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W.P.No.27238 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27238 of 2008

1. Parvathy
2. Rajendran
3. Subramani
4. Krishnan
5. Muniammal

... Petitioners

-Vs-

The Competent Authority and
Assistant Commissioner [ULT X ULC]
Tambaram, Adambakkam,
Chennai – 600 088.

... Respondent

Prayer : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that all the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 in respect to land owned by the L.Ramasamy Chowdary in Survey No.52 of an extent of 1.90 acres situated at Pulikoradu Village, Saidapet Taluk are illegal and non-est and that in the even have abetment caused consequent upon the repeal of the Principal Act by the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act 1999 and consequently declare that the petitioners are entitled to deal



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with the above land owned and possessed by them as legal heirs of the deceased L.Ramasamy Chowdary as full and absolute owners.

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondent : Mr.P.Sathish
Additional Government Pleader

ORDER

The prayer sought for in this writ petition is for a writ of declaration to declare the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the land owned by L.Ramasamy Chowdary in Survey No.52 to an extent of 1.90 acres situated at Pulikoradu Village, Saidapet Taluk as illegal and non-est and that in the event of abatement caused on the repeal of the Principal Act by the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999.

2. It is the case of the petitioners that the petitioners' father one L.Ramasamy Chowdary was the owner of the land comprised in S.No.52 to an extent of 1.90 acres situated at Pulikoradu Village, Saidapet Taluk. He leased out the land of 90 cents in the said survey number to one Sri



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Om Sakthi Blue Metal Industries represented by the Managing Partner
under registered lease deed dated 24.09.1990, which was registered at
S.R.O. Tambaram.

3. The petitioners' father in fact failed to file the statement under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 [in short, 'the Act']. Therefore, a notice under Section 9(4) and draft statement under Section 9(1) of the Act was purported to have been issued to the father of the petitioners inviting objections against the proposed acquisition of 1700 sq.mts.

4. It is the further case of the petitioners that the said notice under Section 9(4) and the draft statement under Section 9(1) of the Act was purported to have been served on one Gnanam as per the proceedings in R.C.No.6606/89C on the file of the respondent.

5. Subsequently, by proceedings dated 05.07.1996 of the respondent, declaration of surplus was notified in the notification No.892 of 1993, which was published in the gazette under Section 11 of the Act



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on 09.02.1994 and that the amount of compensation was calculated under Section 12(i) of the Act.

6. The petitioners' father died interstate on 13.09.2006 and he was survived by the petitioners herein as his class I legal heirs. During the life time of the father of the petitioners, he had not received any compensation and since the lessee i.e., Om Sakthi Blue Metal has been continuously enjoying the possession of the property as a lessee of the petitioners' father, there has been no chance of taking over the possession of the property in question under the provisions of the Act.

7. Therefore, for various grounds as stated supra, in view of the Repealing Act, which has subsequently come, under which, the proceedings, which was not concluded where the possession has not been taken in the manner known to law, it shall be deemed to have lapsed. Therefore, on that ground, the present writ petition has been filed seeking the aforesaid relief.



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8. Reiterating the aforesaid, Mr.J.R.K.Bhavanantham, learned counsel for the petitioner would contend that, no proper notice has been given under the various provisions of the Act to the petitioners' father and to the petitioners and moreover, there has been no possession by the respondent in the eye of law.

9. However Mr.P.Sathish, learned Additional Government Pleader appearing for the respondent would submit that, all the provisions of the Act have been scrupulously followed and ultimately, the land in question has been taken possession from the petitioners, where, the Revenue Inspector, ULT, Tambaram handed over possession and Revenue Inspector, Saidapet Firka, Tambaram has taken over the possession and this taken over possession slip has been recorded in the files, which has been produced before this Court by the learned Additional Government Pleader for the respondents.

10. Relying upon this document, learned Additional Government Pleader would contend that, since the possession has been taken and after following the necessary procedures contemplated under the provisions of



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the parent Act, it cannot be stated that by virtue of the Repealing Act, the proceedings shall be deemed to have been lapsed. Therefore, on that ground, the petitioner cannot have a successful challenge against the declaration of the land as an excess land under the said Act. Therefore, the prayer sought for in this writ petition is liable to be rejected, he contended.

11. I have considered the said submission of the learned counsel appearing for both sides and have perused the materials placed before this Court.

12. Insofar as the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 is concerned, the provisions stated therein at various stages should have been scrupulously followed by the Authorities concerned and in this regard, number of judgments have been passed by this Court, especially, in the context of taking over possession of the land is concerned. Mere taking over slip, where if the ULT officials as well as the Revenue officials signed as handing over and taking over the possession, cannot be construed as a proper taken over of



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possession of the land, as has been construed in number of judgments of this Court.

