



W.A.No.2194 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

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- 1 The Principal Commissioner
and Commissioner of Urban Land Ceiling
Chepauk, Chennai – 600 005.
 - 2 The Assistant Commissioner
Urban Land Ceiling, Tambaram.
- .. Appellants

Vs

- 1 Sathiyavathi
 - 2 L.Santhanam
 - 3 Sasikala
 - 4 Sankari
 - 5 Sarala
- .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 27.8.2018 passed in W.P.No.32700 of 2003.

For the Appellants : Mr.J.Ravindran
Additional Advocate General
assisted by
Mr.A.Selvendran
Spl. Government Pleader



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For the Respondents : Mr.R.Viduthalai
Senior Counsel
for Ms.R.Revathy

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

Calling into question the correctness of the impugned order dated 27.8.2018 passed in W.P.No.32700 of 2003, the official respondents in the writ petition have filed the present writ appeal.

2. The land of an extent of 2000 sq.mtrs. in Survey No.126/4, Tambaram Village, originally belonged to late Krishnaveni Ammal, who died on 21.4.1997. The writ petitioners/respondents herein are legal heirs of the deceased Krishnaveni Ammal. When the writ petitioners/respondents herein came to know that the aforesaid land is sought to be acquired by the respondents/appellants herein by invoking the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [for brevity, "*the Act*"], they applied to the respondents/appellants herein for the certified copy of the proceedings issued or orders passed in this regard. Pursuant to the



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said request, on 21.4.2003, the respondents/appellants herein issued the certified copy of the proceedings dated 3.11.1997 issued under Section 9(5) of the Act. Challenging the said proceedings dated 3.11.1997, the writ petitioners/respondents herein filed the writ petition.

3. Several arguments were placed before the learned Single Judge. The first argument was that when the original owner, late Krishnaveni Ammal, died on 21.4.1997, the respondents/appellants herein issued the notice under Section 7(2) of the Act only on 2.8.1997. It was, therefore, argued that the notice under Section 7(2) of the Act was issued on 2.8.1997 on the dead person, without issuing any notice on the legal heirs of late Krishnaveni Ammal, and, hence, the said notice is non-est in law.

4. Secondly, it was argued before the learned Single Judge that the mandatory procedure contemplated under Rule 8(2)(c) of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 [for brevity, "*the Rules*"] has not been followed, because there was



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no proof to show that before invoking Rule 8(2)(c) of the Rules, an attempt has been made by the respondents/appellants herein to serve notice by sending it through registered post to the owner or holder of the land. Inasmuch as no document has been produced, it cannot be presumed that after making such an attempt to send such notice through registered post, the method of serving notice by pasting it in a conspicuous place as contemplated under Rule 8(2)(c) of the Rules was invoked.

5. Thirdly, it was contended before the learned Single Judge that when notification under Section 11(3) of the Act was issued on 24.3.1999, the possession was not taken taken over as contemplated under Section 11(5) of the Act and if the writ petitioners/respondents herein did not handover the land, the respondents/appellants herein can invoke Section 11(6) of the Act, but in the present case there is no proof to show that physical possession of the land has been taken over by the respondents/appellants herein in the manner known to law before the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 [for



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brevity, "*the Repeal Act*"] came into force on 16.6.1999.

6. Two counter affidavits have been filed before the learned Single Judge. In the first counter affidavit, the respondents/appellants herein averred that no objection was raised to the notice under Section 9(4) of the Act and, therefore, the order under Section 9(5) of the Act was passed on 3.11.1997. The writ petitioners/respondents herein have slept over the matter for six years and, therefore, it is not open to them to say that the respondents/appellants herein had not taken physical possession of the land as per Section 11(5) of the Act or under Section 11(6) of the Act before the Repeal Act came into force on 16.6.1999.

7. Considering the rival claims made by both the parties, the learned Single Judge allowed the writ petition giving three-fold findings. Firstly, the learned Single Judge had concluded that when the respondents/appellants herein had initiated proceedings under the Act by issuing notice under Section 7(2) of the Act on 2.8.1997, the land owner, late Krishnaveni Ammal, died on 21.4.1997.



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Therefore, the non-issuance of notice to the legal heirs of late Krishnaveni Ammal would vitiate the entire proceedings.

8. Secondly, the learned Single Judge while dealing with the crucial aspect contemplated under Section 11(5) of the Act has held that when the respondents/appellants herein have claimed that the proceedings initiated under the Act has culminated in taking over of physical possession of the land, no proof whatsoever has been adduced by placing on record the notice under Section 11(5) of the Act.

9. Thirdly, the learned Single Judge found that the respondents/appellants herein have not even proved or substantiated that they have taken physical possession.

10. Aggrieved by the aforesaid findings, the present writ appeal has been filed.

11. Mr.J.Ravindran, learned Additional Advocate General



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appearing on behalf of the appellants, assailing the reasoning given by the learned Single Judge submitted that when a substantial issue has been raised to non-suit the writ petitioners/respondents herein on the ground of laches, as the writ petitioners/respondents herein have slept over the matter for over six years after issuance of notice under Section 9(5) of the Act on 3.11.1997, the learned Single Judge has not even answered the said issue.

