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W.P. No.12354 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N. MALA

W.P.No.12354 of 2002

1.T.Kalasalingam

2.K.Sridharan

... Petitioners

Vs.

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

2.The Competent Authority,
(Urban Land Ceiling) and
Assistant Commissioner,
Urban Land Tax,
Alandur,
Chennai.

3.S.Velammal



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4. Tamil Nadu Land Reforms Special
Appellate Tribunal,
J.P.Maligai,
Santhome High Road,
Chennai – 600 004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent relating to the order dated 08.10.2001 made in T.R.P.No.3 of 2001, quash the same and direct the 1st and 2nd respondents to forbear from taking any action in respect of the petitioners' land now bearing Survey No.211/2A of Thiruvanmiyur Village.

For Petitioners	:	Mr.V.Ramesh for M/s.V.Sanjeevi
For R1 and R2	:	Mrs.Geetha Thamaraiselvan Special Government Pleader
For R3	:	No appearance
R4	:	Tribunal

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed for issuance of a writ of certiorarified mandamus to quash the order passed by the Tamil Nadu Land Reforms



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Special Appellate Tribunal, dated 08.10.2001, made in T.R.P.No.3 of 2001

and to forbear the respondents 1 and 2 from taking any action in respect of the petitioners' land in Survey No.211/2A of Thiruvanmiyur Village.

2.Brief facts that are necessary for the disposal of this writ petition are as follows :

2.1.Punja lands measuring about 84 cents in Survey No.211/2 in Thiruvanmiyur Village originally belonged to one K.G.Srinivasan. He had three sons by name, S.Ganapathi, S.Paramaguru and S.Venkatasubramanian. It appears that the said K.G.Srinivasan had several other properties. By a registered partition deed, which is registered as Doc.No.571 of 1970 dated 31.03.1970, the said K.G.Srinivasan entered into a partition with this three sons. At the time of partition, all the three sons of K.G.Srinivasan were minors and the mother of the minors, namely, Tmt.S.Velammal represented them in the said partition deed. It is seen from the said partition deed that an extent of 78 cents out of 84 cents in Survey No.211/2 was allotted to the share of S.Venkatasubramanian, one of the sons of K.G.Srinivasan. The remaining extent of 6 cents was to be enjoyed in common.



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WEB COPY 2.2.It is admitted that, subsequent to the partition deed dated 31.03.1970, an extent of 42 cents in Survey No.211/2 was acquired by the State Government under the Land Acquisition Act, 1894, out of the total extent of 78 cents that was allotted to S.Venkatasubramanian, one of the sons of K.G.Srinivasan.

2.3.Thereafter, K.G.Srinivasan died and the minor S.Venkatasubramanian was under the care and custody of wife of K.G.Srinivasan. The wife of K.G.Srinivasan and mother of S.Venkatasubramanian, Tmt.S.Velammal is impleaded as the 3rd respondent in this writ petition.

3.It is the case of the petitioners that the 3rd respondent obtained permission to sell the punja land that was allotted to the share of S.Venkatasubramanian in the partition, i.e., an extent of 36 cents which remained in the holding of minor after acquisition. After getting orders from the District Court, Chengalpet, for sale of the said land at Rs.2,200/- per cent and subject to other conditions, under two independent registered



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sale deeds, both dated 13.03.1984, 18 cents of land was sold to each of the two petitioners herein, for a total consideration of Rs.79,200/-. It is also stated by the petitioners that, another sale deed dated 12.04.1984 was also executed in favour of the 1st petitioner by all the three sons of K.G.Srinivasan in respect of the remaining 6 cents which was kept in common under the partition deed. Therefore, the case of the petitioners is that, by virtue of sale deeds executed by the sons of K.G.Srinivasan, the 1st petitioner is entitled to an extent of 24 cents and the 2nd petitioner is entitled to an extent of 18 cents in Survey No.211/2A. The subdivision Survey No.211/2B refers to the property which was acquired by the Government.

4.It is the specific case of the petitioners that the land in Survey No.211/2A is an agricultural land and therefore, the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as “the Act” for brevity) are not attracted. However, it is stated by the petitioners that, in the 2nd week of December, 1989, the Tahsildar informed the petitioners that the land was acquired by the 2nd respondent by treating the same as excess vacant land of the 3rd respondent Tmt.S.Velammal.



