IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.24535 of 2017

E.S.Vallabhan ... Petitioner

Versus

1.The State of Tamil Nadu
Represented by its Secretary-Revenue
Fort St.George
Chennai – 600 009

2.The Principal Commissioner
Urban Land Ceiling
Government of Tamil Nadu
Chepauk
Chennai – 600 005

3.The Assistant Commissioner/
Competent Authority
Urban Land Ceiling
Sannadhi Street
Adambakkam
Chennai

4.The Deputy Secretary
Government of Tamil Nadu
Revenue Department
Fort St.George
Chennai – 600 009

5.The Tahsildar
Tambaram Taluk
GST Road, West Tambaram
Chennai – 600 045
Kancheepuram District ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration, to declare the land comprised in Survey No.34A/2C1 part of Rajakilpakkam Vilage, Tambaram Taluk, Kancheepuram District belonging to the petitioner, acquired by the 3rd respondent under various provisions of Act 24 of 1978 as abated under Section 4 of Act 20 of 1999 so as to enable the 5th respondent to incorporate the name of the petitioner as owner in the revenue records.

For Petitioner : Mr.V.Ramesh
for Mr.P.Balaji

For Respondents : Mr.G.Krishnaraja
Additional Government Pleader

ORDER

This writ petition has been filed seeking to declare that the land comprised in Survey No.34A/2C1 part of Rajakilpakkam Vilage, Tambaram Taluk, Kancheepuram District belonging to the petitioner, acquired by the 3rd respondent under Tamil Nadu Urban Land Ceiling & Regulation Act so as to enable the 5th respondent to incorporate the name of the petitioner as owner in the revenue records.

2. The case of the petitioner is that originally the land comprised in Survey Nos. 34 A/2 and 34 A/3 ad-measuring 22 cents in Rajakilpakkam Village belonged to the petitioner's sister namely E.S.Nalini. The said subject land was proposed to be acquired under the Tamil Nadu Urban Land Ceiling & Regulation Act, 1978 (hereinafter referred to as "the Act), for which, Section 9(4) notice was issued. The petitioner's sister Nalini filed her objection. However, the said objection was rejected. Though a notice under section 11(5) was also issued on 17.01.1983 calling upon the petitioner's sister to deliver the possession of such vacant land, she did not comply with. Thereafter, the petitioner's sister filed an appeal under Section 33 of the Act before the first respondent against the order determining the excess vacant land. The second respondent, by order dated 25.01.1984, set aside the order and remanded the matter back to the second respondent for fresh disposal. After remand, the petitioner's another sister Neeraja filed a representation referring to a koorchit dated 11.06.1975 between herself and other sister Neeraja but the third respondent, vide his order dated 15.07.1985, rejected the same. Aggrieved by

the said order of the second respondent dated 15.07.1985, the petitioner's sister viz., Neeraja, filed a revision under Section 34 of the Act on 24.07.1985 before the first respondent. The said revision was dismissed vide order dated 26.07.1988. Aggrieved by the same, the petitioner's one of the sister viz., Neeraja filed a writ petition before this Court in W.P.No.11960 of 1988 and this Court, vide order dated 17.07.1998, allowed the writ petition with a direction to reconsider the revision, filed under Section 24 afresh, after issuing notice and on hearing the parties concerned. However, the second respondent rejected the revision which was filed by the petitioner's sister, on 04.06.2009 and re-affirmed the order passed by the competent authority. As against the said rejection order, the said Neeraja filed writ petitions in W.P.Nos.17069 and 17070 of 2009 seeking to quash the order dated 04.06.2009 and this Court granted interim stay and restrained the respondents from interfering with the lawful possession of the subject lands. Till date, the physical possession of the subject land is with the petitioner and the said physical possession is confirmed from the Interim stay granted by this Court.

