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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

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

WP.No.22026 of 2012

and

MP.No.1 of 2012

1.I.Sarojini Devi

2.K.Anitha

3.K.Girija

... Petitioners

Vs

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Law Department,
Fort St.George, Chennai-9

2. The Commissioner-Land Administration,
Ezhilagam, Chepauk,
Chennai-5

3. The Asst.Commissioner,
Urban Land Tax,
Kancheepuram District,
Adambakkam,
Chennai-86

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare that the provisions of the Tamil Nadu Urban Land Ceiling & Regulations of 1978 will not apply to the lands owned by the petitioners bearing Plot Nos.23 and 24 in S.No.174/2, part present S.No.174/9 and 10 of Madipakkam Village, Saidapet Taluk, Kancheepuram District in view of the provisions contained in Tamil Nadu Urban Land Ceiling & Regulation Repeal Act, 1999.

For Petitioners : Mr.A.Jenasenan

For Respondents : Mr.Richardson Wilson,
Government Advocate

ORDER

This Writ Petition is filed to issue a writ of declaration to declare that the provisions of the Tamil Nadu Urban Land



Ceiling & Regulations of 1978 will not apply to the lands owned by the petitioners bearing Plot Nos.23 and 24 in S.No.174/2, present S.No.174/9 and 10 of Madipakkam Village, Saidapet Taluk, Kancheepuram District in view of the provisions contained in Tamil Nadu Urban Land Ceiling & Regulation Repeal Act, 1999.

2. The petitioners are the owners of plot Nos.23 and 24 comprised in survey No.174/9 and 10, Madipakkam Village, Saidapet Taluk, Chengalpet District. It was purchased by the first petitioner by the registered sale deed dated 16.10.1982 vide document No.3472 of 1982 admeasuring 4800 sq.ft. It was laid out under the approved lay out in proceedings No.183/1973 and 163/1974. In the year 1972, larger extent of the land was laid out and divided into house plots. The petitioners' vendor purchased the property and obtained patta from the revenue authorities. After purchase by the petitioners, they applied for planning permission to put up house. Thereafter, the petitioners had put up residential house and they are residing there. The said house was also assessed to the property tax. Thereafter, the first petitioner by the settlement deed dated 31.08.1991 settled to the extent of 1800 sq.ft. in favour of her daughter. Thereafter by another settlement deed dated 28.02.2001, settled another extent of 1800 sq.ft in favour of another daughter. The first petitioner owned 1200 sq.ft and the second and third petitioners owned 1800 sq.ft. each. In the year 1986, the second respondent initiated proceedings under the Tamilnadu Urban Land Ceiling and Regulation Act, 1978 as against the original owner of the property. After his demise, it was initiated as against his legal representatives. In pursuant to which, draft statement issued under Section 9 of the Tamilnadu Urban Land Ceiling and Regulation Act had also been issued on 31.10.1986. Since the legal heirs of the deceased original owner were no longer the owners of the land, they had no interest in the proceedings. However, the petitioners are in possession and enjoyment of the property and they constructed and residing in the premises. Therefore, no notice was served or opportunities had been given to the petitioners in the proceedings initiated under the Urban Land Ceiling and Regulation Act. The Urban Land Ceiling Act itself had been repealed by Tamilnadu Act, 1999 and possession having been remained with the petitioners.

3. In fact, similar proceedings were initiated as against other persons who were similarly placed like that of the petitioners, approached this court in WP.No.13863 of 2001 and this Court by order dated 25.06.2010 held that no notice under Section 11 (5) of the Act was issued to the petitioners prior to the coming into force of the repealing Act and possession in the eye of law was taken before coming into force of the repealing Act. It is relevant to extract the relevant portion of the order of this Court in WP.No.13863 of 2001 dated 25.06.2010 hereunder:



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9.The crux of the issue involved in this case is, whether possession was taken under Section 11 (5) of the Act r/w Section 11(6) of the Act in the eye of law? What all that is contended by the learned Government Advocate is that service of notice on the purchasers of the lands subsequent to the coming into force of the Act is not required in view of the fact that the purchase itself is void and therefore, such purchasers are not entitled for any title, possession or any other right. The said right, according to him, includes the right of service of notice upon them under Section 11(5) of the Act. In my considered opinion, this contention cannot be countenanced for the simple reason that such kind of argument was elaborately considered by two Division Benches and in the judgments cited supra wherein, the Division Benches have held that though such purchases made are void under Section 6 of the Act, still taking possession under Section 11 of the Act without service of notice on the purchasers is non est in the eye of law. In this regard, it may be useful to refer to the following passages in the said judgments:-

10.In V.Somasundaram and others v. Secretary to Government, Revenue Department, Chennai and others (2007(1)MLJ 750) in paragraph 9, it has been held as follows:-

9.From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent who was not the real owner. As per Section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.04.1999 by the second respondent is non est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 with effect from 16.09.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act.



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initially in respect of certain lands from the purview of the act was later on withdrawn. Such withdrawal was very well known by the petitioners therein despite the same they did not chose to challenge such withdrawal. In view of such factual position only the Division Bench had to hold that possession was, as a matter of fact, taken over by the Government to the knowledge of the petitioners therein and so, non service of notice under Section 11(5) of the Act on them shall not initiate the proceedings. Therefore, the conclusion arrived at in that case cannot be taken as a binding precedent on the question of law as the decision was rendered purely on question of fact.

14. Thus, it is crystal clear that the law has been well settled by two Division Benches cited supra, relied on by the learned counsel for the petitioner. As I have already held, since no notice under Section 11(5) of the Act was issued to the petitioners prior to coming into force of the Repealing Act and since possession in the eye of law was not taken before coming into force of the repealing act, the petitioners are entitled to succeed in this writ petition.

15. In the result, the writ petition is allowed; the impugned order is set aside and the respondents are hereby restrained from proceeding further in respect of these lands as per the provisions of the Repealed Land Ceiling Act. No costs.

4. In view of the above, the present writ petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

s/d-
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu
Law Department,
Fort St. George, Chennai-9



2. The Commissioner-Land Administration,
Ezhilagam, Chepauk,
Chennai-5

3. The Asst.Commissioner,
Urban Land Tax,
Kancheepuram District,
Adambakkam,
Chennai-86

+2ccs to M/S.A.Jenasenan, Advocate, SR.No.38276
+1cc to Government Pleader, SR.No.38857

WP.No.22026 of 2012

PL(CO)
PM(02/09/2021)