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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

WP.No.29778 of 2018

M/s.Madras Medical Mission
Rep. By its Honarary Secretary,
Dr.K.Jacob, 4A, Dr.J.J.Nagar,
Mogappair, Chennai-37. ... Petitioner

Vs

1. The Special Commissioner & Commissioner
Land Reforms,
Cheapauk, Chennai.

2. The Assistant Commissioner/Competent Authority,
Urban Land Ceiling,
No.5, Sannathi Stree,
Ambattur Taluk,
Poonamallee, Chennai-56.

3. The Tahsildar,
Ambattur Taluk,
Chennai.

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus to call for the records of the second respondent especially the proceedings in SR.No.777/95D to

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780/95D, dated 29.12.1995 proceedings on the erstwhile owner under Section 4 of Act 20/1999 insofar as the land in Survey No.108/1 measuring 7 acres 31 cents of Adayalampattu Village, Ambattur Taluk, Thiruvallur District so as to enable the 3rd respondent to incorporate the names of the petitioners as owner of the property referred to herein.

For Petitioner : Mr.V.Ramesh
For M/s.T.Thiyagarajan

For Respondents : Mr.G.Krishna Raja
Additional Government Pleader

ORDER

It is the case of the petitioner that the petitioner is a society which was registered under the Societies Act 1975 and the Society is a Charitable and Non profitable organisation. The petitioner society has established a hospital in the year 1987 in the name and style of M/s.Madras Medical Mission Heart Foundation & Research Centre. The petitioner herein had purchased an agricultural land measuring an extent of 7.31 acres in S.No.108/1 situated in Adyalampattu Village, Ambattur Taluk, Thiruvallur District vide Nine sale deeds. Though the lands were purchased by the petitioner Society, the rights of the title and possession in the above said lands got transferred to the petitioner by the District Registrar, Chennai-14 by letter dated 01.04.2016 and the petitioner became the owner of 7.31 acres of agricultural lands in

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S.No.108/1.

2. Such being the position, the second respondent has passed the order in the name of the erst-while owners under Section 9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act (hereinafter referred to as "the Act"), on 29.12.1995 declaring that the said land is excess vacant land. It appeas that the said proceedings were issued in the name of the erstwhile owners after they sold the property in favour of the petitioner. Without any notice either to the original owner or to the petitioner is a clear violation of the Act. Subsequently, the Act was repealed by the Repeal Act XX of 1999. In view of the passing of the Tamil Nadu Act XX of 1999 repealing the Urban Land Ceiling Act and the fact that the possession of the lands in question has not been taken by the authorities, the entire proceedings initiated under the Act would stand abated as per Section 4 of the Repeal Act. Challenging the proceedings, the petitioner Society has filed the present writ petition before this court.

3. Learned counsel for the petitioner submitted that the petitioner

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Society purchased a land from various vendors by various sale deeds measuring about 7.31 acres in S.No.108/1 and after purchase, the petitioner became the owner of the property and subsequently, the petitioner has incorporated its name as owner in all the revenue records. Therefore, the second respondent ought to have issued notice to the Madras Medical Mission Heart Foundation & Research Centre before declare the said land as excess vacant land. Hence, the said order under Section 9(5) has to be quashed.

4. Learned counsel for the petitioner further submitted that initially the Urban Land Ceiling Authorities initiated the Urban Land Ceiling Proceeding against the original owners on 05.09.1991 and the said proceedings was cancelled on 23.08.1994 by observing that the entire land is agricultural land and it could not be changed as urban lands. However, without any further classification, again the respondents have initiated the urban land ceiling proceedings against the original land owners within a period of three months i.e. on 04.11.1994. On the sole ground, the writ petition has to be allowed. The learned counsel further submitted that already the very same issue came

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up for consideration at the instance of the similarly situated persons who purchased the property from the very same petitioner's vendor, have filed a writ petition in W.P.No.11098 of 2008 and the same was allowed by this Court vide order dated 19.06.2019. Further, there is enough evidence to show that the actual physical possession with the petitioner Society. When the possession is actually with the petitioner and the petitioner's predecessor in the title, all the proceedings shall abate under Section 4 of Act 20/1999. Therefore, the learned counsel prays to allow the writ petition.

