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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2022

CORAM

THE HON'BLE MR. JUSTICE T. RAJA
AND
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 3617 of 2019
and
C.M.P. No. 23205 of 2019

The Competent Authority and Assistant Commissioner,
(Urban Land Ceiling),
Tambaram. … Appellant/Respondent

-vs-

1. Vasudeva Pilla (Died)

2. Selvaraj

3. Sundaram

4. V.Mohana

5. V.Purushothaman

6. V.Datchayani

7. V.Rishikesavan

8. S.Kumari

9. V.Punidhavel ... Respondents/Petitioners

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Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 23.07.2010 made in W.P. No. 8800 of 2004.

For Appellant : Mrs. M.Geetha Thamaraiselvan,
Special Government Pleader

For Respondents : Mr. A.Sivaji

J U D G M E N T

(Judgment of the Court was made by **T.RAJA, J.**)

The Competent Authority and Assistant Commissioner (Urban Land Ceiling), Tambaram has brought this appeal against the impugned order dated 23.07.2010 in W.P. No. 8800 of 2004 passed by the learned Single Judge of this Court.

2. We have heard Mrs. M.Geetha Thamaraiselvan, learned Special Government Pleader appearing for the appellant and Mr. A.Sivaji, learned counsel for the respondents.

3. Learned Special Government Pleader appearing for the appellant pleaded that the impugned order passed by the learned Single Judge is untenable

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and unsustainable in law inasmuch as the land measuring an extent of 7,300 sq. mtrs. covered in Survey Nos. 265/1A1, 265/1A3, 265/1B1, 265/1B3, 265/2A, 265/2C and 277/10 situated in Anakaputhur Village was declared as excess lands and the notice under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as 'the Act' for short) were served on the land owner and therefore, the possession of the lands was also taken over and subsequently handed over to the revenue authorities on 30.03.1999 and thereafter, necessary changes have been made in the revenue records. It is further submitted that the respondents have filed the Writ Petition after 5 years, which is an abuse of process of law, but this aspect has been overlooked by the learned Single Judge and therefore, the impugned order is liable to be interfered with. Continuing her arguments, she further submitted that after the publication of notification under Section 11(3) of the Act, the lands vested with the State Government and therefore, the claim made by the Respondents that they continue to be in possession was not correct, but this vital aspect is also ignored by the learned Single Judge. Therefore, instead of dismissing the writ petition holding that the Respondents have not *locus standi* to maintain the writ petition, the learned Single Judges has wrongly allowed the same and as the result, the present appeal has been filed. When the land in question is a vacant land, the

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possession on the basis of the land records would amount to actual possession and therefore, physical possession cannot be established in any other mode in respect of vacant lands, but the learned Single Judge has held against the appellant that the physical possession of the land is found to be with the Respondents. Therefore, she pleaded that the impugned order is liable to be set aside.

4. Per contra, learned counsel for the respondents submitted that the respondents are the son and grandsons of late Thiru. Vasudeva Pillai and his wife Tmt. Govindammal. The late Thiru. Vasudeva Pillai and his wife Tmt. Govindammal, who is also dead, were the owners of the lands against which the proceedings under the Act were initiated. He further submitted that when the late Thiru. Vasudeva Pillai had originally purchased the land by registered sale deed in the year 1945 from one Nagalingam Chettiar, the lands were referred as agricultural lands and it continues to be on record as agricultural lands only, but the appellant without issuing any notice under Section 7(2) of the Act to the respondents, who are the owners of the lands, on the date of issuance of notice, initiated the proceedings on 11.04.1997, but on 11.04.1997, Tmt. Govindammal, who is one of the owner of the lands, was not alive. Therefore, the proceedings