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5. From the records, it is seen that, in the Final Statement prepared by the Competent Authority under Sub-Section (1) of Section (10) of the Act, Tmt.S.Velammal is shown as the owner of the entire property and an extent of 1700 sq.m. in Survey No.211/2A has been stated as land to be surrendered by the assessee namely Tmt.S.Velammal. Subsequently, by a notification dated 04.06.1988, purported to have been issued under Sub-Section (1) of Section (11) of the Act, an extent of 17 Ares in Survey No.211/2A is stated to have been acquired by the State Government and it was also notified that, claims of all persons interested in the land can be made before the Competent Authority, Urban Land Tax and Urban Land Ceiling, Alandur. The said notification was published in the Government Gazette dated 15.06.1988. This was followed by another notification stated to have been issued under Sub-Section (3) of Section (11) of the Act, dated 28.09.1988. As per this notification, an extent of 17 Ares in Survey No.211/2A and an extent of 1 Hectare 29 Ares and 25 sq.m. in S.No.178/7A in Thiruvanmiyur Village were deemed to have been acquired by the State Government and deemed to have been vested absolutely in the State



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Government free from all encumbrances. This notification also reads as if the excess vacant land is in the holding of Tmt.S.Velammal. In effect, all proceedings were initiated and culminated under the Act by treating Tmt.S.Velammal, the 3rd respondent in this writ petition, as the owner of lands holding excess.

6. Thereafter, the writ petitioners challenged the notification issued by the 2nd respondent vide Rc.No.2216/88B insofar as it relates to 17 Ares (42 cents) in S.No.211/2A in Thiruvannamiyur Village, in a writ petition in W.P.No.733 of 1990 and sought for further relief restraining the State as well the Competent Authority (Urban Land Ceiling) and Assistant Commissioner (Urban Land Tax), Alandur, from interfering with the possession and enjoyment of the petitioners in respect of the land. The said writ petition was transferred to the Tamil Nadu Land Reforms Special Appellate Tribunal and numbered as T.R.P.No.3 of 2001.

7. By the time the matter was taken up for final hearing before the Tribunal, the Government of Tamil Nadu repealed the Act by Tamil Nadu



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Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Tamil Nadu Act No.20 of 1999) (hereinafter referred to as “Repealing Act” for brevity), which came into force with effect from 16.06.1999.

8.The petitioners primarily raised the following points before the Tribunal :

- i. The lands are agricultural lands and hence, they cannot be treated as vacant lands or urban lands as defined under Section 3(o) of the Act.
- ii. The failure to issue notice to minor S.Venkatasubramanian is a violation of the provisions, vitiating the whole proceedings, which had culminated into proceedings under Sub-Section (1) of Section (11) of the Act.
- iii. The sales executed by the 3rd respondent on behalf of the petitioners is valid and therefore, the proceedings initiated against the 3rd respondent cannot be valid and binding on the petitioners.
- iv. Since the petitioners 1 and 2 were not issued with any notice at any stage of proceedings under the Act, the entire proceedings is vitiated.
- v. In the light of the fact that the Act was repealed by the State



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Government, the proceedings initiated by the respondents under the Act has abated.

vi. Actual physical possession of the land was always with the petitioners and therefore, the proceedings stand abated by virtue of the Repealing Act.

9.All the issues raised by the writ petitioners were considered by the Tribunal based on the materials produced by the petitioners before the Tribunal and were rejected.

10.Though a specific issue was raised by the petitioners that the whole proceedings were wrongly initiated against the 3rd respondent namely, Tmt.S.Velammal, the mother of the minor S.Venkatasubramanian, by assuming the lands as excess vacant lands in the holdings of Tmt.S.Velammal, the Tribunal referred to the provisions of the Act, particularly the definition with reference to “person” and “family”, came to the conclusion that the notice issued to Tmt.S.Velammal is valid, as she happened to be the guardian of minor S.Venkatasubramanian.



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WEB COPY 11. Referring to Section (6) of the Act, the Tribunal then held that the alienations, i.e., the sales in favour of the writ petitioners, were after the initiation of proceedings against the 3rd respondent and therefore, the sale deeds shall be deemed to be null and void.

12. The issue raised by the petitioners that the land are agricultural lands and that they are not attracted by the provisions of the Act, was also considered and held against the petitioners, only on the ground that the petitioners have not produced any document like Adangal extract to prove actual cultivation in the lands.

13. The Tribunal then considered the issue whether physical possession is with the petitioners and decided the issue that the petitioners cannot be treated to be in possession of the property, mainly on the ground that the sale deeds obtained by them are invalid. In other words, since the petitioners were subsequent purchasers and they are not entitled to any notice in respect of the proceedings initiated by the 2nd respondent, the



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Tribunal came to the conclusion that the fact that possession was not taken from the petitioners would not vitiate the proceedings.

14.Relying upon the delivery receipt, which is available at Page No.289 of the Volume-I of the Department files, the Tribunal held that the delivery receipt on 11.09.1989 would go to show that the possession of the excess land was actually taken by the Revenue Inspector of Mylapore-Triplicane Village.

