, who is the father of the petitioner, the petitioner was a minor, cannot be taken into account at this juncture for two reasons. Firstly, those issues have never been agitated either by the petitioner or by the fourth respondent at any point of time. Moreover, on the date when the Act came into effect, the petitioner was minor and only subsequently she became major. Therefore, at this juncture, that controversy cannot be gone into by this Court. Therefore, the said ground raised by the learned Senior Counsel is liable to be rejected. Accordingly, it is rejected.

25. However, the second ground raised by the learned Senior Counsel that, assuming that the land in question having been declared as excess land, where the land has not been taken over possession by the Government in the manner known to law especially under Section 11(5) and 11(6) of the Act, is the moot question to be answered.



26. In this context, though arguments and counter arguments have been made as stated supra by the learned Senior Counsel appearing for the petitioner as well as the learned Government Counsel for the official respondents and both sides judgments were cited, this Court is of the considered view that, the said issue has already been concluded in number of decisions passed by this Court, of course followed by the earlier decision of the Hon'ble Supreme Court.

27. In fact, I had an occasion to consider this issue exhaustively in a similar circumstance in the order dated 21.01.2019 made in W.P.Nos.11627 of 2004 and 15563 of 2004 in the matter of "C.N.Govindaraj -Vs- Principal Commissioner and Commissioner for Land Reforms and Another".

28. In the said case also, exactly similar situation was confronted, where it was the plea of the respondents therein that, possession had been taken over under Section 11(5) of the Act and in order to establish the same, the Government side had produced the land delivery receipt as has been produced in this case. After having considered the said ground, where the factual matrix which are similar to that of the present case, I had considered the line of judgments made in this regard. The first and foremost decision of the Hon'ble Supreme Court in this regard is State of U.P. -Vs- Hariram reported in 2013 (4) SCC 280. Following the said Hariram case of the Hon'ble Supreme Court, the decision of this Court, in A.N.Visalakshi and others v. The Special Commissioner, Urban Land Ceiling and Land Reforms and others reported in 2015 (5) CTC 823 has extensively discussed this issue and concluded that, this kind of symbolic taking over of the possession by mere recording of the land delivery receipt between ULC authorities and revenue authorities cannot be considered to be a proper move as per the procedure established under Section 11(5) of the Act. There are number of judgments passed in this line. In this context, I have considered some other judgments also in the same line or in slightly different line in the said order of mine dated 21.01.2019.

29. In order to appreciate those aspects, the relevant portion of the order dated 21.01.2019 in "C.N.Govindaraj -Vs- Principal Commissioner and Commissioner for Land Reforms and Another" is extracted hereunder.

"27. In respect of the ground urged so far as the claim of the respondents that, the possession has been taken peacefully or voluntarily from the petitioners are concerned, the law is well settled in this regard. In order to meet out this point, I can straightaway rely upon (2013) 4 SCC 280,



Hariram's case (cited supra), wherein the Hon'ble Apex Court has held as follows :

"Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that 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 authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of 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) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36. 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) of 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



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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. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of 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), then "forceful dispossession" under sub-section (6) of Section 10.

37. The 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 in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

28. Relying upon the aforesaid decision of the Hon'ble Apex Court, a Division Bench of this Court in 2015 (5) CTC 823 in the case of A.N. Visalakshi and others v. The Special Commissioner, Urban Land Ceiling and Land Reforms and others, has held as follows :

"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



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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 v. Hari Ram, 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 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 9(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) of 12 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



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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", 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) & (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, and order under Section 11(5) of the State Act was passed and Notice issued to the Landowners. The Land owner by representation requested for keeping 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 the Landowner had not surrendered possession pursuant to the order under



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served on the Respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the Competent Authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the Respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the Respondents must be accepted''.

30. In yet another Division Bench Judgment reported in 2012-4-LW 289, in the matter of The Government of Tamil Nadu & others v. M/s. Mecca Prime Tannery and others, a Division of this court has held 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



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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.

35. However, there are cases where although the competent authority issued the notice under Section 11(5) of the Act



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

31. In a similar circumstances, yet another Division Bench of this Court in 2013-1-LW 970, in the matter of The Competent Authority (ULC) & another v. Dr.S.Anandalakshmy, has held as follows:

"5. The learned single Judge after going through the pleadings, called for the files and perused the same and gave a specific finding that on going through the files and the statements made by the parties in the affidavit and counter affidavit, the stand of the appellants regarding taking possession of the property cannot be accepted. The learned Judge found that based on the materials available in the file during the period 1984, the writ petitioner was working as Director in Lady Irwin College, Delhi and at that point of time she authorised the writ petitioner's sister Kalyanalakshmi Bhanumurthy and that proceeding was concluded and the authorisation was not extended thereafter. The writ petitioner was corresponding with the authorities. The notice issued under section 11(5) of the Act seeking handing over of possession dated 30.5.1990 was replied stating that her residential address is No. A204, Manasarovar, 19 3rd Sea Ward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. The letter seeking exemption submitted by the writ petitioner was submitted and rejected on 25.7.1991 and on 20.6.1990 the land was said to be handed over to the sister of the writ petitioner. Learned Judge clearly held that it is not clear as to why Mrs. Kalyanalakshmi Bhanumurthy should sign the



