



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.03.2021

DELIVERED ON : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD)No.10711 of 2020

and

W.M.P. (MD)Nos.9432 and 9434 of 2020

1.M.Velayutham

2.C.Chithiraipandiyan

: Petitioners

Vs.

1.State of Tamilnadu,

represented by its Secretary to Government,

Revenue Department, Fort St.George, Chennai-9.

2.The Special Commissioner and

Commissioner of Land Reforms,

Chepauk, Chennai -5.

3.The Assistant Commissioner for Urban Land Tax,

Madurai.

4.The Tahsildar,

Palayamkottai Taluk, Tirunelveli District.

: Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari and Mandamus, to call for the records relating to the impugned order of the third respondent passed in his proceedings 161/2020/A2 dated 23.06.2020 and quash the same as illegal, consequently to forbear the respondents from interfering with the petitioners' peaceful possession and enjoyment of the property comprised in Survey No.468/1B measuring about 1.27 acres at Keelaveeraraghavapuram, Palayamkottai Taluk, Tirunelveli District by invoking the provisions of the Urban Land Ceiling Act, 1978, as repealed Act 20 of 1999.

For Petitioners

:Mr.T.Lenin Kumar

For Respondents

:Mr.C.Ramesh

Special Government Pleader

ORDER

The case of the petitioners is that the property measuring about 8.29 acres comprised in S.No.468/1 situated at Keelaveeraraghavapuram, Palayamkottai Taluk, Tirunelveli District

<https://hsr.cesreports.gov.in/tc-services/>

Chellaiya Thevar and Sankara Thevar. They



partitioned the said property along with other properties among themselves through a valid partition deed, dated 17.09.1951 in Doc.No.3277/1951. Both Chellaiya Thevar and Sankara Thevar have been in enjoyment and possession of the property without any hindrance.

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2.On 15.02.1988 Sankara Thevar died leaving behind his wife, Vishalakshi, and his sons Muthukumarasamy, Veerapandiyan, Chinnathambi, Shanmugasundaram and his daughters Maragatham and Gandhiamathi, as his legal heirs. After the demise of the said Sankara Thevar, his legal heirs had been in possession and enjoyment of the property. After partition, the land was also sub divided into S.No.468/1A and S.No.468/1B. According to the petitioners, the property belonged to Chellaiyar Thevar was in S.No.468/1A and Sankara Thevar was in S.No.468/1B.

3.In the meanwhile, the second respondent had issued a draft declaration under Section 7(2) of the Urban Land Ceiling Act, 1978 (for brevity, 'the Act') seeking to declare the land measuring about 18300 sq.mtrs in S.Nos.468/1 as surplus land. Out of which, Sankara Thevar's property measuring about 5140 sq.mtres in S.No.468/1B also came to be declared as surplus. The remaining extent belonging to Chellaiya Thevar was also brought under the Act. According to the petitioners, despite the fact that the properties had been sub divided, the second respondent had considered both the properties together and declared the land being surplus under the provisions of the Act.

4.Thereafter, the Government issued G.O.Ms.No.252, Revenue Department, dated 21.02.1984 allotting the acquired lands to be used for various schemes. The Government passed another order vide G.O.Ms.No.1507, dated 27.11.1991 in dealing with the acquired properties. According to the petitioners, though the lands were declared surplus, the physical possession of the same has not been taken from the respective land owners. The petitioners claim that till date, the legal heirs of Chellaiya Thevar and Sankara Thevar are in possession and enjoyment of the properties respectively without any interference and also the petitioners claim that no compensation has been paid as per the procedures contemplated under the Act. The further case of the petitioners is that there was no issue of delivery note so far to the effect that the possession was taken over by the revenue authorities, in terms of the mandatory provisions of the Act.

5.While matter stood thus, in 1999, the Act came to be repealed and as per Section 4 of the repealed Act, if the physical possession is not taken over from the respective owners, it would amount the continuation of the proceedings and if any such proceedings is continuing, the same would be abated in terms of the repealed Act. According to the petitioners that the possession has not still been



taken and the petitioners' possession has not been disturbed.

