



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM

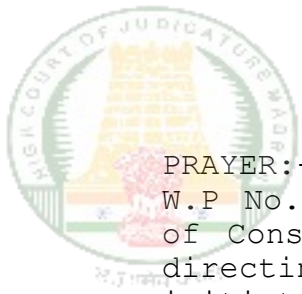
THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.1665 to 1672 of 2015,
3547 to 3550 of 2015,
3554 to 3556 of 2015

A.Justin Veeradhas	...Petitioner in W.P.No.1665 of 2015
K.Santhamurthy	...Petitioner in W.P.No.1666 of 2015
P.N.Venkatesan	...Petitioner in W.P.No.1667 of 2015
R.Ganapati Jothimani	...Petitioner in W.P.No.1668 of 2015
I.Alfred Swetcher	...Petitioner in W.P.No.1669 of 2015
K.Shanmugam	...Petitioner in W.P.No.1670 of 2015
P.Soman	...Petitioner in W.P.No.1671 of 2015
B.Ragavan	...Petitioner in W.P.No.1672 of 2015
M.Mathias	...Petitioner in W.P.No.3547 of 2015
J. Beulah Shanthi Nalinibai	...Petitioner in W.P.No.3548 of 2015
E.Guna	...Petitioner in W.P.No.3549 of 2015
E.Veeraraghavan	...Petitioner in W.P.No.3550 of 2015
S.Deivasigamani	...Petitioner in W.P.No.3554 of 2015
J.Rukmani	...Petitioner in W.P.No.3555 of 2015
S.Kamatchi	...Petitioner in W.P.No.3556 of 2015

Vs

1. The Collector,
Thiruvallur,
Thiruvallur District.
 2. The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Poonamallee, Chennai - 600 056.
 3. The Tahsildar,
Maduravoyal,
Chennai - 600 095.
- ...Respondents in All WP's



PRAYER:-

W.P No.1665 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioner's land in Plot No.48, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh Patta to the petitioner.

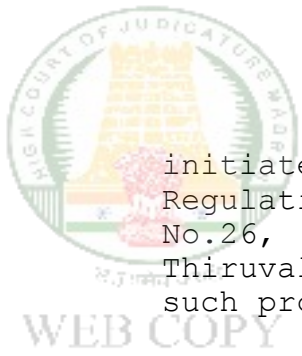
W.P No.1666 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.42, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner.

W.P No.1667 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.53, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner.

W.P No.1668 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.24, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner.

W.P No.1669 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.51, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner

W.P No.1670 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents to refrain from pursuing any action



initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.26, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner.

W.P No.1671 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.49, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner.

W.P No.1672 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the Petitioners Land in Plot No.50, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said land as free from any such proceedings and issue fresh patta to the petitioner.

W.P No.3547 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.27, Survey No. 257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the petitioner.

W.P No.3548 of 2015: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.20-B, Survey No. 257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the petitioner.

W.P No.3549 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.47 Part, Survey No. 257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the



petitioner.

W.P No.3550 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.25, Survey No. 257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the petitioner.

W.P No.3554 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.18, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the petitioner.

W.P No.3555 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.6 & 30, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the petitioner.

W.P No.3556 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus Directing the respondents to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the petitioners Land in Plot No.22, Survey No.257, Ayappakkam Village, Maduravoyal Taluk, Thiruvallur District and to treat the said Land as free from any such proceedings and issue fresh Patta to the petitioner.

For Petitioner : Mr.P.Rajendran
in all WP's

For Respondents : Mr.M.R.Gokul Krishnan,
in all WP's Government Advocate

C O M M O N O R D E R

The case of the petitioners in all writ petitions is that all the petitioners have purchased their respective plot in Survey No.257 situated at Ayapakkam Village, Maduravoyal,



Tiruvallur District from the total extent of 4.68 acres. The said land was originally belonged to one Mohana Bai and she had purchased the said land in the year 1967 from Backiammal and others. She formed a lay out under the name 'Jain Nagar' and the same was approved by the Deputy Director of Town Planning, Madras in LPDM / DDTP No.45 of 1974. In the said approved lay out, the petitioners have purchased their respective plots in the year 1991 by the registered sale deed. After purchasing their respective plots they constructed a house and they have been residing in their respective houses. Their houses also assessed to the property tax and they were given Electricity Service Connection and all other amenities from the respective departments. Thereafter, they were also issued with patta for their respective plots.