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delivery receipt, as the address of the writ petitioner was clearly indicated in the letter dated 30.5.1990 and the Government also replied to the said address on 25.7.1991. The learned Judge also gave a finding that the respondent's mother was residing in the above address viz., No. A204, Manasarovar, 19 3rd Sea Ward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. The writ petitioner's mother viz. Jayalakshmi Subramanian died only on 30.8.1999 and the legal heirship certificate issued by the Tahsildar shows the above address mentioned, which apparently prove that the property was in possession and occupation of the writ petitioner and her mother. Learned Judge also noticed that the Corporation of Chennai granted demolition order for the old building for the purpose of reconstruction of the very same property. The sketch furnished also shows that the excess land is included within the premises of the writ petitioner's property as it is compounded and except with the permission of the land owner the access to the property is not feasible. Thus, possession is not taken from the writ petitioner or her mother and it was taken only from the neighbour. It is also stated in the order that when the writ petitioner and her mother are living in the very same premises, there was no justification on the part of the appellants to take delivery of the property from another person and admittedly the said Kalyanalakshmi Bhanumurthy alone signed the receipt who was not in possession of the property at that time. Thus, alleged possession taken from the said Kalyanalakshmi Bhanumurthy by obtaining her signature cannot justify taking over of possession. Thus, the learned Judge gave a finding based on the records that the plea that possession was taken over on 20.6.1990 cannot be accepted as valid and the possession continues to be with the writ petitioner. As possession has not been taken in a manner known to law, the proceedings initiated under Act 24 of 1978



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abates as per Section 4 of the Repeal Act 20 of 1999 and allowed the writ petition as prayed for.

...

9. From the above narrated facts it is clear that a paper/symbolic possession was taken in respect of the excess land not from the writ petitioner, who was the owner and also not from the mother of the writ petitioner, who was residing in the very same land and delivery of possession was recorded from writ petitioner's sister, who was not given any authority to deliver possession. Thus, the possession allegedly taken/recorded in the file is in contravention of Section 11(5) of the Act. Further Section 11(6) of the Act states that actual possession should be taken. In this case, the land is in actual possession of the writ petitioner and the Corporation of Chennai also granted demolition permission and excess land is inside the compound land, which goes to show that actual possession of the land is with the writ petitioner and not with the appellant department."

32. In a similar circumstances, where Section 11(6) was not invoked for completing the task of taking physical possession of the land by the ULC Authorities, a Division Bench of this Court in 2015-2-LW 391 in the matter of State of Tamil Nadu & others v. Sumathi Srinivas has held as follows :

"37. As far as the present case is concerned, since the Respondent/Petitioner is in possession and enjoyment of the land in question and admittedly, in view of the fact that the physical possession of the property was not acquired from her in the present case, we are of the considered opinion that the Respondent/Petitioner is entitled to avail the benefits of ingredients of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (20 of 1999).

38. In the upshot of qualitative and quantitative discussions as mentioned



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supra and also this Court bearing in mind the Letter No. 03.244/77 dated 10.01.1979 of Secretary (ULC & ULT), Board of Revenue, Madras-5 addressed to Saraswathi Bikeswaran, Madras - 59 wherein it was mentioned that the land in S. No. 72/4 and 99/1AB of Peerkankaranai Village measuring 2225.500 Sq. mts in toto, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976 was repealed and replaced by the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and also that, the said lands were reported to be within the ceiling limit prescribed under the new Act etc. and as such, no exemption from the urban ceiling land was necessary and further, no action in terms of Section 11(6) of the Act was taken with a view to secure actual physical possession of the land from the Respondent/Petitioner, this Court holds that the impugned orders of the 4th Respondent in Na. K.C.P. 81/97D under Section 9(5) and 14.12.98 in RC 1280/78D under Section 11(5) are clearly per se invalid and illegal one. Viewed in that perspective, the Writ Appeal fails."

33. I had an occasion to consider the similar issue raised by the land owners in yet another writ petition in W.P.No.32700 of 2003 in Sathiyavathi and others v. The Principal Commissioner and Commissioner of Urban Land Ceiling, Chepauk, Chennai and another by order, dated 27.08.2018, where after having considered some of the aforesaid Judgments and also by taking into account the factual matrix of that case, where also possession had not been taken by invoking Section 11 (6) of the Act, I have held as follows :

"26. As it has been rightly pointed out by the learned Senior Counsel appearing for the petitioners, the complete answer for this question, has been given by the Hon'ble Division Bench of this Court in A.N.Visalakshi case (cited supra), where the Division Bench has given a categorical finding, by following the decision of the Hon'ble Apex Court in the case of State of Uttar Pradesh Vs Hari Ram reported in



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2013 (4) SCC 280, and has held that, if a notice under Section 11(5) of the State Act was issued to the land owners and the land owner's representation to keep the proceedings pending, as the owner was trying to go for an Appeal, since it has not been considered, even in that case the claim of the respondents that they have taken over possession had been negated. The reason being that, even if notice under Section 11(5) was issued pursuant to which, the land was not delivered by the owner, then the possession has to be taken only in the manner as contemplated under Section 11(6) of the Act and in the absence of any such procedure being adopted under Section 11(6) of the Act to take forcible possession, then it cannot be construed that the possession has been taken by the authorities.

