



W.A.No.1953 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2023

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

AND

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

W.A.No.1953 of 2018

AND

C.M.P.Nos.15571 & 15572 of 2018

1.The Special Commissioner and Commissioner
for Urban Land Ceiling and Urban Land Tax
Chepauk, Chennai 600 005

2.The Assistant Commissioner
for Urban Land Tax-cum-Competent Authority
Alandur, No.169, Sannathi Street
Chennai 600 088

.. Appellants

Vs.

Valliammal
Rep. by her power of attorney holder
R.Babu

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the
order dated 22.01.2013 passed by this Court in W.P.No.11933 of 2005.



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For Appellants : Mr.A.Silambanan
Additional Advocate General
Assisted by
Mr.Vadivelu Deenadayalan
Additional Government Pleader
For Respondent : Mr.S.Wilson

J U D G M E N T

(Delivered by V.LAKSHMINARAYANAN, J.)

This appeal arises against the order dated 22.01.2013 passed by the learned Single Judge in W.P.No.11933 of 2005.

2. Facts leading to the writ petition are as under :

2.1. The writ petitioner had acquired an extent of 0.69 acres comprised in survey No.558/2 and 559/1 of Gerugambakkam Village, Sriperumbudur Taluk, Kancheepuram District by way of a partition deed. The said partition deed was executed on 06.01.1989 and registered as document No.54/1989. The partition was between the sons and wife of one Kanniappa Mudaliar. The writ petitioner is the wife of Kanniappa Mudaliar.



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2.2. According to the writ petitioner, she received the impugned order in Na.Ka.No.951/98/B dated 10.07.1998 holding that she is in possession of excess vacant land of 500 sq. mtrs. According to her, prior to the issuance of the impugned order, no notice was served on her. The impugned order would state that notice had been served by way of affixture on the land. Since no objection had been received from the land owner, it was confirmed. The writ petitioner would state that her address had not been ascertained and that she continues to use the land for agricultural purposes by raising paddy. She would state that the physical possession of the property continues to be with her and since the repeal Act viz., Tamil Nadu Urban land (Ceiling & Regulation) Act, 1999 (Act 20 of 1999) had come into force, the 2nd respondent has no right to take possession of the property. She would allege that the passing of an *ex parte* order against her was wrong as the revenue records stand in her name and the same could have been easily verified.

2.3. A counter affidavit was filed by the 2nd respondent admitting to the fact that the said Valliammal/writ petitioner is the owner of 2300



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sq. mtrs. land. It is alleged that the land owner failed to file returns under Section 7(1) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (in short “the 1978 Act”) and therefore, a notice was issued on 27.02.1998 to the writ petitioner. The said notice was served on 25.03.1998. The Deputy Tahsildar attached to the office of the 2nd respondent had inspected the land on 08.05.1998 and had reported that it is no longer an agricultural land as it has been converted into house site.

2.4. On the basis of the revenue records and the report of the Deputy Tahsildar, the 2nd respondent had issued a notice together with a draft statement under Section 9(4) of the 1978 Act to the writ petitioner. It is alleged that it was served on the writ petitioner's daughter on 19.05.1998. Since the writ petitioner nor any of her representative filed any reply, the 2nd respondent inspected the land on 10.07.1998 and confirmed that it had lost its agricultural status and had become an urban land.

2.5. The 2nd respondent would state that the excess land available with the writ petitioner was determined as 2300 sq. mtrs. and consequently, it



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was acquired and handed over to the Revenue Department on 03.06.1999.

He would state that the Government had taken over the said extent and had allotted 500 sq. mtrs. towards writ petitioner's entitlement.

2.6. The service of notice according to the respondents, was not in any of the modes contemplated under the 1978 Act, but by way of an affixture. The 2nd respondent would allege that since the notification had been issued under Section 11(1) of the 1978 Act on 05.01.1998 and published in the Gazette on 30.12.1998 and this was followed by a notification as per Section 11(3) of the 1978 Act on 08.02.1999. Therefore, the 2nd respondent would state the land vests with the Government. He would state that even the notice under Section 11(5) of the 1978 Act was served only by affixture, since the land owner did not surrender the possession of the land.

2.7. The 2nd respondent alleged that possession was taken on 03.06.1999 and the revenue records have also been mutated. According to him, since the land had already been taken possession on 03.06.1999, which



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was before the enactment of the repeal act, the writ petition has to fail and would seek for dismissal of the writ petition. Based on this counter, the appellants would want us to allow the appeal.