2. In fact, some of the purchasers subsequently sold their plots to others and such sale transactions were also registered. While the subsequent purchasers approached for transfer of patta in their names, they were informed that the subject lands were already acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter called "Act"). Though the proceedings were completed the physical possession of the said property is with the respective petitioners and therefore, the entire proceedings initiated under the Act is lapsed. Therefore, the petitioners filed these writ petitions directing the respondents to refrain from pursuing any action initiated under the Act in respect of their respective plots.

3. The learned counsel for the petitioners submitted that pursuant to the proceedings under the Act, the possession of the lands have not been taken over by the Government even till today. Therefore, the Government has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under Section 10(5) or forceful dispossession under Section 10(6) of the Act. The Government failed to establish any of those situations and as such, the petitioners can claim the benefit under Section 3 of the Repeal Act.

4. He further submitted that a symbolic or paper possession is not a valid possession to sustain the proceedings initiated under the Act. The symbolic possession is not valid without taking physical possession and it cannot sustain the proceedings initiated under the Act. The mere vesting of the land under Section 10(3) would not confer any right on the State Government to have defacto possession in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession as contemplated under Section 10(6) of the Act. The symbolic possession is totally different and distinct from the physical possession and it is only a paper



possession which cannot be treated as that of possession as required under the Act.

5. Per contra, the respondents filed counter and submits that all the petitioners are subsequent purchasers and as such their purchase itself is hit by Section 6 of the Act and the same is not valid. They have no locus standi to question the acquisition proceedings, on the ground that they were not issued any notice. The petitioners formed Jain Nagar Welfare Association on behalf of the Association one of the member namely one Jyothimani received the final statement under Section 10(1) of the Act. Later the appeal under Section 33 of the Act filed before the Special Commissioner / Commissioner of Land Reforms by the Association was disposed of on 06.05.1994 confirming the orders passed by the Competent Authority / second respondent. Thereafter, the application under Section 21(1)(b) was also rejected by the Government by an order dated 20.11.1997 and directed to apply for allotment of the acquisition land. Therefore, the petitioners had knowledge about the acquisition proceedings.

6. The original land owner Tmt.Mohanabai was holding the land as on 03.08.1976 admeasuring 18950 sq.mts. in Survey No.257 of Ayapakkam village. Therefore, a notice under Section 9(4) along with statement under Section 9(1) was issued to her dated 22.07.1971, thereby calling upon her objections, if any, for the proposed acquisition of excess vacant land admeasuring 18450 sq.mts. after allowing 500 sq.mts. as family entitlement area. It was served by affixture and no objection was received, as such the orders under Section 9(5) of the Act were passed on 09.03.1992 to acquire the excess vacant land of 18450 sq.mts. The orders were also served by affixture on 12.05.1992. The final statement under Section 10(1) of the Act was issued on 21.04.1993 and since the said notice was refused by the owner and the same was served to the purchaser on behalf of the Jain Nagar Welfare Association on 26.06.1993.

7. The Notification under Section 11(3) of the Act was issued on 29.07.1998 and the same was published in the Tamil Nadu Government Gazette dated 26.08.1998 thereby vested the land with the Government with effect from 01.09.1998. Thereafter, the notice under Section 11(5) of the Act was issued on 28.09.1998 and the same was also served by affixture in the land. Thereafter, the possession of the excess vacant land 18450 sq.mts in Survey No.257/2 was taken over on 11.06.1999 and handed over to the third respondent on 24.06.1999. The members also filed a suit in O.S.No.3 of 2001 on the file of the District Munsif Court, Ambattur as against the respondents. Pending suit, the present writ petitions have been filed after lapse of 16 years.