27. In the said case, which was dealt with by the Division Bench, in fact, 11(5) notice was issued. However the fact remains that in that case, in spite of 11(5) notice, possession was not delivered and therefore the next course of action which available to the authorities was to invoke 11(6), which they have admittedly not invoked and therefore the claim of the respondents that, they have taken possession was not accepted by the Hon'ble Division Bench. The case in hand is somewhat better than the one dealt with by the Division Bench, as in this case even 11(5) notice was not at all issued.

28. Merely because 11(3) notification was issued, the respondents cannot claim that they have taken possession. Even though they have given a date to take possession as 07.06.1999, absolutely there is no proof or documents filed before this Court to satisfy that they have issued notice either under Section 11(5) on voluntary basis or invoking 11(6) proceeded for taking possession forcibly from the owners of the land in the manner known to law. Therefore in the absence of these documents to show that the possession had been taken either under Section 11(5) or under Section 11(6) of



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the Act, it can be safely concluded that the possession as claimed by the respondents that, it was taken on 07.06.1999, cannot be accepted and therefore it has to be held in favour of the petitioners and against the respondents."

34. In view of the aforesaid Judgments, where the law has been well settled that, the mere possession claimed to have been taken by the ULC Authorities by issuance of Section 11(5) notice itself cannot be accepted.

35. Here in the case in hand, the record shows that, Section 11(5) notice was issued to one of the petitioner as the said notice had been received by the wife of one of the petitioner on 05.11.1996.

36. By relying upon the said serving of notice under Section 11(5) of the Act, the learned Additional Advocate General has made vehement contention that, once the notice under Section 11(5) is served either to the owner of the land or to the family member of the owner and of such service of notice under Section 11(5), no resistance had been shown by them, it can be deemed that they had agreed to give the possession of the land peacefully.

37. In that context, the learned Additional Advocate General would further submit that, since no opposition had been shown by the owners of the land after receipt of the notice under Section 11(5), it can very well be construed that, the owners of the land have been peacefully dispossessed and the possession had been in normal course taken by the respondents.

38. This Court is not able to accept the said proposition as projected by the learned Additional Advocate General.

39. The law as has been enunciated in Hari Ram's case (cited supra) had been reiterated in various subsequent decisions and in number of cases, more than one Division Bench of this Court has followed the dictum of Hari Ram's case and held in an unequivocal terms that, merely because Section 11 (5) notice was issued, it cannot be construed that



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the possession has been automatically taken by the respondents unless there had been a proof to show that the voluntary surrender of the possession had been taken place by the owners of the land, otherwise forcible possession had been taken by invoking Section 11(6) of the Act. This has been made abundantly clear in A.N.Visalakshi's case (cited supra).

40. In this case, after issuance of Section 11 (5) notice to one of the petitioners, nothing was forthcoming from the owners of the land and there has been absolutely no whisper to suggest that, the petitioners had voluntarily surrendered the possession. In fact the learned Additional Advocate General has pointed out that, the land delivery receipt, dated 29.08.1997 reads thus :

R.C.1879/95

LAND DELIVERY RECEIPT

Name of the District : M.G.R.District
Name of the Taluk : Poonamallee
Name of the Village : Paruthipattu

S.No.	Extent in	Boundaries			
		North	East	South	West
503/2B1	0.16.50	504 &	501/1A1	504/2C&	503/2A
		503/2A	& 2C	2B2	& 462

Name of the Land owner: Thiru Punniakotti Naicker,
Paruthipattu

The above extent has been delivered
by me on and taken possession of by the
Zonal Deputy Tahsildar.

Handed over	Taken over
Sd/ xxx	Sd/xxx
Deputy Tahsildar	Zonal Deputy Tahsildar
(Urban Land Tax)	
Poonamallee	



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41. I have perused the original also, where it is merely mentioned that, the Deputy Tahsildar, Urban Land Tax, Poonamallee handed over the possession and the Zonal Deputy Tahsildar of the Revenue Department had taken over the possession, as both the officials had put their signature in the land delivery receipt, dated 29.08.1997. This land delivery receipt has been heavily relied upon by the learned Additional Advocate General to mark that, the land has been delivered to the Revenue Authorities for best utilisation, as per the object of the Act.

42. This Court is not at all impressed with the said contention made by the learned Additional Advocate General on behalf of the respondents, for the simple reason that, the respondents are not able to establish the case that the possession of the land, either had been voluntarily delivered or had been taken over by forcible dispossession or eviction by invoking Section 11(6) of the Act.