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initiated against the dead persons was not valid. In support of his submission, he has produced the death certificate of Tmt. Govindammal dated 30.05.1991. In the present case, when the Order No. Na. Ka. S. R. 175/97 B dated 26.06.1997 was passed by the appellant under Section 9(5) of the Act, Tmt. Govindammal was not alive as per her death certificate dated 30.05.1991. He further submitted that when the notice under Section 11(5) of the Act was issued on 06.08.1998, it has been addressed to Tmt. Govindammal alone. Therefore, when Tmt. Govindammal died on 30.05.1991, issuing notice to her is non est in the eye of law because issuance of notice under Section 11(5) of the Act against the dead persons is untenable and unsustainable in law. He further pleaded that considering this vital aspect, the learned Single Judge accepting the case of the respondents, came to the conclusion that no notice under Section 7(2) of the Act was not served on the owner of the lands on the date of initiation of proceedings on 11.04.1997 or on the date of passing of the order on 26.06.1997. Therefore, such finding need not be interfered with. Even before the learned Single Judge, he pleaded that when the original records were produced, notice under Section 9(5) of the Act was found to be not served on any person. Insofar as notice under Section 7(2) of the Act is concerned, an endorsement was also made stating that the notice was not served on any person. Therefore, the learned Single Judge

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taking note of the fact that there was an endorsement wrongly shown that the notice under Section 9(1) and 9(4) of the Act were sought to be served with the endorsement that the land owner refused to receive, came to the conclusion that the appellant made a wrong statement because it was found that the notice was said to be served on Thiru. Vasudeva Pillai when he was not alive. In support of his submission, he has produced the death certificate of Thiru. Vasudeva Pillai dated 03.07.2005.

5. Although the proceedings was initiated on 11.04.1997 and the order was passed on 26.06.1997, learned Single Judge came to the conclusion that when subsequent proceedings were initiated no attempt was made to serve the legal heirs. Secondly, learned Single Judge in his finding has observed that the lands in question are only agricultural lands and it continued to be on record as agricultural lands, whereas the appellant has not produced before this Court or before the learned Single Judge that the lands in question were not used as agricultural lands at any point of time, more particularly, when the proceedings were initiated under the Act. Thirdly, the learned Single Judge heavily went against the appellant that when the proceedings were initiated against the dead person, no efforts were made with the supporting documents to show that from

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the initiation of proceedings till the conclusion of the proceedings actions were taken by issuing notice to the living legal heirs of the deceased land owner, viz., Tmt. Govindammal.

6. Therefore, we do not find any ground to interfere with the impugned order. Moreover, the Hon'ble Apex Court in the case of ***State of U.P. Vs. Hari Ram*** reported in [(2013) 4 SCC 280] has held that the mere vesting of the land under sub-section (3) of Section 10 of the Act would not confer any right on the State Government to take *de facto* possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.03.1999 or there was any delivery of peaceful possession under sub-section (5) of Section 10 of the Act or forceful dispossession under sub-section (6) of Section 10 of the Act. When similar issue was dealt with by this Court in the case of ***A.Abdul Rahim Vs. Special Commissioner and Commissioner Urban Land Ceiling and Urban Land Tax, Chennai*** reported in [(2021) 6 MLJ 176] taking support from the aforesaid judgment of the Hon'ble Apex Court in the case of ***State of U.P. Vs. Hari Ram*** reported in [(2013) 4 SCC 280], it has been held as follows:-

> *"10.* In "***State of U.P.* Vs. *Hari Ram***" reported in (2013) 3 Mad LJ 408, the Hon'ble Supreme Court has asserted the above legal position. In the said judgment, it is held as under:

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"*39. The mere vesting of the land under sub-section (3) of sec.10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of section 10 or forceful dispossession under sub-section (6) of section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of section.3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of section 3 of the Repeal Act.*""

7. A perusal of the above observation would show that the appellant has not taken physical possession of the lands in question as mandated by the Hon'ble Apex Court in the above mentioned paragraph. Therefore, when there is no document produced before this Court showing that the physical possession of

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the land has been taken in the manner known to law, there is no merit in the writ appeal.

8. In view of the above, the writ appeal, which fails, is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

(T.R., J.) **(P.D.A., J.)**

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vjt
Index: Yes/No

To

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