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W.A.No.1194 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.07.2023

Delivered on: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.1194 of 2018

and

C.M.P.No.9575 of 2018

1.A.Chammundeswari

2.T.Mohan

3.V.Bhagyalakshmi

4.M.Kameshwaran

...Appellants

Vs.

1.State of Tamil Nadu
rep by the
Commissioner of Urban Land
Ceiling and Tax
Ezhilagam, Kamarajar Salai
Chepauk, Chennai-600 005



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2. The Assistant Commissioner of Urban
Land Ceiling and Tax-Adambakkam
153, Karuneegar Street
Adambakkam, Chennai-600 088

...Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.10553 of 2018 dated 26.04.2018.

For Appellants : Mr.Mohammed Riyasath Ali
for
Mr.P.Subba Reddy

For Respondents : Mrs.Geetha Thamaraiselvan, Spl.G.P

JUDGMENT

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

This Intra-court appeal has been preferred by the unsuccessful writ petitioners.

2. The writ petitioners, contending that they are entitled to the benefits of Section 3(2) of The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act,1999 sought for issuance of a writ of declaration in that regard and to consequently direct the 2nd respondent to effect mutation



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of revenue records pertaining to the property that was subject matter of excess urban land.

3. The case of the writ petitioners was that originally the property belonged to the husband of the 1st writ petitioner, father-in-law of the 2nd writ petitioner and Grandfather of the 3rd and 4th writ petitioners, one Arumugam, who had become entitled to the same way back in the year 1960 in a family partition. The respondents initiated proceedings under The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, alleging excess vacant land being available at the hands of the writ petitioners. Proceedings culminated in issuance of Section 11(5) notice under the Act of 1978. It is the specific contention of the writ petitioners that pursuant to the Section 11(5) notice, no steps were taken by the respondents to take physical possession from the petitioners. Moreover, the writ petitioners also did not hand over or deliver possession as required by the respondents vide the Section 11(5) notice issued to them. Though no counter was filed by the respondents, the Writ Court proceeded to dismiss the writ petition on the ground that the petitioners had not produced any order passed by the Ceiling Authorities, determining the excess vacant land and further the



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petitioners had approached the Writ Court belatedly, despite the repeal Act coming into force in the year 1999 itself.

4. Aggrieved by the dismissal of the writ petition, the petitioners have preferred the present Writ Appeal on the grounds that

1. The writ petitioners had filed several documents to show that the extent of excess vacant land had been determined by the respondents which was not at all considered by the Learned Single Judge;

2. The Learned Single Judge has erroneously held that the writ petition was belated, which cannot be a ground for rejecting the writ petition when the Act had been repealed and physical possession remained with the land owners, and without advertng to the fact of physical possession, the Writ Court proceeded to dismiss the writ petition on extraneous grounds, which according to the writ petitioners requires interference.

5. The 2nd respondent has filed a counter before us. It is the case of the respondents that Section 9(4) notice along with the Draft Statement under Section 9(1) was issued to the land owner on 27.08.1991. The said notice



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was refused to be received and therefore it was served by affixture on 01.09.1991. Thereafter an order under Section 9(5) came to be passed on 27.09.1991, declaring an extent of 46,050 sq.mts as excess vacant land. The said order was also served by affixture on 12.10.1991 and the Draft Final Statement under Section 10(1) was issued on 05.05.1992, which was also served by affixture on 22.09.1992. Thereafter, Section 11(1) notification came to be issued on 23.07.1993 and the same was published in the Government Gazette on 18.08.1993. The notification under Section 11(3) was issued on 20.01.1994 and duly published in the Government Gazette on 23.02.1994. The excess vacant land vested with the respondents, free of all encumbrances with effect from 01.03.1994. As the land owner did not hand over possession, Section 11(5) was invoked and a notice was issued, calling upon the land owner to surrender or deliver possession of excess vacant land. As the owner did not surrender possession, possession was handed over by the Revenue Authorities on 30.12.1994 and necessary mutation of records was also carried out thereafter.

6. We have heard Mr.Mohammed Riyasath Ali for Mr.P.Subba



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Reddy, Counsel for the appellant and Mrs.GeethaThamaraiselvan, Special Government Pleader for respondents. We have also perused the records.

7. At the outset, we find that all the dates set out in the counter affidavit of the 2nd respondent filed before us are factually correct. However, pursuant to Section 11(5), notice we do not find any piece of documentary evidence to establish that proceedings under Section 11(6) of the Act were taken and thereby physical possession of the subject lands was forcibly taken over by the respondents. Even in the counter affidavit filed before us, excepting a statement that “*since the land owner did not come forward to surrender the possession it was taken over by the Government on 30.12.1994*”, there is nothing to show that the mandate of Section 11(6) was followed and physical possession was taken over by use of force. The records also do not indicate any such action said to have been taken by the respondents.