6.It is also transpired that in S.No.468/1A, when the property sought to be disturbed, the person concerned approached this Court in W.P.No.8616 of 2003 and this Court, by a detailed order, dated 01.11.2012, allowed the Writ Petition on the ground that the proceedings initiated against the land has abated. On the basis of the order passed by this Court, the Government issued an order vide G.O.Ms.No.258, dated 19.10.2016 ordered to hand over the property to the extent of 13,712 sq.mtrs in S.No.468/1A to the respective legal heirs of Chellaiya Thevar. The petitioners herein claim that since they had some misunderstanding with the legal heirs of Chellaiya Thevar, they were not aware of the developments as stated herein.

7.According to the petitioners, only in January 2020, the petitioners came to know when some officials of the respondent office had come to the land informing the petitioners about the acquisition of the land and at this, it was explained to them about the possession being still with the petitioners. More over, the decision to acquire the lands had been taken commonly in S.No.468/1, when the same had been subsequently sub divided in S.No.468/1A and S.No.468/1B as the acquisition proceedings was held as abated in terms of the decision of this Court in W.P.No.8616 of 2003, dated 01.11.2012, the same reasoning of this Court would also apply to such common property held by the petitioners herein.

8.In the above circumstances, the petitioners had jointly submitted an application to the third respondent for issuance of patta to the the land to the extent of 1.27 acres comprised in S.No.468/1B. In response to the application, the third respondent, by his proceedings, dated 23.06.2020, rejected the claim of the petitioners on the ground that the lands were already acquired in terms of the original Act and therefore, their application could not be considered. Hence, these petitioners are before this Court challenging the order passed by the third respondent.

9.Mr.T.Lenin Kumar, learned Counsel for the petitioners reiterated the above facts elaborately and would submit that the subject lands have been in possession of the petitioners all along and in view of the settled legal position by this Court, as held in number of cases, the question of the land being acquired by the authorities would not arise at all, when physical possession, admittedly, had not been taken by the respondents and it is still with the petitioners and that the entire acquisition proceedings would have to be held as being abated in terms of the provisions of the repealed Act.

10.The learned Counsel would submit that taking over of the physical possession must be in terms of the provisions of the old



Act and unless, such take over of the land is established and proved before this Court by the authorities, mere statement by the officials that the lands had been taken over would not be valid ground to hold that the properties had been taken over physically, as held by this Court repeatedly. The learned Counsel, in fact, requested this Court to summon the original records to ascertain, as to whether the properties had been properly taken over in terms of the Section 11 of the Act. Records have been summoned and the same has also been produced before this Court.

11. The learned Counsel for the petitioners, in support of the legal contention, would draw the attention of this Court to a decision passed by this Court in W.P.(MD)Nos.24977 to 24980 of 2008, dated 23.10.2017. This Court, in consideration of the similar claim, has allowed the Writ Petitions, after perusing the original records therein and finding that there was no handing over of the possession by the owners in terms of the Section 11(5) of the repealed Act and there was no action initiated by the Government under Section 11(6) of the Act. This Court, after referring to the ratio laid down by the Division Bench of this Court on the important legal aspect, has allowed the said Writ Petitions. The learned Counsel, particularly draw reference to the reasons of the observations of this Court in para 4 to 14, which are extracted hereunder:

"4. The learned counsel would further submit that even otherwise since the possession is still vested with the petitioners as owners of the lands, the same has not been handed over in terms of provisions of the Land Ceiling Act. He would specifically draw the attention of this Court to Sub Clause 5 of Section 11 of the Land Ceiling Act, which is extracted as under:

"11.(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice."

5. According to the learned counsel for the petitioners, in terms of the above regulations, no action was initiated by the Government for taking over the land and which case, the entire acquisition proceedings is deemed to have lapsed. According the learned counsel, no action was taken either under Sub Clause (5) or Sub Clause (6) of Section 11 of the Act. Sub Clause (6) of Section 11 of the Act, reads as under:

(6) If any person refuses or fails to comply with an order made under sub-section (5), the



competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorized by the State Government in this behalf and may for that purpose use such force as may be necessary."

