IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.5957 & 5958 of 2017

E.Lathakumari ...Petitioner in W.P.No.5957 of 2017

Baby Ammal ...Petitioner in W.P.No.5958 of 2017

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St. George, Chennai-600 009.

2. The Special Commissioner & Land Reforms,
Chepuk, Chennai-600 005.

3. The Competent Authority / Asst. Commissioner,
(Urban Land Ceiling and Urban Land Tax),
Ambattur Zone, No.5, Sannathi Street,
Poonnamallee, Chennai-600 056.

4. The Tahsildar,
Ambattur Taluk,
Chennai-600 053. ...Respondents in both W.Ps.

Prayer in W.P.No.5957 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the acquisition proceedings initiated by the respondents under the provisions of the Tamil

Nadu Urban Land (Ceiling & Regulations) Act, 1978 in respect of the house, ground and premises bearing Old Door No.5A, New Door No.9A, Narayanasamy Street, Ram Nagar, Ambattur, Chennai-53, comprised in Old Survey No.34/2, New Survey No.34/2A, Oragadam Village, Ambattur Taluk, Trivellore District and the land measuring to an extent of 1416 Sq.ft. stands abated in view of Sec. 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 namely Act 20 of 1999 so as to enable the 4th respondent to incorporate the name of the petitioner as owner of the above property in all the revenue records to issue patta.

Prayer in W.P.No.5958 of 2017: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the acquisition proceedings initiated by the respondents under the provisions of the Tamil Nadu Urban Land (Ceiling & Regulations) Act, 1978 in respect of the house, ground and premises bearing Old Door No.5, New Door No.9, Narayanasamy Street, Ram Nagar, Ambattur, Chennai-53, comprised in Old Survey No.34/2, New Survey No.34/2A, Oragadam Village, Ambattur Taluk, Trivellore District and the land measuring to an extent of 3000 Sq.ft. stands abated in view of Sec. 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 namely Act 20 of 1999 so as to enable the 4th respondent to incorporate the name of the petitioner as owner of the above property in all the revenue records to issue patta.

For Petitioners : Mr.K.Premkumar
(in both W.Ps.)

For Respondents : Mr.P.Sathish, AGP
(in both W.Ps.)

COMMON ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. The case of the petitioners is that the land comprised in S.No.34/, sub-divided S.No.34/2A, No.59, Oragadam Village, measuring an extent of 4800 sq.ft. originally belonged to one Narayanasamy Pillai, who is none other than the father of the petitioner in W.P.No.5958 of 2017, namely Baby Ammal, (hereinafter referred as 2nd petitioner). Thereafter, the said Narayanasamy Pillai and one Masilamani, who is the brother of the 2nd petitioner, have settled the above vacant house site to an extent of 2400 sq. feet in favour of the 2nd petitioner, vide registered Settlement deed Doc.No.2070/1969 dated 09.06.1969 and another extent of 2400 sq.ft. in the very same property in favour of the 2nd petitioner and her husband, vide registered Settlement deed Doc.No.2061/1969 dated 09.06.1969. Thereafter, the 2nd petitioner, her husband and her three sons sold a portion of the above said land and building to an extent of 1416 sq.ft. in favour of the 2nd petitioner's grand daughter, namely Lathakumari, who is none other than the petitioner in W.P.No.5957 of 2017 (hereinafter referred as 1st petitioner), vide registered Sale deed Doc.No.7136/1994 dated 30.11.1994. After the demise of the 2nd petitioner's husband, she is in absolute possession and enjoyment of the above said property to an extent of 3000 sq.ft and a house constructed therein bearing Door No.5, comprised in S.No.34/2A. When the

petitioners applied for patta in their favour for their respective shares in the subject property, they were directed to obtain No Objection Certificate (in short 'NOC') from the 3rd respondent and when the petitioners approached the 3rd respondent for issuance of NOC, the 3rd respondent, vide reply dated 19.10.2016 informed that, the land comprised in S.No.34/2A has already been declared as surplus land and acquired by the Government. Immediately after knowing the same, the petitioners made an application dated 05.11.2016 under the RTI Act before the 3rd respondent, requesting to furnish the copies of the said proceedings in respect of the subject property. On receipt of the documents, the petitioners came to know that the land ceiling proceedings in respect of the subject property were initiated as against one Ethirajan, who is none other than the father of the 1st petitioner and son-in-law of the 2nd petitioner. Hence, challenging the said land ceiling proceedings, the petitioners have filed these Writ petitions.