8. The land which was approved by the Director of Town Planning, Madras was not approved by the local body and hence the notice under Section 9(4) of the Act with the Statement under Section 9(1) of the Act was issued on 22.07.1991. However, since no objections have been filed and orders were passed under Section 9(5) of the Act on 09.03.1992 .

9. The learned Government Advocate relied upon the Judgment of this Court dated 14.03.2013 passed in W.P.No.759 of 2007 filed by Thiru.Mohamed Aadil Arshi and 4 others -vs- The Competent Authority and Assistant Commissioner Urban Land Tax and Land Ceiling, Thiyagaraya Nagar, Chennai - 24 observed as follows:

"...At any rate, the possession, if any, that would have been secured by the petitioner on the advent of the sale deed in his favour would amount to a possession of a trespasser, since the vesting of the title on the Government became complete the taking possession under Section 11(6), which was done on 30.01.1990, as evidenced by the records available in the file produced for the perusal of the Court.... Before ever the Repeal Act came in to force, the possession was taken by the Government thereby the vesting of the title to the property with the Government was complete..... The proceeding of the competent authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 came to an end confirming the title on the Government on the date of taking possession of the land.....the vesting of the property with the Government in this case is confirmed by the exception clause found in section of the Repeal Act. Accordingly the Writ Petition is dismissed...."

10. This Court held that the petitioners are nothing, but trespassers, since the subject lands were already vested with the Government, and completion of taking possession of lands under Section 11(6) of the Act were already over, the respondents prayed for dismissal of these writ petitions.

11. Further stated that the notification under Section 11(3) of the Act was issued on 29.07.1998 and published in Tamil Nadu Government Gazette on 26.08.1998 thereby vesting the excess land with the Government with effect from 01.09.1998 free from all encumbrances. Subsequently, the notice under Section 11(5) of



the Act was issued to the said Mohanabai on 28.09.1998 to deliver the possession of the excess vacant land. There was no refusal on the part of her to handover the possession of the acquired land. Therefore, there was no necessary to use of force or draw proceedings under Section 11(6) of the Act. Hence the possession of the excess vacant land was taken over on 11.06.1999 and the same was handed over to the Revenue Authorities on 24.06.1999.

12. Heard Mr.P.Rajendran, learned counsel for the petitioners and Mr.M.R.Gokul Krishnan, learned Government Advocate for the respondents.

13. In all the writ petitions the petitioners have raised the following common grounds:

The petitioners have purchased their respective plots even before the proceedings initiated under the Tamil Nadu Urban Land Ceiling and Regulation Act, 1978. Even then, they were not served with any notice. The actual and physical possession of the respective plots were never taken by the Government either before or after the repealing of the Act (which was repealed on 18.03.1999) and hence the entire proceedings initiated under the Act have lapsed. When the Government failed to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under section 10(5) or forceful dispossession under Section 10(6) of the Act, the petitioners can claim the benefit under Section 3 of the Repeal Act. The symbolic or paper possession is not a valid possession to sustain the proceedings initiated under the Act. The mere vesting of the land under Section 10(3) would not confer any right on the State Government to have defacto possession in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession under Section 10(6) of the Act.

14. In this regard, the learned counsel for the petitioner relied upon the Judgment before the Hon'ble Division Bench of this Court reported in 2014(8) MLJ 741 Government of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, Chennai - 9 and others -vs- Aalim Muhammed Salegh Trust, Rep. by its Managing Trustee, Shaik Athullah, Chennai - 2. held as follows:

"10. In our considered view, all the above issues need not be gone into at this stage, as the only relevant issue for consideration is as to whether the land owner was dispossessed by the appellants in pursuant to the impugned proceedings or not. For such purpose, we have perused the files. The files disclose that a notice under Section 11(5) of the Act was issued on



