



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.07.2021
Pronounced on	10.08.2021

CORAM

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

and

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

W.A.No.952 of 2018

and

C.M.P.Nos.8086 & 8087 of 2018

1.A.Abdul Rahim

2.Zareena

3.Asha

...Appellants/Petitioners

Vs.

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,
Tambaram at Alandur,
Chennai-600 088.

...Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order of the Single Judge dated 24.07.2017 passed in W.P.No. 28873 of 2013.

Prayer in W.P. No.28873 of 2013: Direction in the nature of Writ, declaring that the proceedings initiated by the Second Respondent in RC.D.2026/84 dated 30.03.1988 is abated in view of Section 4 of the Repeal Act, since the physical possession of the Land comprised in Survey No.258/2 to an extent of 1.38 Acres situated at Thiruneermali Village, Tambaram Taluk, Chengalpet with the Petitioners.



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For Appellants .. Mr.E.Omprakash, Senior Counsel
For Mr.A.Ramu.

For Respondents .. Mr.S.Arumugam,
Government Advocate, for RR1 & 2.

JUDGMENT

R.N.MANJULA, J.

This intra Court Appeal has been filed against the order of the learned Single Judge dated 24.07.2017 passed in W.P.No.28873 of 2013.

2. The appellants are the unsuccessful Writ Petitioners who have filed the Writ Petition for declaring that the proceedings initiated by the 2nd respondent vide RC.D.2026/84 dated 30.03.1988 got abated under Section 4 of the Repeal Act (Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act), due to the failure of the Government to take the physical possession of the subject lands.

3. The short facts which led to filing of this Writ Appeal by the appellants is that the subject land measuring an extent of 1 acre 38 cents in S.No.258/2 is situated at Thiruneermalai Village, Tambaram Taluk, Chengalpet District. It originally belonged to one N.Sivaraman S/o V.Naganatha Iyer. The said Sivaraman sold the said land to the appellants/writ petitioners in the year 1984 through a registered Sale Deed. A notification under Section 4(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 for acquisition of the excess land of 5100 sq.mts comprised in the said land was issued to the original owner and he has filed a return under Section 6(1) of the Act. Subsequent to that the proceedings for acquiring the above mentioned excess land deducting a concession of 500 sq.ft was issued. Though the Appellants were the owners of the subject land at the time of issuing the above proceedings, no notices were issued to them. Hence, they filed the Writ Petition seeking appropriate relief. The learned single Judge dismissed the Writ Petition by denying the relief prayed by the Appellants. Aggrieved over that this Writ Appeal has been filed.

4.The submissions made by Mr. E.Omprakash, learned senior counsel for Mr.A.Ramu, learned counsel for the Appellants and Mr. S.Arumugam, learned Government Advocate for the official respondents were heard.



5. The learned senior counsel for the appellants submitted that the previous owner did not have any locus standi to receive notices after he sold the lands to the appellants and even if he had appeared in response to the notice issued to him, it should be in complete suppression of the subsequent transfer effected in favour of the appellants. The Act itself got repealed by virtue of the enactment of the Tamil Nadu Urban Land (Regulation and Ceiling) Repeal Act, 1999. It is further submitted that no physical possession was taken by the Government until the Repeal Act came into force and hence as per Section 4 of the Repeal Act, the acquisition proceedings should be deemed to have got abated.

6. The learned Government Advocate for the respondents 1 and 2 submitted that originally a notice was served on the father of the vendor of the appellants namely Naganatha Iyer in the year 1978 and subsequent notices were also sent to him to appear for enquiry. After coming to know that Naganatha Iyer was not alive, a subsequent notice under Section 9(4) along with statement under Section 9(1) was issued on 22.09.1987 to Sivaraman, who is the son of Naganatha Iyer. After inspecting the land on 30.03.1998, an extent of 5100 sq.mts is declared as excess land after leaving a concession of 500 sq.mts through an order dated 30.03.1988. Subsequent notifications under Sections 11(1) and 11(5) were issued and they were served on the owners by affixture. On 09.06.1989, the land was handed over to the revenue inspector. Hence, the appellants are not entitled to the relief prayed for.

