IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.28909 of 2018
and
W.M.P.No.33777 of 2018

K.Senthamarai Kannan ...Petitioner

-Vs-

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Tamil Nadu Revenue Department,
   Fort St. George,
   Chennai – 600 009.

2. The Competent Authority,
   (Urban Land Ceiling)
   The Assistant Commissioner
   of Urban Land Ceiling and Land Taxes,
   Collectorate Compound,
   Coimbatore – 641 018.

3. The Tahsildar,
   Coimbatore South Taluk,
   Gopalapuram,
   Coimbatore – 641 018. ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents to treat the land acquisition proceedings as abated and to restore the property in R.S.No.196/3, thereafter re-numbered as 196/3A2 to an extent of 65 cents in Sundakkamuthur Village, Coimbatore (South), Coimbatore, to the petitioner in accordance with the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 and to issue patta in respect of the same to the petitioner.

For Petitioner : Ms.N.Kavitha Rameshwar

For Respondents: Mr.P.Baladhandayutham
Special Government Pleader

ORDER

This Writ Petition has been filed to direct the respondents to treat the land acquisition proceedings as abated and to restore the property in R.S.No.196/3, thereafter re-numbered as 196/3A2 to an extent of 65 cents in Sundakkamuthur Village, Coimbatore (South), Coimbatore, to the petitioner in accordance with the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (herein after referred to as "the Repeal Act") and to issue patta in respect of the same to the petitioner.

2.The case of the petitioner is that his father had purchased 14 acres of land comprised in R.S.No.196/3, Sundakkamuthur Village, Coimbatore, in the year 1963. After his demise, the legal heirs were partitioned the property, after sold out some portion of the land. In pursuant to the partition between the legal heirs, the petitioner was allotted with 1.74 acres of land, in which the petitioner had sold out 54 cents and settled another 5 cents in favour of his elder brother. The remaining land to an extent of 70 cents is in possession and enjoyment of the petitioner.

3.While being so, in the year 1989, the proceedings under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred to as "the Act") were initiated in respect of the property comprised in R.S.No.196/3, to an extent of 9141 sq.mts., owned by the petitioner and his mother. In the said 9141 sq.mts., the petitioner's property is only 2630.55 sq.mt., (65 cents). The petitioner and other land owners were participated in the enquiry and raised primarily objection that the subject land in question is agricultural land and it would not attract the provisions of the Act. However, their objections were not considered and the land was notified for acquisition under the provisions of the Act.

4.Thereafter, the notification dated 25.01.1991 was issued under Section 11(3) of the Act, thereby notified that the lands were absolutely vested with the Stated Government with effect from 12.07.1990. After publication of the declaration under Section 11(3) of the Act, no steps were taken to take physical possession of the land. The petitioner was never served with notice under Section 11(5) of the Act and the physical possession have not been taken even till today and the petitioner is in possession and enjoyment of the property and he is doing cultivation. Therefore, the petitioner filed the present petition with the above said prayer.

5.The learned counsel appearing for the petitioner would submit that the entire proceedings have been lapsed, since the physical possession have not been taken over from the petitioner in respect of the subject property. As per Section 3(2) of the Repeal Act, the entire proceedings have been lapsed. In support of her contention, she relied upon the following reported judgments :-

(i) 2012 (6) MLJ 522 – M/s.Sree Jayalakshmi Brick Industries Vs. The Special Commissioner & ors.

(ii) AIR 2013 SC 1793 – State of UP Vs. Hari Ram

(iii) 2014 (12) SCC 523 – Gajanan Kamlya Patil Vs. Addl. Collector and Comp. Authority & ors.

(iv) W.A(MD).Nos.511 to 521 of 2019 dated 12.06.2019 – The Assistant Commissioner Vs. G.D.Vaithiyalingam.

6.Per contra, the second respondent filed counter and stated that the petitioner and his mother were the owners of the land comprised in S.F.No.196/3 ad measuring 12141 sq.mts., situated at Sundakamuthur Village. Since the urban land owners had failed to file return under Section 7(1) of the Act, notice under Section 7(2) of the Act was issued by the second respondent and the same was served on them on 21.10.1989. On receipt of the same, the urban land owners failed to file return and did not raise any objections. Therefore, the notice under Section 9(4) of the Act, with statement under Section 9(1) of the Act was issued to the urban land owners on 29.11.1989, for the proposed acquisition of 9150 sq.mts. Thereafter, the notice under Section 9(5) of the Act and the final statement under Section 10(1) of the Act were issued on 31.01.1990. On receipt of the same, the petitioner filed an appeal under Section 33 of the Act, and the same was rejected by the Appellate Authority by an order dated 11.12.1990.

7.Further, the notification under Section 11(1) of the Act was issued on 09.05.1990 and the same was published in the Tamil Nadu Government Gazette on 13.06.1990. Thereafter, the notification under Section 11(3) of the Act, was issued on 25.01.1991 and the same was published in Tamil Nadu Government Gazette on 13.03.1991, thereby vesting the land with the Government. The notice under Section 11(5) of the Act was issued on 29.10.1998 to the urban land owners requesting to surrender the vacant possession of the subject property within a period of 30 days. Since the urban land owners failed to surrender their possession, the second respondent initiated action under Section 11(6) of the Act and the possession has been taken over and the same was handed over to the Revenue Authorities on 19.03.1999. Thereafter, necessary changes were carried out in the revenue records as “Government urban land ceiling lands” on 04.03.1999. Therefore, after the period of 19 years from the date of take over the land, now the petitioner filed this Writ Petition.

