IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

W.P.No.4758 of 2019

L.Radha Krishna Murthy ...Petitioner

Vs.

1. The Principal Secretary to Government,
Department of Revenue,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai – 600 009.

2. The Principal Commissioner &
Commissioner of Land Reforms,
Ezhilagam, Chepauk, Chennai – 600 005.3

3. The Special Commissioner,
Urban Land Tax & Ceiling,
Ezhilagam, Chepauk,
Chennai – 600 005.

4. The Assistant Commissioner,
Urban Land Tax & Ceiling,
Ambattur Zone, No.5, Sannadhi Street,
Poonamallee, Chennai – 600 056.
5. The Tahsildar,

Ambattur Taluk,
Ambattur, Chennai – 600 053. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Declaration declaring that the entire proceedings bearing S.R.No.186/91(C2) and R.O.No.6398/92 dated 15.07.1992 of the 4th respondent under Section 9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 is abated by virtue of Section 4 of the Tamil Nadu Urban Land (Ceiling) Repeal Act, 20 of 1999 in so far as the petitioner's land measuring 1909½ Sq.ft., comprised in Survey No.108/1 (part), Korattur Village Ambattur Taluk, Chennai District is concerned and consequently direct the fifth respondent to consider the petitioner's application for patta dated 16.12.2018 and issue patta to his said land.

For Petitioner : Mr.Umesh Rao K for Mr.R.Hashwanth

For Respondents : Mr.V.Veluchamy,
Additional Government Pleader

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ORDER

The writ petition has been filed challenging the acquisition proceedings initiated by the respondents under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (in short 'the Act'), and to extend the benefits under Section 4 of the Repeal Act 1999 (Act 20 of 1999) to the petitioner.

2 Brief facts of the case of the writ petitioner is that he purchased the property to the extent of 1909½ sq.ft. comprised in Survey No.108/1 (part), Korattur Village by a Deed of Sale dated 13.12.1984 and the petitioner was in peaceful possession and enjoyment of the property. In the year 2018, when the petitioner approached 5th respondent and sought for the details of his property, it was informed that the property is a subject matter of urban land ceiling proceedings initiated by the fourth respondent and the land was declared as excess vacant land by order dated R.O.No.6398/92 dated 15.07.1992 under Section 9(5) of the Act. The petitioner, who is in possession of the land, filed the writ petition challenging the acquisition proceedings.

3 Learned counsel appearing for the writ petitioner would submit that originally a larger extent of lands measuring an extent of 8 2/3 cents, comprised in Survey No.108/1, Korattur Village was owned and possessed by one Johnson, who purchased the property from Manndhan and others in any by a Deed of Sale dated 10.09.1966, registered as Doc.No.3595 of 1966 and the said Johnson sold souther portion measuring 4 1/3 cents (1909 1/2 Sq.ft.) out of the total extent of 8 2/3 cents of land to and in favour of Kannappan by Deed of Sale dated 20.03.1968, who in turn sold the same to the petitioner by a Deed of Sale dated 13.12.1984 thus the petitioner is the absolute owner of the said property.

3.1 While that being so, in 2018, when the petitioner approached 5th respondent and sought for the details of his property, it was informed that the property is a subject matter of urban land ceiling proceedings initiated by the fourth respondent and the land was declared as excess vacant land by order dated R.O.No.6398/92 dated 15.07.1992 under Section 9(5) of the Act.

3.2 The fourth respondent without looking into the title deeds initiated proceeding under the Act against one Raji Naicker mentioning him as the urban land owner of Survey No.108/1A. Further the fourth respondent has not initiated the proceeding against the petitioner, who is the original owner and in possession of the land. Therefore initiation of proceedings itself is illegal.

3.3 Further after the proceedings dated 15.07.1992 under Section 9(5) of the Act, the matter was not proceeded further and no final statement as envisaged under Section 10 of the Act was served and there is no declaration under Section 11(3) of the Act. In short, the acquisition proceedings did not see the light of Sections 10 and 11 of the Act and has been kept pending. Therefore, it is crystal clear that the aforesaid proceedings stands abated, when the Repeal Act, 20 of 1999, came into force.

3.4 The learned counsel f or the petitioner contended that even now the alleged surplus land is under the physical possession and enjoyment of the petitioner. Therefore when the Repeal Act 20 of 1999 came into existence, the entire proceedings of the fourth respondent got abated and hence the land in question has to be given to the petitioner, who is in possession of the land.

3.5 In support of his contentions the learned counsel relied on the decisions of this Court and the Hon'ble Supreme Court in the following cases.

1. *(2013) 4 SCC 280 (State of Uttar Pradesh vs. Hari Ram*
2. *2012-4-L.W.289 (The Govt. of Tamil Nadu & Ors.vs. M/s. Mecca Prima Tannery*
3. *2015 SCC OnLine Mad 13913 (A.n.Visalakshi & Ors vs. The Special Commissioner, Urban Land Ceiling*
4. *W.A.No.1846 of 2023 dated 27.07.2023 (The Principal Commissioner and Commissioner of Land Reforms & Ors. vs. V.M.Tharani & Ors.)*

4 Mr.V.Veluchamy, learned Additional Government Pleader appearing for the respondents contended that since the subject lands were attracted under the provisions of the Act, the fourth respondent initiated proceedings under the Act.