8. This Court, time and again, has been reiterating the requirement of taking physical possession from the land owner and mere recording the factum of taking over possession in the revenue records or effecting



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mutation in the revenue records would not suffice. Such practice of taking paper delivery or symbolic possession has been repeatedly deprecated by this Court and as well as the Hon'ble Supreme Court, in urban land ceiling proceedings.

9. Infact, a Division Bench of this Court in *The Government of Tamilnadu & Ors Vs. M/s.Mecca Prime Tannery &ors*, reported in (2012) 4 LW 289, in a batch of Writ Appeals, elaborately considered the provisions of the parent Act, 1978, as well as the Repeal Act 20 of 1999. In the said batch of cases, it is laid down that vesting of the lands could only relate to right, title and interest and not to possession and the authorities have to establish that physical possession has been taken from the land owner concerned with either the land owner voluntarily surrendering the same or alternatively by taking steps under the parent Act, to take forcible possession by invoking Section 11(6) of the Act. We also had an occasion to deal with a similar issue in W.A.No.895 of 2018, wherein and by a Judgement dated 20.07.2023 we have held that where physical possession was not shown to be taken over from the land owner, the proceedings abate.



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10. One another reason on which the writ petition came to dismissed was that the petitioners approached the court belatedly and therefore on the ground of delay and laches the petitioners did not deserve any relief.

11. In this context, a Division Bench of this Court in W.A.No.3621 of 2019 in the case of *The Special Commissioner and Commissioner of Land Reform and Ors Vs. Lakshmi Devi (Died) and Ors*, dated 12.01.2023, held that when the statutory authorities were unable to prove that physical possession was taken over by following the mandate of Section 11(6) of the Act, the question of delay and laches being put against the land owner would not arise. We are in respectful agreement with the said view of the Division Bench of this Court.

12. In order to better appreciate this issue of whether delay can be put against the land owners who approach the Court seeking relief after the repeal of the parent Act is concerned, the object of the repeal Act as well as the principal Act would assume some relevance.



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13. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, was enacted for imposing a ceiling on vacant land in urban agglomeration and to acquire such lands in excess of the ceiling limit, in order to regulate and prevent concentration of urban lands in the hands of few persons and also speculation and profiteering therein and with a very laudable object of bringing out about an equal distribution of land in urban agglomerations. Though the Act was brought into force on 3rd August, 1976, it received the assent of the President of India only on 14th May 1978, and first published in the Tamil Nadu Government Gazette on 17.05.1978.

14. Subsequently, with passage of time, the Government felt that the said Act had not achieved its object, purpose and the desired results were also not forthcoming. It was seen that the Act, on the contrary pushed up urban land prices and affected industrial development as well as the housing industry. The public opinion sought by the State Government was also overwhelmingly in favour of repealing of the Act. Even the Central Government repealed the Central Act namely, The Urban Land (Ceiling and Regulation) Act, 1976 (Act 32 of 1976). For all these reasons, The Tamil Nadu Urban land (Ceiling and Regulation) Repeal Act, 1999, was



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enacted, hoping that such repeal would boost the housing industry and also provide employment opportunities for the poor.

15. Section 3 of the Repeal Act (Act 20 of 1999) contains a savings clause and the same is extracted hereunder for ready reference:-

“....3. Savings. - (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of section 11, 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;

(b) the validity of any order granting exemption under sub-section (1) of section 21 or any action taken thereunder.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 11 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid,



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if any, has been refunded to the State Government.

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Section 4 is relating to Abatement of legal proceedings and the same is extracted hereunder:

“ ...4. Abatement of legal proceedings. - 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 any authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 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”.

16. The phraseology *“possession of which has been taken over”* has been the subject matter of discussion in various decisions before this Court as well as Hon’ble Supreme Court. The Courts have consistently taken a view that the import of the legislature by the usage of words *“possession... . taken over”* can only imply physical possession and not mere symbolic



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possession or a paper delivery. As seen above, in terms of the Section 4 of the repeal Act, therefore wherever physical possession of the excess land has not been taken over by the State Government, or by any person duly authorised by the State Government on its behalf, or by the competent authority, then all proceedings relating to any order made or purported to be made under The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, pending immediately before the commencement of the repeal Act, before any Court, Tribunal or Authority shall abate. The proviso only saves abatement in so far as proceedings relating to Sections 12, 13, 14, 15, 15B and 16 of the principal Act, insofar as such proceedings are relatable to the land of which possession has been taken over as mentioned above. It is needless to state that Sections 3 & 4 of the Repeal Act have to be read together and not in isolation. Consequently, whether proceedings have been taken under the principal Act, even if it was upto the stage of Section 11(5) of the Act, all such proceedings would abate on the commencement of the repeal Act on 16.06.1999, unless and otherwise, the authorities are able to show that pursuant to the Section 11(5) notice, the land owner concerned voluntarily came forward to surrender/ deliver vacant possession or that subsequent proceedings were taken under Section 11(6)



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of the Act and possession was taken over forcibly from the land owner concerned. In the event of the authorities unable to establish such factum of taking over physical possession of the land in question, the proceedings, at whatever stage it may be in, would automatically abate. In this connection it is to be remembered that Section 3(1)(a) of repeal Act itself clearly makes a distinction between vesting of vacant land under Section 11(3) and the act of taking over possession by the State. Thus, even from a plain reading of the repeal Act, especially the savings clause in Section 3, it is clear that even if excess vacant lands stand vested with the State Government under Section 11(3) yet if physical possession of the said excess vacant land was not taken over subsequently, then Section 4 would come into play and all proceedings shall abate.