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6. In support of his contentions, the learned counsel would rely upon the decision reported in 2009 MLJ 85 (G.Krishnamoorthy and others versus Govt.of Tamil Nadu, rep. by its Secretary, Revenue Department and others)", wherein, a Division Bench of this Court has in categorical terms, held that notice under Section 11(5) of the Land Ceiling Act is mandatory and in the absence of Section 11 (5) notice, entire proceedings are initiated. The learned Division Bench has further held that take over of possession is complete only when it was signed by the land owner in the 'land delivery receipt' while delivering the excess land pursuant to the notice under Section 11(5) of the Act. In fact, the learned Division Bench has referred to several decisions passed by this Court and finally held as above.

7. The learned counsel would also draw the attention of this Court to another decision rendered by the same Division Bench of this Court reported in "2009(8) MLJ 522 (Sree Jayalakshmi Brick Industries, rep.by its Proprietor versus Special Commissioner and Secretary to Government, Chennai and others) in which, the Division Bench has held that once possession was not taken over by the Government, proceedings under the Act must be held to have abated under Section 4 of the Repealing Act.

8. The learned counsel would further draw the attention of this Court to a decision rendered by another Division Bench of this Court reported in "CDJ 2012 MHC 3421 (The Govt. of Tamil Nadu, rep. by the Commissioner and Secretary to Government & others versus M/s.Mecca Prima Tannery, rep. by its Managing Director)" wherein in paragraph 31 to 35 of the judgment, the Division Bench has clearly held that unless the possession is taken by resorting to Section 11(5) or 11(6) of the Act, as the case may be, there is no valid take over of possession can be inferred. Paragraph 31 to 35 of the judgment are extracted herein below:

"31. The crux of the submissions made by the learned Additional Advocate General is that after vesting of the land takes place under Section 11 (3) of the Act, the Government becomes the owner of the property and the title vests with the Government, by notification under Section 11(3) of the Act.



Hence, even after the notification under Section 11 (3), if possession of the land is retained by the land holder or any person, it will be considered as unlawful and illegal possession and they would be treated as encroachers in the eye of law. According to the learned Additional Advocate General, the Ceiling Act prescribes penal provisions under Section 11(6) and for the purpose of taking possession, force may be used, if necessary, which means the right of the Government to initiate action against a person or trespasser or any person who is holding illegal possession. If we read the provisions of Section 11 of the Ceiling Act and Section 3 of the Repealed Act, we are unable to accept the submission made by the learned Additional Advocate General.

"32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained in Section 11 (5) and Section 11(6) of the Act. Section 11(5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorised by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under Section 11(6) of the Act.

"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 interest 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.

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"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.

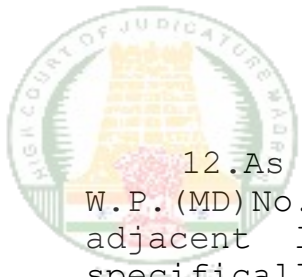
"35. However, there are cases where although the competent authority issued the notice under Section 11(5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be 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 those lands."

9. Upon notice, Shri S.Gunasekaran, learned Addl.Government Pleader entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is stated that the competent authority has recorded take over of possession in respect of the subject lands after the same has been obtained under the Land Ceiling Act, way back in the year 1993 itself. According to the respondents, the petitioners had applied for regularization of the lands only in the year 2008 wherein, the lands in question were purchased 23 years ago. He would further submit that the earlier action initiated was in pursuant to the direction passed by this Court in different writ proceedings and therefore, the same cannot be questioned in the present writ petitions.

10. As regards the factual dispute about taking over possession under the provisions of the Land Ceiling Act, the Government Pleader is directed to produce original

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14. In the said circumstances, the impugned proceedings initiated by the authority concerned, cannot be countenanced both in law and on facts. This court, therefore holds that the acquisition proceedings initiated against the respective lands of the petitioners are deemed to have abated/lapsed in view of the legal position that there is no valid take over of possession of the land in terms of Section 11(5) and 11(6) of the Land Ceiling Act."