43. In this context, the learned Additional Advocate General had argued that, once the 11(5) notice itself received peacefully and no resistance had been shown by either owners or holders or family members of the owners of the land, it can safely presumed or concluded that possession had been symbolically given by the owners of the land in peaceful manner. Therefore notice under Section 11 (6) does not arise in such cases.

44. If the said argument of the learned Additional Advocate General is accepted, there is no need to have the provision of Section 11(6) in the Act.

45. In every case, if Section 11(5) notice is received by the owners of the land or the family members or holders of the land, there ends the matter, i.e., the very serving of the notice under Section 11(5) itself amounts to deeming provision symbolising the smooth handing over of the possession voluntarily by the owner of the land.

46. The said argument advanced by the learned Additional Advocate General is completely opposing to the law laid down by the Hon'ble Apex Court followed by various decisions of the Division Bench of this Court cited supra.



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47. The land delivery receipt, dated 29.08.1997 extracted herein above cannot be construed or accepted as a symbol of delivery of possession and if we say in the language of the Division Bench of this Court in A.N.Visalakshmi's case, it is only a paper delivery not authorised by law.

48. Therefore this Court has no hesitation to hold that, there had been no delivery of possession either voluntarily or peaceful way of taking possession or delivery of possession under Section 11(5) of the Act or forcible eviction or taking over possession by invoking Section 11(6) of the Act. Accordingly, the arguments advanced in this regard on the side of the respondents are hereby rejected.

49. The aforesaid discussions would make it abundantly clear that, absolutely there is no notice under various provisions of the Act to one of the petitioners namely, Govindaraj, who is the petitioner in the first writ petition, who is the owner of the 27 cents of land by virtue of partition deed, dated 04.07.1979. In so far as other 27 cents of land, for which the petitioners in the second writ petition are the owners, even though some notices had been served on them, which they have accepted in their affidavit and notice under Section 11(5) was also served, as the same was received by the wife of the first petitioner in the second writ petition, absolutely there had been no document or proof to show that the possession of the land has been delivered voluntarily by the owners or holders of the land. Since it is the admitted case that Section 11(6) had not at all been invoked in this cases, there could be no chance of taking forcible possession and therefore the delivery receipt relied upon by the respondents is only a paper delivery not authorised by law.

50. The learned Additional Advocate General after conclusion of the arguments has circulated two Division Bench Judgments of this Court (1) W.A.No.756 of 2015 in the matter of The Principal Secretary to Commissioner, Land Reforms, Chepauk, Chennai-5 and two others v. B.Govindammal, dated 13.12.2017 and (2) Writ Appeal No.1496 of 2017 in the matter of The Assistant commissioner, Urban Land Tax / Competent Authority Urban Land Ceiling, Chennai -56 and three others v. D.Nagarajan, dated 28.06.2018.



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51. By relying upon these two Judgments, the learned Additional Advocate General had emphasised her submissions that, on issuance of Section 11(5) notice for delivery of possession and if the said notice under Section 11(5) is received by the owner or holder of the land, it shall be deemed that the possession had been taken over and once such possession has been taken over by the ULC Authorities and handed over to the Revenue Authorities, it can be very well construed that, the possession has been voluntarily taken over from the owner or holder of the land by the ULC Authorities and therefore the question of invocation of Section 11(6) does not arise in those cases.

52. I have gone through the said two Division Bench decisions also.

53. In the first decision, i.e., W.A.No.756 of 2015, the Division Bench has held at para 15, which reads thus :

"It is a well settled principle that notice served on the adult members of the family, shall be construed as a due service.

...

As far as the service of possession, notice under Section 11(5) of the Act is concerned, the notice was refused by the land owner, and it was hence served by way of affixture, which is a deemed service. The possession was taken by the Deputy Tahsildar and it was handed over to the Zonal Deputy Tahsildar on 15.06.1999, i.e., prior to the Repeal Act."

54. There is no quarrel on the principle that, once notice is served on the adult member of the family, it shall be construed as a deemed service. Here in the case in hand, as detailed above, in the first writ petition, notice has not been served to the petitioner. In so far as the second writ petition, notices have been served either to the first petitioner or the family members of the first petitioner.

55. Therefore in so far as the second writ petition is concerned, I have already held that the notice has been served and only in respect of the



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first writ petition, notice has not been served.

56. However the Division Bench at para 15 of the Judgment referred as extracted above has held that, Section 11(5) notice was refused by the land owner, therefore by affixture it is served, which is a deemed service and the possession has been taken over by the Deputy Tahsildar and it was handed over to the Zonal Deputy Tahsildar on 15.06.1999.

57. By accepting the said factual matrix, the Division Bench has held that, the possession has been taken over prior to the Repealing Act.

58. As I have already discussed, by relying upon various Division Bench Judgments of this Court following the dictum of the Hon'ble Apex Court in Hariram's case (cited supra), mere delivery of possession and handing over the same by the ULC Department to Revenue Department can only be construed as a paper delivery and it cannot be construed as a actual taken over possession of the land within the meaning of the said Act.