15.Therefore, the Tribunal, in view of the findings as against the petitioners, dismissed T.R.P.No.3 of 2001.

16.Challenging the same, the above writ petition is filed by the petitioners.

17.Learned counsel appearing for the petitioners almost advanced arguments on all the issues that were held against the petitioners. The learned counsel, referring to the documents filed in support of the writ petition, advanced his arguments on the following points :



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- i. The lands are agricultural lands even at the time when the petitioners purchased the same. Merely because there was no cultivation at the time when proceedings were initiated against the 3rd respondent, the provisions of the Act are not attracted in respect of agricultural lands purchased by the writ petitioners in 1984.
- ii. The entire proceedings were initiated by treating the lands as held by the 3rd respondent, namely Tmt.S.Velammal, the mother of S.Venkatasubramanian, as owner, despite the partition deed and hence, the proceedings culminated in the declaration under Section 11(3) of the Act are void as against the petitioner. In other words, it is contended that, by virtue of a registered partition deed which was long prior to the commencement of the Act, the subject property was allotted to the share of one of the sons of K.G.Srinivasan, namely S.Venkatasubramanian, and the whole proceedings are void, inasmuch as the same were initiated against a wrong person and not binding on the petitioners.
- iii. The sale deeds dated 13.03.1984 and 12.04.1984 executed by the sons of K.G.Srinivasan in favour of the petitioners cannot be held to



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be void, inasmuch as no proceedings were pending or initiated as against the vendors of the petitioners at any point of time. In other words, the sale deeds, having been executed by the real owner in favour of the petitioners, and the lands were never declared in the holdings of the petitioners' vendor, the real owner, cannot be invalidated merely because the proceedings were initiated against the 3rd respondent, treating the lands in her holdings as if she is the owner.

- iv. When possession is with the writ petitioners, and no document is produced by the respondents to prove that physical possession was taken from the writ petitioners at any point of time, as contemplated under Sub-Section (5) of Section (11) of the Act or by resorting to Sub-Section (6) of Section (11) *ibid.*, the proceedings cannot be treated as concluded by mere paper delivery to avoid the consequences of repeal of the Act. In other words, even from a stranger who is in possession under a void document, the 2nd respondent cannot take possession without resorting to Section 11(5) and Section 11(6) of the Act.



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v. Since physical possession is still with the petitioners, the proceedings initiated against the 3rd respondent must be held to have abated under Section (4) of the Repealing Act. Since it is not possible for the respondents to proceed further, the writ petition should be allowed.

18. In support of the contentions raised by the petitioners, this Court has considered the facts particularly with reference to the documents that were produced by the petitioners.

19. First of all, the records produced by the respondents and available on record would clearly indicate that, proceedings were originally initiated in respect of lands in S.No.211/2A against a wrong person, namely, 3rd respondent-Tmt.S.Velammal, who has no semblance of right over the property, except being the natural guardian of her minor sons at the relevant point of time. This Court also finds that this position is made clear going by the records of competent authority concerned at every stage of the proceedings. However, for the reasons best known to the 2nd respondent, in every proceedings, viz., notices and declaration under Section 11 of the Act,



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only the name of Tmt.S.Velammal, who is the 3rd respondent herein, is found as a person who is the owner of the land, clearly indicating that the assessment of excess vacant land is by treating the lands in the holdings of the 3rd respondent. Therefore, primarily, this Court is unable to sustain the proceedings or the stand taken by the respondents before this Court that notice was issued to the 3rd respondent and therefore, all the proceedings would bind the minor sons of the 3rd respondent and consequently, the writ petitioners. It is pertinent to mention that the 3rd respondent has categorically stated before the authorities about the partition and the subsequent sale deeds in favour of petitioners and to exclude the lands from the proceedings. Had there been a notice to the petitioners, the 2nd respondent would have dropped the proceedings against 3rd respondent in respect of lands in S.No.211/2A. Unfortunately, the Tribunal, though was apprised of the partition and the facts, proceeded to decide as if Tmt.S.Velammal, as natural guardian of minors, had represented minor. However, the minor became major in 1985. Hence, at no stretch of imagination, the proceeding culminated in the declaration under Section 11(3) of the Act can be held to be valid and binding on the vendor of the



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petitioners or the petitioners who have purchased the lands from the minor against whom no proceeding was initiated under the Act.