12. Mr.J.Ravindran, learned Additional Advocate General, further submitted that the findings rendered by the learned Single Judge that inasmuch as the respondents/appellants herein failed to produce any proof to substantiate the taking over of physical possession, the land in question has not been physically taken over by the respondents/appellants herein, is unacceptable and untenable.

13. In reply, Mr.R.Viduthalai, learned Senior Counsel appearing on behalf of the writ petitioners/respondents herein, submitted that it is the own case of the respondents/appellants



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herein that the law contemplates that after completion of the proceedings under the Act, the physical possession of the land should have been taken before coming into force of the Repeal Act on 16.6.1999, but till date it is an admitted position that the respondents/appellants herein have not issued notice under Section 11(5) of the Act.

14. It is further submitted by learned Senior Counsel for the writ petitioners/respondents herein that if the respondents/appellants herein have taken physical possession of the land before coming into force of the Repeal Act on 16.6.1999, the respondents/appellants herein ought to have produced before the learned Single Judge or before this Court the relevant official records substantiating their claim that they have taken physical possession of the land in question by following the procedure contemplated under Section 11(5) or 11(6) of the Act.

15. Taking support from the counter affidavit filed by the respondents, learned Senior Counsel for the writ



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petitioners/respondents herein submitted that a threadbare reading of the first counter affidavit dated 20.11.2009 disproves the case of the respondents/appellants herein that they have taken possession of the land as contemplated under Section 11(5) of the Act. Referring to the additional counter affidavit dated 20.7.2018, learned Senior Counsel submitted that it has been admitted by the respondents/appellants herein that the certified copy of the notice under Section 11(5) of the Act has been issued to the writ petitioners/respondents herein only on 21.2.2003.

16. In reply, Mr.J.Ravindran, learned Additional Advocate General submitted that although they have taken physical possession by following the procedure contemplated under Section 11(5) of the Act scrupulously, the writ petitioners/respondents herein applied for the certified copy of the order issued under Section 9(5) of the Act and the notice under Section 11(5) of the Act only on 10.2.2002 and, therefore, the copies were issued on 21.2.2003.



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17. From the above marshalling of facts, The question raised before the learned Single Judge and before us is whether the proceedings initiated by the respondents/ appellants herein under Section 7(2) of the Act culminated in taking over physical possession as mandated under Section 11(5) of the Act.

18. A bare perusal of the additional counter affidavit dated 20.7.2018 makes it ample clear that the conditions postulated under Section 11(5) of the Act have not been followed. The relevant paragraph of the additional counter affidavit is reproduced hereunder:

"6. I humbly submit that I joined duty as Assistant Commissioner (Urban Land Tax) Kancheepuram District on 05.10.2017 and in order to comply with the order of Hon'ble High Court I have made sincere and elaborate search of all relevant records and files relating to issuance of notice under section 11(5) of the Act and the possession taken particulars. I humbly submit that even after the elaborate search made by me with due diligence in our office of the Assistant Commissioner, Urban Land Ceiling and



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Urban Land Tax, Tambaram, the records pertaining to issue of notice under section 11(5) of the Act and proof of having served the same was untraceable. However sincere efforts are being taken to trace out the connected acquisition file. It is humbly submitted that despite of having taken all efforts to trace out the relevant records, the file is still untraceable. I humbly submit that the relevant registers maintained in the office of the Assistant Commissioner, relating to the Urban Land Ceiling acquisition proceedings against the urban land owner is available till the issuance of notice under section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 and the registers are readily available for verification."

19. The aforesaid position makes it clear that the records pertaining to issuance of notice under Section 11(5) of the Act and the proof of having served it on the writ petitioners/respondents herein are not traceable. Because, it only substantiates the fact that the respondents/ appellants herein have not followed the mandate of Section 11(5) of the Act.



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20. At this juncture, it is apposite to refer to a ratio propounded by the Apex Court in the case of ***State of Uttar Pradesh v. Hari Ram and others, (2013) 4 SCC 280***, with regard to the effect of the Repeal Act. Paragraphs 41 and 42 of the said judgment are quoted hereunder:

"41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

*42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. **The State has to establish that there has been a***



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voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act."

[emphasis supplied]

21. In the light of the aforesaid proposition laid down by the Apex Court, unless the State establishes that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under Section 11(5) or Section 11(6) of the Act before 16.6.1999, the land owner is entitled to claim the benefits of abatement of the proceedings for acquisition conferred by the Repeal Act.

22. For the foregoing reasons, the appeal fails and the same is



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dismissed by affirming the findings and conclusions reached by the learned Single Judge. There shall be no order as to costs. Consequently, C.M.P.No.16406 of 2022 is closed.

(T.R., ACJ.) (P.D.A., J.)
23.09.2022

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T.RAJA, ACJ.
AND
P.D.AUDIKESSAVALU,J.

(sasi)

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