59. In respect of the second case, W.A.No.1496 of 2017 is concerned, the Division Bench in para 15 of the said Judgment has held that, the land acquisition proceedings were completed on 12.08.1994 by issuing notice under Section 11(5) of the Act. The possession of the acquired land was handed over on 19.12.1995.

60. The aforesaid fact of the said case would reveal two things, one is that, by issuance of Section 11(5) notice itself, the proceedings came to an end, as recorded by the Division Bench, therefore there was no need for notice under Section 11(6) in that case.

61. Secondly the possession of the acquired land was handed over on 19.12.1995. If the possession was handed over by the land owner or the holder of the land voluntarily and if there is enough proof shown that such voluntary possession has been given by owner or holder of the land, then it is very well be concluded that, the possession has been surrendered voluntarily by the owner or holder of the land, within the meaning of Section 11 (5) of the Act, therefore question of Section 11(6) in that case would not arise.



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62. However if there is no proof to show that volunteer surrender of possession has been taken place in the case in hand, certainly as per the law declared by the Hon'ble Apex Court, followed in number of decisions of Division Benches referred to above, Section 11(6) should have been invoked and forcible possession should have been taken and it should have been registered. In the absence of any such proof or contemplation under Section 11(6) of the Act, it cannot be construed that, the possession has been either voluntarily given by the owner of the land or had been taken forcibly by the respondents.

63. Therefore the decision of the two Division Bench Judgments referred to above, as cited by the learned Additional Advocate General would no way help the respondents to advance their case in the present context both in law as well as the facts of the present case and therefore the said two Division Bench Judgments cannot be made applicable to the facts of this case.

64. By virtue of these position, the petitioners are entitled to get the benefit of the provisions of the Repealing Act as has been held in number of cases of similar nature referred to above.

65. For all these reasons, this Court is of the view that the impugned proceedings initiated, contemplated / concluded under the provisions of the Act are vitiated. Therefore, they are liable to be quashed."

Almost in similar circumstances, yet another decision was made by the learned Judge of this Court, which was appealed through an intra-court appeal in W.A.No.3632 of 2019 by the respondents ie., the Principal Commissioner and Commissioner for Land Reforms. In that case also, very similar issue of taking over possession by registering the land delivery receipt was triggered. Considering those aspects the Division Bench has held as follows:-

12. Respondents have produced letters dated 27/2/1998, 21/3/1998 and 24/10/1998, and the same read as under:-



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From

To

Thiru.V.Srinivasan, B.Sc
Assistant Commissioner (ULT)
Poonamallee at 2, Sannathi Street
Poonamallee
Madras 56.

The Tahsildar
Ambathur

RC.No.3687/97/2 dated 27/2/98

Sir,

Sub: Tamil Nadu Urban Land (Ceiling and Regulation) Act 1975 - Madras Urban Agglomeration - Acquisition of excess vacant land measuring 2800 Sq. in Ayapakkam Village - held by Thiru. Mahendran Notification u/s.11(3) of the Act published - reg.

Ref: Notification u/s 11 (3) of the Act published in the Tamil Nadu Government Gazette dated 14/1/98 in Part VI Section I at page No.62

- - - - -

An extent of 2800 Sq.mts in S.No.11/2A 1B of Ayapakkam Village, Ambattur Taluk, Tiruvallur District has been acquired under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 as surplus vacant lands held by Thiru.Mahendran.

The Notification u/s 11 (3) of the Act was published the referenced cited. The Notice under Section 11 (5) of the said Act is being issued to the land holder. A copy of it is enclosed. I therefore, request that the possession of the land may please be taken over ~~from the urban land owner or~~ from the Deputy Tahsildar of this office and a copy of Land Delivery Receipt may be sent to this office early.

Competent Authority (ULC) &
Assistant Commissioner (ULT)
Poonamallee, Chennai 56

- - - - -

R.C.622/95/C
Dated 21/3/1998
(date written by hand)



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FORM VII
{See Rule 10 (3)}

Form of notice under sub-Section (5) of Section 11 regarding surrender or delivery of possession of excess vacant land acquired under sub-Section (3) of Section 11

To

Thiru Mahendran
Ayapakkam Village

Please take notice that the vacant land/lands specified in the Schedule below is/are vested with the State Government under sub-Section (3) of Section II of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 with effect on and from 1st February 1998. You are requested to surrender or deliver possession of the said land/lands to the Tahsildar, Ambattur Taluk within thirty days of the service of this notice.

2. if this order is not complied with, the said land/lands will be taken possession of the authority mentioned above after using such force as may be necessary.

3. If there are any construction, they may be removed before the date fixed above. If they are not removed by the owner, they will be removed by the Officer authorized in this behalf to take possession of the said land who shall sell them and keep the proceeds thereof in deposit in the name of the person, after deducting the cost of removal and other incidental charges."

