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Writ Petition No.4293 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.4293 of 2023
and WMP.Nos.4338, 4339, 4340 of 2023

1. A.V.R.Natesan
2. A.V.R.Vaidyanathan

... Petitioners

-Vs-

1. The Sub-Registrar,
Padappai Sub-Registration Office,
Kancheepuram District.
2. The Assistant Commissioner,
Urban Land Tax,
Tambaram, No.153, Karuneeagar Theru,
Adambakkam, Chennai – 600 088.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.B/547/2013 dated 26.07.2021 and the consequential orders in Na.Ka.No.B/547/2013 dated 21.12.2022 and the rejection order passed by the 1st respondent dated 08.02.2023 in No.35/2023 and to quash the same and consequently direct the 1st respondent to register the Memorandum of Deposit of Title Deeds forthwith.



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For Petitioners : Mr. V.C.Janardhanan
for Mr.C.Prabakaran
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus to quash the impugned order passed by the 2nd respondent in Na.Ka.No.B/547/2013 dated 26.07.2021 and the consequential order in Na.Ka.No.B/547/2013 dated 21.12.2022 and the rejection order passed by the 1st respondent dated 08.02.2023 in No.35/2023 and consequently direct the 1st respondent to register the Memorandum of Deposit of Title Deeds forthwith.

2. In respect of the land at S.Nos.112/1 and 112/2 at Perungalathur Village, it is the contention of the respondents that the said land has been taken over under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [in short, 'the Act'] on 22.11.1991 itself.

3. It is the case of the petitioner that the said land has never been taken over within the ambit of the Urban Land Ceiling Act and no notice



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had been issued to the owner of the property or holder of the property and the possession has neither been taken nor has been surrendered or handed over by the land holder within the meaning either under Section 11(5) or under Section 11(6) of the said Act. Therefore, the impugned proceedings issued in this regard by the Assistant Commissioner, Urban Land Ceiling i.e, second respondent dated 26.07.2021 and also the proceedings dated 21.12.2022, based on which, the refusal made by the first respondent vide his proceedings dated 08.02.2023 are under challenge in this writ petition.

4. The issue to be resolved in this writ petition is as to whether the land in question i.e., two survey numbers referred to above whether had been subjected to the urban land ceiling proceedings and if so, whether the mandatory provisions of the said Act have been followed scrupulously and the possession either voluntarily or by force have been taken over by the respondents.

5. In order to ascertain this, Mr.Yogesh Kanndasan, learned Special Government Pleader appearing for the respondents, pursuant to the order



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passed by this Court has produced the original file and made submissions stating that as per transfer charge certificate i.e., land taken over and handed over certificate dated 22.11.1991, the Deputy Tahsildar, ULT Tambaram handing over the land in question at S.Nos.112/1 and 112/2 to an extent of 0.12 and 0.006 hectares to and in favour of the Revenue Inspector, Tambaram Firka.

6. When that being so, since the land had been taken over and handed over to the Revenue Department within the meaning of either under Section 11(5) or under Section 11(6) of the said, subsequent Repealing Act would no way help the petitioner and therefore, on that ground the petitioner cannot seek indulgence of this Court to assail the impugned communications issued by the second respondent followed by the refusal order made by the first respondent.

7. However, Mr.V.C.Janardhanan, learned counsel appearing for the petitioner has vehemently contend that, at no point of time notice as contemplated under various provisions of the said Act have been issued either to the petitioner or predecessor in title of the petitioner.



8. Learned counsel appearing for the petitioner has also pointed out that, insofar as the taken over possession of the land covered under the Urban Land Ceiling Act is concerned, it must be a volunteer possession within the meaning of Section 11(5) of the Act otherwise, if the land owners refused to voluntarily surrendered the possession, it is open to the authorities concerned to use force and by using the force can take over the land under Section 11(6) of the Act.

9. In this context, learned counsel would contend that, the land transfer charge certificate now has been produced by the respondents' side as the proof to show the taken over the land either under Section 11(5) or under Section 11(6) of the Act would not cure the defect as the land has never been taken either under Section 11(5) or under Section 11(6) of the Act. Therefore, on that ground itself, the stand taken by the respondents especially the second respondent that the land in question have been subjected to the urban land proceedings and had been taken over and handed over to the Revenue in the year 1991 would not be sustained.



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10. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. Insofar as the land in question i.e., two survey numbers as stated supra, it is a stand of the respondents that the land has been taken over under the provisions of the Urban Land Ceiling Act is concerned, umpteen number of judgments on the issue had already been pronounced by this Court, where very consistent stand have been taken especially with regard to the taken over possession of the land. The taken over possession of the land must have been made in two ways, one is voluntarily surrendered the possession under Section 11(5) of the Act, failing which, the Authority can forcibly take the possession of the land under Section 11(6) of the Act.

12. Insofar as the claim now made by the respondents that the possession of the land has been taken over not voluntarily given by the land owner is concerned, such taken over proceedings should have been undertaken or concluded under Section 11(6) of the Act, for which,



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notice ought to have been given and after using the force, the forcible eviction can be made and forcible taken over also has to be made.

13. No such proceedings seems to have been issued as no such documents are available in the file except the transfer charge certificate, where as stated supra, Deputy Tahsildar, ULT Tambaram and Revenue Inspector Tambaram Firka have signed as if that the one is handing over the possession and another one is taking over the possession.

14. This type of handing over and taking over certificate recorded by the authorities concerned would not be sustained in view of the plethora of decisions made by this Court. Some of the cases can be usefully referred for reiterating the aforesaid legal position are as follows:

1. *Sathiyavathi and Ors. Vs. The Principal Commissioner and Commissioner of Urban Land Ceiling and Anr.*[W.P.No.32700 of 2003 dated 27.08.2018.
2. *C.N.Govindaraj Vs. The Principal Commissioner and Commissioner for Land Reforms and Anr.*[W.P.No.11627 and 15563 of 2004 dated 21.01.2029]



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15. In view of the said position, where the legal position has been settled consistently and if the said legal position is applied to the facts of the present case, a mere transfer charge certificate recorded by themselves as has been mainly relied upon by the learned Special Government Pleader appearing for the respondents would no way help the respondents to advance their case to suggest that the land has already been taken over from the land holders. When that being the case, the impugned orders insofar as the said land viz., S.Nos.112/1 and 112/2 are concerned, would not stand in the way and therefore, those lands are to be treated as the land released from the clutches of the Urban Land Ceiling proceeding, therefore, the consequential proceedings insofar as the said lands are concerned also would not be sustained.

16. In the result, the impugned proceedings insofar as the S.Nos.112/1 and 112/2 to an extent of 0.12 and 0.006 hectares are hereby set aside and as a sequel, there shall be a direction to the first respondent to entertain the document to be presented in this regard by the petitioner in respect of the said land for the purpose of encumbering the property as if that the land holders are free to encumber the same since their title have been cleared now by virtue of this order.



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With these directions and observations, this writ petition is ordered accordingly. No costs. Connected miscellaneous petitions are closed.

22.02.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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