19(A).As per Section 6 of the Act, no person holding vacant land in excess of land ceiling limit immediately before the commencement of the Act, shall transfer any such land by way of sale, mortgage, gift, lease or otherwise until a notification regarding the excess vacant land held by him has been published under Sub-Section (1) of Section (11) and any such transfer made in contravention of the provision shall be deemed to be null and void. In this case, the land was never treated in the holding of vendor of the petitioners. Assuming that the vendor of petitioners did not file a statement under Section 7 of the Act, the land sold to petitioners cannot be treated as urban vacant land without a declaration against petitioners' vendor who became major in 1985 long before the notice under Section 11(1) or the declaration under Section 11(3). It is unethical to apply Section 6 of the Act in the present case to treat the sale in favour of petitioners as void and to say that the declaration that the lands covered by sale in favour of petitioners as excess urban vacant land in the holdings of



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Tmt.S.Velammal is binding on the petitioners.

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20.The lands are stated to be agricultural lands. It is surprising to note that the Tribunal has concluded the character of the land only on the basis that the lands are vacant and not on the basis of any Revenue record produced before the Tribunal. The lands were always treated as agricultural lands when substantial portion of the land was acquired by the Government. It is not in dispute that the lands were treated as agricultural lands and the petitioners purchased the same as agricultural lands as per the sale deeds. There is no document or material placed before the Tribunal to show as to how the agricultural land can be treated as a house site or urban vacant land so as to invoke the provisions of the Act. Merely because the petitioners are unable to produce records to show cultivation immediately after the purchase, this Court is unable to sustain the findings of the Tribunal as regards the character of the land.

21.This Court, in several cases while dealing with the issue in relation to the proceedings initiated under the Act, has held that a land can be



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considered as vacant for the purpose of invoking the provisions of the Act, only when the land is mainly used for the purpose other than agriculture after commencement of the Act. It has been held by a Division Bench of this Court in the case of ***Commissioner of Land Reforms, Chennai v. M/s.Libra Electrical Meters (P) Ltd., Coimbatore [1997 Writ L.R. 504]***, as follows :

“7. ... The object of a purchaser in the purchase or the possible use in future of a particular land for purposes other than agriculture is no ground to treat the lands which are really as on the date of the agreement or as on the relevant date merely agricultural lands to have been converted as urban vacant land.

...

As rightly held by the learned Single Judge, the fact that in one or more of the faslis the lands were kept fallow without actually raising crops is no ground to draw an inference or come to the conclusion that the lands ceased to be agricultural lands. The actual raising of crops or cultivation would depend upon every so many reasons, particularly the seasonal factors including the availability of water for irrigational purposes and therefore, the non-raising of crops in one or two stray faslis is by itself no sufficient ground or indication of the



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agricultural lands ceasing to be such lands and being proof of such agricultural lands getting converted as urban land for the purpose of the Act, as though they have been used for purposes other than agriculture.”

22.In the present case, it is not the case of the respondents that the lands were put to use either by the minor or the petitioners for purpose other than agricultural purpose. The lands, even after purchase by the writ petitioners, were kept as it was, and no part of the remaining property in the same Survey Number belonging to the petitioners or others or neighbouring lands was shown to be treated as urban land. Hence, the finding of the Tribunal that the subject lands are non-agricultural vacant lands, is erroneous.

23.Regarding possession, the Revenue records produced before this Court would show that, petitioners' names have been included as pattadhars in respect of the property in Survey No.211/2A. As a matter of fact, the chitta in respect of the land for various faslis and the extracts of Revenue records clearly indicate that the names of T.Kalasalingam and K.Sridharan (writ petitioners) are shown as pattadhars.



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24. The learned counsel appearing for the petitioners submitted that, mutation of records in favour of the petitioners would certainly show that the petitioners are in physical possession of the property and therefore, the entire proceedings without notice to the petitioners would only indicate the conduct of the respondents to conclude the proceedings ignoring the possession of the petitioners. He also relied upon a judgment of a learned single Judge of this Court in the case of ***Iqbal Mohemmed Bijili v. K.Arumugam and others [2005 (3) CTC 420]***, wherein the learned single Judge, after relying upon the judgment of the Hon'ble Supreme Court, has held as follows :

“22. The learned counsel for the respondents submits that though mutation of names in the revenue records is not the evidence of title, it would definitely show possession and for this he relied on Guruvammal v. Subbaiah Naicker, 2000 (1) L.W. 488, wherein, the learned Judge has referred to Sankalchan Jayachandbhai Patel v. Vithalbhai Jaychandbhai Patel, 1996 (6) SCC 433, in which it was held that the mutation entries enable the State to collect the revenues from persons in possession. According to the learned counsel, the fact that the



revenue records have been changed to their names would clearly show that they were in possession.”

25.Since the respondents are expected to inspect the Revenue records at the time of initiating the proceedings under the Act, this Court is unable to justify the stand taken by the respondents questioning the physical possession of the petitioners, despite the enjoyment of the land by the petitioners is clearly recognized by the Revenue officials long before taking paper delivery. When no notice was issued to the petitioners under Section 11(5) of the Act, it has to be concluded that possession if at all can be taken only from the petitioners.

