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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.14260 OF 2011

AND

M.P.NO.1 OF 2011

R.Amirtham

...Petitioner

Vs.

1.The Competent Authority cum Asst. Commissioner,
Urban Land Tax and Ceiling,
Coimbatore-18.

2.The Commissioner and Director,
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai-600 005.

3.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Tamil Nadu Urban Land Ceiling & Tax Department,
Fort St. George, Chennai-600 009.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to treat the proceedings initiated by the 1st respondent under the provisions of principal Act, Tamil Nadu Urban land (Ceiling and Regulation) Act 1978 vide Not.No.VI(1) 248/87 dated 29.04.1987 and Not.No.VI(1) 430/87 dated 08.07.1987 as abated in virtue of Sec 4 of the Repeal Act, 20/1999 in respect of the properties of the petitioner namely Plot No.12(part), 13, 16(part), 21 and 23 comprised in S.No.412/1C at Uppliyapalayam Village, Coimbatore T.K and District.

For Petitioner : M/s.A.Mohamed Ismail

For Respondents : Mr.G.Nanmaran, Spl. GP

O R D E R

The petitioner has filed this writ petition seeking issuance of a Writ of Mandamus to direct the respondents to treat the proceedings initiated by the 1st respondent under the provisions of principal Act, Tamil Nadu Urban land (Ceiling and Regulation)



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Act 1978 vide Not.No.VI(1) 248/87 dated 29.04.1987 and Not.No.VI (1) 430/87 dated 08.07.1987 as abated in virtue of Sec 4 of the Repeal Act, 20/1999 in respect of the properties of the petitioner namely Plot No.12(part), 13, 16(part), 21 and 23 comprised in S.No.412/1C at Uppliyapalayam Village, Coimbatore T.K and District.

2. The case of the petitioner is that her father late Ramakrishnan inherited certain properties including the properties comprised in S.F.Nos.412/1 and 422/1 at Uppliyapalayam village, Coimbatore Taluk, vide partition deed dated 06.03.1969. Out of the above said properties, an extent of 3,287 sq. mts., in S.R.No.412/1C was subjected to proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (in short Act). The said property was declared as excess vacant land in terms of Sec 11(1) of the Act, vide notification dated 29.04.1987 and the properties were declared as deemed to be acquired in terms of Sec 11(8) of the Act and the same was notified vide notification dated 08.07.1987. While such being the case, the petitioner filed a partition suit in O.S.No.2433/1990 and in the meanwhile, the petitioner's father died in the year 1993 and after his demise, the petitioner's mother viz., Padmavathi and her sister viz., Radhamani were impleaded in the suit and preliminary decree was passed on 14.08.1997 and the property was ordered to be divided into two equal half and one half was decreed in the petitioner's favour and final decree was passed on 30.07.2004 wherein half of the share of the suit property was earmarked by dividing the same into plots by the Commissioner appointed by the Court and thereby ordered for vacant possession of Plot No.12(part), 13, 16(part), 21 and 23.

3. It is further submitted that, though the subject properties were deemed to be acquired under Section 11(8) of the Act vide notification dated 08.07.1987, the respondents did not pay the compensation as envisaged in Sec 12 of the Act and have failed to take actual physical possession. The said Act was repealed by the Tamil Nadu Urban land (Ceiling and Regulation) Repeal Act, 1999 and same came into force on 16.06.1999. After the repeal of the Principal Act, no provision of the said Act could be enforced any further and the entire proceedings initiated under the Principal should be treated as abated. Even today, the petitioner is in possession of the properties that were given to her under the Decree in O.S.No.2433 of 1990. Hence, the present Writ petition challenging the notifications/acquisition proceedings in Not.No.VI(1) 248/87 dated 29.04.1987 and Not.No.VI(1) 430/87 dated 08.07.1987.

4. The learned counsel for the petitioner submits that, it is true that the entire acquisition proceedings were initiated



in the year 1987 and the properties were acquired in the year 1987 itself. However, even on bare perusal of the counter, it is evident that no compensation amount was paid. Though the respondent claim that notice dated 5.08.1987 was issued to the land owners to surrender or deliver possession of excess vacant land, under section 11(5) of the Act but they did not come forward to surrender the excess vacant land and, therefore, the said land was taken and handed over to the Revenue Inspector, Singanallur on 18.11.1988 and a notice dated 27.02.1989 was issued to the land owners to appear for enquiry and thereafter, the order under Section 12(6) was passed for payment of 25% of the amount payable for the acquired land and the same was refused by the urban land owners/petitioner's parent. It is the further submission on behalf of the petitioners that the counter did not reveal whether amount has been paid and physical possession has been taken by the respondents and in the absence of the same, the principal Act having been repealed, no proceedings could continue against the petitioners. Towards taking symbolic possession, learned counsel for the petitioner relied on the decision of this Court in W.P.No.12256/2006 dated 05.07.2018 and also W.P.No.28909/2018.

