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W.P.Nos.27695 of 2005 & 11669, 11670 of 2006

+IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition Nos.27695 of 2005 & 11669, 11670 of 2006
and W.P.M.P.Nos.13260 & 13261 of 2006

W.P.No.27695 of 2005:

Babulal Rikhab Chand (Deceased)

1.Hemant B Jain

2.Vikram B Jain

3.Dinesh B Jain

... Petitioners

(P1 to P3 impleaded as LR's of deceased
petitioner vide order dated 19.09.2022
in W.M.P.No.24219 of 2022)

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 001.

2.The Commissioner for Land Reforms,
Urban Land Tax,
Chepauk,
Chennai – 600 005.

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3.The Assistant Commissioner/Competent Authority,
Urban Land Tax, Madhavaram,
Chennai – 600 099.
... Respondents

W.P.Nos.11669 & 11670 of 2006:

Tamil Nadu Petroproducts Limited,
Manali, Chennai – 600 068,
Rep. by its Company Secretary
Mr.M.B.Ganesh.

... Petitioner

Vs.

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

2.The Special Commissioner and
Commissioner of Land Reforms,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.The Assistant Commissioner,
Urban Land Tax,
Madhavaram Area,
No.2, Vivek Nagar, Redhills Road,
Kolathur, Chennai – 99.

4.The Assistant Commissioner,



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Land Reforms,
Villupuram.

... Respondents

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PRAYER in W.P.No.27695 of 2005: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, calling for the entire records on the file of the third respondent in its proceedings Rc.5018/80/C dated 30.10.1985 and quash the same.

PRAYER in W.P.No.11669 of 2006: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of declaration that all proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978 in respect of the lands owned by the petitioner situated at Old Survey No.258/5A2 in Manali Village, Ambattur Taluk, Thiruvallur District, admeasuring about 52300 Sq.ft. forming part of the full extent of 18 acres of land purchased by the petitioner in S.Nos.258/5B, 258/5C, 258/5D, 258/5E, 258/5H and part of 258/5F and 258/5I in Manali Village, Ambattur Taluk, Thiruvallur District are illegal and non-est and that in any event have abated consequent upon the enactment of the Tamil Nadu Urban Land (Ceiling and Regulation Repealing Act, 1999 and consequently declare that the petitioner is entitled to deal with the above mentioned lands owned and possessed by it as a full and absolute owner by carrying out necessary corrections to the Revenue records.



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PRAYER in W.P.No.11670 of 2006: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of declaration that all proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulations) Act, 1978 in respect of the lands owned by the petitioner situated at Old Survey No.258/5B in Manali Village, Ambattur Taluk, Thiruvallur District, admeasuring about 56250 Sq.ft. forming part of the full extent of 18 acres of land purchased by the petitioner in S.Nos.258/5G, 258/5J, 258/5K, part of 258/5I, 258/5F in Manali Village, Ambattur Taluk, Thiruvallur District are illegal and non-est and that in any event have abated consequent upon the enactment of the Tamil Nadu Urban Land (Ceiling and Regulation) Repealing Act, 1999 and consequently declare that the petitioner is entitled to deal with the above mentioned lands owned and possessed by it as a full and absolute owner by carrying out necessary corrections to the Revenue records.

For Petitioners

in W.P.No.27695 of 2005 : Mr.Srinath Sridevan

For Petitioner

in W.P.Nos.11669 & 11670 : Mr.Rahul Balaji
of 2006

For Respondents

in All W.Ps : Mrs.Geetha Thamaraiselvi
Special Government Pleader



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COMMON ORDER

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Since the issue involved in all these writ petitions are one and the same, they are taken together and disposed of by this common order.