26.As regards physical possession, the learned Special Government Pleader strenuously argued that the petitioners cannot be treated as one in possession of the property, as the sale deeds obtained by them are liable to be declared as void in view of Section (6) of the Act. This Court has already held that the sale deeds cannot be declared as void, in view of the fact that no proceedings have been initiated against S.Venkatasubramanian, who is



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the actual owner of the property at any point of time, as admitted by the respondents before this Court. Merely because proceedings were initiated against the 3rd respondent, who is not the real owner, and the proceedings under the premise that the 3rd respondent was holding vacant lands in excess of the ceiling area is not binding on the petitioners, this Court is unable to countenance the argument of the learned Special Government Pleader by referring to Section (6) of the Act.

27. Question whether the Competent Authority is bound to issue notice in writing to a person who is in physical possession, arose before this Court in several instances and in all those cases, this Court has consistently held that, in the absence of surrender or delivery of possession by the assessee to the State Government or any person duly authorized by the State, or the State or Competent Authority takes physical possession of the property, the person aggrieved can maintain a writ petition challenging the proceedings initiated under Section 11(5) of the Act. A Division Bench of this Court, in the case of *V.Somasundaram and others v. Secretary to Government, Revenue Department, Chennai and others* [2007 (1) MLJ



750], after considering the provisions of the Act, has held as follows :

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“9.From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner . As per section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and delivery possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of section 11(5) of the Act.

10.Similar issue was considered by a learned single Judge of this Court (A.Kulasekaran, J.) in the decision reported in 2006 (5) CTC 52 (Vijay Foundation (P) Ltd. v. The Principal Commissioner and Commissioner of Land Reforms)



and in para 7 the learned Judge held as follows,

“7.The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Section 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents.”

We are in entire agreement with the said decision of the learned Judge.

11.As rightly contended by the learned counsel for the appellants, the appellants were not entitled to file appeal due



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to enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, from 16.9.1999. Hence the writ petition filed without availing the alternate remedy of filing appeal under section 33 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, is maintainable.”

28. Again the same issue arose before another Division Bench in the case of ***M/s.Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to Government, Revenue Department, Chennai [2009 (4) L.W. 819]***, and the Division Bench has held as follows :

“11. On the other hand, the learned Special Government Pleader contended that the petitioner is not entitled to notice under Section 11(5) of the Act in view of the Division Bench decision of this Court in Prabhavathi Jain and 4 others Vs. The Government of Tamil Nadu and 8 others reported in 1995 (2) L.W. 200. We have perused the judgment. We are of the view that the judgment did not decide whether Section 11(5) contemplates service of notice on the person who is in possession of the concerned excess land. On the other hand, the judgments cited by the petitioner are on the point. Further it is not the case of the petitioner that he is entitled to notice under Section 7 or 9 while acquiring the land.



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12. In view of such categorical pronouncements of this Court, we are of the view that the notice under Section 11(5) should be served on the petitioner. Though, his purchase by a sale deed is made invalid by Section 6 of the Act, in view of the word any person who may be in possession used in Section 11(5) of the Act, notice ought to have been served on the petitioner to surrender or deliver possession to the Government.

13. Further, the learned counsel for the petitioner argued from the records produced that even the vendor of the land was also not served with the notice under Section 11(5) of the Act read with Rule 10(3). According to him, the notice under Section 11(5) should be sent by RPAD. In this case, admittedly, the records do not indicate that notice was sent through RPAD to the erstwhile owner. The learned counsel also pointed out that there was no endorsement from the erstwhile owner for the receipt of the notice. On the other hand, the records reveal that an endorsement was made by the official at page No.937 of the record file that notice was served on the erstwhile owners. According to the learned counsel for the petitioner, this does not amount to service of notice under Section 11(5) of the Act.



The learned counsel for the petitioner strenuously contended that if such a method is approved, then the officials would cook up the records by simply making an endorsement in the notice without getting endorsement from the concerned persons for proof of service or by sending through RPAD. We find force in the submission of the petitioner.

14. We therefore, hold that there was no notice served under Section 11(5) of the Act either on the petitioner or on the erstwhile owner, viz., the vendor of the land.

15. The learned counsel for the petitioner further argued that the take over of possession is complete only when it is signed by the land owner or the person in possession while delivering the excess land under Section 11(5) of the Act read with Rule 10(3) of the Rules. If no such delivery of possession took place, the third respondent has to resort to Section 11(6) of the Act. It was argued that neither the erstwhile land owner (vendor) nor the petitioner signed the Land Delivery Receipt and the alleged take over of possession was not actual and real and it was only a paper possession and therefore, the petitioner is entitled to the benefit of the Section 4 of the Repealing Act 20 of 1999.