17. The learned counsel for the respondents would also place reliance on a recent Judgement of the Hon'ble Supreme Court in ***State of Tamil Nadu & Ors vs M.S.Viswanathan & Ors*** reported in ***(2021) 10 SCC 614***. We have perused the said judgment carefully. The Supreme Court, on the facts in the said case, held that the legal heirs of the original owner could not take a stand that went against the stand taken by the original owner. In



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the said case it was found that, even before the repeal Act came to be enacted, the original owner had confirmed in writing that she was surrendering possession. Therefore, under such circumstances, the Hon'ble Supreme Court held that there was a voluntary surrender of possession even before the repeal Act came into force and therefore Section 4 of the Act would not come into play and the legal heirs of the land owner could not claim the benefit of Section 3(2) of the repeal Act. Therefore, we are unable to apply the ratio laid down by the Hon'ble Supreme Court to the facts of the present case, which are entirely different.

18. Infact, in *State of UP vs Hari Ram* reported in (2013) 4 SCC 280, the Hon'ble Supreme Court, while deciding a batch of civil appeals arising under the urban land ceiling proceedings, taking note of the fact that vesting under Section 11 of (Section 10 of the Central Act) was only de jure possession and not de facto possession, by referring to various decisions, held that the requirement of issuing of notice under Section 11(5) & 11(6) of the Repeal Act [Section 10(5) & 10(6) of Central Act] was mandatory and though the word “may” is used in both the subsections, as the consequences of such notices might result in dispossession of the



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land owner without notice, the Hon'ble Supreme Court held that the word "may" used in Section 11(5) & 11(6) has to be read as "*shall*". Ultimately, the Apex Court held that the State has to establish that there has been a voluntary surrender of the excess vacant land and delivery of possession pursuant to Section 11 (5) (Section 10 of Central Act) notice or forceful dispossession under Section 11(6) (Section 10 of Central Act) and failure to establish any of these situations would entitle the land owner or holder to claim the benefit of Section 3 of the repeal Act. Further, the onus is also on the authorities to establish that while taking physical possession forcibly invoking under Section 11(6) of the principal Act, wherever the land owner is not a signatory to any land delivery receipt, the factum of taking over physical possession forcibly should be either in the presence of independent witnesses or by preparation of a Panchanama with the independent witnesses also subscribing their signatures to the same. When there is nothing to show that such exercise was duly carried out by the authorities, merely stating that the Government had taken over possession on a particular date would not come to the aid of the respondents.

19. Next question to be decided is the issue of delay in approaching



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the Writ Court and seeking relief and whether it would be an impediment for the Court to grant relief to the writ petitioner. Admittedly the parent Act 21 of 1978 has been repealed by an enactment, viz.. Act 20 of 1999 with effect from 16.06.1999. Once the Act itself has been repealed, the question of delay cannot be put against the land owner. Infact even in the present case the writ petition came to be filed only because the authorities refused to receive tax from the petitioners and also issue patta to them.

20. There cannot be an embargo of delay or limitation that can be put against the land owner in such cases, especially when Section 4 of the repeal Act resulted in abatement of all proceedings .Consequent to such abatement, the land owner is entitled to contend that any of the proceedings initiated under the principal Act (Act 21 of 1978), would no longer have any force and therefore the land owner would be entitled to the benefits of the repeal Act. The cause of action for filing of the writ petition was only the non-issuance of patta and refusal to receive tax from the petitioners. Under such circumstances, the question of delay or laches would never come into play, leave alone putting the same against the writ petitioners in order to deny them relief. Further, when the authorities had



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failed to follow the mandatory procedure contemplated under the principal Act (Act 21 of 1978), subsequently, the principal Act also being repealed, the issue of delay and laches on the part of the land owner would become irrelevant. Further, the nature of breach of fundamental right that is alleged is also a relevant factor. When admittedly the Act itself has been repealed, the Authorities cannot proceed any further as the proceedings stood abated on the date of the repeal of Act coming into force on 16.06.1999. That being the position issues like delay or laches pale into insignificance.

21. For all the above reasons, we are unable to subscribe to the findings of the Writ Court. Admittedly, the writ petitioners were in actual physical possession on the date of coming into force of the repeal Act (Act 20 of 1999) on 16.06.1999. The original records produced by the authorities also clearly show that proceedings under Section 11(6) were not taken and thereby the contention of the respondents that possession was taken cannot be accepted.



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In fine, the Writ Appeal stands allowed. The order of the Learned Single Judge is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
22.08.2023

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(kpr)

Pre-delivery judgment in
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22.08.2023