IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.09.2022**

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**Writ Petition Nos.38986 & 38987 of 2004
and W.P.M.P.Nos.46527 & 46528 of 2004 and
W.M.P.Nos.31484 & 31481 of 2018**

W.P.No.38986 of 2004:

1.P.Rathinambal (Deceased)

2.P.Ravi

3.P.Gurumoorthy

4.D.Chandrika

(P2 to P4 substituted as LRs of Deceased sole petitioner vide order dated 01.09.2022 made in W.M.P.No.1087 of 2022)

... Petitioners

Vs.

1.The Competent Authority,
Urban Land Ceiling cum Assistant
Commissioner, Urban Land Tax,
Salem.
Now merged with the Assistant Commissioner,
Land Reforms and Urban Land Tax,
54, Thanga Perumal Street,
Sri Ambal Thirumana Mandapam (Upstairs),
Erode – 638 001.

2.The Special Commissioner and Commissioner,
Urban Land Ceiling and Urban Land Tax,
Ezhilagam,

Chepauk, Chennai – 600 005. … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of declaration declaring the proceedings of the first respondent in his S.R.No.226/92(A1) dated 05.05.1999 in respect of the petitioner's land to an extent of 0.03.00 hecs in S.No.159/3A7, 0.02.00 Hecs in S.No.159/3A12 and 1/5th share in 0.36.00 Hecs in S.No.159/3A14 in Sivadhapuram Village, Salem Taluk and declare that the said proceedings is null an dvoid and stand abated in view of section 4 of the Tamil Nadu Urban Land Ceiling and Regulation Repeal Act (Tamil Nadu Act 20/1999).

W.P.No.38987 of 2004:

D.Chandirika ... Petitioner

Vs.

1.The Competent Authority,
Urban Land Ceiling cum Assistant
Commissioner, Urban Land Tax,
Salem.
Now merged with the Assistant Commissioner,
Land Reforms and Urban Land Tax,
54, Thanga Perumal Street,
Sri Ambal Thirumana Mandapam (Upstairs),
Erode – 638 001.

2.The Special Commissioner and Commissioner,
Urban Land Ceiling and Urban Land Tax,
Ezhilagam,
Chepauk,
Chennai – 600 005. … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of declaration declaring the proceedings of the first respondent in his S.R.No.226/92(A1) dated 05.05.1999 in respect of the petitioner's land and building measuring 0.03.05 Hecs. in S.No.159/3B in Sivadhapuram Village, Salem Taluk and declare that the said proceedings is null and void and stand abated in view of section 4 of the Tamil Nadu Urban Land Ceiling and Regulation Repeal Act (Tamil Nadu Act 20/1999).

For Petitioners in both W.Ps	:	Mr.P.Jagadeesan
For Respondents in both W.Ps	:	Mr.T.K.Saravanan, Government Advocate

COMMON ORDER

Since the issue involved in these writ petitions being one and the same, all the petitions are taken up for final disposal by way of a common order.

2. The case of the petitioners is that the petitioner viz., P.Rathinambal (Deceased) in W.P.No.38986 of 2004 and the petitioner viz., D.Chandirika in W.P.No.38987 of 2004 are mother and daughter. The deceased

P.Rathinambal is the owner of the properties of different extent of lands admeasuring 0.03.00 Hecs. in S.No.159/3A7, 0.02.00 Hecs. in S.No.159/3A12, 1/5th share in 0.36.00 Hecs. in S.No.159/3A 14 in Sivadhapuram Village, Salem Taluk, and the said lands originally belonged to one Paripooranammal, who sold some extent of lands to different persons and thereafter, the petitioner has inherited the same and in possession of the property. Thereafter, the said P.Rathinambal executed a registered gift deed in favour of her daughter viz., D.Chandirika on 04.06.1979 to an extent of 0.03.05 Hecs in S.No.159/3b. This being the case, the first respondent initiated proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter referred as "the Act") and issued notification under section 11(3) of the said Act in his proceedings S.R.No.226/91/98 A 1 dated 06.02.1998 and declared an extent of 0.74.0 Hecs of land as excess vacant land held by one Paripooranammal, who is no way connected to the aforesaid subject property. Moreover, the first respondent issued notification under section 11(1) on 26.11.1997 and notification under section 11(5) on 05.05.1999 to the said Paripooranammal for handing over the possession of 0.74.50 Hecs of vacant land.

