



WEB COPY



W.P.No.28988 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.28988 of 2017

and

W.M.P.No.31210 of 2017

1. K.Arumugam
2. K.Loganathan
3. K.Devaraj
4. K.Sundaram
5. K.Rangaraj
6. K.Mahesh

. . . Petitioners

Vs.

1. The Principal Secretary/Commissioner
Urban Land Ceilings Land Tax
Chepauk, Chennai-600 005.
2. The Special Commissioner &
Commissioner of Land Reforms
Chepauk,
Chennai-600 005.
3. The District Collector,
Coimbatore District,
Coimbatore.
4. The Assistant Commissioner-cum-
Competent Authority
Urban Land Tax
Coimbatore.

. . . Respondents



W.P.No.28988 of 2017

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus or any other appropriate Writ or Order or Direction in the nature of Writ, calling for the records, relating to the impugned order passed by 4th respondent under Sec.9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 vide Letter No.6913/85/a3 dated 25.09.1990 and the consequential impugned order passed by the 2nd Respondent dated 12.04.1991 vide Na.Ka.J2/42675/90 and consequential impugned order passed by 1st Respondent dated 01.03.2017 vide Mu.Mu.No.1064/2017(J3), quash the same and consequently direct the 1st respondent herein to issue “NO OBJECTION CERTIFICATE” for grant of Patta in the name of the petitioners herein in respect of land bearing Ka.No.304/1-B, measuring in extent 6600 sq.mt, situate at Koundampalayam Village, Coimbatore North Taluk, Coimbatore.

For Petitioner : M/s.M.Venkadeshan

For Respondents : Mr.G.Krishna Raja,

Additional Government Pleader.

ORDER

The present petition has been filed seeking to quash the impugned order which was passed by 4th respondent under Sec.9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 vide Letter dated 25.09.1990 the consequential impugned order dated 12.04.1991 passed by the 2nd



W.P.No.28988 of 2017

Respondent and the consequential impugned order dated 01.03.2017 which came to be passed by 1st Respondent and further direct the 1st respondent herein to issue “NO OBJECTION CERTIFICATE” for grant of Patta in the name of the petitioners herein in respect of the land bearing Ka.No.304/1-B, measuring to an extent of about 6600 sq.mt, situated at Koundampalayam Village, Coimbatore North Taluk, Coimbatore.

2. It is the case of the petitioners that the subject property of the Petitioner is the agricultural land, which originally belonged to their grand father namely Late Nanja Konar. The petitioners' father namely Karuppa Konar is the only legal heir of the petitioners' grand father, therefore, during the life time, the petitioners' grand father had executed a will in favour of his legal heirs i.e., the petitioners. After the demise of their grandfather, the petitioners were in absolute possession of the above property. Through RTI, the petitioners were informed that proceedings have been initiated under the Tamil Nadu Urban Land (Ceiling & Regulations) Act 1978 against their property and possession was taken by the Government. According to the 4th respondent, notice under Section 11(5) was served by way of affixture.



W.P.No.28988 of 2017

However, till date, possession has not been taken by the Government and the said property vests with the petitioners as on date. That being the case, the 5th petitioner made a representation to the 1st respondent requesting to issue “No Objection Certificate” for grant of patta in favour of the petitioners, however, the 1st respondent had rejected the same, vide the impugned order dated 01.03.2017. Challenging the same, the petitioners have come up with the present petition.

3. Learned counsel for the petitioners submitted that even prior to the proceedings alleged to have been initiated under the Tamil Nadu Urban Land (Ceiling and Regulation Act) 1978, the petitioners' grandfather had sold 2 acres of land to four persons, which extent includes the lands alleged to have been acquired by the respondents. Further, the notice mandated under Section 11(5) of the Act was not issued even to the land owner and persons interested i.e., the petitioners who are in possession of the property. Further, the physical possession has not been taken till date nor the compensation amount was paid to the petitioners or to the land owner. Further, as per Sections 11(5) & (6) and rule 8, the competent authority



W.P.No.28988 of 2017

should issue notice to the owners / person in possession of the property, that too personally, to surrender and deliver the possession to the State Government within a period of thirty days of the service of the notice, however, it is not followed in the present case which clearly shows that the procedure contemplated in the above said sections have not been followed by the authority.

4. Learned counsel for the petitioners further relied upon the Section 4 of the Repeal Act 20/1999 and same is extracted hereunder :

The Urban Land (Ceiling and Regulation) Repeal Act, 1999

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 other authority shall abate: Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 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.