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LAND DELIVERY RECEIPT

Name of the District: Thiruvallur
Name of the Taluk : Ambathur
Name of the Village : 73 Ayapakkam

S .No.	Extent (Sq.mts)	Descrip tion of land	Boundaries			
			North	East	South	West
11/2 A1B	028.0	Dry	10	11/2B	14	11/ 1, 11/ 2A2
			11/2A1A			11/ 2A3 , 11/ 2A1 A

Name of owner: Mahendran

The above extent has been delivered by me at 24/10/1998 and taken possession of by the Revenue Inspector, Ambathur.

Handed Over
Sd/-----

Taken Over
Sd/- ----

Deputy Tahsildar
Urban Land Tax
Poonamallee

Zonal Deputy Tahsildar
Revenue Inspector
Ambattur Firka
Ambattur Taluk

13. Form VII issued under Rule 10 for compliance of Section 11 (5) has been admittedly served by affixture. Admittedly, the land is a vacant land. There is nothing to show as to where the notice was affixed. In absence of any material placed before us, it cannot be accepted that there was affixture of notice for service under Section 11 (5) of the Ceiling Act. A perusal of the above letter dated 27/2/1998 would show that the second respondent has directed the Tahsildar to take possession from the Deputy Tahsildar and consequently, the Deputy Tahsildar has handed over the possession to the Zonal



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Deputy Tahsildar. The letter shows that the words "from the urban land owner" has been struck off, meaning thereby, the land was not taken from the land owners. What is more interesting is that the letter dated 27/02/1998 proceeds as if the land stand vested in the State under Section 11(3), notice under Section 11(5) is being sent and therefore possession of the land can be automatically taken. This approach is contrary to the law laid down by the Hon'ble Supreme Court.

14. A perusal of the above position would show that Section 10 (5) postulates that the land owner himself surrenders the possession. If the land owner does not surrender possession, then procedure under Section 10 (6) of the Ceiling Act has to be adopted. Section 10 (6) of the Ceiling Act, therefore, postulates that authorities must go to the land and take physical possession on the land itself. This procedure cannot be adopted while sitting inside the office of the authorities. Notice under Section 11 (5) of the Act was served, on the land owners only by affixture. There is nothing to show where the notice was pasted. There is no witness to show whether there was actual pasting or not. The possession certificate only shows that the land was handed over by the Deputy Tahsildar to the Zonal Deputy Tahsildar. As observed earlier, the words "from the urban land owner" has been struck off. There is nothing on record to satisfy us that the Government took physical possession of the property from the land owners. There are no witnesses to show that the officers went to the land physically and took over possession which is normally done in favour of independent witnesses. It looks as if the entire exercise of affixture and taking over of the possession of the land was done inside the office of the respondents. This Court is of an opinion that there has to be some form of material showing service of notice under Section 11(5) of the Ceiling Act having being done through affixture. There has to be some material to show voluntary surrender of possession. In the absence of any material, it cannot be presumed that there has been a voluntary surrender of the land. In the absence of voluntary surrender of the land, the State Government will have to resort to the procedure under Section 11(6) of the Ceiling Act. Admittedly, Section 11(6) of the Ceiling Act has not been resorted to. The stand of the State Government that unless there is a physical resistance, Section



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possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure."

18. The facts of the above said judgment are completely distinguishable from the facts of the present case. In *State of Assam Vs. Bhaskar Jyoti Sarma & Ors.*, (2015) 5 SCC 321, initially subsequent purchasers challenged the proceedings under the vesting Act. When they failed, the land owner came up to challenge the vesting. It is in that circumstances, paragraph 16 quoted above, has to be viewed. In the present case, the writ petitioners filed the writ petition after their appeal under the Ceiling Act was rejected, on the ground that on the passing of Repealing Act, the appellate authority had become functus officio. Therefore, it cannot be said that there was any delay on the part of the writ petitioners to approach the Court. Even according to the respondents, the land owner was Mr. Mahendran. The second respondent is the wife of Mahendran, who has succeeded to the estate. It cannot be said that a third party stranger or a subsequent purchaser is challenging the proceedings under the vesting Act or is claiming abatement of proceedings under the Repeal Act. The reliance on the judgment of the Hon'ble Supreme Court in (2015) 5 SCC 321 *State of Assam Vs. Baskar Jyoti Sarma & Ors.*, is therefore, misplaced.

19. The Government has also placed reliance on the following judgments:-

(i). *Sulochana Chandrakant Galande Vs. Pune Municipal Transport & Ors.*, (2010) 8 SCC 467

(ii). *State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, & 2 others Vs. T.V. Antony* 2018 SCC online Mad 541.



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(iii). State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, & 2 others Vs. V.R.Ramanathan, W.A.No.2485 of 2013.

(iv). M/s. Annai Builders Real Estate Private Limited, rep. by its Authorised Signatory, Chennai Vs. The Special Commissioner and Commissioner for Land Ceiling and Land Tax, Chepauk, Chennai & 3 Rs., W.A.No.1067 OF 2017.

(v). The Special Commissioner, Commissioner of Land Reforms, Chennai & 2 Ors., Vs. N.Vijayalakshmi, W.A.No.1667 of 2017.