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16.The learned counsel for the petitioner strenuously contended that the Tribunal erred in holding that the take over of possession on paper by the Revenue authorities on 31.12.1990 was sufficient. In view of such a finding, the Tribunal came to an erroneous conclusion that Section 4 of the Repealing Act 1999 would not help the petitioner, according to the learned counsel for the petitioner.

17.The learned counsel for the petitioner argued that there should be actual take over of possession and the take over of possession in record is not the physical possession of the surplus lands. If the land owner is not a party to the Land Delivery Receipt, the take over should be established by getting signature from independent witnesses, preparing Panchanama, etc. But the records reveal that it is only possession in papers.

18.The learned counsel for the petitioner relied on the judgment of the Honourable Mrs.Justice Prabha Sridevan in W.P.No.19845 of 2006 dated 31.07.2006, wherein in paragraph No.13, the learned Judge held that mere recording of possession by the authorities will not amount to actually taking



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of possession. The learned Judge rejected the plea of taking of possession based on the similar Land Delivery Receipt produced in that case. In this context, the learned Judge recorded in paragraph No.8 that the Land Delivery Receipt does not show in whose presence, the possession was taken. The learned Judge also relied on a paragraph in W.P.No.35490 of 2004, which is as follows:

"When the respondent does not say that the petitioner had surrendered possession on it's own, then the respondent ought to have taken possession. Under Section 11(6) of the Principal Act, whenever a urban land owner fails to surrender possession as demanded under Section 11(5) of the Act, then the competent authority may take possession of the lands and may, for that purpose, use such force as may be necessary. Therefore, from the above two aspects namely, the urban land owner was directed to surrender possession and since he is not shown to have surrendered possession and the power of the Government to use such force as may be necessary in taking possession, clearly indicate that physical possession of the land must be taken by the competent authority. There is nothing on record to show that "on what day possession was taken; was any representative of the writ petitioner present; the name of the person who took possession the person from whom possession was taken; are there any contemporary record to show that possession was in fact taken at such a time and on such a date when possession was handed over to the Revenue Inspector, Pallikaranai; are there any



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record to show such handing over to the Revenue Inspector, Pallikaranai and the name of the officer, who received possession of the lands.....

In 2002 (2) L.W.764 (C.V.Narasimhan Vs. The Government of Tamil Nadu etc., and 2 others), while considering the impact of the Repealing Act, had held that where physical possession of such land continues to be with the owner, the statutory vesting under Section 11(3) of the Act is of no relevance at all".

19.The learned counsel for the petitioner further cited the decision dated 25.09.2006 of the Honourable Mr.Justice F.M.Ibrahim Kalifulla in W.P.Nos.33839 and 33911 of 2004, wherein the learned Judge followed his earlier decision dated 09.09.2004 in W.P.No.6641 of 1997 and the same is extracted here-under:

"11.In this context, it is worthwhile to refer to the decision of S.JAGADEESAN, J in the judgment reported in C.V.Narasimhan rep. by his Power Agent Smt.Jayalakshmi, No.12, Bishop Garden, Raja Annamalaipuram, Chennai 28 vs. 1. The Government of Tamil Nadu, rep. by its Secretary, Revenue Department, Fort St.George, Chennai-9. 2. The Special Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5. 3. The Competent Authority, Urban Land Ceiling, Alandur (2002-2-L.W.-764), wherein the learned Judge has clearly stated that so long as the physical possession of the land continues to be with the owner, even the statutory vesting of the



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land will be of no consequence."

The learned Judge in paragraph No.7 of the same judgment dated 25.09.2006 has held as follows:

"7.To the same effect is the order of Justice R.Balasubramanian, dated 22.8.2006 passed in W.P.No.17416 of 2004, where the learned Judge, reiterating the position that the possession means taking physical possession, had held, "Therefore, the sine qua non to keep the property declared as surplus under the provisions of the Act is that physical possession of the said property ought to have taken by the competent authority despite coming into force of the Repealing Act."

20.The learned counsel for the petitioner heavily relied on paragraph No.10 of the judgment dated 19.10.2006 of the Honourable Mr.Justice K.Chandru in W.P.No.29061 of 2003, which is as follows:

"This Court in its judgment reported in (2006) 2 M.L.J. 664 (Sosamma Thampy vs. The Assistant Commissioner (ULT) - cum - Competent Authority (ULC), has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC Act and noting in the file that symbolic possession is taken cannot be accepted as taking of physical possession. This Court is in complete agreement with the ratio laid down in the aforesaid decision



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which also squarely applies to the facts and circumstances of the case."

