



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NOS.24143, 24195, 24767 AND 29138 OF 2008

WP NO.24143 / 2008

M.S.Chandrasekaran

...Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai.
2. The Assistant Commissioner of Urban
Land Ceiling and Urban Land Tax
No.2, Vivek Nagar,
Kolathur, Chennai - 99.
3. The District Collector
Thiruvellore District,
Thiruvellore.
4. The Zonal Deputy Thasildhar
Madhavaram, Ambattur Taluk,
Thiruvellore District.
5. The Managing Director
Chennai Metropolitan Water Supply
and Sewerage Board
No.1, Pumping Station Road,
Chintadripet, Chennai - 2.
(R5 impleaded as per order dated 13.02.2009
in MP No.1/2009 in WP No.24143/2008)
6. The Project Director
National Highways Authority of India
Project Implementation Unit (Port connectivity)
2nd Floor, 1/54-28, Butt Road,
St. Thomas Mount, Chennai - 600 016.
(R6 impleaded as per order dated 21.12.2011
in MP No.1/2011 in WP No.24143/2008)

...Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of



Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings RC.No.6209/88 dated 31.08.1989 purported to be under Section 9(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 and also the notice dated 03.12.1991 issued by the 2nd respondent under Section 11(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 in so far as the property of the petitioner in old S.No.240/1 (new S.No.240/1B-1.50 hares) at Kadapakkam Village, Ambattur Taluk, Thiruvellore District and quash the same and consequently forbear the respondents from in any way interfering with the petitioner's property in old S.No.240/1 (new S.No.240/1B-1.50 hares) at Kadapakkam Village, Ambattur Taluk, Thiruvellore District.

For Petitioner	:	Mr.N.Suresh
For Respondents 1 and 2	:	Mr.Haja Nazirudeen Additional Advocate General Assisted by Mr.T.Chezhian Additional Government Pleader
For Respondents 3 and 4	:	Mr.M.Rajendiran Additional Government Pleader
For Respondent 5	:	Mr.N.Paul Sundar Singh Standing Counsel
For Respondent 6	:	Ms.J.P.Dhanyasree For M/s.P.Wilson Associates

WP NO.24195 / 2008

R.Sambandam

...Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai.
2. The Assistant Commissioner of Urban
Land Ceiling and Urban Land Tax
No.2, Vivek Nagar,
Kolathur, Chennai - 99.
3. The District Collector
Thiruvellore District,
Thiruvellore.
4. The Zonal Deputy Thasildhar
Madhavaram, Ambattur Taluk,
Thiruvellore District.



5. The Project Director
National Highways Authority of India
Project Implementation Unit (Port connectivity)
1/54-28, Butt Road,
St. Thomas Mount, Chennai - 600 016.
(R5 impleaded as per order dated 21.12.2011
in MP No.1/2011 in WP No.24195/2008)

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings RC.No.6209/88 dated 31.08.1989 purported to be under Section 9(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 and also the notice dated 03.12.1991 issued by the 2nd respondent under Section 11(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 in so far as the property of the petitioner in old S.No.240/1 (new S.No.240/1C-1.50 hares) at Kadapakkam Village, Ambattur Taluk, Thiruvellore District and quash the same and consequently forbear the respondents from in any way interfering with the petitioner's property in old S.No.240/1 (new S.No.240/1C-1.50 hares) at Kadapakkam Village, Ambattur Taluk, Thiruvellore District.

For Petitioner	:	Mr.N.Suresh
For Respondents 1 and 2	:	Mr.Haja Nazirudeen Additional Advocate General Assisted by Mr.T.Chezhian Additional Government Pleader
For Respondents 3 and 4	:	Mr.M.Rajendiran Additional Government Pleader
For Respondent 5	:	Ms.J.P.Dhanyasree For M/s.P.Wilson Associates

WP NO.24767 / 2008

M.S.Chandrasekaran

...Petitioner
Vs.

1. The District Collector
Thiruvellore District,
Thiruvellore.
2. The Zonal Deputy Thasildhar
Madhavaram, Ambattur Taluk,
Thiruvellore District.



