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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND

THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.No.886 of 2018

and C.M.P.No.7728 of 2018

1. State of Tamil Nadu,
Rep. by the Secretary,
Revenue Department,
Fort St.George, Chennai-9.
2. The Special Commissioner &
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai-5.
3. The Asst. Commissioner (ULT),
Competent Authority (ULC),
Thiruvallur District,
Poonamallee, Chennai-56. ...Appellants/Respondents

Versus

Mrs.J.Jayalakshmi

....Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order passed by the learned single Judge dated 27.10.2017 in W.P.No.35781 of 2003.

W.P.No.35781 of 2003 : Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for the records on the file of the third respondent in Na.ka.S.R.800/95 dated 15.11.1995 under section 9 (5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act and quash the same.

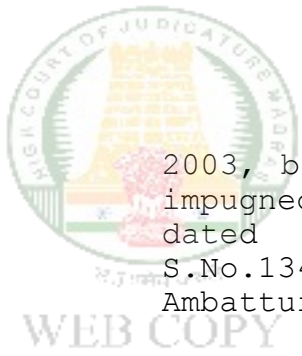
For Appellants .. Mr.S.John J.Raja Singh, G.A.

For Respondent .. Mr.S.Rajendran

JUDGMENT

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

This Writ Appeal has been directed against the Order of the learned single Judge dated 27.10.2017 passed in W.P.No.35781 of



2003, by which the Writ Petition was allowed, setting aside the impugned proceedings of the third Appellant in Na.Ka.S.R.800/95, dated 15.11.1995 in respect of the respondent's land in S.No.134/1A1A1 to the extent of 159 cents in Koladi Village, Ambattur Taluk, Thiruvallur District.

2. The facts which led to the filing of this Appeal in brief are stated as under:

The writ petitioner/respondent herein had purchased a land measuring about 159 cents comprised in S.No.134 part, (S.No.134/1A1A1)in Koladi Village, Ambattur Taluk, Thiruvallur District from her vendor, Smt.D.Sarojini Ammal vide Sale Deed dated 30.01.1982. Out of the said land declared an extent of 7,100 sq.mts was considered as an excess of the ceiling limit prescribed under the Tamil Nadu Urban Land (Ceiling and Regulation Act) (Act 24 of 1978) (hereinafter referred to as 'the Act') and initiated acquisition proceedings under the Act by issuing notice u/s 7(1) to the erstwhile owner one Lakshmana Reddy. Since he did not file any return, further proceedings have been taken in accordance with the Act. According to the respondent, she was not aware of any of the above said proceedings and she is in possession of the land right from her purchase. It is claimed that no physical possession of the property was taken by the authorities and hence, it has to be set aside.

3. The Appellants/official respondents contended that as per the Revenue records, the land stood in the name of Thiru Lakshmana Reddy and he did not file the return as required under Section 7(1). Hence a notice under Section 9(4) along with draft statement under Section 9(1) was issued and served by affixture and for that also, no objection was received. After inspecting the land, orders for acquisition under Section 9(5) of the Act was passed on 15.11.1995. On 27.02.1998, the authorities issued notice under Section 10(5) to surrender possession. Thereafter, possession was handed over to the Revenue Authorities on 06.10.1998. Subsequently, revenue records were mutated in the name of the Government. The writ petitioner has no locus standi to question the acquisition proceedings. Since the possession was already taken before the Repeal of the Act, the acquisition proceedings will not get abated.

4. The learned single Judge allowed the Writ Petition in favour of the respondent and in view of that, the proceedings of the third respondent quashed.



5. Heard the learned Government Advocate for the appellants and the learned counsel appearing for the respondent and perused the entire materials available on record.

6. The learned Government Advocate reiterated the proceedings taken by the Government is valid and in accordance with the Act. Since the possession has already taken, no benefit under the Repeal act can be claimed.

7. The learned counsel for the respondent submitted that she is the owner of the land and no notice was issued to her. The respondent continues to be in its possession and hence, the Appeal is liable to be dismissed.

8. Admittedly, no notice regarding acquisition of excess land was served on the writ petitioner, who is the actual owner and who is in physical possession of the subject land during the time when the acquisition proceedings were issued and the alleged possession was taken over by the Appellants. On the date when the alleged delivery was taken over by the appellant/ Authorities from Lakshmana Reddy, the said person was neither the owner of the property nor was he in possession of the subject lands. In fact he had sold the property to one Saroja Ammal and from whom, the respondent has purchases as early as on 30.01.1982. Under such circumstances, it is not possible for Lakshmana Reddy to hand over the possession as claimed by the Appellants. The above facts would only show that the Appellants entries and proceedings in their records are only self-serving.

9. The Hon'ble Supreme Court as well as this Court have held in several cases that 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 Repealing Act. If the Government did not take the physical possession of the property, the land owner can claim the benefit of Section 4 of the Repeal Act. In (State of U.P. Vs Hari Ram) 2013-3-MLJ-408 (SC), the Hon'ble Supreme Court has held that the land owner can get the benefit of the Repeal Act, if the State fails to establish that the actual possession was taken by voluntary surrender of vacant land or through forceful dispossession. In the said judgement, it is held as under:

"39. The mere vesting of the land under subsection (3) of sec.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



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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."

10. Though the Appellants have claimed that the statutory notices of each stage of the proceedings have been served on the owner, it is not proved to be so. Had really the Appellants went to the land and made spot inspection by making proper enquiry, the details about the actual owner of the property would have come to their knowledge. The petitioner has purchased the property as early as in the year 1982. Despite that she was not put under notice about those proceedings which is alleged to have been taken in the year 1995 and thereafter.

11. Since the appellants/authorities have failed to establish the actual taking over of the possession of the subject land in compliance with the mandates of Section 10(5) or sec.10 (6) and also failed to establish that proper notices have been given to the actual owner of the land, the entire proceedings in connection with the subject land is liable to be quashed. As it was held already, as per the provisions of the repealing Act, more particularly as per Section 4 of the Repeal Act, the respondent is entitled to get its benefits. The learned single Judge has elaborately dealt the facts and circumstances of this case and allowed the Writ Petition in favour of the petitioner by giving consequential directions. The decision so rendered by the learned single Judge does not suffer from any factual or legal infirmity and hence, we do not find any reason for interference.

In the result, the Writ Appeal is dismissed and the order of the learned single Judge dated 27.10.2017 in W.P.No.35781 of 2003 is confirmed. No costs. Connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Revenue Department,
Fort St. George,
Chennai-9.

2. The Special Commissioner &
Commissioner of Land Reforms,
Ezhilagam,
Chepauk, Chennai-5.

3. The Asst. Commissioner (ULT),
Competent Authority (ULC),
Thiruvallur District,
Poonamallee Zone,
Chennai - 56

4. The Inspector General of Registration,
Santhome, Chennai.

+1cc to the Government Pleader, S.R.No.30407

W.A.No.886 of 2018

AK(CO)
RGA(03/08/2021)