5. Mr.Krishna Raja, learned Additional Government Pleader submitted that the notice was not received by the petitioners; but the notice was served through the registered post and the same was served on 04.11.1994 to the original owners. The notice was sent by RPAD and acknowledged by the owners on 18.02.1995. Since no reply was received, a notice under Section 9(4) of the Act along with a statement under section 9(1) were issued on 31.08.1995 calling the objections if any for the proposed acquisition of 11750 sq. mts. Of excess vacant land. The notices were served to the representatives by affixture on 22.09.1995 as the urban land owner has refused to receive it.

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The lands were found converted into urban in nature and the land was levelled for construction, the same was confirmed during inspection by the Assistant Commissioner on 07.12.1995. Hence, the acquisition proceedings were initiated in the names of the various land owners who owned the lands on the date of commencement of the Act. The action taken in their names is in their names is in accordance with law. Hence, the learned counsel prays to pass an appropriate orders.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the petitioner Society have purchased the properties in the year 1994. It is equally not in dispute that Urban Land Ceiling Proceedings against the original owners were initiated in the year 1997 and after following the procedures, final notice under Section 11(5) was issued on 24.06.1997 on the original owners. From the above, it is clear that no notice has been issued on the petitioner Society prior to the repealing of the Parent

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Act. Notice has been issued only on original owners, though the properties in question had sold to the petitioner way back in the year 1994 itself and revenue records have also been mutated to carry the name of the petitioner Society.

7. It is the claim of the respondents that subsequent to the issuance of notice on 24.06.1997 and subsequently, the respondents had taken possession. However, it is to be pointed out that for taking possession, certain procedures are created under the Statute itself which are to be complied with and for better clarity, Section 11(5) and 11(6) of the Act, which contemplate the procedures to be followed prior to taking possession are extracted hereunder:-

> *"11. .....*
> *(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.*

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(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."

9. 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.

10. In the case on hand, admittedly notice u/s 11(5) was issued to the original owner on 24.06.1997, but no notice has been issued on the interested persons, as has been mandated u/s 11 (5). The petitioners, who have purchased the lands even in the year 1994 and have had the revenue records mutated in their favour, have not been issued with any notice as mandated u/s

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11 (5).

11. Admittedly, the notice had only been issued on the original owners on 24.06.1997 and the thirty days period would expire only on 24.07.1997 and as per Section 11 (5), before the expiry of the period of thirty days, possession cannot be taken. As already pointed out though the petitioner society have purchased the property even in the year 1994 and have been in possession yet, no notice had been issued to them. Further, in the case on hand, it is not the case of the respondents that the said original owners declined to part with the lands, which required usage of force as provided u/s 11 (6) and, therefore, sub-section (6) to Section 11 would have no application. Equally the said Section 11(6) cannot be used against the petitioners as well because of no notice has been issued under Section 11(5).

12. As pointed out above, even as early as in the year 1994, the petitioner society had purchased the lands from their vendor. However, the petitioner Society was not issued with any notice u/s 11 (5) and further the petitioners were not aware of the urban land ceiling proceedings. In this

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background, the language employed in Section 11 (5) of the Act assumes significance. Section 11 (5) of the Act spells out that "*the person who is in possession of the property is 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 by employing force. Therefore, for non compliance of the said provisions, necessarily this Court has to set aside the possession taken by the respondents. Such being the case, the repealing of the Parent Act stares writ large on the face of the respondents to continue the proceedings.

13. This Court also hastens to add that proceedings under the Act was mainly to take over the excess lands from such of those persons, who had held lands over and above the ceiling limit fixed under the Parent 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 ensure 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

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further detriment to land owners. Such being the intent of the Government in repealing the Act, 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.

14. In view of the above, the entire land ceiling proceedings, impugned herein, stand abated in view of the repeal Act and as a consequence thereof, these writ petition stands allowed and the impugned proceedings of the second respondent in his S.R.No.777/95D dated 29.12.1995, is set aside. No costs. Consequently connected miscellaneous petitions are closed.

28.06.2022

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Index:Yes/No
Internet:Yes/No
Speaking/Non speaking

M.DHANDAPANI, J.

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