12.As far as the decision of the learned Judge of this Court in W.P.(MD)No.8616 of 2003, dated 01.11.2012, in respect of the adjacent land, the learned Counsel for the petitioners would specifically draw the attention of this Court to para 24 to 33, which are extracted hereunder:

"24.Further it was argued that unless the physical possession has been taken over by the Government, the petitioners are not eligible to receive the total award amount in full, hence, the petitioners were paid in instalments. He pleaded, in the present case, it can be seen that not only Section 11(5) was complied with, but the payment of compensation was also satisfactorily paid to the petitioners. Since the original land owner and the second petitioner on various dates received their compensation in four instalments, again the learned Additional Government Pleader for the respondents has pleaded that it is not a fit case to accept the prayer made by the petitioners in the writ petition. The above said arguments do not carry any merit in view of Section 16(1) and (2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1978, which are extracted hereunder:

"16(1)The State Government shall, within a period of six months from the date of the order of competent authority determining the amount to be paid under Section 12, or, in a case where an appeal has been preferred against such order under Section 13 or where a revision has been preferred under section 15, within a period of six months from the date of the final order of the appellate or revisional authority, pay the amount referred to in section 12 to the person or persons entitled thereto.

(2)(a)It is amount payable is twenty five thousand rupees or below, it shall be paid in cash forthwith.

(b)If the amount payable exceeds twenty five thousand rupees, the first twenty five thousand rupees shall be paid in cash forthwith and the balance shall, during a period of fifteen years, be paid in cash in equal annual instalments carrying an interest at the rate of six percent per annum with effect from the date on which the vacant land is deemed to have been acquired by the State Government under sub section (3) of section 11."

25.Admittedly, if we look at Section 16(2) of the Act, the land measuring an extent of 13712 sq.metres acquired



by applying Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, has been fixed for a sum of Rs.3,425/- as compensation on 18.4.1983, but as per Section 16(2)(a), as the amount is less than Rs.25,000/-, the respondents ought to have paid the entire compensation amount in cash forthwith. Unfortunately, even though a meagre amount of Rs.3,425/- was fixed as compensation for an extent of 1371 sq. metres, the respondents have not paid even now the entire compensation amount in cash to the land owner, particularly, when the original land owner Mr.Chellaiah Thevar was alive till 1989, the respondents have not come forward to pay any interest for the balance amount till now. The respondents have paid only a part of some compensation in several instalments as against Sections 16 (1) and 16(2)(a) of the Act. The violation of these provisions shall be fatal against the acquisition proceedings to the extent that it is abated. In this context, it is pertinent to refer to the judgment of my respected brother Justice M.Jaichandren in N.S.JAYA VS. THE SECRETARY, DEPARTMENT OF REVENUE, GOVERNMENT OF TAMILNADU, SECRETARIAT, FORT ST. GEORGE, CHENNAI 600 009 AND THREE OTHERS in W.P.Nos.39713 and 39714 of 2002, dated 06.02.2009 and the decision in T.AUDIKESEVAN AND OTHERS VS. GOVERNMENT OF TAMIL NADU REP. BY ITS SECRETARY, REVENUE DEPARTMENT, CHENNAI AND OTHERS (2008 (3) MLJ 252), inwhich, it is held that when the land owner has not handed over the physical possession of the land and the possession was taken over by signing a land delivery receipt, it would not amount to actually taking physical possession with the signature of the land owner evidencing voluntary delivery of lands. Further it was held in the above said judgment that if the respondents had not taken physical possession of the land in question and if full compensation amount had not been paid, the land acquisition proceedings would stand abated, in view of coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 i.e. Act 20 of 1999.

26. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident from the provisions contained



in Section 11(5) and Section 11(6) of the Act. Section 11 (5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorised by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under Section 11 (6) of the Act.

27. 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 those lands.