2. It is the case of the petitioner in W.P.No.27695 of 2005 would submit that originally the land comprised in Survey No.258/5, patta No.357 to an extent of 78 cents situated at Manali Village, Saidapet Taluk was originally owned by one Venugopal Pillai. The said Venugopal Pillai alienated the property in favour of one Padmaja in the year 1983 and the said Padmaja alienated the property in favour of the petitioner on 04.05.1988 vide document No.2091 of 1988. Urban Land Ceiling Authorities had initiated proceedings under Section 7 (2) of the Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter called 'the Act') against Venugopal Pillai, who is the original owner of the property and sent a notice to him on 29.05.1985. On receipt of the said notice, Venugopal pillai, who is the original owner of the property made an objection on 02.07.1985 stating that the property in survey



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No.258/5 to an extent of 56.275 sq.mts is not only owned by him but also owned by seven persons viz., G.Jeyaraj, D.Venugopal Pillai, O.S.Kannapan, M.D.Radha Krishnan, Muthukarupan, Sudandradevi and M.Bakthavatchalam. Therefore, the said Venugopal Pillai made a request to the Urban Land Ceiling Authority to issue notice to other land owners as well. However, the said objection was not considered by the third respondent and dismissed the same vide proceeding in Rc.No.5018/80/C dated 30.10.1985. Aggrieved by the same, the said Venugopal Pillai filed an appeal petition under Section 33 of the Act before the Special Commissioner of Land Reforms, which was also dismissed for non-appearance of Venugopal Pillai. Even though the said Venugopal Pillai forwarded the detail of other owners vide letter dated 02.07.1985 to the Competent Authority, the third respondent issued notice only to Venugopal Pillai and acquired the land under section 11(5) and 11(6) of the Act, without following the procedures contemplated under the abovesaid sections. It is further case of the petitioner that Act itself was repealed on 16.06.1999 vide Repeal Act 20 of 1999.



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3. It is the case of the petitioner in W.P.Nos.11669 and 11670 of 2006 that the disputed property was owned by one Gopal Nadar and the said Gopal Nadar had 10 legal heirs and the 10 legal heirs alienated the property on 11.11.1983 and sold the same in favour of one Jain family by way of different sale deeds. Thereafter, the petitioner in these writ petitions purchased the property from the said Jain family in the year 1998 through different sale deeds. At the time of initiation of acquisition proceedings, no notice was issued either to Gopal Nadar or any interested persons and the entire proceeding was initiated against a wrong person merely by way of affixture, which is contrary to Rule 8 of the Tamil Urban Land Ceiling and Regulation Rules, 1978 and without following the procedures contemplated under Section 11(5) and 11(6) of the Urban Land Ceiling Act.

4. The respective learned counsel appearing for the petitioners submit that the entire land was taken over by way of vesting on the Government



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under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 26 of 1963 and based on the pre-existing rights, ryotwari patta was granted by the Assistant Settlement Officer, Chennai under section 11(1)(ii) of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 26 of 1963 on the basis of application submitted by the aforesaid land holders. The Assistant Settlement Officer on 05.03.1973 granted a Ryotwari patta in favour of the land holders in S.No.258/5 in the year 1973 based on the pre-existing rights. Such being the case, the aforesaid lands are exempted from the purview of the Urban Land Ceiling Act. It is the further submission of the learned counsel that while one arm of the Government had already taken over the lands under the Inam Abolition Act and ryotwari patta was granted in favour of the petitioners' predecessor in title based on the pre-existing right, the other arm of the Government, viz., the Urban Land Ceiling Authority has no locus to take over the very same lands, as the lands, which have been classified as ryotwari lands and patta granted, could never partake the character of urban lands. Further, the Urban Land Ceiling Authority had directed the petitioner to file exemption application in terms of the section 37(A) of the Act. Further, possession has



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not been taken and the procedure contemplated for taking possession as provided u/s 11 (5) and 11 (6) of the Act have not been followed, which vitiates the entire proceedings. Further, the Repeal Act having come into force on 16.6.1999, the lands having not been taken possession of in the manner prescribed under the Act, the Urban Land Ceiling proceedings stood abated and no acquisition could be made of the said lands. Accordingly, learned counsel prays for allowing the writ petitions.