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3. The Revenue Inspector
Madhavaram,
Ambattur Taluk,
Thiruvellore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in respect of his proceedings dated 17.09.2008 in Naa.Kaa.1514/2007/A1 and quash the same and thereby forbear the respondents from in any way interfering with the petitioner's property in Old Survey No.240/1 (New Survey No.240/1B - 1.50 hares) of Kadapakkam Village, Ambattur Taluk, Thiruvallore District.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.M.Rajendiran
Additional Government Pleader

WP NO.29138 / 2008

S.Nathan

...Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai.
2. The Assistant Commissioner of Urban
Land Ceiling and Urban Land Tax
No.2, Vivek Nagar,
Kolathur, Chennai - 99.
3. The District Collector
Thiruvellore District,
Thiruvellore.
4. The Zonal Deputy Thasildhar
Madhavaram, Ambattur Taluk,
Thiruvellore District.
5. The Project Director
National Highways Authority of India
Project Implementation Unit (Port connectivity)
2nd Floor, 1/54-28, Butt Road,
St. Thomas Mount, Chennai - 600 016.
(R5 impleaded as per order dated 21.12.2011
in MP No.1/2011 in WP No.29138/2008)

...Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in respect of his proceedings RC.No.6209/88 dated 31.08.1989 and 03.12.1991 purported to be under Sections 9(5) and 11(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 respectively in so far as the property of the petitioner in old S.No.240/1 (new S.No.240/2 - 1.50 hares) and quash the same and consequently forbear the respondents from in any way interfering with the petitioner's property in old S.No.240/1 (new S.No.240/1B-1.50 hares) at Kadapakkam Village, Ambattur Taluk, Thiruvelllore District.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.Haja Nazirudeen
1 and 2 Additional Advocate General
Assisted by Mr.T.Chezhian
Additional Government Pleader

For Respondents : Mr.M.Rajendiran
3 and 4 Additional Government Pleader

For Respondent 5 : Ms.J.P.Dhanyasree
For M/s.P.Wilson Associates

COMMON ORDER

In all these writ petitions, the petitioners have challenged the Proceedings of the Competent Authority under the Urban Land Ceiling Act and Urban Land Tax, Madhavaram, in Rc.No.6209/88, dated 31.08.1989.

2.It is imperative to note that the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978) came into force on 17.05.1978.

3.The lands which is the subject matter in all these writ petitions were declared as surplus lands. Originally, the lands were belonged to one K.A.Shanmuga Naicker. He sold the lands in favour of Mayandi and Madathur Moosa on 31.07.1972 by way of a registered document bearing Registration No.1008. Thereafter, the property was mortgaged in favour of the President of India on 15.08.1972 for securing loans. On 14.03.1974, the said K.A.Shanmuga Naicker died. His wife S.Dhanalakshmiammal also died on 27.03.1980. The said Madathur Moosa and Mayandi executed a Power of Attorney in favour of one Swamy S/o. Sandiyagu on 07.02.1984 for selling the lands by forming a layout. The said Power of Attorney formed a layout and obtained approval from the



Madras Metropolitan Development Authority on 27.12.1984. Pursuant to the approval, the property was sold on 12.02.1987. The writ petitioners herein, are the purchasers of the property by virtue of Sale Deed No.605/1987 dated 12.02.1987.

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4.While the matter stood thus, from the impugned order dated 31.08.1989, it is noted that the Competent Authority under Urban Land Ceiling and Urban Land Tax, Madhavaram, said to have issued notice under Section 7(2) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, to Mr.Shanmuga Naicker for the lands owned by him in S.No.239/B2, 240 and 241 in Kadapakkam Village, measuring an extent of 18750 sq.mts. It is further noted that the said notice was acknowledged by one Mr.D.Maria Susai, for and on behalf of the land owner on 17.07.1987. Since the land owner has failed to file a statement under Section 7(1) of the Act and not furnished any information regarding the land hold by him, a draft statement under Section 9(1) and notice under Section 9(4) were issued to the land owner for the above said extent of land. The land owner was served by affixture on the land in question on 01.07.1989. The land as per the revenue records were found vacant land and in view of no objection received from the land owner, leaving out 500 sq.mts as entitlement in S.No.241 Part, other lands were declared as surplus lands. Thereafter, a declaration under Section 10(3) of the Act was issued declaring them as surplus lands under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 01.07.1991 and it is vested with the Government. Challenging the same, the petitioners have approached this Court.

5.Heard the submissions made on either side and perused the materials available on record.

6.At the outset, Section 7(2) of the Act specifies that if a person holds the lands in excess of the ceiling limit, the Competent Authority may serve a notice upon such person requiring to file a statement to specify the vacant land within the ceiling limit which he desires to retain. After considering the statement filed by the individual, it is for the Competent Authority to take a decision.

7.In the instant case, as noted above, the said K.A.Shanmuga Naicker, the original owner of the land, died as early as on 14.03.1974. His wife also died on 27.03.1980. There is no reference as to his legal heirs. A perusal of the impugned order dated 31.08.1989 shows that it was sent to K.A.Shanmuga Naicker, who was a dead person. It is also noted that it was acknowledged by one Mr.D.Maria Susai, for and on behalf of the land owner on 17.07.1987, who happens to be a stranger.