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the said Baskara Pillai on 28.12.1992, calling upon him to surrender or deliver possession of the subject matter lands. Further, the competent authority addressed the District Collector of the then Chengalpeta-MGR District at Kancheepuram, through proceedings dated 28.12.1992, requesting that the Tahsildar, Saidapet may be instructed to take possession of the lands from the urban land owner. Similar proceedings were also addressed to the Tahsildar of Saidapet on the very same day. Thereafter, there is nothing in the files to show that the land owner has either voluntarily surrendered the possession or the authorities have taken steps to take physical possession of the lands forcibly as per the procedures contemplated under the Act. On the other hand, only a Land Delivery Receipt, dated 24.2.1994 is available in the files, which shows that the subject matter lands have been handed over by the Revenue Inspector, Poonamallee and taken over by Firka Revenue Inspector, Mori Firka. The said Land Delivery Receipt does not show anywhere that the said Baskara Pillai delivered the possession of the lands on his own or he was dispossessed forcibly, except showing him as the owner. Therefore, it is evident from the perusal of the files that only a symbolic or paper possession was taken by the Revenue officials of the appellants and factual and physical possession was never taken from the hands of the original owner or from the writ petitioner at any point of time.

11. Whether symbolic or paper possession is a valid possession to sustain the proceedings initiated under the Act, has already come up for consideration before this Bench in Writ Appeal No.949 of 2013 and by judgment dated 3.9.2014, we have observed in paragraphs 8 to 10 as follows:

"8. The issue as to whether taking over of the land by symbolic possession can be construed as possession taken and based on such act, whether the authorities can claim right over the land after the Repeal Act, has already been considered and decided by the Hon'ble Supreme Court in the case of State of



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State Government and not possession of the land. After the right, title and invested 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 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. "

10. From the perusal of the above said decisions, it is very clear that the mere vesting of land under sub-section (3) of Section 10 of the said Act would not confer any right on the State Government, in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession under sub-section (6) of Section 10 of the said Act. Symbolic possession is totally different and distinct from physical possession. It is only



a paper possession, which cannot be treated or construed as that of possession as required under the Act."

15. The Hon'ble Division Bench of this Court held that mere vesting of land under Section 10(3) of the Act would not confer any right on the State Government in the absence of any proof that there was voluntary surrender of vacant land or there was a forceful dispossession under Section 10(6) of the Act. In the case on hand, the petitioners are in factual and physical possession of their respective houses. After constructing their houses, all are assessed with property tax and provided with all amenities such as Electricity Connection, Water Connection etc.

16. According to the respondents, the notification under Section 11(3) of the Act was issued on 29.07.1998 and thereby the excess land vested with the Government with effect from 01.09.1998 free from all encumbrances. Thereafter, they issued notice under Section 11(5) of the Act to the said Mohanabai on 28.09.1998 to deliver the possession of the excess vacant land. There was no refusal on the part of her and hence there was no necessary to use of force or draw proceedings under Section 11 (6) of the Act. Hence the possession of the excess land was taken over on 11.06.1999 and handed to the Revenue Authorities on 24.06.1999. Thus, the respondents have taken only symbolic possession or paper possession from the petitioners. The actual and physical possession was never taken from the petitioners at any point of time. It cannot be treated or construed as that of possession as required under the Act.

17. All the petitioners have purchased their respective plots before 1991 from the original land owner namely Mohanabai, W/o.Ganeshmal Sowcar Jain. She owned property to an extent of 4.68 acres and formed a lay out in the name of Jain Nagar. It was duly approved by the Deputy Director of Town Planning, Madras in LPDM/DDTP No.45 of 1974. Thereafter, all the house plots were sold out to various persons in which, the petitioners have purchased their respective plots for valid sale consideration by the registered sale deed.

