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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No.3111 of 2021
and C.M.P.No.21584 of 2021

- 1.State of Tamil Nadu
rep. By its Secretary to Government,
Revenue Department, Chennai - 9.
 - 2.The Competent Authority,
Urban Land Ceiling and Asst.
Commissioner of Urban Land Tax,
Poonamallee, Chennai - 56.
 - 3.The Special Commissioner and
Commissioner for Land Reforms,
Chepauk, Chennai - 5.
 - 4.The District Collector,
Thiruvallur District, Thiruvallur. ..Appellants
- Vs
- D.C.Mangalraj,
Sole Prop:
Kumaran Bricks Works,
V Block, 24, Mogappair East,
Chennai - 50. ..Respondent

Appeal preferred under Clause 15 of Letters Patent
against the order dated 28.06.2019 made in W.P.No.36437 of 2004.

Prayer in W.P. No. 36437/2004:

The Writ Petition filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified
Mandamus, to call for the entire records pertaining to the issue
of the impugned order of the 2nd respondent, in R.C.No.C.5424/88
dt. 23.10.2003 served on the petitioner on 07.01.2004 and quash
the same as illegal, arbitrary, without jurisdiction and
consequently forbearing the respondents 1 and 2 from in any



manner interfering with the petitioner's lawful possession of the lands comprised in S.No.38/1, 41 and 42 etc., of an extent of 21 acres 50 cents, at Ayanambakkam Village, Ambattur Taluk, Thiruvallur District.

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For Appellants : Mr.T.K.Saravanan,
Govt. Advocate

JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 28 June 2019 recorded on W.P.No.36437 of 2004. This appeal is by the respondents/ State authorities.

2. Learned Government Advocate for the appellants has submitted that the possession of the land in question was taken over and learned single Judge erred in allowing the writ petition which calls for interference. Reliance is placed on the decision of the Supreme Court of India in Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others ((2010) 8 SCC 467). It is submitted that this appeal be entertained.

3. Having heard learned Government Advocate for the appellants/ State Authorities and having considered the material on record, this Court finds that the learned single Judge has, on the basis of the material on record arrived at the conclusion that the order of the original second respondent dated 23.10.2003 which was claimed to have been served on the original writ petitioner on 07.01.2004 was illegal and arbitrary. This Court has taken into consideration the findings recorded by the learned single Judge, which was after hearing the original writ petitioner so also the Government Counsel and the counter filed on behalf of the respondent authorities / the present appellants. Relevant part of the judgment reads as under:

6.Records perused, which clearly indicates that the Tamil Nadu Urban Land (Ceiling and Regulation) Authority after following the procedures contemplated under act, issued a notification under Section 11(3) of the Act and allowed the authority to take possession under Section 11(5) of the Act. Accordingly, the authority issued notice through R.P.A.D. to one P.Vajravel, the Proprietor of Kumaran Bricks Works. The said notice was issued on 11.01.1984 and the same was sent through R.P.A.D. dated Nil. Further, the said notice was served on 19.01.1984. The



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acknowledgement card is available in the file, which reveals that the notice was received by one unknown person whose initial is G and the name starts with A and further no details of the person is given to whom the notice was served. Hence, this Court arrives to a conclusion that Rule 8 is not followed in the present case.

7.Hence, it is clear the official respondents have not followed the procedure contemplated under the Act when 11(5) notice was issued and possession is also not taken as per the procedure contemplated under Section 11(5) of the Act and the same is not a valid one. In the present case, though the records reveal that the possession was taken from the petitioner and handed over to the Revenue Inspector on 21.05.1990, however, the fact remains that the possession of the petitioner was protected by this Court right from the year 1991 to till date. Till now the physical possession is with the petitioner and further in the counter, the respondent has admitted that the physical possession is with the petitioner however that the petitioner is treated as the encroacher, the relevant portion is extracted hereunder:

13.With regard to the averments made in paragraph 7 of the affidavit it is submitted that possession of the petitioner has to be treated only as an encroachment in a Government land. The excess vacant land was acquitted from the then proprietor and the possession was handed over to the Revenue Authorities on 21.05.1990 by signing land delivery receipts.

20.When regard to the averments made in paragraph 10 of the affidavit, it is submitted that the orders passed under section 12(6) of the said Act are as per the provisions of the said Act. The possession of the excess vacant land acquired was handed over to the Revenue Authorities on 21.05.1990. The Repeal Act shall not apply to this case as per section 3(1) (a) of the Repeal Act.

8.The above averments in the counter affidavit makes it clear that the physical possession is with the petitioner and the same has not been taken by the



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respondents in the manner known to law by following 11(6) of the Act. So in view of the above, the entire Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 procedure stands abated and the petitioner is entitled to succeed by virtue of Repeal Act 20 of 1999.

9.The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed."

4. We find that the impugned order, in the facts of the case, can not be said to be erroneous which may call for any interference in this intra court appeal. So far the decision of the Supreme Court in the case of Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others (cited supra) is concerned, there cannot be any dispute with regard to proposition of law enunciated therein but on facts, when the learned single Judge has found otherwise, the said judgment will not help the appellants/ State Authorities.

5. For the above reasons, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is disposed of.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mmi/4

To

1.The Secretary to Government,
State of Tamil Nadu
Revenue Department, Chennai - 9.

2.The Competent Authority,
Urban Land Ceiling and Asst.
Commissioner of Urban Land Tax,
Poonamallee, Chennai - 56.



3.The Special Commissioner and
Commissioner for Land Reforms,
Chepauk, Chennai - 5.

4.The District Collector,
Thiruvallur District, Thiruvallur.

+1 CC to The Government Pleader sr 2260.

W.A.No.3111 of 2021

BR(CO)
SP(25/01/2022)