3. Learned counsel for the petitioners submitted that the land ceiling proceedings in respect of the subject property were initiated as against the said Ethirajan, father of the 1st petitioner under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (in short 'Ceiling

Act') and the notices were served only in the name of the said Ethirajan, that too only by way of affixture and not on either the petitioners or the predecessors in title, which is a clear violation of rule 8. Further, even a bare perusal of the land delivery receipt of the Revenue Inspector dated 19.11.1999 reveals that, there are two houses in the subject land and the petitioners are in possession of the same by paying necessary taxes and the petitioners building were also approved and they have also obtained electricity connection in their names. While such being the case, when the petitioners are practically in possession of the subject property, not serving notice to the petitioners before taking possession is a clear violation of Section 11(5) of the said Act . Further, as per Sections 11(5) & (6) and rule 8, the competent authority should issue notice to the owners / person in possession of the property, that too personally, to surrender and deliver possession to the State Government within a period of thirty days of the service of the notice, however, it is not followed in the case of the petitioners, which clearly shows that the procedure contemplated in the above said sections and rules were not followed by the authority. He further relied upon the Section 4 of the Repeal Act 20/1999 and submitted that possession not having been taken in the manner contemplated under the

Ceiling Act, the coming into force of the Repeal Act the proceedings would stand abated.

4. It is therefore contended by the learned counsel that physical possession of the above said property having not been taken by the authority, after the repeal of the parent Act, symbolic possession would not suffice as it would not be in consonance with Section 11 (5) of the Ceiling Act and, therefore, the impugned order deserves to be set aside.

5. Learned Additional Government Pleader appearing on behalf of the respondents submitted that, on the date of initiation of the land ceiling proceedings under the provisions of the Ceiling Act, the subject property stood in the name of said Ethirajan, as the petitioners have not taken steps to carry out the necessary changes in the revenue records in respect of the subject property. Further, as no statement under Section 7(1) was filed by the land owners, a notice under section 7(2) of the Act was issued in the name of said Ethirajan and since he refused to receive the same, the same, it was served by way of affixture. As no return was filed by the land owner, the subsequent notice under Section 9(4) of the Act dated 31.11.1989 was

issued and the same was served by way of affixture. Since, no objection was received, the notice under Section 9(5) dated 15.04.1991, declaring the subject property as excess vacant land was issued and the same was served in person to one Padmavathy, wife of said Eithirajan and the final statement under Section 10 (1) of the Act was issued on 22.10.1991 and the same was served on the said Eithirajan. Further, the notices under Sections 11(1) & 11(3) were also published on 18.10.1995 and 10.07.1996 respectively and the notice under Section 11(5) of the Act, for surrender or delivery of possession of excess vacant land was issued on 14.02.1997 and the same was served by way of affixture in the presence of Revenue Inspector, Urban Land Tax, Ambattur and notices under Section 12(6) & 12(7) was issued and the same was served by affixture and the possession of the excess vacant land measuring a total extent of 1900 sq.mts. (i.e.) 850 sq.mts in S.No.34/2A and 1050 sq.mts. in S.No.34/4A was taken over on 15.06.1999 by the Revenue Inspector, Urban Land Tax and handed over to the Revenue Inspector, Ambattur Firka on 19.11.1999.