18. In fact, all the purchasers were issued patta and the Revenue Documents were mutated in their names. Even then, the respondents failed to issue notice to the petitioners. Admittedly, a notice under Section 9(4) along with the statement under Section 9(1) of the Act were issued to the original land owner namely Mohanabai. The said notices were served by affixture, since her present address could not be found. Thereafter, the order was passed under Section 9(5) of the Act and the same was also served by affixture on 12.05.1992. In



fact, the final settlement under Section 10(1) of the Act was issued on 21.04.1993 was served to one of the purchasers namely Jothimani on behalf of the Jain Nagar Welfare Association on 26.06.1993.

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19. Immediately, the Secretary of Jain Nagar Welfare Association had filed an appeal under Section 33 of the Act before the Special Commissioner and Commissioner of Land Reforms on 22.07.1993 challenging the Acquisition Proceedings. However, it was rejected by an order dated 06.05.1994 and liberty was given to the association to apply to the Government under Section 21(1)(b) of the Act. Accordingly, the Association filed an application on 12.06.1994 before the Secretary to the Government, Revenue Department, requesting exemption under Section 21(1)(b) of the Act. However, the Government by the letter dated 20.11.1997 rejected the said request and directed individual purchaser to request for allotment under Section 24 of the Act. Therefore, the respondents had knowledge about the approved lay out and purchase of all the house plots by the various persons. Even then, the respondents did not take any steps to serve the notice under Section 11(3) of the Act to the original owners namely the plot purchasers. Admittedly, subsequent notice was served by affixture in the name of the original owner.

20. As stated supra, all the petitioners have purchased their respective house plots even before the proceedings initiated under the Act namely before the issuance of notice under Section 9(4) and 9(1) of the Act dated 22.07.1991. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Division Bench of this Court in W.A.No.3632 of 2019 dated 20.01.2020 The Principal Commissioner and Commissioner for Land Reforms Chepauk, Chennai 5 and another -vs- B.Booshanam and another, wherein this Court held as follows:

"11. It is the submission of the State Government that since Mr.B.Mahendran did not raise any objection at any point of time and he also did not participate in the entire proceedings and he also did not raise any objection after the notice under Section 11 (5) of the Ceiling Act was issued, there is no necessity of invoking the procedure under Section 11 (6) of the Ceiling Act. The stand of the State Government in their counter is that since notice under Section 11 (5) of the Ceiling Act was affixed, procedure under Section 11 (6) of the Ceiling Act, need not be followed. It is



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also the stand of the State Government that since there was no obstruction, there is no necessity to follow Section 11 (6) of the Ceiling Act. It is also contended that the writ petition has been filed after five years of the possession being taken over and therefore the writ petition is hit by laches. All these contentions cannot be accepted. Admittedly the land is a vacant land. It is not known as to how affixture was done on the vacant land. Admittedly, the affixture was done only because the whereabouts of the land owner Mr. Mahendran husband of second respondent was not known. Peaceful dispossession would only mean where the land owner himself hands over vacant possession. Section 11 (6) of the Ceiling Act, does not by way of talk of use of force by the land owner. Section 11 (6) deals with failure to comply with the notice under Section 11 (5) and 11 (6) is categorical that if a person refuses or fails to comply with an order, then possession has to be taken by resorting to Section 11 (6) of the Act. In the facts of this case, the learned Single Judge, after perusing the entire material on record found that there is no evidence that the Government has taken possession of the land in question. Even before us, no material has been produced as to how, where and before whom notice under Section 11 (5) of the Ceiling Act, was affixed. The material also indicates that possession has been given and taken over by Government officials. There is no material to show in whose presence, the possession of the land was taken over. There are no independent witnesses whose signatures have been affixed to substantiate that the officers went to the site to take the possession. The mere silence on the part of the land owner or the fact that the land owner did not raise any objection or participate in the proceedings cannot absolve the Government from following the procedure under Section 11 (6) of the Ceiling Act. It is settled law that unless actual physical possession of the land had not been taken over, the proceedings taken under the Ceiling Act stood abated on the



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coming into force of the Repeal Act.

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 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



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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 11(6) need not be resorted to at all, cannot be accepted."

