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W.A.Nos.1727 and 1728 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.1727 and 1728 of 2014
and M.P. No.1 of 2014

- 1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Revenue Department,
Fort St. George,
Chennai – 600 009.
- 2.The Principal Commissioner cum
Commissioner of Land Administration,
Chepauk, Chennai 600 005.
- 3.The Competent Authority,
The Assistant Commissioner,
(Urban Land Ceiling Act),
153, Karunika Street,
Adambakkam,
Chennai – 600 088. ... Appellants in both the cases

vs

Prakash Chand Jain (HUF) ... Respondent in W.A. No.1727 of 2014

Bimal Kumar Jain ... Respondent in W.A. No.1728 of 2014

Prayer in both the cases: Writ Appeals filed under clause 15 of the
Letters Patent Act against the order dated 03.01.2011 passed in W.P.
Nos.25801 and 25802 of 2007.

For Appellants in both the cases : Mr.K.V.Sajeev Kumar,
Special Government Pleader

For Respondent in both the cases : Mr.K.Bijai Sundar



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COMMON JUDGMENT

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[Judgment of this Court was delivered by T.RAJA, J.]

These writ appeals have been filed challenging the correctness of the order dated 03.01.2011 passed in W.P. Nos.25801 and 25802 of 2007, wherein the learned Single Judge, while coming to the conclusion that the appellants are in possession of the alleged land and the same has also been admitted by the respondents therein in paragraph 5 of the counter affidavit, has allowed the writ petitions in favour of the respondents herein, as per judgment of the Division Bench of this Court in the case of V.Somasundaram and others vs. Secretary to Government, Revenue Department, reported in 2007 (1) MLJ 750.

2.Learned Special Government Pleader appearing for the appellants submitted that although the respondents have been in possession of the land, obtaining patta in their names on 31.03.1997, after issuance of notice under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 to the original owner, it is for the respondents to come forward and hand over the physical possession, but, the learned Single Judge has wrongly held that 11(5) notice ought to have been given to the persons, who are in possession of the land on the relevant date. Secondly, when subsequent development has been taken place by transferring the patta in the



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name of the respondents, the respondents came to the conclusion that notices under Sections 11(5) and 11(6) of the Act could have been issued to them, which is a wrong approach adopted by them. Since it would not be possible to issue notice to a person, who claimed to be in possession of the vacant land, if the address is not known, the impugned orders passed by the learned Single Judge are liable to be set aside.

3.In reply, learned counsel for the respondents submitted that the physical possession of the excess land covered in S.No.15/1 has been continued with the erstwhile owner on the date of Repeal Act came into force on 16.06.1999, which enjoins two conditions namely, (1)where any land is deemed to have vested in the State Government under Sub Section 3 of Section 11 of the principal Act, but possession of which has not been taken over by the State Government and any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government; and (2) all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate. Admittedly, when the physical possession



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continues with the respondents, after issuance of patta in their names on 31.03.1997 and the amount of compensation has not been paid, the impugned orders passed by the learned Single Judge are liable to be confirmed.

4.It is seen from records that the vacant house site bearing Plot Nos.1 and 2, measuring to the extent of 2397 and 2400 sq.ft., situated at Pozhichalur Village, comprised in S.Nos.15 and 15/1 A3 respectively, issued by the Tahsildar, Tambaram are originally owned by one A.O.P. Ezekiel and she having acquired the title to the said plots by a Sale Deed dated 25.10.1990 from one P.Balakrishnan and others, had executed a General Power of Attorney dated 20.08.1996, empowering one Dr.S.Gnanadesigan to sell the vacant plots purchased by her in terms of the Sale Deed dated 25.10.1990. Thereafter, the above A.O.P.Ezekiel, represented by her power agent Dr.S.Gnanadesigan, had executed a Sale Deed dated 03.09.1996 in favour of the respondents herein. Subsequent to the said purchase, the respondents had transferred the records maintained with the Revenue Department and obtained patta bearing No.1638 dated 31.03.1997 in their names from the Tahsildar, Tambaram. Subsequently, the respondents were in absolute possession and enjoyment of the said vacant plots, after obtaining necessary



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encumbrance certificate. While so, the appellants had issued a notice under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 for surrendering or delivering possession of the excess land to the erstwhile owners. In spite of the fact that the mutation in respect of the revenue records already done by the respondents, the respondents have not received any notice of the alleged proceedings from the appellants. When the plot under the acquisition proceedings continue to be under the possession and enjoyment of the respondents, the appellants have not taken steps to dispossess the respondents from the vacant plot or issue notices to them and therefore, in terms of the Repealing Act No.20 of 1999, the entire acquisition proceedings have got abated, if the owner continues to be in possession. Therefore, the respondents have filed the above writ petitions before this Court seeking a declaration declaring that the proceedings issued by the respondents therein with regard to Plot Nos.1 and 2, measuring to the extent of 2397 and 2400 sq.ft., situated at Pozhichalur Village, comprised in S.Nos.15 and 15/1 A3 respectively issued by the Tahsildar, Tambaram have been abated.

5.Admittedly, patta has been transferred in the name of the respondents on 31.03.1997 and subsequent to the same, Sections 9(5) and 11(5) notices have been issued only to the erstwhile owners



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and not to the persons, who are in possession of the land at the relevant point of time. Therefore, the learned Single Judge, while observing that even assuming that transaction has to be held as illegal, Section 11(5) notice has to be issued to a person, who is in possession of the said land, having come to the conclusion that the respondents are entitled for the notice, but the said notice has not been issued to them, as per the judgment of the Division Bench of this Court in the case of V.Somasundaram and others vs. Secretary to Government, Revenue Department reported in 2007 (1) MLJ 750 holding that since the proceedings have been initiated against the wrong person, the lands of the petitioner therein cannot be acquired by the respondents, has allowed the above writ petitions in favour of the respondents.

6.In this regard, it is relevant to refer Act No.20 of 1999 of the Tamil Nadu Urban Land (Ceiling And Regulation) Repeal Act, 1999 as under:

'3.Savings:-

(1)the repeal of the principal Act shall not affect--

(a)the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;



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(b) the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder.

(2) Where--

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings:-

All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or any authority shall abate.

Provided that this Section shall not apply to the proceedings relating to Sections 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.'



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7.A perusal of the above provision clearly shows that any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the principal Act, but possession of which has not been taken over by the State Government or any person duly authorised by the State Government, such land shall not be restored unless the amount paid, if any.

8.In the present case, when compensation has not been paid to the respondents and notice under Section 11(5) of the Act, to which the occupiers/respondents are entitled to, has not been issued to them, the impugned orders passed by the learned Single Judge cannot be found fault with. Accordingly, these writ appeals stand dismissed. Consequently, connected M.P. stands closed. No costs.

[T.R.,J.] [K.B.,J.]
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