6. He further submitted that, the subsequent notices under section 12(6) & 12(7) were also served by affixture and the amount payable under

Section 12(6) of the Ceiling Act was fixed as Rs.9,500/- but the said amount has not yet been paid. Further, the said Eithirajan, against whom the entire land ceiling proceedings was initiated is none other than the father of the 1st petitioner and son-in-law of the 2nd petitioner. While so, claiming that they are not aware of the entire proceedings is not sustainable and they have also not filed any objections and such being the case, simply claiming patta for the lands which were already acquired under the Ceiling Act cannot be acceded to. He further more submitted that possession of the land was taken over as early as on 15.06.1999, which is one day in advance to the implementation of the repeal Act. In the light of the above said section the respondents are saved under clause 3(1)(a) of the Repeal Act and the petitioners are not entitled for relief prayed for. Hence, he prayed for dismissal of these Writ petitions.

7. Heard learned counsel appearing on either side and perused the materials available on record.

8. Admittedly, the subject property was originally owned by petitioners' ancestors, however, the land ceiling proceedings has been

initiated against one Eithirajan, who is the father of the 1st petitioner and son-in-law of the 2nd petitioner. However, the grievance of the petitioners is that, though the petitioners are in absolute possession of the subject property by constructing house in the said property, and the same was also not disputed by the respondents and it is also confirmed by the Revenue Inspector, vide Land delivery receipt dated 19.11.1999, while so, the land ceiling proceedings were continued only against said Eithirajan and no notice was served on the petitioners, which is a clear violation of Section 11(5) of the said Act. Hence, in order to avail the benefit as per Rule 8, rule 4(4)and Section 11(5) & (6) of the Act, the petitioners have filed this Writ petition.

9. This Court in order to ascertain the taking over of the possession procedures, called for and perused the entire materials and a perusal of the files make it clear that the notice under the Section 11(5) of the ceiling Act was issued on 14.02.1997 in the name of the said Ethirajan and the same was served by way of affixture and admittedly, the Parent Act was repealed on 16.06.1999, however, the possession is alleged to have been taken on 15.06.1999.

10. Therefore, the pivotal issue that requires consideration is whether there is compliance of Section 11(5) of the Act by the respondents. For better appreciation, Sections 11 (5) and 11 (6) of the Ceiling Act are extracted hereunder :-

> **11. Acquisition of vacant land in excess of ceiling limit.**
>
> * * * * * * * *
>
> (5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.
>
> (6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary.

11. Section 11 (5) contemplates the authorities to issues notice to the person in possession of the property and if they fail to surrender the possession of the property, they have to follow the procedures prescribed under Section 11(6). Further Section 11(5) of the Act, refers to the procedure in which the acquisition of vacant land in excess of ceiling limit

shall be proceeded.

12. The grievance of the petitioners is that, the petitioners came to know about the entire land ceiling proceedings under Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 in respect of the above said properties, only when they made application for issuance of patta. Though the petitioners were in absolute possession of the above said property at the time of initiation of land ceiling proceedings, no notice was served on the petitioners.

13. Notice before taking possession of the property is mandatory as per the provisions of the Act. A perusal of the materials available on record reveals that the respondents initiated land ceiling proceedings under the Principle Act against the 1st petitioner's father. However, it is pertinent to note that, the said Ethirajan is in no way connected with the subject property and the same were owned by the petitioners alone, while so, the land ceiling proceedings were continued only in the name of the said Ethirajan and though the petitioners are in possession of the subject property, no notice was served on them. In the above backdrop, the contention of the respondents that the petitioners are not entitled for the relief under the

Repeal Act is not sustainable. Further, it is pertinent to note that, no notice was served on the petitioners and physical possession of the above said property was also not taken by the respondents. Though the respondents claim that they have taken possession of the property, however, the materials available on record do not reveal such to be the case and there is no material to substantiate the said stand.

14. It is to be pointed out that notice ought to be served on the person in possession of the property. Only if the person in possession of the property refuses to receive the notice issued u/s 11 (5), service of notice through affixture ought to be resorted to. There is no material available on record to show that notice u/s 11 (5) was attempted to be served on the person in possession of the property. Such being the case, it would only go to show that the spirit of service of notice contemplated u/s 11 (5) has not been complied with and, therefore, the service of notice by way of affixture could in no way be termed to be a proper and effective service as provided for u/s 11 (5) and the said service could only be deemed to be no service in the eye of law.