5. The learned Special Government Pleader appearing for the respondents submitted that notice was duly served on Gopal Nadar, Venugopal u/s 7 (1) of the Act and in response to the said notice Venugopal S/o.Duraiswamy appeared and given a written statement stating that the land in S.No.258/5, an extent of 27.82 acres is owned by him along with six others in equal shares, though no evidence evidencing the same has been furnished during the enquiry. Therefore, further notice u/s 9 (4) and 9 (1) was served by way of registered post calling for objection and in response to the said notice, Venugopal sent a reply reiterating his earlier stand. However, no



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documentary evidence in support of the said objection was furnished.

Therefore, the claim of Venugopal was rejected and the appeal filed against the same was dismissed as the said individual had not turned up before the appellate authority.

6. It is the further submission of the learned Special Government Pleader that the petitioner is not the owner of the land as on 03.08.1976, when acquisition proceedings were initiated and he was a subsequent purchaser vide document No.2091/1988, dated 04.05.1988 and the land itself having been acquired prior to the said sale, the sale itself is not valid as per section 6 of the said Act and the petitioners can only be treated as rank encroachers on the aforesaid property. The possession of the land having been taken over on 15.6.1999 and the Repeal Act having come into force only on 16.6.1999, the petitioner cannot derive any benefit from the repeal Act.

7. Heard the learned counsel for the petitioners and learned Special



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Government Pleader appearing for the respondents and perused the materials available on record.

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8. Admittedly, the subject lands were originally owned by one Venugopal Pillai, Gopal Nadar and Kannappa Pillai. However, it is evident from the materials available on record that the very same property was the subject matter of vesting under Act 26 of 1963 and based on the pre-existing right, the land holders were granted ryotwari patta by the Assistant Settlement Officer in terms of Section 11 (1) (ii) and 12 of the Act 26 of 1963. However, in the year 1984, the Urban Land Ceiling Authority initiated Urban Land Ceiling proceedings against the original vendor by classifying the entire land as urban land.

9. Though it has been the consistent claim of the original owner, viz.,



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Venugopal Pillai that the subject lands were owned by seven persons including him, however, notice has been served only on Venugopal Pillai.

The orders passed on the said objection raised by Venugopal Pillai is silent on this aspect, though it is the claim of the respondents that the said Venugopal Pillai had not produced any materials with regard to the whereabouts of the other persons, who are alleged to have been the owner of the said lands.

10. In the absence of address, though procedure has been prescribed under the Urban Land Ceiling Act for service of notice on the said individuals, who are said to have been joint owners of the subject lands, yet, for reasons best known, the respondents have not adverted to the said procedure and issued notice by following the relevant provisions. Therefore, in effect, notice has not been served on all the persons, who are connected with the said lands.



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11. Further, even in the appeal filed by Venugopal Pillai before the Special Commissioner of Land Reforms under section 34 of the Urban Land Ceiling Act by reiterating the very same objections, yet, the revision was rejected by the Special Commissioner on 27.08.1986 and thereafter, the authority proceeded the matter as against only three persons viz., Venugopal Pillai, Gopal Nadar and Kannappa Pillai, who had already alienated the property in favour of the petitioner's vendor. However, no notice was issued to the petitioner's vendor or the petitioner u/s 11(5) and in the absence of compliance of Section 11 (5), the procedure contemplated u/s 11 (6) was resorted to.

12. For better understanding Section 11 (5) and 11 (6) of the Act, which are basis on which the petitioners claim their right, are extracted hereunder :-

"11.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in



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writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary."

13. A perusal of the above said provision makes it clear that notice in writing has to be issued on the land owner and other interested persons u/s 11 (5) of the Act upon vesting of lands with the State Government by invocation of the Urban Land Ceiling proceedings, ordering any person who may be in possession of such lands to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice.