(vi). Mani Srinivasan Vs. The Secretary, Revenue Department, Government of Tamil Nadu, Chennai & 4 Ors., W.A.No.600 of 2016.

(vii). Balwant Narayan Bhagde Vs. M.D.Bhagwat & Ors., (1976) 1 SCC 700.

(viii). State of Tamil Nadu, rep. by the Secretary to Government, Revenue Department, Chennai 9 & 5 Ors., Vs. M/s.Technolab Instruments (Madras), rep. by its Proprietor, Chennai, W.A.No.651 of 2016.

(ix). The Assistant Commissioner, Urban Land Tax/Competent Authority, Chennai & 3 Ors., Vs. D. Nagarajan, W.A.No.1496 of 2017.

(x). The Principal Secretary to Commissioner, Land Reforms, Chepauk, Chennai & Ors., Vs. B.Govindammal, 2017 SCC Online Mad 22013.

(xi). S.Balasubramaniam & Ors., Vs. The Special Commissioner and Commissioner of Land Reforms, Chennai & 2 Ors., 2009 SCC Online Mad 1485.

(xii). State of Assam Vs. Bhaskar Jyoti Sarma & Ors., (2015) SCC 321.

20. None of these judgments are identical to the facts of the present case.

(a). In Sulochana Chandrakant Galande Vs. Pune Municipal Transport & Ors., (2010) 8 SCC 467, the Hon'ble Supreme Court was dealing with the question of vesting under the Ceiling Act. In that case, the possession was taken over by the Government and handed over to the Pune Municipal Transport in the year 1978 - 79. A Bus depot was constructed on the part of the land in the year 1988 i.e., after ten years and the revision petition was filed in the year 1998, i.e., after twenty years of the possession. The facts in the present case are entirely different. In the light of the facts of that case, the Hon'ble Supreme Court, held that the Repealing Act would not apply. In that case, the question regarding actual



physical possession being handed over did not arise, since a bus depot had been constructed on a part of the land which had been taken over. The said judgment is therefore, distinguishable on facts.

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(b). Similarly, the case of State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, & 2 others Vs. T.V.Antony 2018 SCC online Mad 541, is also misplaced. The petitioner in this case was a subsequent purchaser. The sale in favour of the writ petitioner therein was therefore, void.

(c). The decision rendered in State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, & 2 others Vs. V.R.Ramanathan, W.A.No.2485 of 2013, is also misplaced. In this case, the land owner himself had admitted that he had sold the land to third parties and the third parties had encroached over the land. Since the land was sold, the case will not apply to the facts of the present case.

(d). The reliance of The Special Commissioner, Commissioner of Land Reforms, Chennai & 2 Ors., Vs. N.Vijayalakshmi, W.A.No.1667 of 2017, is misplaced in as much as the only question that was discussed was whether there was any proceeding pending on the date of the commencement of the Repealing Act or not. The issue regarding service of notice under Section 11 (5) or the need of following the procedure under Section 11 (6) was not discussed.

(e). The case of Mani Srinivasan Vs. The Secretary, Revenue Department, Government of Tamil Nadu, Chennai & 4 Ors., W.A.No.600 of 2016, is also distinguishable on facts. The proceedings under the Ceiling Act, concluded in 1988 and the land had been allotted to Slum Clearance Board. The writ petitioner is a third party purchaser, who approached for regularisation of his purchase of the land in the year 1988 only in 2010. The writ petition by a third party purchaser was therefore, not maintainable.

(f). The case of Balwant Narayan Bhagde Vs. M.D.Bhagwat & Ors., (1976) 1 SCC 700, does not deal with the effect of the Repealing Act nor does it deal with the Vesting Act, but deals with Land Acquisition Act. The provisions not being para materia are not applicable to the present case.



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(g). State of Tamil Nadu, rep. by the Secretary to Government, Revenue Department, Chennai 9 & 5 Ors., Vs. M/s. Technolab Instruments (Madras), rep. by its Proprietor, Chennai, W.A.No.651 of 2016, was relied on by the State Government is also not applicable in as much as the respondent/writ petitioner in the said writ appeal was a third party purchaser who had no right to challenge.

(h). The Assistant Commissioner, Urban Land Tax/Competent, Urban Land Ceiling & 3 Ors., Vs. D.Nagarajan, W.A.No.1496 of 2017, The Principal Secretary to Commissioner, Land Reforms, Chepauk, Chennai & Ors., Vs. B.Govindammal, 2017 SCC Online Mad 22013 and S.Balasubramaniam & Ors., Vs. The Special Commissioner and Commissioner of Land Reforms, Chennai & 2 Ors., 2009 SCC Online Mad 1485, are distinguishable on facts. In the said cases, the High Court, had looked into the files and came to a conclusion that on the requirements under the Ceiling Act had been strictly and meticulously followed unlike in the present cases, the learned Single Judge after going through the records found that the actual physical possession has not been taken over and the Government has not produced any records to substantiate the same.