W.P.No.28988 of 2017

WEB COPY

It is therefore contended by the learned counsel that physical possession of the above said property having not been taken by the authority and the Act itself having been repealed, proceedings stands lapsed and, therefore, the orders impugned in this petition deserve to be set aside.

5. Learned Additional Government Pleader appearing for respondents submitted that all the provisions of law with regard to service of notice at every stage of the proceeding was complied with and thereafter possession has been taken. That being the case, without any proper material the submission of the petitioner that notice has not been issued even at the 11(5) stage is wholly erroneous and the repeal Act would not stand attracted to the case of the petitioner and accordingly he prays for dismissal of the petition.

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



W.P.No.28988 of 2017

7. Even on a bare perusal of the counter affidavit filed by the respondents, it is clear that almost all the notices were served by way of affixture. Notices, as contemplated under the various provisions have not been issued as prescribed under the Act. It is to be pointed out that service by affixture should be resorted to only as a last resort and not at the initial stage. However, there is no material placed before this Court to show that notice was attempted to be served in all the modes and failure of the same led to service by affixture. When the petitioners are in possession of the subject lands, it is incumbent on the respondents to serve notice on the petitioners, yet, there is no material to show that any notice was served on the petitioners, which is a clear violation of Section 11(5) of the said Act. Further, even the counter of the respondents reveal that service of notice was only by way of affixture. Even in respect of notice u/s 11(5) on the land owner, service was by way of affixture.

8. Admittedly, the Repeal Act came into force on 16.06.1999 and failure to take possession in the manner known to law before the said date, the entire proceedings would stand lapsed. Without substantiating actual



W.P.No.28988 of 2017

taking of possession by following the procedures contemplated under the Act, the claim of the respondents that possession has been taken cannot be taken at its face value to hold that the proceedings has been taken to its logical conclusion.

9. Further, 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 through RTI proceedings. Though the petitioners were in absolute possession of the above said lands at the time of initiation of Land Ceiling proceedings, however, no notice was served on the petitioners and no material to substantiate the same is available on record.

10. For taking over of the possession, the notice in the prescribed format should be served on the land owners. In the present case notice was served only by affixture, that too only on the land owner and not sent by registered post with acknowledgement due and the notice under the said Act was not served on land owner in accordance with law as provided u/s 11 (5)



W.P.No.28988 of 2017

of the Act and failure of the same vitiates the land ceiling proceedings.

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.



W.P.No.28988 of 2017

WEB COPY

(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]

11. Notice before taking possession of the lands is mandatory as per the provisions of the Act. It is pertinent to note that, no notice was served on the petitioners and physical possession of the above said land were 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.



W.P.No.28988 of 2017

WEB COPY

12. Further Section 11(5) of the Act, refers to the procedure in which the possession of vacant land in excess of ceiling limit has to be taken which is as under :-

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. Failure to comply with the notice u/s 11 (5) would necessitate invocation of Section 11 (6).

13. In the case on hand, no materials have been placed to show that the authorities have followed the procedures contemplated under Section 11(5) of the Act by issuing proper notice and, thereafter, taking possession of the subject lands or in the alternative, the failure of the petitioners to part with the lands necessitated the authorities to invoke Section 11 (6) of the Act and in the absence of the same, the Repeal Act has set at naught the proceedings taken up by the respondents and necessarily, the take over of



W.P.No.28988 of 2017

the lands under the Urban Land Ceiling proceedings stood abated.

WEB COPY

14. In such circumstance, the land ceiling proceedings having not been taken up in the manner as prescribed under the provisions of the Act and the mandatory provisions having been followed and physical possession having not been taken, as the petitioners are in possession of the lands, it would clearly show that pursuant to the repeal Act, no proceedings for taking over the lands could be initiated against the petitioners and, therefore, the entire land ceiling proceedings deserves to be quashed.

15. Accordingly, this Writ petition is allowed and the order impugned herein is set aside. No costs. Consequently, the connected Miscellaneous Petitions are closed.

04.08.2022

NHS

Index : Yes / No

Internet : Yes / No

12/14



WEB COPY



W.P.No.28988 of 2017

To

1. The Principal Secretary/Commissioner
Urban Land Ceilings Land Tax
Chepauk, Chennai-600 005.
2. The Special Commissioner &
Commissioner of Land Reforms
Chepauk,
Chennai-600 005.
3. The District Collector,
Coimbatore District,
Coimbatore.
4. The Assistant Commissioner-cum-
Competent Authority
Urban Land Tax
Coimbatore.



WEB COPY



W.P.No.28988 of 2017

M.DHANDAPANI, J.

NHS

W.P.No.28988 of 2017

04.08.2022