



W.P.No.1255 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 20.10.2022

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.1255 of 2015
& M.P.No.1 of 2015

1.Dr.V.P.R.Varadharajan
2.V.P.R.Raja

...Petitioners

Vs.

1.The State of Tamil Nadu
rep.by the Assistant Commissioner
Urban Land Ceiling and Tax
Kundrathur-Alandur (E)
No.153, Karuneegar Street,
Adambakkam, Chennai 600 088.

2.The Sub Registrar,
Adayar Sub Registrar Office,
Adayar, Chennai 600 020.

3.A.Chinnaponnu

4.A.Gnansekaran

5.Kuppu

6.Gangammal

(R3 to R6 impleaded vide order dated 12.10.2022 made in
WMP.No.20820/2022)

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondents Letter No.Na.Ka.B/364/13 dated 27.9.2013 against the property comprised in Survey No.227/6E measuring an extent of 46 cents situated in Kottivakkam Village, Saidapet Taluk, Kanchipuram District, and



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quash the same as the Urban Land Ceiling Proceedings initiated by the 1st respondent are ceased to exist in view of Repeal of Act 15 of 1999 dated 16.6.1999 and accordingly direct the 1st respondent duly communicate the same to the 2nd respondent to cancel the entries forwarded by the 1st respondent relating to the property of the petitioner to the 2nd petitioner by order dated 27.9.2013 and duly comply the orders of court.

For Petitioner : Mr.P.Subba Reddy
For RR1 and 2 : Ms.Akila Rajendran
Government Advocate
For R3 to R6 : Ms.S.Balasubramaniam

ORDER

The petitioners have filed this petition for issuance of writ of Certiorarified Mandamus calling for the records of the 1st respondent dated 27.9.2013 against the property comprised in Survey No.227/6E, measuring an extent of 46 cents, situated in Kottivakkam Village, Saidapet Taluk, Kanchipuram District, and quash the same and direct the 1st respondent to communicate the same to the 2nd respondent to cancel the entries forwarded by the 1st respondent relating to the property of the petitioner to the 2nd petitioner by order dated 27.9.2013.

2. The case of the petitioners is that they are the owners of the property comprised in Survey No.227/6E measuring an extent of 46 cents situated in Kottivakkam Village, Saidapet Taluk, Kanchipuram District. As



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against the petitioners vacant land, the authorities had initiated urban land ceiling proceedings in the name of Lakshmi Narayanan instead of Lakshmi Rama Pandiaraj and the entire urban land ceiling proceedings has been initiated against the dead person without following the mandatory procedures contemplated under the urban land ceiling Act and Rules. Aggrieved by the notification under Section 11(5), for handing over the possession of the properties, the petitioners have filed this writ petition.

3. The learned counsel appearing for the petitioners submitted that originally the disputed property is owned by one Ganapathy Chettiar and the said Ganapathy Chettiar executed Sale Deed in favour of the petitioner's father viz., V.P.Rama Pandiaraj vide Doc.No.2439/1962, on 12.09.1962 and thereafter, the said V.P.Rama Pandiaraj died on 20.07.1972 leaving behind his wife Lakshmi Rama Pandiaraj, three sons and three daughters including the petitioners. Subsequently the daughters have released their shares in favour of brothers and thereafter the mother of the petitioners died on 20.12.1993. It is the further case of the petitioners that after Urban Land Ceiling Act came into force, the competent authority is entitled to acquire the land by issuing notice under Section 7(2), 9(1) and 9(4) of the said Act,



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however in the present case, the competent authority has proceeded against Smt.Lakshmi Narayanan instead of Smt.Lakshmi Rama Pandiaraj and further the proceedings against the property and notices relating to the proceedings never served to the urban land owner and all the notices were served only by way of affixtures, which is contrary to Rule 8 of the Urban Land Ceiling Rules, 1978. It is to be considered that after death of the original land owner, the family consists of 8 persons. As per Section 3(f) of the Urban Land Ceiling Act, the family having husband wife and two children are entitled for 500 sq.mtrs each and in result all the four members are entitled to 2000 sq.mtrs and in that capacity the petitioners' family is entitled for 2000 sq.mtrs and therefore, the calculation of excess land arrived by the authorities without issuing notice to the appropriate persons, is not sustainable.

4. Furthermore, in the meanwhile on 16.06.1999, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was repealed by the Repeal Act, 20/1999 and therefore, the entire proceedings initiated by the authorities will stand abated in terms of Section 4 of the Repeal Act and thereby for the purpose of mutation of revenue records, the petitioner



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approached the Sub Registrar, Adyar to verify the encumbrance of the said property. Thereafter the Sub Registrar issued the impugned order dated 27.09.2013 under the Rights to Information Act, wherein it is stated that the Assistant Commissioner of Urban Land Ceiling and Tax / 1st respondent has sent a report to the Sub Registrar, Adyar, about the details of lands acquired under the Act and requested not to entertain any documents in respect of the lands mentioned in the said impugned order, which includes the land of the petitioner. Aggrieved by the said impugned order, the present writ petition is filed.

5. The learned counsel appearing for the petitioners submitted that on an earlier occasion, the present writ petition was dismissed by this Court on 25.11.2015, as against which the petitioner has preferred a Writ Appeal in W.A.No.145/2016 and the Division Bench of this Court vide its order dated 04.10.2017, has set aside the order of this Court and remanded the matter. Hence the matter is before this Court.