(i). In M/s. Annai Builders Real Estate Private Limited, rep. by its Authorised Signatory, Chennai Vs. The Special Commissioner and Commissioner for Land Ceiling and Land Tax, Chepauk, Chennai & 3 Rs., W.A.No.1067 OF 2017, a Hon'ble Division Bench of this Court has observed as under:-

"There was no resistance for taking possession by the Government and under the said circumstances, the question of taking forcible possession by invoking Section 11 (6) of the Act does not arise."

The said pronouncement is contrary to the law laid down in the case of State of Uttar Pradesh Vs. Hari Ram {(2013) 4 SCC - 280}, which states that in case possession is not delivered under Section 11(5) of the Ceiling Act, then actual physical possession must be taken by the authorities. The judgment of the Hon'ble Supreme Court in Hari Ram (supra) continues to hold the field and has not been overruled by a Larger Bench.



21. In view of the above, the Writ Appeal is dismissed. No Costs."

30. In these decisions of the Hon'ble Supreme Court right from Hariram case till the latest decision referred to above in W.A.No.3632 of 2019, the law has been well settled that, there must be delivery of possession pursuant to Section 11(5) notice by the land holder, failing which it is open to the respondent ULC authorities to take recourse of invoking the provisions under Section 11(6) of the Act for taking forcible possession or forcible dispossession of the land holder by using force.

31. Here in the case in hand, it is the definite stand of the respondents that, pursuant to the Section 11(5) notice dated 07.09.1987 since the fourth respondent had not come forward to surrender the possession, as per the procedure they adopted already in number of cases, the ULC authorities and the revenue authorities had entered into a land delivery receipt on 19.11.1987 that symbolises the handing over and taking over of the possession of the land in question and therefore, that can be construed as taking over or handing over of possession under Section 11(5) of the Act.

32. This position has been dealt with in number of cases, which was readily rejected or negated in all those decisions.

33. Assuming that there is no surrender of possession by smooth sailing ie., peaceful taking over of the possession under Section 11(5), forcible dispossession could have been taken place, for which Section 11(6) could have been invoked by the respondents. However, it is not the case of the respondents that, they invoked Section 11(6) and they stick on that they have taken over by recording land delivery receipt. Except the land delivery receipt dated 19.11.1987, no other document has been filed before this Court to establish that, they had taken over possession of the property. In order to have a ready reference, the entire land delivery receipt is extracted hereunder.

"

LAND DELIVERY RECEIPT

Name of the District	:	Chengalpattu
Name of the Taluk	:	Saidapet
Name of the Village	:	Keelakattalai

S.No.	Extent	Description of the land
252/6B2	0-01.00	North by S.No.252/6B1 East by S.No.252/6B1 South by S.No.252/4A3



Name of the Owner : Thiru Joseph Leo Miranda
Plot No.955, 39th Street
Korattur Housing Board Colony
Korattur, Madras - 600 080

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The above extent of vacant land delivered by me
and taken possession of the above land by the
Revenue Inspector, Alandur.

Handed Over
Sd/-

Taken Over
Sd/-

Deputy Tahsildar
URT

RI, Alandur"

34. Similar land delivery receipts had been dealt with in all these cases referred to above and therefore, after having referred to these kind of land delivery receipts, the plea of the ULC authorities for taking over the land and handing over the same to the revenue authorities since had been negated, once again the very same move cannot be approved by this Court. Therefore, this Court has no hesitation to hold that there was no handing over of the possession of the land in the manner known to law especially in the context of Section 11(5) and Section 11(6). Therefore, on that count the ULC proceedings initiated against the original land holder fourth respondent and now against the petitioner being the only legal heir, gets vitiated.

35. As a sequel, the petitioner is entitled to get back the land in question, which was declared to be excess under the ULC Act as admittedly the possession is physically available only with the petitioner, as there has been no contra evidence produced before this Court to establish that the physical possession has been in the hands of the respondents except the land delivery receipt dated 19.11.1987.

36. Therefore, in view of the above said discussion and for the reasons stated above, this Court is inclined to pass the following order.

- That the impugned order dated 16.10.2002, 53607/Na.Nil-2/2000-2 is quashed.
- Consequently, the land acquisition proceedings under the Urban Land Ceiling Act insofar as the land in question to the extent of 100 Sq.m in Survey No.252/6B2 in 155, Keelkattalai Village, Tambaram is vitiated or invalid.



- Therefore, the petitioner being the legal heir of the fourth respondent is entitled to inherit the property in question and to enjoy the same in the manner known to law.

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37. With the above orders, this writ petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

- 1.The Secretary to Government, Revenue Department,
Government of Tamilnadu,
Fort St.George, Chennai 600 009.
- 2.The Special Commissioner and Commissioner for Land Reforms,
Chepauk, Chennai 600 005.
- 3.The Thasildar, Office of the Thasildar,
Tambaram at Adambakkam,
Chennai 600 088.

+1cc to the Government Pleader Sr No.36583

W.P.No.14000 of 2004

KSM (CO)
PR (07/10/2021)