14. The said Venugopal Pillai had alienated the property in favour of one Padmaja, who, in turn, had alienated the property in favour of the petitioners, however, no notice was issued to the said Padmaja or to the petitioners. It is further to be pointed out that the said Padmaja, who is the vendor of the petitioners had purchased the property way back in the year 1973 from Venugopal Pillai and, thereafter, the petitioners have purchased the property. Such being the case, while taking possession, the persons in actual possession, are to be served with the requisite notice u/s 11 (5) and in the absence of complying with the mandate u/s 11 (5) proceedings u/s 11 (6) have to be resorted to. However, there is no material placed before this Court to show that the procedures as contemplated u/s 11 (5) and 11 (6) were complied with. Though the respondents claim that possession was taken over on 15.6.1999 and the Repeal Act came into force only on 16.6.1999, yet, it is to be pointed out that there is no material available on record to show that before taking possession of the land on 15.6.1999, the procedure contemplated u/s 11 (5) was resorted to and in the absence of compliance the procedure contemplated u/s 11 (6) was invoked. The manner in which possession of the lands were taken is not available and no material



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whatsoever has been placed before this Court to substantiate that the procedures contemplated u/s 11 (5) and 11 (6) have been complied with.

15. It is to be pointed out that the procedures contemplated u/s 11 (5) and 11 (6) are pivotal procedures, which have been provided only to safeguard the interests of the land holders and the said procedures are to be complied with in letter and spirit and infraction of the same would render the acquisition vitiated. In the case on hand, as aforesaid, there is no material to show that the said procedures have been complied with, but merely it is stated on affidavit that possession of the subject lands have been taken. Mere paper possession without following the procedure prescribed under the Act could not be termed to be possession in the eye of law. Therefore, the possession, alleged to have been taken over by the respondents, has not been established in a manner known to law.

16. Further, it is the admitted case of either side that the Assistant Settlement Officer had granted ryowtari patta in favour of the pre-existing



right holders, which stood transferred to the subsequent purchasers, viz., the petitioners vendor. The said grant of ryotwari patta is prior to the acquisition under the Urban Land Ceiling Act and the said ryotwari patta stares writ large on the face of the acquisition proceedings. When once ryotwari patta has been granted, it is to be noted that the said lands have been classified as ryoti lands, which are nothing but agricultural lands. That being the case, this Court is at a loss to understand as to how urban land ceiling proceedings have been initiated against the piece of lands, which have been classified as ryoti lands or agricultural lands.

17. Further it is a matter of record that the competent authority has issued a notice under the Act and directed the petitioners in W.P.Nos.11669 and 11670 of 2006 to approach the Authority for exemption of the agricultural land from the purview of the Urban Land Ceiling proceedings in terms of Section 37 of the Act. However, as pointed out above, without following the due process of law, the Urban Land Ceiling Authority acquired the land under the Urban Land Ceiling Act, that too a land, which has been classified as agricultural land and also without following the procedure



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contemplated u/s 11 (5) and 11 (6) of the Act.

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18. Not only on the aforesaid grounds, but also on the ground that possession has not been taken over in the manner known to law and that the procedures contemplated u/s 11 (5) and 11 (6) of the Act having not been complied with, the possession alleged to have been taken on 15.6.1999 is not only a farce, but not substantiated and the Repeal Act having come into force on 16.6.1999, the urban land ceiling proceedings cannot be allowed to continue, as the same stood abated in terms of section 4 of Repeal Act 20 of 1999.

19. 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



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of the land owners. Once the Legislature, in its wisdom, had thought 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.

20. For the reasons aforesaid, the impugned acquisition proceedings under the Act are wholly unsustainable and, accordingly, they deserve to be quashed. Accordingly, the impugned proceedings are quashed and these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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vm/GLN

Index : Yes/No

Speaking Order : Yes/No



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To:

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- 1.The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 001.
- 2.The Commissioner for Land Reforms,
Urban Land Tax,
Chepauk,
Chennai – 600 005.
- 3.The Assistant Commissioner/Competent Authority,
Urban Land Tax, Madhavaram,
Chennai – 600 099.
- 4.The Secretary to Government,
Revenue Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 5.The Special Commissioner and
Commissioner of Land Reforms,
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- 6.The Assistant Commissioner,
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- 7.The Assistant Commissioner,
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M.DHANDAPANI,J.

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