IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.No.990 of 2021
and C.M.P.No.6159 of 2021

1.The Special Commissioner
and Commissioner Urban Land
Ceiling and Urban Land Tax,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Assistant Commissioner for
Urban Land Tax,
Ambattur, Chennai-600 029
(Presently Assistant Commissioner
Urban Land Tax) Egmore,
@ Kuralagam, 3rd Floor,
Broadway, Chennai-600 108. .... Appellants

verus

Mrs.Kumari Kannan .... Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order passed by the learned single Judge dated 13.01.2020 in W.P.No.27229 of 2013.

For Appellants .. Mr.J.Rajasingh, G.A.

For Respondent .. Mr.S.Senthilnathan

JUDGMENT

(Judgment of the Court was made by R.N.MANJULA, J.)

This intra-Court Writ Appeal has been directed against the common order of a learned single Judge dated 13.01.2020 in W.P.No.27229 of 2013.

2. The brief facts which led to the filing of the present Writ Appeal, can be stated as under:

The respondent has purchased a house site bearing Plot No.8 in S.No.30/1 to an extent of 2852 sq.ft. situated at Kunnoor Village, Perambur Purasaiwakkam Taluk, Chennai District, vide sale deed dated 24.05.1982 and she has constructed a house and is residing therein. The 2nd appellant herein, issued a notice under the Urban Land (Ceiling and Regulation Act) (hereinafter referred to as 'the Act') to the erstwhile owner, Mrs.Amma Thayarammal, who was the great grand-mother of the vendor of the writ petitioner, stating that out of the above said land, an extent of 1600 sq.mts., has been declared as surplus.

3. The respondent obtained certified copies of the acquisition proceedings and came to know that all the proceedings were initiated against erstwhile owner who died even prior to her purchase. Since, she has been in possession and enjoyment of the subject property and no notice was issued by the appellants to her under the Act, the writ petitioner has moved the Writ Petition in W.P.No.27229 of 2013 before this Court, seeking to declare that the acquisition proceedings initiated by the 2nd appellant herein, are abated in view of Section 4 of the Urban Land (Regulation and Ceiling) Repeal Act, 1999 (in short, 'the Repeal Act').

4. Having considered the pleadings and rival contentions, more particularly, an admitted fact contained in the counter affidavit to the effect that the possession has been handed over to the Revenue Authorities by making necessary changes in the Village Accounts, which would clearly indicate that it is a paper possession, the learned single Judge has held that no actual physical possession has been taken by the Government. The entries in the records have been effected under the pretext of symbolic possession, just in order to counterblast the application of Section 4 of the Repeal Act.

By holding so, the learned single Judge has allowed the Writ Petition. Challenging the same, the appellants/authorities have preferred the present Writ Appeal.

5. The learned Government Advocate appearing for the appellants would contend that the Act itself came into force on 03.08.1976 on which date, the subject land stood in the name of the urban land owner, namely, Tmt.Amma Thayammal and hence, the acquisition proceedings were initiated in the name of the said urban land owner. He would also contend that by virtue of Section 6 of the Act, any sale made after the Act coming into force, is null and void and hence, it is not open to the subsequent purchaser, i.e. writ petitioner/respondent to contend that the entire acquisition proceedings were invalid on the ground that no physical possession was taken over either from original urban land owner or from her vendor and that the same were abated by virtue of the Repeal Act. It is submitted that the acquisition proceedings were completed as early as on 04.08.1997 and the writ petitioner purchased the subject property in the year 1982 and filed the writ petition after a lapse of 16 years and hence, it is not maintainable.

6. It is not in dispute that from the date of purchase, the respondent/writ petitioner has been in actual possession of the subject property till date and the entire acquisition proceedings right from the issuance of Section 7(1) notice till the notice under Section 11(5) of the Act were initiated only in the name of the erstwhile owner Amma Thayammal. It is the specific contention of the writ petitioner/respondent that factually, no physical possession was taken over either from the urban land owner Tmt.Amma Thayammal or from her legal heirs, from whom, the respondent has purchased the subject property.

7. In pith and substance, the Appellants contended that the land in question were registered in the name of Tmt.Amma Thayammal in the Revenue Records and as such, no notice could have been issued to the petitioner and therefore, the action initiated by the Appellants in terms of Section 11 of the Act was correct in law; besides that, the land in question was vested with the Government under Section 11(3) of the Act on 15.06.1992 and subsequently handed over on 04.08.1997 to the Revenue Authorities and as such, the respondent has no *locus standi* to question the acquisition proceedings. In short, since the possession of the land in question was taken and handed over, the provisions of the Repeal Act would not apply.

8. It is pertinent to note that the Appellants in their counter affidavit to the Writ Petition, had clearly stated that the State Government had decided to regularize the purchase of land by the innocent purchasers in respect of the acquired land and had issued guidelines in G.O.Ms.No.565, Revenue Department dated 26.09.2008 and that the Respondent/Petitioner is a subsequent innocent purchaser and she also applied for regularization of the land and the same was recommended for regularization under innocent buyer category and a report was sent to the Commissioner (Urban Land Ceiling and Urban Land Tax) by the then Assistant Commissioner (Urban Land Tax), Egmore vide reference 745/2010/A, dated 9.11.2011. In fact, the respondent has built a house therein and it has been subjected to assessment. But the possession entries of the Government records does not show the same, despite the building was put up immediately after the purchase made by the respondent. It is settled law that actual physical possession has to be taken over and mere mutation in revenue records or paper possession is not acceptable in order to release the subject land from the benefits conferred under Section 4 of the Repeal Act.

9. The Hon'ble Supreme Court, as well as this Court, in *catena* of decisions, have held that land ceiling proceedings would abate in all cases, where actual possession has not been taken by the State Government before the date of coming into force of the Repeal Act. In fact, mere vesting of the land under Section 10(3) will not confer any right on the Government to have de-facto possession of the land, unless there has been a voluntary surrender of vacant land before the Repeal Act came into force (w.e.f, 16.06.1999). In the instant case, admittedly, no actual physical possession was taken over from the original urban land owner.

10. The above legal position has also been held ***in State of U.P. Vs Hari Ram) 2013-3-MLJ-408 (SC)*** by the Apex Court. In the said judgement, it is held as under:

> *"39. The mere vesting of the land under sub-section (3) of* Section 10 *would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of* Section 10 *or forceful dispossession under sub-section (6) of Section 10. On failure to establish any*

of those situations, the land owner or holder can claim the benefit of Section 3 *of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.”*

11. Admittedly, since the appellants/authorities have failed to establish actual taking over of possession as per the provisions of the Act and the fact remains that the writ petitioner/respondent is still in possession of the subject land, he is entitled to the benefit of Section 4 of the Repeal Act. In the light of the above, we do not find any irregularity or infirmity in the Order of the learned single Judge and it does not warrant any interference.

In the result, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected CMP is closed.

(M.M.S., J.) (R.N.M., J.)
07.07.2021

Index:Yes/No
suk

To

1.The Special Commissioner
and Commissioner Urban Land
Ceiling and Urban Land Tax,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Assistant Commissioner for
Urban Land Tax,
Ambattur, Chennai-600 029
(Presently Assistant Commissioner
Urban Land Tax) Egmore,
@ Kuralagam, 3rd Floor,
Broadway, Chennai-600 108.

M.M.SUNDRESH, J.
and
R.N.MANJULA, J.

suk

W.A.No.990 of 2021

05.07.2021