2.1. The aforesaid P.Rathinambal is the absolute owner of the property situated in S.Nos.159/3A7, 159/3A12 and 1/4th share in S.No.159/3A 14, however, the first respondent in his proceedings included her lands in the holdings of the Paripooranammal and initiated proceedings in her name. Moreover, after the issuance of the notification under Section 11(5) of the Act dated 05.05.1999, the respondents have not taken any steps to take possession of her property. Subsequently, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was repealed by the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Tamil Nadu Act 20 of 1999) with effect from 16.06.1996 and in view of the repeal of the parent act, possession having not been taken till the repealing of the parent Act, the respondents cannot proceed further and take possession of their lands. While such being the position, during the first week of December 2004, the revenue officials inspected the petitioner's property and informed that proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) are being pursued against the petitioner's land. It is alleged by the petitioners that once the Act has been repealed with effect from 16.06.1999, the respondents have no juridiction to pursue the matter and take possession of the property. Aggrieved by the notification under Section 11(5), for handing over the possession of the properties in question, the petitioners have filed these writ petitions.

3. The learned counsel for the petitioners would submit that admittedly the petitioners have purchased the property prior to 1990, and immediately thereafter the revenue records were mutated in favour of the petitioners prior to 1991 itself. Even thereafter, without issuing notices to the petitioners, the Urban Land Ceiling proceedings has been initiated against the original owner, viz., Paripooranammal and all the subsequent notices were issued in the name of Paripooranammal by way of affixtures and no notice was issued under RPAD by the respondents. Immediately thereafter, the said Paripooranammal filed an appeal petition before the Government on 16.06.1999, requesting to cancel the entries made in Village and Taluk records as ULC lands in respect of the above said survey numbers and while the appeal is pending before the Government, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was repealed by the Repeal Act, 20/1999 on 16.06.1999 and therefore, the entire proceedings initiated by the authorities will stand abated in terms of Section 4 of the Repeal Act and in order to avail such benefit, the petitioners have filed this writ petitions.

4. Learned counsel for the petitioners further submitted that though the petitioners have purchased the properties prior to the Urban Land Ceiling proceedings, no notice was issued in the name of the petitioners and further no physical possession was taken from the petitioners. Further, the parent Act itself stood repealed now, the entire acquire proceedings would be deemed to have lapsed and accordingly, prays for allowing of these petitions.

5. Learned Government Advocate appearing for the respondents would submit that the land owner sold out the land after the introduction of the said Act, hits under section 6 of the Act and to escape from the clutches of the Ceiling Act. Notice under section 11(5) of the Act was issued to the land owner on 05.05.1999 requesting to surrender or deliver the possession of the declared excess vacant land within 30 days before the Collector of Salem. But the land owner filed appeal before the Government instead of surrender the excess vacant land.

6. Learned Government Advocate further submitted that on the basis of revenue records Paripooranammal was the owner of the land in S.No.1259/3

of Sivadhapuram Village, who holding excess vacant land. The first respondent initiated acquisition proceedings against the land owner to acquire the excess vacant land. After publication of notification under Section 11(3) of the Act in Government Gazette in April 1998, the land stands vested with the Government free from all encumbrances. The notice under section 11(5) of the Act was issued to the land owner on 05.05.199 and sent by Registered Post. Necessary changes were carried out in village & taluk records the lands in S.Nos.159/3A4(100); 3A5(350); 3A6 (150); 3A7(300); 3A8(300); 3A9(700); 3A10(200); 3A12(200); 3A13(200); 3A14(3600); 159/3B(350); 159/3A15B(850); 159/6(7000) totalling 14400 sq.mts., of Sivadhapuram village as Government ULC lands. All notices were sent to the land owner Paripooranammal at every stage of acquisition. As such there is no need to send notices to the petitioners under the provisions of the Act. Hence, he prayed for dismissal of these writ petitions.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and the particulars of dates, which are relevant for deciding the present petitions.