3. In the meanwhile, the said Nalini executed her Last Will and Testament on 18.01.2002, which was duly registered as document No.3 of 2002 on the file

of the Sub Registrar, Mylapore. On 17.10.2002, the said Nalini died. After her demise, the petitioner, who is an executor, has initiated proceedings for probate in O.P.No.374 of 2004 before this Court. Since the said Neeraja was referred to as a party entitled to a portion of the property as per the koorchit, the OP was converted as Testamentary Original Suit in TOS. No.25 of 2004 and the said Will was upheld, holding that the said Neeraja is not entitled to claim the property, which was bequeathed to the petitioner herein. Aggrieved by the grant of probate, the said Neeraja, filed an O.S. No.146 of 2014 before this Court. Subsequently, the said appeal was withdrawn by the said Neeraja on 03.06.2016 and hence, the petitioner became the absolute owner of the property and he is in physical possession of the subject lands. Therefore, the petitioner made an application before the Tahsildar for grant of patta in his favour on 03.05.2017 and he was informed that the said lands in question have been classified as "Government lands". For apprehending the land acquisition proceedings and for mutation of revenue records in respect of the subject properties, the petitioner has come up with this petition.

4. Mr.V.Ramesh, learned counsel appearing for the petitioner submitted that in the present case, there is no procedural violation with regard to the

acquisition of the land as against the petitioners sister Nalini. In fact, the said Nalini filed objection before the authority, but the same was rejected by the authority on 15.04.1992 and the said rejection order was challenged by one of the petitioner's sister Neeraja before this Court on the ground that the said Neeraja is entitled to get share of the property by way of Koorchit. This Court, while entertaining the writ petition, granted interim stay on 12.10.1998 in W.P.No.11960 of 1988 whereas the respondents claimed in the counter affidavit that the possession was taken as early as on 20.04.1983 and immediately thereafter, the same was handed over to the revenue authorities. However, the fact remains that this Court granted interim stay in the year 1988 and that itself shows that the possession was not taken in the manner known to law. Further, the petitioner's sister Neeraja was filed writ petitions in W.P.Nos.17069 & 17070 of 2009 challenging the rejection order passed by the revenue authorities. This Court, while entertaining the writ petitions, granted interim stay in the year 2009 itself and the said writ petitions were subsequently withdrawn on 10.07.2017. Till today, the petitioner and his sister are in possession of the property and the possession was not taken from the petitioner in the manner known to law and therefore, the entire proceeding shall automatically lapsed in terms of Section 4 of the Act 20 of 1999 which with effect from 16.06.1999.

Therefore, the learned counsel prays that this Court may direct the first respondent to remove the iron posts and tin sheets put up by the first respondent in respect of the subject property within the stipulated time as fixed by this Court.

5. The respondents have filed a counter affidavit and the relevant paragraphs of the same are extracted hereunder:

"It is submitted that One Selvi.E.S.Nalini filed a petition on 15.06.1994 requesting exemption under section 19(1)(b) of the Tamil Nadu Urban Land (Ceiling and regulation) Act 1978, for the following land held by her as on 03.08.1976

Village	*Survey No.*	*Extent in Square Metres*
Rajakilpakkam	*34 / A / 2C*	*869.7*

The Urban Land owner also filed a return under section 6(1) of the Tamil Nadu Urban Land (Ceiling and regulation) Act 1976 on 17.08.1977. The Assistant Commissioner (ULT), Tambaram in his letter No.5674/1978/C, dated 20.01.1979 directed the petitioner to file the details regarding the family members etc. In reply to this notice Selvi.E.S.Nalini has sent a *letter dated 06.02.1979 to the Assistant Commissioner (ULT), Tambaram, stating that she is a spinster aged 52 years and working as a Head Mistress in Government Girls High School Mylapore. She has also stated that her aged parents along with her brother are dependent on her and also stated that she is planning to setup a kitchen garden after her retirement and also having plans to open a private school for the cause of elementary education and hence has requested to grant exemption for the above 1 ½ grounds of land held by her. She has also appeared for an enquiry and has given a statement in this regard.*

The Government in their letter No.86004/T2/1977, dated 21.01.1980 has rejected the exemption application of the urban land owner, dated 17.08.1977 stating that, they see no grounds to comply with the request and that further action will be taken in respect of the above mentioned vacant land under Tamil Nadu Urban Land (Ceiling and regulation) Act 1978.

