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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
17.03.2022	29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 4442 OF 2012

AND

M.P. NO. 1 OF 2013

1.D.Chandran

2.D.Ganasoundari

3.V.Chellammal

4.V.Ethiraj

5.V.Delli Babu

6.V.Selvakumar

7.V.Prakash

8.V.Dhanalakshmi

9.V.Neelavathi

..Petitioners

- Vs -

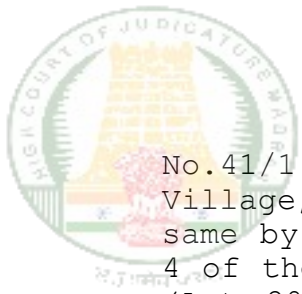
1. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk, Chennai 600 005.

2. The Assistant Commissioner (ULT)/
Competent Authority (ULC)
Poonamallee, No.5, Sanathi Street
2nd Floor, Poonamallee
Chennai 600 056.

3. The Tahsildar
Poonamallee Taluk,
Chennai 600 056.

..Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the respondents, especially the order of the 2nd respondent dated 13.3.97 vide S.R.997/96D u/s 9 (5) and notice dated 28.8.98 vide Rc.863/96D u/s 11 (5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of lands in survey



No.41/1 measuring an extent of 7400 sq.mts., of Amudurmedu Village, Sriperumbudur Taluk, Tiruvallur District and quash the same by treating the proceedings referred to above as abated u/s 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeat Act (Act 20 of 1999) so as to enable the 3rd respondent herein to correct the entries in the revenue records by incorporating the names of the petitioners as owners of the land in the said survey No.41/1 of Amudurmedu Village.

For Petitioners : Mr.V.Ramesh

For Respondents : Mr. Yogesh Kannadasan, Spl. GP

ORDER

The notice and the order passed by the 2nd respondent in respect of the acquisition of lands under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (for short 'the Act') has been put in issue before this Court by assailing the same on the ground that the said proceedings stood abated in view of the enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeat Act so as to enable the 3rd respondent herein to correct the entries in the revenue records by incorporating the names of the petitioners as owners of the land in the said survey No.41/1 of Amudurmedu Village.

2.It is the averment of the petitioners that their father was in possession of the agricultural lands measuring an extent of 7900 sq.mtrs., in S. No.41/1, Amudurmedu Village, which was subjected to cultivation. After his death the property devolved on the petitioners and they are in absolute possession and enjoyment of the lands. It is the further averment of the petitioner that proceedings were initiated under the Act to acquire the lands by the 2nd respondent, about which the petitioners were not aware of till recently, when the Special Tahsildar (Acquisition), Highways Department, took steps to take possession of the said lands. Coming to know about the acquisition pursuant to the notice of acquisition under the Act, the petitioners sought certified copies of the various orders of acquisition u/s 9 (5), 10 (1) and 11 (5) of the Act from which it transpired that the 2nd respondent had acquired an extent of 7400 sq. mtrs., out of the 7900 sq. mtrs., in possession of the petitioner, questioning which the present writ petition has been filed.

3. Learned counsel appearing for the petitioners, to assail the impugned order and notice, submitted that the delay in the petitioners coming before this Court to file the present



petition in relation to the time when lands were acquired cannot be construed as delay for the simple reason that no notice was given to the petitioners before the acquisition of the lands. It is the further submission of the learned counsel that had the respondents really issued notice, the petitioners would have gone before the respondents to assert their right. But, for reasons best known, the respondents have not issued any notice, which would have given an opportunity for the petitioners to present their case.

4. It is the further submission of the learned counsel that the lands are agricultural lands and the acquisition of agricultural lands is not contemplated under the Act as 'Urban Land' and 'Vacant Land' are defined u/s 3 (o) and 3 (p) of the Act. The lands owned by the petitioners, being agricultural lands, they cannot be acquired under the Act. Therefore, the impugned order dated 13.3.97 issued u/s 9 (5) of the Act is without jurisdiction and that said order being bad, the subsequent orders u/s 10 (1), 11 (1) and 11 (5) are also equally bad.

5. It is the further submission of the learned counsel that though the order dated 13.3.97 issued u/s 9 (5) of the Act speaks about the notices u/s 7 (2), 9 (1) and 9 (4) having been served, however no material to substantiate the same has been placed before the Court by the respondent. In the absence of issuance of the aforesaid notices/orders on the petitioners, the entire acquisition proceedings stands vitiated and is in gross violation of principles of natural justice.

