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W.P.No.26167 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.26167 of 2017
and W.M.P.No.27813 and 27814 of 2017**

P.Saroja

... Petitioner

Vs.

1.The Competent Authority (ULC) and
the Assistant Commissioner (ULT),
Kundrathur, No.153, Karuneegar Street,
Adambakkam, Chennai 600 088.

2.The Tahsildar,
Maduravoyal Taluk, Chennai.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the 1st respondent in Re. No.1204/91 (A) dt 29.1.1992 U/s.9/5 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1978 in respect of excess land in Survey No.18 of Valasaravakkam Village Maduravoyal Taluk to quash the same by treating the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (20 of 1999) and to direct the 2nd respondent to correct the entries in the Revenue Records by incorporating the petitioners name as the owner of the land in Survey No.18 and 19 of Valasaravakkam Village, Maduravoyal Taluk, as per the Sale Deed in Document No.299 of 1987 on the file of the Sub Registrar Office .



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For Petitioner : Mr.K.Sakthivel

For Respondents : Mr.G.Krishnaraja

Additional Government Pleader

ORDER

The petitioner has filed this petitions for issuance of writ of Certiorarified Mandamus to call for records of the 1st respondent in respect of excess land in Survey No.18 of Valasaravakkam Village, Maduravoyal Taluk, to quash the same and to direct the 2nd respondent to correct the entries in the Revenue records by incorporating the petitioners name as the owner of the land in Survey No.18 of Valasaravakkam Village, Maduravoyal Taluk, in so far as the petitioners extent of land.

2. The case of the petitioner is that the lands comprised in S.F.No.17,18, 19, 20, 21 and punja survey no.30, 32/1A and 29 of Valasaravakkam Village, belonged to one Alameluammal and the said Alameluammal died on 09.02.1985 leaving behind her husband one Chokalinga Gramani and Shenbagavalli Ammal and the said Chockalinga Gramani expired and thereafter, the said Shenbagavalliammal being absolute



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owner of the property developed the property known as Sri Lakshmi Nagar.

The petitioner has purchased the plot no.117 in S.F.No.18 and 19 by way of Sale Deed dated 11.02.1987 and have obtained patta for the above said land and have been in possession and enjoyment of the property. While so, the respondent competent authority issued a notice u/s.11(5) of the Act regarding the surrender of possession of the excess land of Alameluammal and Surrender Notice was issued only in respect of Sr.No.17, 19, 21 and thereby, the said Association preferred petition dated 12.12.1997, with the Principal Commissioner, who passed an order dated 12.12.1997 cancelling the notification u/s. 11(1) and 11(3) in respect of Sr.No.17, 19, 20, 23, 30, 321(A)1 of Valasaravakkam Village and the Principal Commissioner has not dealt in respect of S.F.No.18 and on impression given by the officers that there were no proceedings in respect of S.F.No.18, the petitioner has constructed house and have been in possession. While such being the position, the Tahsildar conducted the survey to issue electronic patta to all the residents of Valasaravakkam Village and during such exercise, the officers of the Tahsildar have specifically left out SR.No.18 of the Valasaravakkam Village stating that all the lands comprised in SR.Nos.18 have already been declared excess land under Tamil nadu Urban Land



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Ceiling Act and thereafter on making enquiry, the petitioner came to know that a proceedings were initiated against Alameluammal in respect of Sr.No.18 in the year 1990 subsequent to her demise and further came to know that there were two separate proceedings against Alameluammal and the notification in respect of SF.Nos.17, 19, 20, 23, 30, 32(1)A(1) was already cancelled and in respect of Sr.No.18 has not been cancelled. It is alleged by the petitioner that a notice under Section 7 of the Act was issued to Alameluammal on 12.11.1990 and as there was no response, the 1st respondent issued the draft statement in respect of S.F.Nos.18 and 28(1) of Valasaravakkam Village and affixed the same on 27.04.1991, however it is the grievance of the petitioner that the proceedings issued against Alameluammal was against the dead person and have come forward to file this writ petition to quash the impugned proceedings dated 29.01.1992, as the same was initiated against dead person.

3. The learned counsel appearing for the petitioner submitted that the petitioner has been in possession of the land from 1987, however she has not been issued with any notice regarding the Urban Land Ceiling proceedings. Further the acquisition is obviously in the name of a dead person and thus,



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the order of acquisition of excess vacant land is illegal as it is against the dead person, without issuing notice to the persons who is in possession of the property, which is in violation of Section 11(5) of the Urban land Ceiling Act and it is also in violation of Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978, in view of the fact that all the notices were served in person by way of affixtures, which is impermissible as per the above said rule position and further as per Section 11(5) of the Urban Land Ceiling Act, whereby *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 and If any person fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land* and the statutory provisions as laid under the Act has not been followed and therefore, the entire proceedings initiated by the authorities will stand abated and prays for allowing of these petitions.