7. The submission of the learned Government Advocate and the counter of the respondents would show that the first notice was issued to Naganatha Iyer. Before issuing the notice, the respondent authorities did not ascertain whether the said person was alive and whether the property was still owned by him. Those notices can be of no consequence for two reasons. One is for not ascertaining whether the said person was alive at the relevant point of time and another is for not verifying whether he had title over the subject land on the relevant date. Since the respondents came to know subsequently that the said Naganatha Iyer died, subsequent notices were issued to his son Sivaraman. But when notice was issued to Sivaraman on 22.07.1987, even he was not the owner of the property. He sold the subject land to the appellants as early as on 23.04.1984. By virtue of the said sale, the appellants have been in possession of the same till this date.

8. It is alleged by the learned Government Advocate that local inspection was made by the 2nd respondent on 30.03.1988 and on the same day, the impugned proceedings for completing the

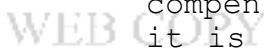


acquisition proceedings have been issued. Had the official respondents really made the local inspection on 30.03.1988, they would have come to know about the sale in favour of the appellants and that the subject land was in their possession. Even without verifying the said facts, the respondent authorities continued to issue notices to the vendor of the appellants, viz., Sivaraman. Only when the appellants applied for sub-division, they came to know about the action taken under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. It is not possible for the respondents to get the actual possession of the subject land even without knowing the actual owners. Further, it is seen from the records that the notices have been served by affixture and not in person. Under such circumstances, these appellants who are innocent purchasers can not be aware of anything about the actions taken under the Urban Land Ceiling Act. It has been already observed that on 22.07.1987 itself the respondent authorities failed to issue notice to the real owner.

9. The main thrust of the appellants' contention is that the physical possession of the property continues to be with them and the Government had never taken possession. The respondents have not established that physical possession of the subject land has been taken in accordance with Section 10(5) and 10(6) of the Act. It has been held in catena of decisions that the proceedings would get abated, wherever actual possession has not been taken by the Government before the date of coming into force of the Repealing Act. Failure to take physical possession would entitle the land owners to get the benefit of Section 4 of the Repealing Act.

10. In "State of U.P. Vs Hari Ram" reported in 2013-3-MLJ-408 (SC), the Hon'ble Supreme Court has asserted the above legal position. In the said judgment, it is held as under:

"39. The mere vesting of the land under sub-section (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 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



11. Though it is claimed by the respondents that the compensation has been paid to the owner of the subject matter, it is not acceptable for the simple reason that the respondents did not even know who is the actual owner of the property on the relevant date. Further the respondents have not taken the possession either through voluntary surrender by the owners or through forcible dispossession. The alleged symbolic possession of the subject land by making self-serving entries on the records without following due procedure is not acceptable.

13. When a specific procedure is contemplated under Section 10 (5) and (6) of the special Act, it ought to have been followed by the Government. Only if physical possession is taken as per the above procedure it could happen with the knowledge of the owner. Even if the owner refused to hand over the possession, the authorities were entitled to dispossess them forcibly. Since it was not established that the possession of the land have been taken by the Government either through voluntary surrender or through forcible dispossession, it ought to have been concluded that the possession of the subject land was not vested with the Government on the date when the Repeal Act came into force. Since the learned single judge omitted to notice the above material facts, we are inclined to interfere and reverse the order of the learned single Judge.

Sd/-
Assistant Registrar (CS III)

Sub Assistant Registrar



jrs

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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,
Tambaram at Alandur,
Chennai-600 088.
- +1 CC to M/s.A.Ramu, Advocate, Sr.No. 39715.

W.A.No.952 of 2018

SJ(CO)
LS(25/08/2021)