



W.A.No.1639 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.08.2023

Delivered on: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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1. Mohamed Aadil Arashi,
S/o. S.M. Quadrathullah.

2. K.T.M. Sathakathul Hameed
S/o. K.T.M. Mohamed Hussain.

3. Aminath Sidhi Mariam D/o. A.N.S. Hameed

4. Naseema Beevi W/o. A.N.S. Hameed

5. S.M. Quadrathullah S/o. S.M. Fazlullah

.. Appellants

Vs.

1. The Competent Authority and
Assistant Commissioner,
Urban and Tax and Land Ceiling,
Thiyagaraya Nagar, Chennai – 600 024.

2. The Tahsildar,
Mambalam – Guindy Taluk,
Chennai-600 078.

.. Respondents



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Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.759 of 2007 dated 14.03.2013.

For Appellant : Ms. H. Lucia Priyadarshini.

For Respondents : Mr. S. Silambarasan, Additional Advocate General assisted by
Mr. Vadivel Deenadayalan, Additional Government Pleader.

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

1. The Writ Petitioners, aggrieved by the dismissal of the W.P. No.759 of 2007 in and by order dated 14.03.2013 have preferred the above writ appeal.

2. The case of the appellants before the Writ Court was that proceedings had been initiated under *The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978* and that pending the proceedings, by *Act 20 of 1999*, the Principal Act namely *Act 21 of 1978* came to be repealed and therefore the appellants were entitled to benefit of the repeal Act as they were in physical possession of the alleged excess vacant land. The Writ Court found from the records that Section 11(3) declaration was



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made, thereby vesting the excess land with the State and that thereafter Section 11(5) notice was issued, ordering the registered owner, Mr.Y.K.S. Prakash Rao to surrender or deliver possession of the excess vacant land. It is the specific case of the appellants before the Writ Court that subsequent to the said Section 11(5) notice, no proceedings were initiated to take physical possession and therefore on the date of coming into force of the repeal Act (*Act 20 of 1999*), the appellants being in physical possession, all proceedings should abate and therefore the appellants are entitled to relief.

3. Per contra, the respondents contended that records were available to show that on failure/ refusal of the registered urban land owner to deliver possession, the competent authority took possession of the excess lands in 1990 and handed over the same to the revenue department. It is further stated that admittedly when the appellants had purchased the property from the legal heirs of the registered land owner from whom the property was already acquired and possession taken, they would not have any locus standi to even put forth the contention that possession was not taken over from the said erstwhile land owner.

4. The Writ Court, after considering the submissions advanced by the



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counsels for appellants as well the respondents, dismissed the writ petition, holding that the vesting of the property with the respondents stood confirmed by the exemption clause in Section 3 of the repeal Act (*Act 20 of 1999*).

5. The said order dismissing the writ petition is challenged by the appellants on the grounds that the appellants continued to be in physical possession of the subject lands. The CMDA had approved the building plan and granted building permission to the appellants on 30.05.1995; there is no record to show that the registered land owner surrendered vacant possession or that possession was taken over under Section 11(6) of the Act by the respondents.

6. We have heard Ms. H. Lucia Priyadharshini, Counsel for the appellants and Mr. S. Silambanan, Additional Advocate General assisted by Mr. Vadivelu Deenadayalan, AGP, counsel for the respondents 1 & 2. We have also perused the order of the Writ Court and also original records.

7. The appellants have also filed a voluminous typed set containing



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various documents including the planning permits issued by the CMDA and the Corporation of Chennai, patta issued in the name of the appellants and registered sale deeds under which the appellants acquired title to the said land. The only issue that remains to be answered by us in the present Writ appeal is as to whether the respondents had taken over physical possession of the excess vacant lands or not. It is the definite case of the appellants that they have been in continuous possession and enjoyment of the excess vacant lands and at no point of time, steps were initiated to take physical possession following the procedure mandated under Section 11(5) and Section 11(6) of *Act 21 of 1978*. The relevant portion of the order of the Learned Single Judge which pertains to the issue of whether the authorities took physical possession of the excess vacant land is extracted hereunder:-

“...12. Admittedly, the petitioner got a sale deed from the legal heirs of Y.K.S. Prakash Rao only on 17.02.1994. As per the records produced by the first respondent, after issuance of section 11(5) notice, possession was taken by the competent authority, namely the first respondent, on 30.01.1990 and thereafter the land was handed over to the Revenue Department by the Deputy Tahsildar, Urban Land Tax, Alandur, to the Revenue Inspector – IV, which is evident from the land delivery receipt dated 06.02.1990. The