21. The learned counsel for the petitioner strenuously contended that the Act contemplates that if the persons in possession failed to deliver possession within 30 days of receipt of notice under Section 11(5), the Competent Authority has to take possession under Section 11(6) of the Act. The learned counsel has brought to our notice that the words "may for that purpose use such force as may be necessary" used in 11(6) indicates that to take actual possession, the Competent Authority is clothed with power under Section 11(6). In the absence of delivery of possession by land owner pursuant to notice under Section 11(5), the possession should have been taken through the manner suggested under Section 11(6). Since the notice under Section 11(5) was not even served, the symbolic possession is not a possession as contemplated under Sections 11(5) and 11(6) of the Act. The learned counsel for the petitioner also produced various receipts for payment of tax and the latest receipt is dated 07.03.2007 and various electricity bills including the last one dated 14.11.2008 besides Small Scale Industries Registration Certificate about the carrying on the manufacturing of bricks, in support of his



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submission that the concerned lands are in his actual possession.

22.The learned Special Government Pleader vehemently argued that symbolic possession is sufficient when the actual take over of possession is not contemplated under the Act. We are not in agreement with that submission in view of the categorical pronouncements of this Court referred to above.

23.Once the possession is not taken over by the Government as held by us, all the proceedings under the Act must be held to have abated under Section 4 of the Repealing act, in view of the categorical pronouncement of the constitutional Bench of the Honourable Apex Court in Smt.Angoori Devi Vs. State of Uttar Pradesh and Others reported in JT 2000 (Suppl.1) SC 295.”

The Division Bench which decided *M/s.Sree Jayalakshmi Brich Industries'* case has again reiterated the position in a subsequent judgment in the case of ***G.Krishnamoorthy and others v. Government of Tamil Nadu, represented by its Secretary, Revenue Department, Chennai and others [2009 (8) MLJ 85].***



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29.A Division Bench consisting of His Lordship Mr. Justice M.Y.Eqbal, Chief Justice, as he then was, speaking for the Bench, in the case of *The Government of Tamil Nadu and others v. M/s.Mecca Prime Tannery, represented by its Managing Director and others [2012 (4) L.W. 289]*, has elaborately considered the terms 'vesting' and 'vesting free from encumbrance' used in different Statutes, having different connotations. It was held that, even after declaring excess vacant land and vesting of the land free from encumbrance, the State has to initiate action for taking possession of the land, as evident from Sections 11(5) and 11(6) of the Act. For proper appreciation of the judgment, this Court has to extract the following portion of the said judgment :

“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.

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



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taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands.”

The Division Bench, ultimately after referring to every judgment that was cited on behalf of the State, rejected the same and accepted the case of the persons who were in physical possession of the property to grant relief on account of the repeal of the Act on the ground that physical possession was not taken from those persons.

30.The issue whether physical possession is a *sine qua non* to conclude the proceedings to render the Repealing Act ineffective, was considered by the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. Hari Ram [2013 (4) SCC 280]***. Interpreting the provisions of the similar Act which is applicable to the State of Uttar Pradesh and its repeal, the Hon'ble Supreme Court has held as follows :

“Voluntary Surrender

31.The ‘vesting’ in sub-section (3) of Section 10, in our



view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in Maharaj Singh v. State of UP and Others (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that 'vesting' is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in Rajendra Kumar v. Kalyan (dead) by Lrs. (2000) 8 SCC 99 held as follows:

"We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest" generally means to give a property in." (Per Brett, L.J. Coverdale v. Charlton. Stroud's Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well."

32. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver



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possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of “possession” which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any



person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35.If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression “where any land is vested” under sub- section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36.The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under



sub-section (5) of Section 10. Sub-section (6) to Section 10 again speaks of “possession” which says, if any person refuses or fails to comply with the order made under sub- section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub- section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to Section 10. Sub-sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is “peaceful dispossession” and on failure to surrender or give delivery of possession under Section 10(5), than “forceful dispossession” under sub-section (6) of Section 10.

37.The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word ‘may’ has been used therein, the word ‘may’ in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from



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failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'."

The Hon'ble Supreme Court then has considered the effect of Repeal Act in Para Nos.41 and 42 of the said judgment, which reads as follows :

“Effect of the Repeal Act

41.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.

42.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



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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.”

31.The same principle was followed subsequently in few judgments of the Division Benches and in several judgments of learned Single Judges of this Court, viz., in the cases of *The Government of Tamil Nadu represented by its Secretary, Revenue Department and others v. J.Richardson [2014 (3) L.W. 328]*, *State of Tamil Nadu represented by its Secretary to Government, Revenue Department, Chennai and others v. Sumathi Srinivas [2015 (2) L.W. 391]*, *A.N.Visalakshi and others v. The Special Commissioner, Urban Land Ceiling and Land Reforms, Ezhilagam, Chepauk, Chennai and others [2015 (5) CTC 823]*, etc. In *A.N.Visalakshi's* case, a Division Bench of this Court noticed that the land delivery receipt



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recorded by the authority can be considered only as paper delivery as it is not authorised by law, especially in a case where no authenticated records are available to show that authorities have taken physical possession of the land in accordance with law.