28. In an order passed by the learned Single Judge of this Court in W.P.Nos.39713 and 39714 of 2002, dated 06.02.2009 in N.S.JAYA VS. THE SECRETARY, DEPARTMENT OF REVENUE, GOVERNMENT OF TAMIL NADU, SECRETARIAT, FORT ST. GEORGE, CHENNAI 9 AND THREE OTHERS, it is held as follows:

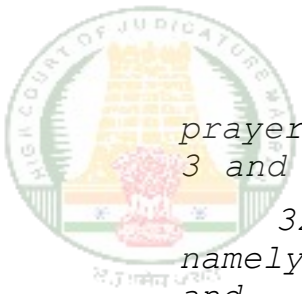
"When actual physical possession had not been taken and the compensation payable to the petitioner had not been paid, the land acquisition proceedings initiated by the respondents, with regard to the land in question, cannot be questioned in the eye of law.

In such circumstances, in view of the reasons stated above and in view of the decided cases cited before this Court, the land acquisition proceedings, initiated by the respondents, in respect of the land in the possession of the petitioner, are unsustainable in the eye of law. Even otherwise, in view of the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proceedings would stand abated. Accordingly, the writ petitions are allowed. No cost."

29. In view of above position, if we look at the present case, it can be seen that the proceeding initiated on the land in question has not been over. The issuance of notice under Sections 11(5) followed by 11(6) is concerned, the physical possession is only a crucial fact to be looked into for applying the benefit of the Repeal

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31. In view of the above, if we look at the case of the petitioner, the copy of patta dated 9.10.2002 issued by the Tahsildar of Palayamkottai, the copy of Adangal dated 11.10.2012 and the Kist Receipt issued by Village Administrative Officer, dated 11.10.2012 stand as good testimonies to support the case of the petitioner that the physical possession of the land still continues to be with the petitioner and furthermore, when the petitioner did not receive the full compensation till date, in respect of the land sought to be acquired by the Government, the ratio laid down in ANGOORI DEVI (cited supra) will apply in favour of the petitioner that the entire proceedings will get abated. Under such circumstances, I answer the



prayer in favour of the petitioners by applying Sections 3 and 4 of the Repeal Act.

32. In view of the above said documentary proofs namely, patta, adangal and kist receipt dated 9.10.2012 and 11.10.2012, the physical possession is still continuing with the petitioners and hence, the petitioners are entitled to have benefits of the Repeal Act in the light of Section 3(2)(b) of the Repeal Act which runs hereunder:

"Any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

33. Therefore, the petitioners are hereby directed to refund the entire amount received from the respondents with interest at the rate of 9% from the date of payment till the repayment by the petitioners."

13. In respect of the above detailed decision, the learned Counsel would submit that the reasoning of the learned Single Judge of this Court squarely hold good for the present challenge in this Writ Petition also. The original acquisition was in respect of the entire land in S.No.468/1 commonly and hence, what is good for S.No.468/1A would also be good for S.No.468/1B also.

14. The learned Counsel would also refer to the decision of Honourable Division Bench of this Court on the said legal aspect in W.A.No.804 of 2012, dated 17.03.2016 and specifically refer to para 5 to 7, which are extracted hereunder:

"5. Similar issue came up before the First Bench of this Court in W.A.Nos.137 & 587 of 2009, etc. batch and the provisions of Section 11 of the Principal Act as also the Repeal Act have been fully dealt with. One of us (S.Vaidyanathan,J.) had an occasion to consider a similar plea in W.P.No.4315 of 2011 with reference to the said First Bench judgment of this Court. Relevant portion of the order dated 16.07.2014 made in W.P.No.4315 of 2011 is extracted below:

12. It is further held in the above said batch cases by the Honble Division Bench thus, possession allegedly taken over by the respondents without issuing due notice to the person who was in actual possession of the land was held to be illegal in the eye of law. Therefore, the question of initiating fresh proceedings applying the mandatory provisions under the Act would not arise at this distant point

as the 1978 Act had come to be repealed by



Act 20 of 1999. A perusal of the records in this case reveals that neither the petitioner, who was the actual owner, nor his immediate vendor had even been served with a notice. The possession allegedly taken over by the respondents without issuing due notice to the person who was in actual possession of the land was held to be illegal in the eye of law.