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records clearly show that the possession was taken from Y.K.S. Prakash Rao on 30.01.1990 and subsequently the land was delivered to the Revenue Department on 06.02.1990. That being so, as rightly contended by the Learned Additional Government Pleader, the petitioner, who chose to get a sale deed from the legal heirs of the said Y.K.S. Prakash Rao four years thereafter, has no locus standi to contend that possession was not taken from the said Y.K.S.Prakash Rao. The mere fact that after possession of the land was taken by the first respondent and handed over to the Revenue Department, the petitioner got a sale deed from the legal heirs of Y.K.S.Prakash Rao and managed to get patta and also sanction for the building plan, will not have the effect of taking away the title vested in the government. At any rate, the possession, if any, that would have been secured by the petitioner on the advent of the sale deed in his favour, would amount to a possession of a trespasser, since the vesting of the title on the government became complete on the taking of possession under section 11(6), which was done on 30.01.1990, as evidenced by the records available in the file produced for the perusal of the court. Before ever the Repeal Act came into force, possession was taken by the government and thereby the vesting of title to the property with the government was complete. Hence the exemption provided under section 3 of the Repeal Act for the abatement of the legal proceedings contemplated under section 4 of the Repeal Act (Act 20 of 1999), is squarely attracted to the case on hand. Admittedly, no legal proceeding was initiated before the passing of the Repeal Act (Act 20 of 1999) to attract section 4. The proceedings of the competent authority under the Tamil Nadu



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Urban Land(Ceiling & Regulation) Act, 1978 came to an end confirming the title on the government on the date of taking possession of the land. Therefore, there is no scope for holding that such proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 abated on the passing of the Repeal Act (Act 20 of 1999). The vesting of the property with the government in this case is confirmed by the exemption clause found in section 3 of the Repeal Act. Therefore, even the second prayer made by the petitioner is liable to be turned down...”

8. The Counsel for the appellants also filed an additional typed set, containing several documents to impress upon us that the appellants have always been in continuous physical possession.

9. It is vehemently contended by the counsel for the appellants that the Writ Court has failed to see that the records did not establish the factum of physical possession being taken over by the respondents invoking Section 11(6) of the Act and relying on the various planning permits, sale deed and patta, the counsel for appellants sought for setting aside the order of Writ Court.

10. In view of the Writ Court specifically referring to the fact that



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records have been perused and it was found that the respondents indeed took physical possession and a categorical assertion to the contra by the counsel for the appellants, we requested the respondents to produce the original records. We were really taken aback and shocked to find that pages 533 and 534 are missing from the original file. The entire original file has been assigned consecutive numbers starting from page 1 and ending with page 542. Excepting missing pages 533 and 534, all other pages are intact. We have no reason to disbelieve the findings of the Writ Court, specifically recording the fact that the original records have been perused and that the same revealed the factum of physical possession being taken over by the respondents from the appellants. A conjoined reading of the order of the Writ Court and the stand of respondents, only leads to the conclusion that the missing page is the Section 11(6) proceedings.

11. We are unable to reconcile to the fact that an official record of the Government can be tampered with so easily and boldly. Infact, the missing page appears to be document that goes to the very root of the matter on which the appeal can actually turn. That being the position, we are



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constrained to take very serious note of this issue. We, hereby direct the 1st respondent to initiate a disciplinary enquiry/ criminal action, as may be warranted and find out the culprits behind the missing document from the original files, which are supposed to be in the safe custody of the State.

12. Be that as it may, any amount of documentary evidence that may be supplemented by the appellants are of no avail because once it is found by the Writ Court that by following Section 11(6) of the Act, physical possession was taken over from the erstwhile and registered owner, it does not lie in the mouth of the subsequent purchasers, namely the appellants, that too from the legal heirs of the said registered owner, to canvass that possession was not taken over from the registered land owner.

13. The planning permission issued by the CMDA and the Corporation of Chennai and the patta issued to the appellants by the revenue department would not in any way come to the rescue of the appellants. Once it is shown that physical possession had already taken from their predecessor in title and interest, a best the possession of the



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appellants can only be termed as illegal or in the capacity of an encroacher.

Infact, the Writ Court has discussed at great length, the effect of vesting of excess vacant land with the State under Section 11(3) of the Act and found that the appellants were not entitled to any relief.

For all the above reasons, we do not see any ground for interfering with the order of the Writ Court. In fine, the Writ appeal stands dismissed with a direction to the 1st respondent to initiate an enquiry in respect of the missing document from the original file and take such disciplinary action / criminal proceedings against the officials concerned, who may be found guilty, in accordance with law .

(D.K.K.J) & (P.B.B.J)
20.09.2023

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mjs

To

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Assistant Commissioner,
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2. The Tahsildar,



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P.B.BALAJI,J.

(mjs)

Pre-delivery judgment in
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