6. It is the further submission of the learned counsel that no opportunity of personal hearing, as contemplated u/s 9 (5) was given to the petitioner and, therefore, the consequent orders passed in this regard under the various other provisions also does not survive. It is the further submission of the learned counsel that actual physical possession has not been taken by the respondents and mere paper possession would not suffice to hold that the provisions of the Act has been duly complied with. There has been gross infringement of Article 300-A of the Constitution and no person can be deprived of his property without the procedure laid down under the relevant Act. No voluntary surrender having been established and physical possession having not been taken by following the procedure contemplated, in view of the repealing of the Act by Act 20/1999, the acquisition of lands by the respondents cannot be sustained. It is the further submission of the learned counsel that the procedure contemplated u/s 11 (5) of the Act not having been followed, in that the authorities having forcibly taken possession, notice to be served on the petitioners is mandatory. However, in the present case, though notice has been said to be



served only upon one of the petitioner to the exclusion of the other petitioners, the possession said to have been taken by the respondents is not sustainable and, accordingly, the writ petition deserves to be allowed.

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7. In support of his submissions, learned counsel appearing for the petitioners placed reliance on the following decisions :-

i) State of U.P. - Vs - Hari Ram (2013 (4) SCC 280;

ii) Competent Authority - Gs - Bangalore Jute Factory & Ors. (2005 (13) SCC 477);

iii) Govt. of T.N. - Vs - Nandagopal & Ors. (2011 (5) CTC 843); and

K.V.George & Ors. - Vs - The Special Commissioner & Anr. (W.P. No.11098/2008 - Dated 19.06.2019)

8. Per contra, learned Special Government Pleader appearing for the respondents, referring to the notices issued to the petitioners submitted that even as early as in the year 1997, when the lands were sought to be acquired, necessary notice under the Act was issued to the petitioners, which were duly acknowledged. However, for reasons best known, the petitioners kept silent and participated in the proceedings and have not taken any legal steps questioning the acquisition proceedings. However, after more than a decade and a half, the petitioners, after submitting themselves to the acquisition proceedings, sought for certain documents under the Right to Information Act and based on the said notices/documents given to them, have filed the present petition challenging the said acquisition proceedings as having abated in view of the passage of the repeal Act 20/1999. The delay in the petitioners moving this Court is fatal to their case. It is the further submission of the learned Special Government Pleader that possession has been taken by the respondents and the claim of the petitioners that possession has not been taken has not been established. Therefore, he prays that this Court may dismiss the present petition.

9. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

10. It is not in dispute that the acquisition proceedings relate to the year 1997 and that notices were issued in the year 1997. The ground on which the order and notice are attacked is that possession still remains with the petitioner and that no notice has been issued to them.



11. In order to appreciate the aforesaid contention, this Court called upon the respondents to produce the original files, and pursuant to the said direction, the original files were placed before this Court. From a perusal of the files, it reveals that notices u/s 9 (5), 10 (1) and 11 (5) were issued to the petitioners and acknowledgment towards receipt of the same is found therein. Therefore, the claim of the petitioners that notice has not been served on them prior to the lands vesting with the Government pursuant to the invocation of the Act does not deserve acceptance. Equally, the further stand of the petitioners that individual notices were not sent, which renders the vesting of the lands vitiated also does not merit acceptance for the reason that the petitioners belong to one and the same family and they are brothers/sisters and half brothers/half sisters. That being the case, non-causing of individual notices on each person would not in any way vitiate the proceedings.

12. It is the case of the petitioners that they came to know about the acquisition proceedings only pursuant to the notice of acquisition, whereupon the petitioners applied for certified copies of the various orders relating to the acquisition, more especially the orders u/s 9 (5), 10 (1) and 11 (5) of the Act. However, the affidavit of the petitioners is silent as to the date on which they had sought for the said copies through their communication/representation. The petitioners submit that only when they received the communication relating to the acquisition of land under the Land Acquisition Act, they came to know about the orders relating to the lands having taken over under the Act and sought for copies.

13. A perusal of the records reveal that notice was issued in Form VII with regard to delivery of possession of lands that have since vested with the Government on the invocation of the Act on 28.8.98 and, thereafter, possession of the lands have been handed over as early as in the year 1999. The notice has been received by the petitioner, as stated above, which is evident from the acknowledgment found in the records. However, only vide 16.9.2010, representation has been addressed seeking certified copies of certain documents for the purpose of filing appeal. As is evident from the said letter, the petitioner has stated that he is aware that the lands have been taken over by the Government under the Act. However, the petitioner has not spoken about the date on which he came to know about that the lands have vested with the Government. However, it is clear that the petitioner was aware that lands have been taken over by the Government under the Act.