8.The learned Special Government Pleader appearing for the respondents submitted that after completion of the acquisition proceedings under the Act, the possession of the excess vacant lands were taken over and handed over to the Revenue Authorities, well before the commencement of the Repeal Act. Therefore, the acquisition proceeding has been saved under Section 3(1)(a) of the Repeal Act. The petitioner raised disputable question of fact, whether the physical possession of the land was taken or not. Such a question of fact could not have been gone into and adjudicated before this Court. To support of his contention, he also relied upon the judgment reported in 2015 (5) SCC 321 in the case of State of Assam Vs. Bhasker Jyothi Sarama & ors., in which the Hon'ble Supreme Court of India held as follows :-

> 15...... the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

Therefore, he prayed for dismissal of the present Writ Petition.

9.Heard Ms.N.Kavitha Rameshwar, learned counsel appearing for the petitioner and Mr.P.Baladhandayutham, learned Special Government Pleader appearing for the respondents.

10.The only point for consideration in this Writ Petition is that whether the physical possession of the subject land has been taken from the petitioner, so as to suspend the urban land ceiling proceeding as against the petitioner.

11.On perusal of the original records produced by the second respondent revealed that the urban land owners were issued notice under Section 11(5) of the Act on 29.10.1998. The said notice was received by the petitioner's mother in respect of her share alone. There is no record to show that the petitioner was served with notice under Section 11(5) of the Act. That apart, the physical possession of the subject land is still with the petitioner and the same had not taken over even till today. Even according to the second respondent after issuance of notice under Section 11(5) of the Act, the urban land owners failed to surrender the possession of the land. Therefore, they initiated proceedings under Section 11(6) of the Act and taken physical possession of the property and handed over to the Revenue authorities on 19.03.1999. There is absolutely no record to show that the respondents had initiated action under Section 11(6) of the Act and took physical possession of the subject land. It shows that they had done desk work and no physical possession of the subject land was taken over.

12.It is also to be noted that there are two types of possession of the property viz., symbolic and physical. While the former is a paper possession, the latter is actual one. It is not in dispute that urban land ceiling proceedings were initiated against the subject land. However, the main contention of the petitioner is that he is continuously in possession and enjoyment of the subject land and he has not dispossessed at any point of time from the property. If the petitioner has not dispossessed physically and continuously enjoying the subject property, the Repeal Act comes to rescue him to declare that the entire urban land ceiling proceedings as abated. If actual possession was not taken, the petition is entitled to get benefit under the Repeal Act.

13.In this regard, it is relevant to rely upon the judgment reported in 2015 (1) CWC 388 in the case of The Government of Tamil Nadu Vs. Aalim Muhammed Salegh Trust, 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 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 Chengalpet-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 U.P. vs., Hari Ram reported in 2013-3-MLJ-408(SC) at para 38 and 39, which reads as follows:-

"38. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

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."

9. Likewise in a decision rendered by the Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu vs., Mecca Prime Tannery reported in 2012-6-MLJ-273, it has been held at para 33 to 35 as follows:-

"33. The phrases shall be deemed to have been acquired and shall be deemed to have been vested absolutely in the State Government occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the 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 thoselands."

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."

12. Further, the Honourable Supreme Court in the case reported in 2014 (2) CTC 665 (SC) (Gajanan Kamlya Patil Vs. Addl.

Collector & Competent Authority), held in paragraphs 12 and 13 as follows:

"12. We may indicate, apart from the affidavits filed by the officials in this case, no other document has been made available either before the High Court or before this Court, either showing that the Appellant had voluntarily surrendered or the Respondents had taken peaceful or forcible possession of the lands............

13. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under Section 10(5) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only de jure possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the ULC Act. The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed."

Therefore, mere symbolic possession is not sufficient. The petitioner is in possession and enjoyment of the subject property in question.

14.That apart, the subject property is an agricultural in nature and hence it cannot attract the provisions of the Act. Though necessary changes were carried out in the revenue records in respect of the subject property comprised in S.F.No.196/3A2 to an extent of 9150 sq.mts., situated at Sudakamuthur Village as Government Urban Land Ceiling Lands, by the proceedings dated 04.03.1999, the entire proceedings have been done as desk work and no physical possession has been taken in respect of the subject property. Therefore, the entire acquisition proceedings were lapsed in view of the provisions under Section 3(2) of the Repeal Act.

15.Accordingly, the entire land acquisition proceedings in respect of the land comprised in R.S.No.196/3, re-numbered as 196/3A2 to an extent of 65 cents in Sundakkamuthur Village, Coimbatore (South), Coimbatore, is lapsed. The third respondent is directed to mutate the revenue records in favour of the petitioner and issue patta in respect of the property within a period of six weeks from the date of the receipt of a copy of this Order.

16.With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   State of Tamil Nadu,
   Tamil Nadu Revenue Department,
   Fort St. George,
   Chennai - 600 009.

2. The Competent Authority,
   (Urban Land Ceiling)
   The Assistant Commissioner
   of Urban Land Ceiling and Land Taxes,
   Collectorate Compound,
   Coimbatore - 641 018.

3. The Tahsildar,
   Coimbatore South Taluk,
   Gopalapuram,
   Coimbatore - 641 018.

+1cc to M/s.Kavitha Rameshwar, Advocate, S.R.No.67800

+1cc to the Government Pleader, S.R.No.68298

W.P. No.28909 of 2018
and
W.M.P.No.33777 of 2018

SRA(CO)
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