



W.P. No.28153/2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.07.2022	14.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 28153 OF 2007

M.N.Sugumaran

.. Petitioner

- Vs -

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

2. The Assistant Commissioner of
Urban Land Tax – cum –
Competent Authority, Alandur
Chennai 600 088.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to declare that the land to an extent of 0.86 acres comprised in Survey No.138/2 situated at Madipakkam Village, Tambaram Taluk, Kancheepuram District is exclusive land of the petitioner in view of the repealed Act 20 of 1990.



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For Petitioners : Mr. C.Mohan, for
Mr. S.L. Venkatesan

For Respondents : Mr. G.Krishnaraja, AGP

ORDER

Direction is sought for by the petitioner to the respondent to declare the subject lands in Survey No.138/2 to an extent of 0.86 acres in Madipakkam Village, then Saidapet Taluk, now at Tambaram Taluk, as the exclusive land of the petitioner by virtue of the repealing of Act 20 of 1990.

2. Vide order dated 26.7.18, the writ petition was dismissed for non-prosecution, but later, at the instance of the legal heirs of the petitioners, leave was granted to the said persons to file appropriate petition to condone the delay in filing the petition for setting aside the said order and the petition to set aside the order, which were accordingly allowed, which resulted in the writ petition being listed once again.

3. It is the case of the petitioner that the land in S. No.138/2 to an extent of 0.86 acres in Madipakkam Village, then Saidapet Taluk, now Tambaram Taluk, vide sale deed dated 19.01.1967, which was registered at the Sub Registrar's



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Office, Pallavaram. Since the date of purchase, the petitioner claims to be in exclusive possession, occupation and enjoyment of the property and is cultivating the same.

4. It is the further averment of the petitioner that the 2nd respondent issued order u/s 9 (5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, (for short 'the Act') and deducted an extent of 2000 sq. mtrs., from out of the total extent of 3500 sq. mtrs., of the land belonging to the petitioner, which order was served on the petitioner on 28.1.1992. Aggrieved by the said order, the petitioner preferred appeal and the appellate authority rejected the appeal vide order dated 30.7.92, rejected the appeal on the ground that the petitioner has not produced the chitta and adangal extract for establishing cultivation in the land.

5. It is the further averment of the petitioner that though the 1st respondent had dismissed the appeal of the petitioner as early as in the year 1992, yet the respondents have not taken possession of the lands and even as on date, the lands are in the possession and enjoyment of the petitioner. Now, the



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respondents are trying to take possession of the lands, inspite of the fact that even as on 16.6.1999, the Act has since been repealed by Act 20 of 1999 and after the repeal of the Principal Act, the respondents have no power to take physical possession and, therefore, the present petition is filed seeking direction to declare the lands as the exclusive property of the petitioner.

6. Learned counsel appearing for the petitioner submitted that the respondents are trying to evict the petitioner on the basis of the impugned proceedings, which is not enforceable, as possession has not been taken under the Act and as on date the Principal Act has since been repealed. It is the further submission of the learned counsel that upon repealing of the Principal Act, the respondents are bound to renotify the particulars of the lands declaring the petitioner as the owner of the subject lands, as such notification is necessary for all further purposes.

7. It is the further submission of the learned counsel that though on the earlier occasion the petitioner had challenged the impugned order of the 1st respondent, which writ petition was dismissed, however, even thereafter,



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possession was not taken in the manner known to law and Section 11 (3) notice was not served on the petitioner. Without serving the notice u/s 11 (3) and 11 (5), creating paper possession cannot be said to be a sustainable possession. Further, the respondents have to issue notice u/s 11 (5) and provide the petitioner with a period of thirty days to surrender possession of lands and only upon failure, taking of possession has to be resorted to u/s 11 (6) of the Act. It is the submission of the learned counsel that none of the procedure have been followed and that still the possession of the lands is with the petitioner. It is further submitted that the Principal Act was repealed on 16.6.99 and upon repealing of the Act, the acquisition stood lapsed and, therefore, the petitioner would be entitled to derive the benefit of the repealed Act.

8. Per contra, learned Addl. Government Pleader appearing for the respondents submit that pursuant to the take over of the lands under the Act, the said order was challenged by the petitioner in appeal, which was dismissed by the first respondent, vide order dated 30.7.1992. It is the further submission of the learned Addl. Government Pleader that the said order was put in question in W.P. No.20180 of 2007 before this Court and this Court, vide order dated



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18.6.07 has considered all the materials and had given a categoric finding that the petitioner has not filed any proof to show that he is in possession of the lands and, accordingly dismissed the petition.

9. It is the further submission of the learned Addl. Government Pleader that the earlier round of litigation in W.P. No.20180/07, which has since been dismissed, has not been spelt out by the petitioner in his affidavit, which clearly show that the petitioner has come before this Court with unclean hands. Further, it is the submission of the learned Addl. Government Pleader that a finding having been rendered by this Court that possession with the petitioner having not been proved and the said finding having attained finality, it is not open to the petitioner to reagitate the same. Accordingly, he prays for dismissal of the present writ petition.