15. Further Rule 8 of the Act prescribes the manner in which notice has to be prepared. For better appreciation, rule 8 is quoted hereunder :-

8. Particulars to be contained in draft statement as regards vacant land and manner of service of the same.-

(1) Every draft statement prepared under sub-section (1) of section 9 shall contain the particulars specified in Form III.

(2)(a) The draft statement together with the notice referred to in sub-section (4) of section 9 shall be served on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance to sub-section (1) of section 7, and

(ii) in the case of other persons, at their last known addresses.

(b) Where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person referred to in clause (a), in the manner specified in that clause are not successful for reasons other than the reason referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

(3) The notice under sub-section (4) of section 9 shall be in Form IV]

For taking over of the possession, the notice under prescribed format should be served on the land owners, as provided under rule 8 as aforesaid. However, in the present case, the notice was served only on said Eithirajan, that too only by affixture and not by registered post with acknowledgement due and the notice under the Act was also not served on the persons in possession of the property. Therefore, the mandate under rule 8 as well as under section 11(5) has not been complied with.

16. As stated above, this Court perused the entire file which reveals that in the Land delivery receipt of the Revenue Inspector dated 19.11.1999, he himself admitted that there are two houses in the subject land, which clearly shows that the possession of the subject property vests with the petitioners, while so, the urban land ceiling authorities ought to have issued notice to the petitioners, who are in possession of the subject property.

17. It is the claim of the respondents that possession was taken on 15.6.1999 and the Repeal Act had come into force only on 16.6.1999. Section 4 of the Repeal Act makes it clear that, if the physical possession is

not taken, the entire land ceiling proceedings would stand abated, which is as under :-

> ***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 12, 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.*

18. As already stated above, notice as contemplated u/s 11 (5) has not been complied with and even assuming without admitting that possession has been taken, it could not be deemed to be legal possession in the eye of law, in view of non-compliance of Section 11 (5) and in the wake of coming into force of the Repeal Act on 16.6.1999, the possession claimed to have been taken by the respondents could not be termed to be lawful possession and, therefore, the proceedings under the Urban Land Ceiling Act would stand abated. Further, it is to be pointed out that mere recording of a possession on 15.6.1999 without following the procedure contemplated u/s

11 (5) would be of no help to the respondents to sustain the proceedings. Therefore, this Court has no hesitation to arrive at the conclusion that the procedures contemplated under the Ceiling Act was not followed and accordingly, the entire land ceiling proceedings stands abated.

19. It is to be pointed out that the Repeal Act 20 of 1999 is a welfare legislation, which was enacted to safeguard the interests of the land owners. Consciously, the Government has taken a decision to repeal the Urban Land Ceiling Act for reasons, which finds place in the repeal Act. That being the case, it is the bounden duty of the respondents to adhere to the reasons given in the said enactment. However, it is often seen that giving a go-by to the reasons for the welfare enactment, the land owners are made to run from pillar to post to get their grievances redressed. When the interests of the land owners is sought to be safeguarded by the said enactment, it cannot be infracted by the respondents by restoring to subterfuge. Time and again, this Court has come across instances of the authorities not adhering to the provisions of the Repeal Act, which is grossly illegal. It is the duty of the authorities to strictly adhere to the provisions of the enactment so that the intent with which the legislation was put in place, the fruits of the same

reach to the land holders.

20. For the reasons aforesaid, the land ceiling proceedings are quashed and the Writ petitions are allowed. No costs.

23.06.2022

skt

Speaking Order : Yes/ No
Index : Yes/ No

To

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St. George, Chennai-600 009.

2. The Special Commissioner & Land Reforms,

Chepuk, Chennai-600 005.

3. The Competent Authority / Asst. Commissioner,
(Urban Land Ceiling and Urban Land Tax),
Ambattur Zone, No.5, Sannathi Street,
Poonnamallee, Chennai-600 056.

4. The Tahsildar,
Ambattur Taluk,
Chennai-600 053.

M.DHANDAPANI, J.

skt

W.P.Nos.5957 & 5958 of 2017

23.06.2022