6. On a perusal of the records, it is seen that there is no documentary evidence to show that property tax has been paid by the Government after the Repeal Act. But, some other writ petitioners have filed documents after the year 2010 regarding payment of property tax, which clearly shows that possession has not been taken over by the Government. Learned Single Judge, in the order dated 20.07.2010 has also observed that no notice has been sent to the original land owners, i.e. the members of the writ petitioner Association, under Section 11(5) of the Principal Act, which is mandatory.

7. Moreover, as none was dispossessed and property was not taken over by the Government and finality was not attained with regard to possession of lands prior to the coming of the Repeal Act and also in view of the decision of the First Bench of this Court rendered in W.A.Nos.137 & 587 of 2009, etc. batch and taking note of the decision rendered in W.P.No.4315 of 2011, dated 16.07.2014 (S.Vaidyanathan,J.), this Court is of the view that the order of the learned Single Judge in allowing the Writ Petition is perfectly in order and the same is confirmed."

15.The learned Counsel would also rely upon a recent decision of this Court in W.A.No.3632 of 2019, dated 20.01.2020. The legal position has been reiterated again by the Honourable Division Bench of this Court after referring to various legal precedents on the said aspects. The Honourable Division Bench of this Court dismissed the Writ Appeal as against the decision of learned Single Judge of this Court holding in favour of the writ petitioners therein. The Honourable Division Bench has referred to the all decisions including the decisions of Honourable Supreme Court and other decisions reaffirming the ratio that the physical possession had to be taken over in a manner that is provided under the provisions of the repealed Act. Therefore, the learned Counsel would submit that this Court may see the records in order to ascertain whether acquired property has been physically taken over by the respondents in terms of the Section 11 of the repealed Act.

16.In response to the notice ordered in this Writ Petition, Mr.C.Ramesh, learned Special Government Pleader entered appearance on behalf of the respondents and a counter affidavit has also been



filed.

17. In the counter affidavit, the facts as stated above have not been disputed and in fact, the same have been repeated in the counter affidavit. According to the counter affidavit, after the completion of the acquisition proceedings, the acquired land in S.No.468/1B measuring about 5105 sq.mtrs., was allotted to Rehabilitation Department vide G.O.Ms.No.252, Revenue Department, dated 21.02.1984. Thus, the rights to the lands thereafter belong to the allottee only and the petitioners have no *locus standi* to question the acquisition proceedings.

18. In the counter affidavit, it is further stated that even before the repealed Act, which had come into force on 16.06.1999, the acquisition proceedings had come to an end and all formalities were followed and hence, Section 4 of the repealed Act shall not be applicable to the present claim. The counter also contains detailed averments as to the notices issued under the various provisions of the Act, which included a notice under Section 11(3) of the Act being issued on 21.01.1983 and published in Tamil Nadu official Gazette on 09.02.1983. Notice under Section 11(5) of the Act was also issued on 25.02.1983 to surrender and deliver the possession of the land. According to the averments that since the land owners did not come forward to surrender the excess vacant land, the possession of the land was taken over and handed over to the revenue authorities on 04.03.1993. In regard to the payment of compensation, the averments in the counter affidavit would state that the land owners have received the compensation in installments.

19. Mr.C.Ramesh, learned Special Government Pleader appearing for the respondents would strenuously reiterate the above facts and submit that the present Writ Petition is without any merits and the same is liable to be dismissed. According to him, in terms of the detailed averments contained in the counter affidavit, the authorities have followed the provisions of the Act scrupulously and today, these petitioners, at this distance of time, cannot claim that the land still belongs to them and take advantage of Section 4 of the repealed Act after so many years.

20. The learned Special Government Pleader would also submit that the decision relied upon by the petitioners pertains to the adjacent piece of lands that land owners had instituted Writ Petition as early as in 2003 and therefore, the petitioners cannot compare themselves with the Writ Petitioners therein. The Writ Petition was filed immediately after coming into force of repealed Act and the decision was rendered on the basis of the factual matrix of that case at that point of time.