8.The Competent Authority shall prepare a draft statement under Section 9 of the Act, containing the following particulars, namely, the name and address of the person, address of vacant land, the particulars of all vacant lands and of any other land, on which there is a building and the land which the land owner wants to retain within the ceiling limit, particulars of the right, title or interest of the person in the vacant lands and such other particulars as may be required. This draft statement shall be served on a person, who holds the lands.

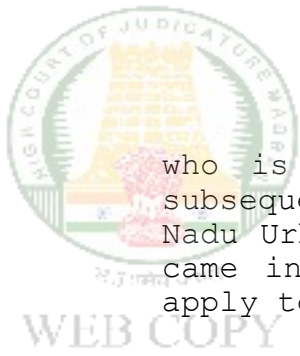
9.But in the instant case, from a reading of the impugned proceedings, dated 31.08.1989, it is noted that the Competent Authority has not by himself or by any person delegated by him had collected information as to the right, title or interest of the person who is holding the vacant land.

10.As per Section 3(j) of the Act, a "person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. As per Section 3(1) of the Act, "to hold" means, who owns such land or possess such land as owner or as tenant or as a mortgagee or in any other capacity.

11.In the instant case, admittedly, the lands were sold by way of a registered document on 31.07.1972 itself. In that event, a person holding the lands must be purchaser and not the vendor. Even before the issuance of notice under Section 7(2) of the Act dated 17.07.1987, Power of Attorney was executed on 07.02.1984 and the layout was formed and it was approved by the Madras Metropolitan Development Authority on 27.12.1984 and sold to the petitioners as early as on 12.02.1987. Therefore, the Competent Authority who ought to have collected all the information and verified the right, title or interest of the persons, who are holding the lands, appears to have taken action on the basis of the revenue records available in the office. Such an act is contrary and violative of Sections 7(2), 9(2) and 10(3) of the Act.

12.At any stretch of imagination, the proceedings against a dead person, cannot be held to be valid. Thus, it is void ab initio. Further, the Competent Authority has failed to collect information as to the right, title or interest over the property which he had taken action to declare as surplus lands. Therefore also, the order passed by the Competent Authority is tainted with non-application of mind.

13.In a similar circumstance, a Division Bench of this Court in STATE OF TAMIL NADU AND OTHERS VS. P.B.K.THILAGAR [2018 (5) CTC 875] has categorically held that notice said to have been issued on a dead person and not issued to the transferee



who is in possession of lands is not valid and further the subsequent transferees are entitled to the benefits of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, which came into force on 16.09.1999. The said judgment will squarely apply to the present case also.

14.The learned Additional Advocate General would contend that as per Sections 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the contentions of the petitioners cannot be sustained. As per Section 3(1)(a) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the land already vested under Section 10(3) of the Act will not be affected by the repealing of Principal Act. As per proviso to Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proceedings shall not automatically abated with respect to Sections 11, 12, 13 and 14 of the Principal Act, where possession has already been taken over by the State Government. But in the instant case, the proceedings under Section 10(3) of the Act itself is a non-est, as proceedings under Section 7(2) of the Act were initiated against a dead person and the declaration under Section 10(3) of the Act was issued in the name of a dead person without complying with the requirements under Section 9(2) of the Act. In so far as this case is concerned, as per Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, all the proceedings shall be deemed to have been abated. It is supported by the judgment of a Division Bench of this Court in STATE OF TAMIL NADU AND OTHERS VS. P.B.K.THILAGAR [2018 (5) CTC 875].

15.Considering all the facts and circumstances, the impugned order in Proceedings RC.No.6209/88 dated 31.08.1989 is set aside and the consequential declaration issued under Section 10(3) of the Act does not stand to scrutiny of law and accordingly, the writ petitions in W.P.Nos.24143, 24195 and 29138 of 2008 are allowed.

16.Pursuant to the order passed in the above three writ petitions, viz., W.P.Nos.24143, 24195 and 29138 of 2008, the writ petition in W.P.No.24767 of 2008 is also allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Principal Commissioner and
Commissioner of Land Reforms
Chepauk, Chennai.
2. The Assistant Commissioner of Urban
Land Ceiling and Urban Land Tax
No.2, Vivek Nagar,
Kolathur,
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2nd Floor, 1/54-28,
Butt Road,
St. Thomas Mount,
Chennai - 600 016.

+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.20710

+1cc to Mr.N.Paul Sunder Singh, Advocate, S.R.No.21176

+1cc to Mr.N.Suresh, Advocate, S.R.No.20705 [09/06/2022]

WP NOS.24143, 24195, 24767
AND
29138 OF 2008

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