13. Considering this legal position, several orders have been passed and this Court had an occasion to consider these kind of issues in a related writ petition in W.P.No.32700 of 2003, where this Court has passed an order on 27.08.2018, where *inter alia* stated the following:

“27. In the said case, which was dealt with by the Division Bench, in fact, 11(5) notice was issued. However the fact remains that in that case, in spite of 11(5) notice, possession was not delivered and therefore the next course of action which available to the authorities was to invoke 11(6), which they have admittedly not invoked and therefore the claim of the respondents that, they have taken possession was not accepted by the Hon'ble Division Bench. The case in hand is somewhat better than the one dealt with by the Division Bench, as in this case even 11(5) notice was not at all issued.

28. Merely because 11(3) notification was issued, the respondents cannot claim that they have taken possession. Even though they have given a date to take possession as 07.06.1999, absolutely there is no proof or documents filed before this Court to satisfy that they have issued notice



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either under Section 11(5) on voluntary basis or invoking 11(6) proceeded for taking possession forcibly from the owners of the land in the manner known to law. Therefore in the absence of these documents to show that the possession had been taken either under Section 11(5) or under Section 11(6) of the Act, it can be safely concluded that the possession as claimed by the respondents that, it was taken on 07.06.1999, cannot be accepted and therefore it has to be held in favour of the petitioners and against the respondents.

29. Further, in this case starts from 7(2) notice till 11(1) notification, wherever notice was required to be served in the manner known to law, has not been served to the owners of the land. Since it is the fact that the original owner Krishnaveni Ammal died on 21.04.1997, sincere attempt should have been made by the respondents to trace out the legal heirs of the original owner. It is the stand of the respondents, that the original owner Krishnaveni Ammal was not available for serving notice. However, the fact remains that the owner died four months before the proceedings was initiated. All these facts, would show that there had been no attempt on the side of the respondents to verify, who is the present owner or owners of the land and whether they are residing in the land or nearby area and what is the address presently or last known address and after ascertaining this, notice should have been given by



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sending it through Registered Post, which admittedly the respondents have not done.

30. It is the claim of the respondents that, since the address of the owner was not known and she was not available for serving notice, they invoked Rule 8(2)C and served the notice by pasting it in conspicuous place of the land in question itself.

31. In this regard, this Court wants to point out that, Rule 8(2)C does not contemplate such service of notice in the land to be acquired or to be declared as excess land under the Act. The language used in sub rule (C) is that, notice shall be served by affixing copies of the same in conspicuous place in the office of the Competent Authority and also in some conspicuous place in the part of the house (if any) in which the holder of the vacant land or other person known to have last resided or carried on business or personally work for gain.

32. Strictly speaking the claim made by the respondents that they have served notice by pasting only at the conspicuous place in the land in question, cannot be taken as a service, within the meaning of sub-rule C of Rule 8(2). Therefore, in that regard also the method adopted by the respondents cannot be approved as the said method is not in the said Rule 8(2)C.

33. Therefore, the fact remains that, provisions of the Act have not been followed, the procedures contemplated



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under the Act have not been followed, the procedures set out under the Rule for serving the notice has also not been followed.

34. The claim made by the respondents that they have taken possession has also not been proved. In such circumstances applying the principles laid down in the aforesaid judgments, this Court has no hesitation to hold that the entire proceedings initiated under the provisions of the Act ended in the impugned order and also subsequent events including alleged taken over of the possession, as claimed by the respondents, are completely vitiated, as the said procedure as adopted by the respondents cannot be approved in the eye of law.

35. In the result, the impugned proceedings is quashed. Consequential proceedings including the claim of taking over the land in question from the petitioners, are declared to be invalid. Therefore, by virtue of the Repealing act, the land shall vest with the owners of the land, who are the petitioners herein and they shall be free to deal with the said land in accordance with law.

36. With these directions, the writ petition is allowed. However there shall be no costs."

14. Insofar as the claim made by the respondent that they have taken possession is concerned, since the similar taking over and handing



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over slip had been produced in that case also, which was produced in several other cases and this kind of taking over possession as claimed by the respondent under the provisions of the Act was not accepted by the Law Courts and number of judgments since have been issued in this regard, it cannot be construed as taken over possession and the proceedings cannot be treated as a concluded one. Therefore, at the time when the Repealing Act has come into effect, since the proceedings was not concluded, it can very well be deemed to have been lapsed and therefore, the grounds urged by the petitioner can be accepted.

15. In that view of the matter, this Court has no hesitation to hold that the petitioner is entitled to succeed in this writ petition. In the result, this writ petition is allowed. No costs.

06.12.2022

Index : Yes/No
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R. SURESH KUMAR, J.

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To

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