4. The learned Special Government Pleader appearing for the



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official respondents submitted that as per the revenue records, the lands in the above said survey numbers were registered in the name of said Alameluammal and since the land owner did not file return under the provisions of the Act, notice was issued requesting to file objection if any, for the proposed acquisition, which was served by affixture, however neither the land owner nor her representative did file objection for the acquisition of excess vacant land held by her and after the issuance of notices as contemplated under the Act, final notice under Section 11(5) of the Act was issued by the 1st respondent on 06.01.1996 requesting the land owner to surrender or deliver the possession of excess vacant land. Further it is submitted that necessary changes were carried out in the revenue records that the lands in the above said survey numbers as Government ULC lands.

5. However, the learned Special Government Pleader fairly submitted that no notice were served to the petitioner, as she is the subsequent purchaser and their purchase itself is void in terms of Section 6 of the Urban Land Ceiling Act and after following the 11(5) procedures, the possession was taken and handed over to the revenue officials on 20.01.1997, and hence prays for dismissal of this petition.



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6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. Admittedly, the petitioner has purchased the properties prior to 1987 and further the Urban Land Ceiling Proceedings against the original owner was initiated only in the year 1990 and after following the procedures, final notice under Section 11(5) was issued on 06.01.1996 and further as per Rule 8 of the Urban Land Ceiling Rules, Every draft statement prepared under Sub Section (1) of Section 8 shall be served on the holder of the vacant lands by sending the same by registered post addressed to the person concerned, 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. However in the present case on hand, all the notices were served by way of affixtures and to the dead person and in order to take possession, certain procedures are created under the Statute itself and it is relevant to extract Section 11(5) and 11(6) of the Act:

(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



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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 concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

8. A perusal of the above said provision makes it clear that notice in writing has to be issued on the land owner and other interested persons u/s 11 (5) of the Act upon vesting of lands with the State Government by invocation of the Urban Land Ceiling proceedings, ordering any person who may be in possession of such lands to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice.

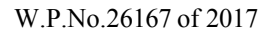
9. In the case on hand, admittedly notice u/s 11(5) was issued to Alameluammal on 06.01.1996, but no notice has been issued on the interested persons, as has been mandated u/s 11 (5). Admittedly, the said



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11(5) notice was issued to the dead person viz., Alameluammal on 06.01.1996 and the 30 days time period is expired on 06.02.1996, however since no notice was issued as against the petitioners, they were not aware of the urban land ceiling proceedings. Further, the petitioners are in possession of the said lands and it is pertinent to note that the language employed in Section 11(5) of the Act, is that *the person who is in possession of the property directed to deliver the land to the State* and further if any person failed to comply with Section 11(5), the competent authority may take possession of the vacant land and give to the State Government. Admittedly, the petitioners are in physical possession of the property, however as contemplated under the Act, no notice has been served on the petitioners, however it has been served to the dead person and hence, this Court has no hesitation to arrive at a fair conclusion that the procedures contemplated under Section 11(5) and 11(6) of the Act, is not followed. Further, the original land owner has alienated the property in favour of several persons prior to initiation of the Urban Land Ceiling proceedings.

10. Further this Court also hastens to add that proceedings under the Act was mainly to take over the excess lands from such of those persons,



~~Act.~~ The Act was enacted in the year 1978, however, the Legislature thought it fit to repeal the said Act keeping in mind the plight of the land owners to part with their lands, as take over under the Act would not enure any benefit in favour of the land owners. Once the Legislature, in its wisdom, had thought it fit to repeal the parent Act, which was done mainly for the purpose of avoiding further detriment to land owners. Such being the intent of the Government in repealing the Act, which had come into force on 01.06.1999 any order that would defeat the purpose of the repeal Act would neither be in the interest of justice nor in the interest of the land owners, be it original owners or subsequent purchasers.

11. In view of the above, the entire land ceiling proceedings, impugned herein, stand abated in view of Section 4 of the repeal Act and as a consequence thereof, this writ petition stands allowed and the proceedings of the first respondent in his Na.Ka.No.1204/91(A), dated 29.01.1992, is set aside. No costs. Consequently connected miscellaneous petitions are closed.

27.06.2022



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To

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2.The Tahsildar,
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M.DHANDAPANI,J.
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