32. Again, in the case of *The Secretary to Government, Revenue Department, Secretariat, Chennai and others v. B. Anand Kumar [2016 (3) CTC 668]*, Division Bench of this Court held that, record of delivery of possession by way of land delivery receipt or panchanama is not sufficient and there should be exchange of physical possession as contemplated under the Act and by following the procedure. Again, this issue was discussed in the case of *State of Tamil Nadu, represented by its Secretary, Revenue Department, Chennai and others v. P.B.K. Thilagar and another [2018 (4) L.W. 762]*. This Court, though can lay hands on several other judgments of the Hon'ble Supreme Court and this Court by learned Single Judges in writ petitions challenging the proceedings initiated under Section 11(5) of the Act, in view of the categorical pronouncement of the Hon'ble Supreme Court and previous Division Benches of this Court taking a consistent view



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that, taking physical possession for vesting the land in State is *sine qua non* for treating the proceedings complete, so as to render the Repealing Act ineffective.

33.The learned counsel appearing for the petitioners pointed out that the observations of the Tribunal regarding physical possession is totally unwarranted. This Court, in response to the submission of the learned counsel, wanted to peruse the original records, as it was considered by the Tribunal. Volume-I Page No.289 of Department files, which was relied upon by the Tribunal and produced by the learned Special Government Pleader, contains land delivery receipt that was prepared. The receipt was prepared in a typed format indicating that an extent of 17 Ares in Survey No.211/2A have been delivered by a Revenue official and taken possession of by the Firka Revenue Inspector. This Court finds that the endorsement evidencing hand over of possession is supposed to be signed by the land owner. However, the typed portion 'land owner' has been scored off by ink and below it, some Revenue official has signed as a person who has handed



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over the land. This signature bears the date 11.09.1983. Surprisingly, the Revenue Inspector has signed on 11.09.1989 to acknowledge taking of possession. Therefore, the record which was prepared as if possession was taken from Tmt.S.Velammal, does not contain the signature of Tmt.S.Velammal, however, a Revenue official has acknowledged handing over of possession by him on 11.09.1983, which has been acknowledged by another Revenue official, namely, Revenue Inspector on 11.09.1989. The same is available in duplicate with the same signatures and dates in Page No.291. A similar receipt is also found in Page No.293. All the three receipts, though were prepared to vouch taking of possession from Tmt.S.Velammal, it is now seen that some Revenue official has signed as if he has handed over possession on 11.09.1983 and later, the Revenue Inspector has signed in all three receipts on 11.09.1989, acknowledging taking over possession. Even the symbolic or paper delivery is not from Tmt.S.Velammal but from another Revenue official. Therefore, it appears that the records have been prepared which is self serving. The finding of Tribunal relying upon these documents cannot be sustained.



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34. Without proper entries or records to convince this Court that physical possession was ever taken by any of the Revenue officials from Tmt.S.Velammal or the petitioners, as already held, the whole proceedings initiated against the 3rd respondent is invalid and cannot culminate in a valid vesting of the land in favour of the Government under the provisions of the Act.

35. For all the reasons and conclusions reached above on all the issues, this Court finds merits in this writ petition and the writ petition is allowed. The impugned order passed by the Tribunal in T.R.P.No.3 of 2001, dated 08.10.2001, is quashed. The respondents 1 and 2 shall not interfere with the petitioners' possession and enjoyment of the subject lands.

36. In case the respondents have done mutation pursuant to the order of the Tribunal, which is now set aside by this Court in this writ petition, the respondents shall cause mutation in all Revenue records restored in the name of petitioners through the concerned Revenue officials. When this order is produced before the concerned Revenue official, namely, Tahsildar,



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he shall make necessary entries/mutation in the Revenue records, so as to restore patta for the subject lands in the names of the writ petitioners in terms of the sale deeds through which they claim title, right in accordance with law. This exercise shall be undertaken by the Tahsildar concerned within a period of four weeks from the date of production of a copy of this order before him. No costs.

(S.S.S.R., J.) (N.M., J.)
04.11.2022

mkn

Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

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

2.The Competent Authority,
(Urban Land Ceiling) and
Assistant Commissioner,
Urban Land Tax,
Alandur, Chennai.

3.The Tamil Nadu Land Reforms Special Appellate Tribunal,

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J.P.Maligai,
Santhome High Road,
Chennai – 600 004.



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S.S. SUNDAR, J.
and
N. MALA, J.

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