4.1 The main contention of the writ petitioner is that he is the owner of the subject property and the acquisition proceedings were initiated against one Raj Naicker, who is not at all owner of the subject property. As per the revenue records, the lands in S.No.108/1A and in S.No.139/2B measuring an extent of 750 sq.mts and 1250 sq.mts respectively totally measuring 2000 sq.mts. stood registered in the name of one Raj Naicker and since the urban land owner did not file return under Section 7(1) of the Act, notice under Section 7(2) was served on R.Munisamy s/o. Raj Naicker on 16.12.1992, but, they have not filed their objections. Thereafter by following the procedures, notice along with draft statement was served on 05.02.1992 to Devaki, daughter-in-law of the urban land owner, for which no reply was received and hence the fourth respondent passed order under Section 9(5) of the Act in Rc.No.6398/1992, dated 15.07.1992 (S.R.186/91/C2) declaring the subject lands as excess vacant lands after allowing 500 sq.mts in S.No.108/1A1 towards family entitlement, which order was served by affixture.

4.2 Final statement under Section 10(1) of the Act was served on 29.12.1995 by affixture and notifications under Sections 11(1) and 11(3) of the Act were also published in the Tamil Nadu Government Gazette vesting the land with the Government w.e.f.31.08.1996. Notice under Section 11(5) of the Act was issued to the urban land owner and since he failed to surrender or deliver possession, the Assistant Grade Revenue Inspector, took possession of the excess vacant land on 15.06.1999 and handed over to the revenue authorities and necessary changes were also made in the revenue records.

4.3 Even though the petitioner subsequently purchased the property, there is no document to prove that either his vendor was in possession of the subject land or he is in possession of the subject property. If the petitioner's vendor carried out necessary mutation in the revenue records, the authorities concerned would have caused or issued 7(2) notice in their name. Therefore any sale made after the commencement of the Act is null and void as per Section 6 of the Act.

4.4 As far as the contentions of the petitioner that he was in possession of the land when the Repeal Act came into force and hence he is entitled to the benefits under the Repeal Act, is concerned, it is already stated that after following all the procedures, possession was handed over to the revenue authorities on 15.06.1999 itself i.e. prior to Repeal Act came into force. Therefore, all the acquisition proceedings came to an end prior to Repeal Act came into force and hence the contentions of the learned counsel for the petitioner is not sustainable and the writ petition is liable to be dismissed.

5 Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6 The main grievance of the writ petitioner is that the petitioner is the owner of the property and the acquisition proceedings was initiated against one Raj Naicker, who is not at all the owner of the subject property. Further the petitioner was in possession of the land when the Repeal Act 20 of 1999 came into existence and hence the entire proceedings of the fourth respondent got abated.

7 From the counter filed by the respondents and it is seen that after verifying the revenue records, notice under Section 7(2) of the Act has been served on R.Munisamy s/o Raji Naicker , who was the urban land owner as per the revenue records. Further final statement under Section 10(1) of the Act was served by affixture and notification under Section 11(1) and 11(3) of the Act was published declaring the subject vacant lands vesting with the Government and notice under Section 11(5) was also issued. Thereafter, since after receipt of notice under Section 11(5), there was no refusal on the part of the Urban Land Owner to hand over possession of the lands acquired, the possession of excess vacant lands was handed over the revenue authorities on 15.06.1999. If at all the petitioner is in possession of the land, he should have raised objections. Further there is no document to prove that the petitioner was in possession of the subject lands. Even as per the case of the writ petitioner, he purchased the property in the year 1984, but he applied for patta in the year 2018 and his vendor also not mutated the revenue records. It is settled proposition of law that possession would follow title. Admittedly at the time of taking possession of the land by the respondents, it is vacant land. Further more none of the land owners or the petitioner challenged the acquisition proceedings or raised any objections. Therefore the contentions of the petitioner is not acceptable.

8 As far as the other contentions regarding possession of acquired lands when the Repeal Act came into force, the petitioner has not produced any document to show that he was in possession of the subject land when the Repeal Act came into force. Admittedly at the time of taking possession of the lands by the respondents, the subject property is a vacant land. When the petitioner claim benefits under the Repeal Act, it is for him to prove that he was in possession of lands acquired when the Repeal Act came into force or the acquisition proceedings under the Act was pending or physical possession was not taken. All the proceedings were completed and possession was handed over to the revenue authorities on 15.06.1999 itself i.e. prior to Repeal Act came into force. Once the acquired land is vacant site and vested with the Government under the Act, the petitioner claiming benefit under the Repeal Act, he has to prove his possession in the manner known to law.

9 In view of the foregoing observations and reasons, the writ petition shall stand dismissed. No costs.

21.12.2023

Index: Yes/No
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P.VELMURUGAN, J.,

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