Accordingly a notice under section 9(4) and draft statement under section 9(1) of the Act was issued to the urban land owner vide Assistant Commissioner (ULT), Tambaram, letter No.Rc.5674/1978/C, dated 02.02.1980, for the proposed acquisition of 369.7 Square metres. After receiving the draft statement the applicant filed a reconsideration petition to the Government on 04.08.1980 for considering her request to retain *the excess vacant land. But the Government in their letter No.74861/H2/80-2/Revenue dated 29.11.1980 again rejected the request. Accordingly the Assistant Commissioner (ULT), Tambaram, in his proceedings 5674/78/D, dated 15.04.1982 issued orders under section 9(5) of the Act, determining an extent of 450 square meters in S.No.34A/2C1 of Rajakilpakkam Village as excess vacant land. Final statement under section 10(1) of the Act issued by the Assistant Commissioner and it was sent by RPAD and acknowledged on 21.04.1982. Notification under section 11(1) of the Act was issued on 11.08.1982. Notification under section 11(3) of the Act was issued on 27.11.1982. Notice under section 11(5) of the Act was issued on 17.01.1983 and was served by RPAD on 27.01.1983. The acquired excess vacant land was handed over and taken over by the Revenue authorities on 20.04.83. The Notice under section 12(7) of the Act was issued on 09.05.83 Orders under section 12(6) of the Act was issued on 09.06.83.*

Against the orders issued under section 12(6) of the Act Selvi.E.S. Nalini filed an appeal under section 13(4) of the Act. The Commissioner of land reforms in his proceedings in D.Dis 37377/83, dated 25.01.1984. issued orders setting aside the orders passed by the Assistant Commissioner under section 12(6) of the Act and remanded the case back to the Assistant Commissioner for fresh disposal according to law.

In the mean while One Tmt.E.S.Neeraja has filed an appeal under section 25(1) of the Tamil Nadu Urban Land (Ceiling and regulation) Act 1978 stating that she is the sister of the urban land owner Selvi.E.S. Nalini and she is also having ½ share in the above land and has requested to pass an order to make an enquiry on her claims. The Government in their letter (Ms) No.1710, dated 12.10.1984 rejected the request of the petitioner. It was held that Selvi.E.S.Nalini was the sole owner of the above land as per the records and that the amount payable under section 12(6) was not received by Selvi.E.S. Nalini inspite of repeated communication and the amount was kept in Revenue Deposit. The land owner went on appeal with the Government on 24.07.1988 and again on 18.04.1988. The Government in their letter No.45995/T2/88-2, dated 26.07.1988 rejected her petition stating that the unregistered koorchit cannot be taken as a valid document and since she had already preferred an appeal under section 13(4) of the Act, the Government could not invoke the provisions of section 34 of the Act and that the orders passed by the competent authority under section 9-11 of the Act had already been implemented by handing over the possession of the excess vacant land to the Revenue Authorities on 20.04.1983 itself. Against this letter Tmt. E.S. Neeraja filed a writ petition in the Hon'ble High Court in W.P.No.11960/1988. The Hon'ble High

Court in its order dated 17.07.98 has set aside the Government letter and issued orders directing the second respondent to consider the matter afresh after notice and after hearing the petitioner or her counsel in accordance with law. After giving sufficient opportunity to the petitioner, the Government in their letter No.187 Revenue dated 04.06.2009 had rejected the request of the petitioner on the ground that the petitioner has no locus standi in the matter. Against this order Tmt. E.S. Neeraja W/o.R.S.Srinivasan again filed a writ petition in the Hon'ble High Court of Madras, in W.P.No.17069/2009 & 17070/2009. The Hon'ble High Court in its order dated 10.07.2017 dismissed both the writ petitions as withdrawn.

Now Thiru.Vallabhan has filed a writ petition in W.P. No.24535/2017 against the acquisition of excess vacant land comprised in S.No.34A/2C1 of Rajakilpakkam village and to incorporate the name of the petitioner as the owner in the Revenue records.

....

As regards the averments set out in para 11 of the affidavit it is respectfully submitted that after observing all the provisions laid down under the Act the possession of the excess vacant land was handed over to the Revenue Department in the year 1983 itself and the land is Government land. The petitioner has to be treated as *encroacher of the Government land. Hence the contention deserves no consideration.*

....