6. It is further submitted that the petitioners have not been issued with any notice regarding the Urban Land Ceiling proceedings. Further the



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acquisition is obviously in the name of a dead person and thus, the order of acquisition of excess vacant land is illegal as it is against the dead person, without issuing notice to the persons who is in possession of the property, which is in violation of Section 11(5) of the Urban land Ceiling Act and it is also in violation of Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978, in view of the fact that all the notices were served in person by way of affixtures, which is impermissible as per the above said rule position. As per Rule 8 of the Urban Land Ceiling Rules, Every draft statement prepared under Sub Section (1) of Section 8 shall be served on the holder of the vacant lands by sending the same by registered post addressed to the person concerned, 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. However in the present case on hand, all the notices were served by way of affixtures to the wrong person. Therefore, without verifying the revenue records, the entire proceedings have been initiated in a mechanical manner and hence the entire proceedings initiated by the authorities will stand abated and prays for allowing of this petition.



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7. The learned Government Advocate appearing for the respondents 1 and 2 submitted that the procedures contemplated under the Urban Land Ceiling Act was scrupulously followed and though the petitioners claimed that the authorities had initiated urban land ceiling proceedings in the name of Lakshmi Narayanan instead of Lakshmi Rama Pandiaraj, in the revenue records the name was mentioned only as Lakshmi Narayanan and further based on the inspection report submitted by the Tahsildar, the proceedings were initiated against the urban land owner and further the land was acquired in the year 1997 and the possession was taken prior to the Repeal Act, whereas the petitioners have filed the present writ petition only in the year 2015, after a lapse of 16 years, which is not sustainable and it suffered from delay and laches and prays for dismissal of this petition.

8. The learned counsel appearing for the private respondent submitted originally the property is belonged to the 3rd respondent and the said Ganapathy Chettiar is not the owner of the property and however this Court may grant liberty to the 3rd respondent to workout his remedy in the manner known to law before the competent forum.



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WEB COPY 9. 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.

10. Facts in the present case is not in dispute. The Urban Land Ceiling proceedings has been initiated against Lakshmi Narayanan and a perusal of the entire records also reveal that the entire proceedings were initiated against Lakshmi Narayanan, whereas the petitioners have produced the Settlement Deed dated 13.12.1943 and Sale Deed dated 12.09.1962 and Release Deed dated 28.11.1972 and patta dated 06.11.1987 and all those deeds and revenue records disclose that the petitioners' mother viz., Lakshmi Rama Pandiaraj is the owner of the property, whereas Section 7(2) notice was issued in favour of Lakshmi Narayanan instead of Lakshmi Rama Pandiaraj and there is no proper explanation as to the same has been available in the original records produced by the respondents and further the field inspection report also not reflected the original owner and no records were annexed in the original file. Further notice under 7(2) and 9(4) was

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issued in favour of Lakshmi Narayanan by way of annexures and therefore,

now the question is as to whether the service contemplated under Rule 8 is followed or not? In order to find out the solution, this Court has perused Rule 8 of the Urban Land Ceiling Rules. A perusal of Rule 8 makes it clear that every draft statement prepared under Sub Section (1) of Section 8 shall be served on the holder of the vacant lands by sending the same by registered post addressed to the person concerned, 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. However in the present case on hand, no RPAD was sent to the appropriate person and the service is effected only by way of affixtures, which is contrary to the said rule position. Though the petitioner challenging the restrain order passed by the 1st respondent to the 2nd respondent, however subsequently prayer is to set aside the urban land ceiling proceedings in terms of Act 20 of 1999. Further 11(5) notice was issued by way of annexure on 01.09.1998, however this Court has perused the handing over and taken over proceedings, which were available in the original records. A perusal of the same reveals that no dates were available in the said proceedings and though the Act is repealed on 16.06.1999, there is no clarity for taking possession of the properties at the



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relevant time and hence this Court is of the view that the entire records were created only for the purpose of depriving the rights of the petitioners.

11. Further, it is the stand of the petitioners that no notice has been issued on the petitioners, who are interested persons, prior to the repealing of the Parent Act. It is to be pointed out that for taking possession, certain procedures created under the Statute itself are to be complied with and for better clarity, Section 11 (5) and 11 (6) of the Act, which contemplate the procedures to be followed prior to taking possession 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 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."



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WEB COPY 12. 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.

13. In the case on hand, admittedly notice u/s 11(5) was issued to Lakshmi Narayanan instead of Lakshmi Rama Pandiaraj, 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 1962 and have had the revenue records mutated in their favour, have not been issued with any notice as mandated u/s 11 (5).

14. 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



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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 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.

15. In view of the above, the entire land ceiling proceedings initiated by the 1st respondent stand abated in view of the repeal Act and as a consequence thereof, this writ petitions stand allowed and thereby the impugned proceedings of the first respondent in Letter No.Na.Ka.B/364/13 dated 27.9.2013 is set aside. No costs. Consequently connected miscellaneous petition is closed.

20.10.2022

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To

1.The Assistant Commissioner

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Adayar, Chennai 600 020.

M.DHANDAPANI,J.



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