21. The Hon'ble Division Bench of this Court elaborately dealt with about the services by affixture and also the notice under Sections 10(5) and 10(6) of the Act. Further held that 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. In the case on hand, as stated supra, the petitioners are in possession and enjoyment of their respective house plots and the respondents have never taken physical possession from the petitioners. Section 10(5) of the Act shows that the land owner herself surrenders the possession. If the land owner does not surrender the possession, then procedure under Section 10(6) of the Act has to be adopted. Section 10(6) of the Act, therefore, postulates that authorities must go to the land and take physical possession of the land itself.

22. The notice under Section 10(5) was served by affixture. According to the respondents, there was no need to go to exercise the provision under Section 10(6) of the Act, since the possession of land was taken over on 11.06.1999, as there was no refusal on the part of the land owner. It is unfortunate to state that when the petitioners categorically proved their possession and enjoyment of the respective house plots, the



statement of the respondents are utter lie that they have taken over the possession of the lands inside the office of the respondents and nothing else.

23. The respondents raised objections that the writ petitions are hit by laches since the writ petitions are filed after lapse of 16 years. In the same Judgment as cited supra, the Hon'ble Division Bench of this Court held as follows:

"15. The contention that the writ petition is hit by laches cannot be accepted. There is no evidence to show that notice under Section 11(5) of the Ceiling Act was served on Mr. Mahendran through affixture. There is also no evidence that the officials went to the land to take over possession under Section 11(6) of the Ceiling Act. In the absence of the same, it cannot be presumed that there was knowledge on the part of the writ petitioners that the possession of the land had been taken over. The learned Single Judge has come to a conclusion that the possession of the land is still with the land owners and as stated earlier, other than documents showing possession being taken only on paper, there is nothing to show that actual physical possession has been taken by the Government. In such event, the principle of laches cannot be invoked by the Government to defeat the writ petition."

24. In view of the fact that possession of the land is still with the petitioners and as such the principle of laches cannot be invoked to defeat the case of the petitioners. The respondents further contended that the petitioners are encroachers since they are subsequent purchasers. It is seen that all the petitioners have purchased their respective plots even before 1991 namely before issuance of notice under Section 9(4) and 9(1) of the Act dated 22.07.1991, that too, the said notices were served by affixture on the erstwhile land owner. Even according to the respondents, one of the purchasers namely Jothimani had received notice on 26.06.1993 and he filed an appeal before the Special Commissioner for Land Reforms. Thereafter, the association was directed to seek extension from the Government and accordingly they requested for exemption under Section 21(1)(b) of the Act and the same was rejected.

25. Even then, the respondents have failed to serve notice to the purchasers. Thus, it is clear that the petitioners are the real land owners and they were not served with any notice and they have been in possession and enjoyment of their plots



even till today. Therefore, the petitioners are in possession and enjoyment of their respective plots when the Repeal Act came into force. In the afore-stated facts and circumstances, this Court is of the view that the proceedings under the Act have become lapsed since the physical possession of the lands were never taken by the respondents either before or after the repealing of the Act (which was repealed on 18.03.1999).

26. The respondents are directed to refrain from pursuing any action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of their respective property and to treat the said property as free from any such proceedings. The third respondent is directed to issue fresh patta to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

27. Accordingly, all the writ petitions are allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Collector, Thiruvallur, Thiruvallur District.

2. The Assistant Commissioner,
Urban Land Ceiling and Urban Land Tax,
Poonamallee, Chennai - 600 056.

3. The Tahsildar, Maduravoyal, Chennai - 600 095.

+15cc to Mr.P.Rajendran, Advocate, S.R.No.46929, 46930, 46931,
46932, 46933, 46934, 46935,
46936, 46937, 46938, 46939,
46940, 46941, 46942, 46943

+1cc to the Government Pleader, S.R.No.46888, 46891, 46892,
46889, 46895, 46893, 46890, 46894

W.P.Nos.1665 to 1672 of 2015, 3547 to 3550 of 2015,
3554 to 3556 of 2015

PM(CO)
RGA(06/10/2021)