21. This Court considered the submissions of the Mr.T.Lenin Kumar, learned Counsel for the petitioners and Mr.C.Ramesh, learned



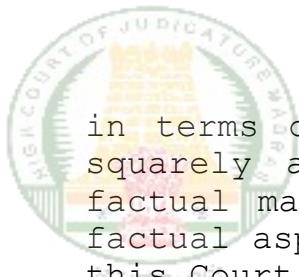
Special Government Pleader appearing for the respondents.

22.As far as the legal position is concerned, as rightly contended by the learned Counsel for the petitioners, the ratio has been consistently laid by the Courts that unless, the acquisition authorities had taken over the possession of the acquired lands in terms of the provisions of the repealed Act, the taking over of the possession by any other form or method would not be construed valid and would be construed that the possession continuous to be with the original owner or successors-in-interest. In which case, the acquisition would attract Section 4 of the repealed Act. Therefore, there cannot be any dispute in regard to the application of the ratio as far as the claim of these petitioners in this Writ Petition is concerned.

23.In the above circumstances, the only issue that falls for consideration is whether the physical possession of the subject lands had been taken over by the respondent factually in terms of Section 11 of the repealed Act. As stated above, the original records have been produced and in fact, the learned Special Government Pleader was confronted with the question whether the old documents reveal any physical taking over of the property in terms of the provisions of the repealed Act. The learned Special Government Pleader, on perusal of the documents, could not vouch for the fact that the authorities had taken over the physical possession of the properties in terms of the Act.

24.Be that as it may, this Court having directed to produce the documents, as to make sure whether physical possession has been taken by the authorities, from the original records produced for consideration before this Court, particularly, in the teeth of detailed averments contained in the counter affidavit as to the allotment of the acquired properties to the Rehabilitation Department in 1984 itself vide G.O.No.252, dated 21.08.1984. But, after perusing the original records, this Court finds that the possession has not been taken over by the authorities in terms of Section 11 of the repealed Act. This Court finds that the files contain no specific material to reveal that the authorities had resorted to any action in terms of of the provisions under Section 11 of the Act, namely, Section 11(3), (5) and (6) of the Act. In the absence of any such measure being initiated, this Court would have to come to an inexorable conclusion that the possession of the petitioners' land had not been taken over, as mandated by the provisions of the repealed Act, particularly, with reference to Section 11 of the Act.

25.In the said circumstances, the ratio laid down by the Courts as affirmed from time to time that in case of physical possession of the properties had not been taken in terms of the Section 11 of the repealed Act, the proceedings have to be declared as having abated



in terms of Section 4 of the repealed Act. The ratio has to be squarely applied to the present case also on the basis of the factual matrix and also the findings of this Court on the crucial factual aspects as set out above. In view of the above conclusion of this Court, the Writ Petition has to be necessarily allowed.

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26. In the said circumstances, the impugned order of the third respondent passed in his proceedings 161/2020/A2, dated 23.06.2020 is hereby set aside as invalid and illegal and consequently, the respondents are directed not to interfere with the petitioners' possession and enjoyment of the property in S.No.468/1B measuring above 1.62 acres situated at Keelaveeraragavapuram, Palayamkottai Taluk, Tirunelveli District, by invoking the provisions of the repealed Act 20 of 1999.

27. It is also clarified that any compensation received by the owners as a consequence of the acquisition of the property, it is open to the authorities to proceed against the petitioners for refund of the compensation amount if any received by them, with reasonable interest.

28. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Secretary to Government of Tamilnadu,
Revenue Department,
Fort St. George, Chennai-9.

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

3. The Assistant Commissioner for Urban Land Tax,
Madurai.

4. The Tahsildar,
Palayamkottai Taluk, Tirunelveli District.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-15262[F] dated
01/04/2021)



W.P.(MD)No.10711 of 2020

+1 CC to M/s.SPL GP (SR-15344[F] dated 07/04/2021)

W.P. (MD) No.10711 of 2020

01.04.2021

NS (CO)

KB(09.04.2021) 18P 7C

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