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



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11. Though the contention raised on behalf of the petitioner is that failure to take possession of the subject lands in view of the repealing Act would revert the subject lands back to the petitioner and, therefore, necessary direction is sought to be issued to the respondents to renotify the said aspect, however, the said contention, in the light of the materials placed on record by the respondents nullify the relief. As rightly pointed out by the learned Addl. Government Pleader, the order of the 1st respondent, rejecting the appeal filed by the petitioner challenging the take over of the excess lands at the hands of the petitioner, had been the subject matter of consideration in W.P. No.20180 of 2007 and vide order dated 18.06.2007, this Court had dismissed the writ petition with the following observations :-

"5. It is seen from the impugned order that the Assistant Commissioner for Land, Land Tax cum Competent Authority, Chennai, had taken action and issued draft statement under Section 9 (1) and notice under Section 9 (4) dated 29.7.1988 was served on the petitioner on 4.11.1988. A further notice for hearing dated 22.02.1989 was also served on the petitioner on 08.02.1989. Since the urban land owner, the petitioner herein had not filed any objections, the competent authority has passed an order under Section 9 (9) on 13.04.1989 and a final statement under Section 10 (1) was also issued on 23.08.1990. The statutory appeal was



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heard by the first respondent on 22.07.1992 and the petitioner's counsel Mr. V.Ramesh was also heard. He did not submit any record in support of the petitioner's contention raised in the appeal. The appellate authority considered the merits of the case and dismissed the appeal on merits and communicated the order to the petitioner's counsel. Though the impugned order was passed on 30.07.1992 and served on the counsel for the petitioner, the contention of the petitioner that only after 15 years, when he approached the Village Administrative Officer to pay the kist, he came to know that proceedings have been initiated against him is not acceptable. The counsel representing the litigant is the authorized agent of the party and therefore service on the counsel amounts to service to the petitioner. The inordinate delay and laches on the part of the petitioner is not explained. The petitioner has not filed any proof of evidence to show that he is in possession of the land. Under such circumstances there is no merit in the writ petition and accordingly, the same is dismissed."

12. From the above, it clearly transpires that even on the earlier occasion the petitioner had assailed the order passed by the 1st respondent in the appeal filed by the petitioner and this Court had observed in detail that opportunity was granted to the petitioner to prove his possession, yet the petitioner miserably failed to prove the same. Further, it has been pointed out by the Court that even



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before the Court the petitioner had not proved his possession. Therefore, even in the earlier round, it has been established that the possession has not been proved by the petitioner.

13. Further, it is the case of the respondents that the Act was repealed with effect from 16.6.1999, but possession has been taken by the respondents way back on 30.4.1998 and, therefore, Section 4 of the repealing Act would be of no avail to the petitioner. Though the petitioner claims possession at his hands, however, as pointed out above, this Court has, already in the earlier round of litigation, even in the year 2007, has held that the petitioner has not proved his possession. Such being the case, the benefit of the repealing Act would not be available to the petitioner.

14. In the above backdrop, not only filing the present writ petition seeking the relief of resumption of lands back to the petitioner is bad, but equally, the conduct of the petitioner in not bringing to the knowledge of this Court about the earlier round of litigation, which had gone against him, definitely proves that the petitioner has approached this Court with unclean hands. The affidavit of



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the petitioner exhibits that the truth in the matter has been shielded from the eyes of this Court so as to enable the petitioner to avail beneficial orders. No leniency can be granted to persons, who approach the court with unclean hands.

15. Be that as it may. It is to be pointed out that in the earlier round of litigation the petitioner had questioned only the order passed by the 1st respondent. There has been no whisper about the entitlement of the petitioner to the lands on the repealing of the Principal Act. The petitioner cannot pick and choose his time, by means of successive petitions to get the relief of his choice one way or the other. Truth is the weapon, which the petitioner has to rely on to get the relief and end up with justice. But in the case on hand, truth has been sidelined to the benefit of the petitioner, which this Court cannot allow to subsist. The Court has to look at the conduct of the petitioner and his truthfulness before the Court, which is the main yardstick in rendering substantial justice to the party. In the case on hand, as aforesaid, the petitioner has suppressed material particulars, including the earlier writ petition, which had not only gone against him, but has attained finality and his possession has



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been rejected and that being the case, the petitioner is estopped from once again agitating the same issue before this Court, but clothed in a different form.

16. Not only the order in W.P. No.20180 of 2007 dated 18.6.07 stares writ large on the petitioner, but the findings rendered in the said order clinches the issue and goes against the petitioner and the conduct of the petitioner coupled with the materials aforesaid, leads this Court to the irrefutable conclusion that the relief sought for by the petitioner deserves to be negative.

17. In the result, the writ petition fails and the same is dismissed. There shall be no order as to costs. However, liberty is granted to the petitioner to work out his remedy in the manner known to law.

14.07.2022

Index : Yes / No

Internet : Yes / No

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To

1. The Special Commissioner &



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Commissioner of Land Reforms
Chepauk, Chennai 600 005.

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**PRE-DELIVERY ORDER IN
W.P. NO.28153 OF 2007**

**Pronounced on
14.07.2022**



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This petition is listed today under the caption “For Being Mentioned” at the instance of the learned counsel for the petitioner.

2. It is brought to the notice of this Court by the learned counsel that the original petitioner passed away pending the writ petition and his legal heirs were granted leave to implead themselves in the writ petition and contest the petition, vide order of this Court dated 17.02.2022 in WMP No.29573/2021. However, in the cause title, the impleaded petitioners name have not been reflected. Therefore, he seeks necessary correction in the cause title.

3. A perusal of the materials, more particularly the order passed in WMP No.29573/2021 reveals that this Court had, vide order dated 17.2.2022, impleaded the petitioners in the said petition as party petitioners in the place of the deceased original petitioner. However, Registry had not carried out the necessary correction in the cause title in the main petition, which has resulted in the non-inclusion of the name of the impleaded petitioners in the cause list.



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4. In the aforesaid circumstances, Registry is directed to include the petitioners in WMP No.29573/2021 as party petitioners in the place of the deceased original petitioner and issue fresh corrected order to the parties.

20.10.2022

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