8. Admittedly, the deceased P.Rathinambal has purchased the properties prior to 1990. It is not in dispute that Urban Land Ceiling proceedings against the original owner was initiated in the year 1990 and after following the procedures, notification was issued on 05.05.1999. However, the sale preceded the Urban Land Ceiling Proceedings, which is evident from the material available on record. On receipt of the 11(5) notice, the original land onwer, viz., Paripooranammal had preferred appeal before the appellate authority on 16.06.1999, which was received by the said authority on 17.06.1999. It is the stand of the petitioners and not disputed by the respondents that no notice has been issued on the petitioners, who are interested persons, prior to the repealing of the Parent Act. Notice has been issued only to Paripooranammmal, though the said Paripooranammal had sold the property to the petitioners way back in the year 1990 itself, before the Urban Land Ceiling Proceedings and revenue records have also been mutated to carry the names of the petitioners. It is borne out by record that the Parent Act was repealed on 16.06.1999, and on the date of Repeal Act, appeal filed by Paripooranammal was pending before the appellate authority.

9. In the case on hand, admittedly notice u/s 11(5) was issued to Paripooranammal on 05.05.1999, but no notice has been issued on the interested persons, as has been mandated u/s 11(5). The petitioners, who have purchased the lands even in the year 1990 and have had the revenue records mutated in their favour, have not been issued with any notice as mandated u/s 11(5). The notice on Paripooranammal had simply mandated handing over of possession to the Government or to the authorities official within thirty days of the said notice.

10. Admittedly, the notice had been issued on Paripooranammal on 05.05.1999 and the thirty days period would expire only on 04.06.1999 and as per Section 11 (5), before the expiry of the period of thirty days, possession cannot be taken. However, in the case on hand, it is not the case of the respondents that the said Paripooranammal declined to part with the lands, which required usage of force as provided u/s 11 (6) and, therefore, sub-section (6) to Section 11 would have no application.

11. Once this Court sets aside the possession taken by the respondents, the repealing of the Parent Act stares writ large on the face of the respondents

to continue the proceedings. As pointed out above, even as early as in the year 1990, the petitioners had purchased the lands from Paripooranammal. However, the petitioners were not issued with any notice u/s 11 (5) and further the petitioners were not aware of the urban land ceiling proceedings. The petitioners having purchased the subject lands, once this Court has set aside the possession, alleged to have been taken over by the respondents, the only presumption that follows is that the petitioners are deemed to be and are in possession of the said lands. In this background, the language employed in Section 11 (5) of the Act assumes significance. Section 11 (5) of the Act spells out that "the person who is in possession of the property is directed to deliver the land to the State" and further if any person failed to comply with Section 11 (5), the competent authority may take possession of the vacant land and give to the State Government by employing force. Though the respondents produced the Delivery Note, no records were produced before this Court to show that notice as contemplated u/s 11 (5) was issued to the petitioners to hand over possession of the land. The alleged taking of possession having been set aside and no notice having been issued to the petitioners, who are persons interested and the Parent Act having since been repealed with effect from 16.06.1999, on and from the said date, the question of take over would not arise as issuance of any notice on the petitioners subsequent to the repeal of the Parent Act would be a nullity and one without the authority of law.

12. Further, the appeal filed by the original land owner before the appellate authority, pursuant to the repeal of the parent Act, nothing further would survive for adjudication in the pending appeal for the reasons aforesaid, as the original land owner had alienated the property in favour of several persons even prior to initiation of the Urban Land Ceiling proceedings.

13. This Court also hastens to add that proceedings under the Act was mainly to take over the excess lands from such of those persons, who had held lands over and above the ceiling limit fixed under the Parent Act. The Act was enacted in the year 1978, however, the Legislature thought it fit to repeal the said Act keeping in mind the plight of the land owners to part with their lands, as take over under the Act would not enure any benefit in favour of the land owners. Once the Legislature, in its wisdom, had though it fit to repeal the parent Act, which was done mainly for the purpose of avoiding further detriment to land owners. Such being the intent of the Government in

repealing the Act, any order that would defeat the purpose of the repeal Act would neither be in the interest of justice nor in the interest of the land owners, be it original owners or subsequent purchasers.

14. In view of the above, the entire land ceiling proceedings, impugned herein, stand abated in view of the repeal Act and as a consequence thereof, these writ petitions stands allowed and the impugned proceedings of the first respondent in his S.R.No.226/92(A1) dated 05.05.1999, is set aside. No costs. Consequently connected miscellaneous petitions are closed.

22.09.2022

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Index : Yes/No
Speaking Order : Yes/No

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M.DHANDAPANI,J.

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