5. The learned Special Government Pleader submitted that, based on the revenue records, notices were issued to the parent of the petitioner as per the rules and due to non-appearance and in the absence of any efforts by those persons, possession of the said land was taken and handed over to the revenue authorities vide proceedings dated 18.11.1988 and obtained possession certificates on the same day, which was long before the introduction of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20/1999) (in short 'Repeal Act'). Hence, no question arises as to the abatement of the proceedings under the Repeal Act and the present petition deserves to be dismissed.

6. This Court gave its anxious considerations to the contentions advanced by the learned counsel on either side and perused the materials available on record.

7. Admittedly, the urban land ceiling acquisition proceedings were initiated against the petitioner's father and the notice was served to the petitioner's father under section 7 (2) of the Act and the petitioner's father / land owner filed statement under Section 6(1) of the Act regarding land owned by him and he appeared on 26.11.1979 and gave statement regarding his consent to surrender the eastern portion of the land in S.F.No.412/1(pt) of Uppilipalaya Village to the Government. After serving notice under section 9(4) with draft statement under Section 9(1) of the Act, the 1st respondent issued order dated 17.07.1984 determining an extent of 3287 sq. mts., as



excess out of total extent of 6287 sq. mts and the same was served on the petitioner's father on 20.09.1984. Aggrieved by the said order, the petitioner father filed an Appeal dated 01.10.1984 which was allowed setting aside the order and remanding the matter for fresh disposal vide order dated 18.04.1985. Thereafter, the 1st respondent issued fresh notice dated 01.07.1985 and the same was acknowledged by the petitioner's father on 05.07.1985 and the petitioner's parents filed objection on 07.07.1985. Thereafter, final notice was issued to the land owners on 5.08.1987 to surrender or deliver possession of excess vacant land, under section 11(5) of the act. Though the respondents claim that notice dated 27.02.1989 was issued for enquiry along with objection if any regarding the fixation of land value for the acquired land, no such proof has been filed before this Court.

8. Further Rule 8 of the Act prescribes the manner in which the notice has to be served. For better appreciation, Rule 8 is quoted hereunder :-

8. Particulars to be contained in draft statement as regards vacant land and manner of service of the same.-

(1) Every draft statement prepared under sub-section (1) of section 9 shall contain the particulars specified in Form III.

(2)(a) The draft statement together with the notice referred to in sub-section (4) of section 9 shall be served on-

(i) the holder of the vacant lands, and
(ii) all other persons, so far may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance to sub-section (1) of section 7, and

(ii) in the case of other persons, at their last known addresses.

(b) Where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person referred to in clause (a), in the manner specified in that clause are not successful for reasons other than the reason referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon conspicuous part of the house (if



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any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

(3) The notice under sub-section (4) of section 9 shall be in Form IV]

From a perusal of the typed set, it is evident that, neither there is any proof of notice nor the annexures of the basis of which orders were passed has been provided to the petitioner. In effect Rule 8 has not been complied with in letter and spirit.

9. Further, a perusal of the entire records reveals that only symbolic possession was taken on 18.11.1988 and no physical possession was ever taken. Such being the case, the petitioner's father having been in possession and enjoyment of the land in question and admittedly, in view of the fact that the physical possession of the property was not acquired from the petitioner's father in terms of Section 11(5) of the Act, this Court is of the considered opinion that the petitioner is entitled to avail the benefits of ingredients of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (20 of 1999). No material to substantiate taking physical possession of the property has been filed before this Court and in the absence of any material substantiating physical possession of the property with the respondent, mere assertion in the counter cannot partake the character of proof. The petitioner's land having been acquired in the year 1988 and the Writ petition is filed in the year 2010, however, till date the land was not allotted to any other public purposes. In such circumstances, for all the reasons aforesaid, the impugned proceedings cannot stand the test of judicial scrutiny and definitely the petitioner is entitled to the relief sought for.

10. This writ petition is accordingly allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

skt

To

1. The Competent Authority cum Asst. Commissioner,
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2.The Commissioner and Director,
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3.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Tamil Nadu Urban Land Ceiling & Tax Department,
Fort St. George, Chennai-600 009.

+1cc to M/s.A.Mohamed Ismail, Advocate Sr.No.8416

+1cc to the Government Pleader Sr.No.9035

W.P.No.14260 of 2011
and
M.P.No.1 of 2011

VSN-II (CO)
RVM(06/06/2022)