14. It is to be pointed out that the orders for delivery of possession under the Land Acquisition Act had been passed as early as in the year 1999, however, the petitioners had filed



the present petition only in the year 2012, a decade after the said order has been passed. There is no reason attributed for the delay in filing the writ petition, more so when there is no whisper in the petition about the date on which the petitioners have sought for certified copies of the notices under the Right to Information Act. In the absence of pointed particulars about the date on which the petitioners came to know about the acquisition vis-à-vis the order relating to delivery of possession, the delay in filing the writ petition is fatal to the case of the petitioners.

15. Further, it is borne out by record that subsequent to the vesting of the lands under the Act, by way of land acquisition for the formation of Outer Ring Road, the lands were delivered by the Deputy Tahsildar and possession has been taken by the Revenue Inspector. Notice in this regard has also been issued to the petitioners. The above clearly shows that the possession of lands have been handed over to the Revenue Inspector as early as in May, 1999. Further to taking possession of the lands, Outer Ring Road was also formed, which is also not disputed. That being the case, the stand of the petitioner that the lands are still in his possession does not merit acceptance.

16. Be that as it may. As pointed out above, the lands were taken over by the Government under the Act in the year 1996-1997 and the said Act was repealed by way of Repealing Act 20/1999. Therefore, on and from the date the Act stood repealed vide the Repealing Act, no action having been taken by the petitioners during the subsistence of the Act, upon repealing of the Act, the petitioners cannot come before this Court and claim that the proceedings stood abated as possession has not been taken. This Court has already held that possession has been taken by the respondents pursuant to which the lands have been put to use for the formation of the Outer Ring Road. Such being the case, this Court is at a loss to understand as to how the present writ petition can be prosecuted as no action was taken under the Act during its subsistence and upon its repeal in the year 1999, no action could be taken with regard to the same, more so in the year 2012, which is after a period of 13 years.

17. As already pointed out above, possession of the lands have been taken over by the Government pursuant to the land acquisition proceedings for which also notice has been issued to the petitioner insofar as acquisition of the balance lands in his favour. The vested lands stood transferred and possession was delivered to the Revenue Inspector. Thereafter said land was used for formation of Outer Ring Road and the road has also been formed. The petitioners have come before this Court after a decade and a half seeking enforcement of the repealing Act to



get control of the lands, which have been taken possession of and utilized by the respondents in the formation of Outer Ring Road. The said act of the petitioners cannot be sustained for the reasons aforesaid.

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18. Though very many other contentions have been raised by the petitioners with regard to the lands being agricultural lands and that they have been in continuous possession till date and are cultivating the said lands, the said issues need not be gone into for the simple reason that possession has already been taken and road has also been formed and, therefore, in the absence of a diligent follow up by the petitioners before the repealing of the Act and the Act having been repealed subsequently, as early as in the year 1999, the petitioners have filed the petition only in the year 2012, almost after 13 years, no relief can be granted to the petitioners at this belated point of time.

19. Further, the decisions relied on by the petitioners would in no way further the case of the petitioners as in all those cases, the petitioners therein have come before the Court not only at the earliest point of time, but also the Act was in force when they filed the petitions and relief was granted by this Court for reasons stated therein. However, in the case on hand, as already pointed out above, the lands were sought to be taken over in the year 1997 and upon vesting, the lands were delivered and possession was taken under the Land Acquisition Act much prior to the Act being repealed and till such time, the petitioners have not taken any steps and further to the repealing of the Act, the petitioners cannot come before this Court and claim that the proceedings stood abated in view of the repealing of the Act for the simple reason that only if possession was not taken, the abatement would come into play. However, as already pointed out above, possession having been taken and Outer Ring Road having also come into existence, the claim of the petitioners that the proceedings have abated for want of possession does not deserve acceptance.

20. For all the reasons aforesaid, the claim of the petitioners that there is infraction of the provisions of the Act does not merit acceptance and the delay in filing the petition coupled with the fact that possession having already been taken and the lands having been put to use and the Act having been repealed, does in no way tilt the scales of justice in favour of the petitioners and, therefore, the present writ petition deserves to be dismissed.

21. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition to vacate the



interim order granted by this Court is allowed. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Principal Commissioner &
Commissioner of Land Reforms
Chepauk,
Chennai 600 005.
2. The Assistant Commissioner (ULT)/
Competent Authority (ULC)
Poonamallee, No.5, Sanathi Street
2nd Floor, Poonamallee
Chennai 600 056.
3. The Tahsildar
Poonamallee Taluk,
Chennai 600 056.

+1cc to Mr.V.Ramesh, Advocate, S.R.No.20874

W.P.NO.4442 OF 2012

PL(CO)
RGA(08/04/2022)