The excess vacant land measuring 450 m^2 in the holdings owned by Selvi.E.S.Nalini was handed over to the Revenue Authorities on 20.04.1983 and the claim of the petitioner that he is still in possession of the land even after handing over of the land to Government should only be treated as encroachment on Government land."

6. Heard the learned counsel on both sides and perused the materials available on record.

7. The facts of the case are not in dispute. Admittedly the Urban Land Ceiling proceedings were initiated against the petitioner's sister viz., Nalini. It is also equally undisputed fact that there is no procedural violation for issuing notice under section 7(2) of the Act. In fact, Rule 8 is scrupulously followed by the respondents and further, the petitioner's received all the notices and they made objection before the Assistant Commissioner, ULC under Section 33 of the Act for exempting the said land as required for establishment of the School and the said request was rejected and final statement under Section 9(5) issued

on 15.04.1982 and subsequently, one of the sisters viz., Neeraja filed a writ petition challenging the 9(5) notice dated 15.04.1982 before this Court in W.P.No.11960 of of 1988. Subsequently, the said writ petition was allowed and the said impugned notice therein was set aside and the matter was remanded back to the second respondent. However, the second respondent rejected the petitioner's request for exemption of the acquired land. Challenging the rejection, the petitioner's sister Neeraja filed writ petitions in W.P.Nos.17069 and 17070 of 2009 and this Court, granted an order of interim stay. According to the petitioner, her sister and himself are in possession and enjoyment of the property, till date.

8. On a perusal of the counter affidavit, it is seen that the petitioner is an encroacher, since as per Section 11(5) of the Act, if the Urban Land Ceiling proceedings is over and necessary notice has been issued to the land owners under Section 11(5) of the Act and the land has to be surrendered within a period of thirty days. If the petitioner failed to surrender the land within thirty days, the next remedy available to the respondents is to take possession by implementing Section 11(6) of the Act. In the present case, this Court perused the entire original records. On perusal of the entire records, it is seen that the

possession of the subject land was taken as early as in the year 1983. Further, from perusal of the original records, it is clear that there is no signature found in the land delivery receipt in page No.279 of the original records. Subsequently, in page No.283, ULC authorities signature is available. However, no proof was filed before this Court with regard to the service of the 11(5) notice. Though the 11(5) notice was received by the petitioner, however, the procedure contemplated under 11(6) was not followed and no record is available with regard to taking possession by enforcing section 11(6) of the Act. The revenue authorities have signed in the register on 20.04.1983. Though the respondents claim that the possession was taken on 12.04.1983, the same was handed over on 19.04.1998 and the same was taken on 20.04.1998, however, the fact remains that the possession was not taken on three different dates. Therefore, this Court easily presumed that the possession was taken only for paper purpose not physically and the procedure contemplated under section 11(6) of the Act was not followed. Further in the present case, though the possession was taken in the year 1983 and this Court granted interim stay in the year 1988 in W.P.No.11980 of 1988 and the order was in force till 17.07.1998, again this Court granted another interim order in W.P.Nos.17069 and 17079 of 2009 and the said interim order was in force till 10.07.2017. However, during such period, the respondents have not taken any effective steps to get the interim stay on the ground that the possession was already taken. The attitude of the respondents themselves shows that the possession has not taken and further, the Act was repealed in the year 1999 and the possession was not taken in the manner known to law and the entire acquisition proceedings shall stand abated under Section 4 of the Act 20 of 1999.

9. 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.

10. For the reasons aforesaid, this Court grants liberty to the petitioner to file appropriate petition/application before the concerned Revenue Officials for mutation of the revenue records within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of such petition/application, the concerned Revenue Official, without insisting for NOC from the Urban Land Ceiling Authorities, shall mutate the revenue records in favour of the petitioner in respect of the subject property, within a period of six weeks, thereafter.

10. In the result, the writ petition stands allowed accordingly. No costs.

25.07.2022

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To

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Fort St.George
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2.The Principal Commissioner
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M.DHANDAPANI, J.

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W.P.No.24535 of 2017

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