2.8. When the matter was taken up by the learned Single Judge, he framed an issue whether the writ petitioner is in possession of the property as on date of the repeal act and on relying upon the judgment of this Court in *The Government of Tamil Nadu Vs. Mecca Prime Tannery and Others* (W.A.No.137 of 2010 etc. batch decided on 23.07.2012), he quashed the proceedings. Aggrieved by that order, the present writ appeal has been filed.

3. We have heard Mr.A.Silambanan, learned Additional Advocate General, assisted by Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the Government and Mr.S.Wilson, learned counsel appearing for the writ petitioner.

4. In order to dispose of this writ appeal, we have to see the view taken by this Court in a batch of writ appeals in *Mecca Prime Tannery*



(supra). The Division Bench had held that pursuant to a notification under Section 11(3) of the 1978 Act, it is the right, title and interest, in respect of the land that is deemed to have vested with the Government. However, unless and until, possession of the land is taken as required under the Act, it cannot be held that the Government is in possession of the property. The relevant portion of the judgment are extracted below :

“4.

33. The phrases ‘shall be deemed to have been acquired’ and ‘shall be deemed to have been vested absolutely in the State Government’ occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and interest is vested in the State Government by notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

40. In 2009 (8) M.L.J. 522 (supra), though the petitioner had purchased the land in the year 1980, the authorities had initiated proceedings under the Urban Land Ceiling Act in the year 1990 without issuing any notice to him. The Tamil Nadu Land Reforms Special Appellate Tribunal dismissed the petition filed by the petitioner challenging the said proceedings, against which the petitioner filed the writ petition contending that as per Section 11(5) of the Act, any person who is in possession of the land is entitled to notice to surrender or deliver possession to the Government, and that actual physical possession of the acquired land was not taken over by the Government and it was only a paper possession and therefore, the petitioner is entitled to the benefit of Section 4 of the Repealing Act of 1999. The Division Bench,



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holding that there was no notice under Section 11(5) of the Act either on the petitioner or on the erstwhile owner/vendor of the land and that actual physical possession was not taken over by the Government, quashed the order of the Tribunal and the acquisition proceedings were held to have been abated, in view of Section 4 of the Repealing Act of 1999.

41. In 2011 (4) M.L.J. 577 (supra), the respondents challenged the proceedings initiated in respect of their lands under the Ceiling Act contending that possession of the land was not taken over in a manner known to law on the date when the said Act was repealed and therefore, the proceedings shall lapse after the coming into force of the Repealing Act. The writ petitions were allowed and in the writ appeals filed by the State, it was contended that since symbolic possession was taken a day prior to the Repealing Act came into force, the question of giving the benefit of the Repealing Act would not arise. The respondents/land owners contended there was no proper notice on the land owners, which violated the provisions of Section 11(5) of the Ceiling Act. The Division Bench held that even assuming that possession had allegedly been taken over, such taking over of possession cannot be considered to be valid in the eye of law so long as Section 11(5) of the Ceiling Act was not complied with, in that there was no notice on the owners of the land or the persons in possession of such land and the respondents were given the benefit of the Repealing Act. The relevant paragraphs of the judgment of the Division Bench are extracted hereunder :-

“7. In order to find out as to whether the notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the competent authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the



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Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the respondents must be accepted.

8. For the said reason, we are also of the considered view that the respondents are entitled to the benefit of the Repealing Act and accordingly, we find no reason to interfere with the impugned order. Accordingly, the writ appeals are dismissed. However, the issue as to whether the State could claim the taking over of symbolic possession and hence the question of physical possession is necessary or not is left open.”

42... (iii) W.A. No.1975 of 2010 :

This appeal has been filed by the State aggrieved by the order of the learned single Judge dated 08.11.2001 passed in W.P.No.20398 of 1993. The writ petition was filed by the petitioners-land owners to quash the acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 which culminated in the notification dated 15.01.1992 issued by the 3rd respondent, and quash the same, and direct the respondents to hear the petitioners before passing any further orders under Section 11(3) of the Act. Learned single Judge ordered the writ petition holding that in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20 of 1999) repealing Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, no factual adjudication is required. Learned single Judge also observed that since the possession of the lands continued to be with the petitioners, in view of the interim injunction being in force all along the, petitioners are entitled to the benefits of 1999 Repealing Act.

Learned Additional Advocate General is not in a position to satisfy us that physical possession of the land either delivered by the land owner to the Government or the Government took possession of the land. Hence, the finding of the learned single Judge needs no interference. This appeal is also dismissed.”



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5. A perusal of the judgment shows that possession has not been taken in the manner known to law. It was held that even assuming possession had been taken, it does not comply with the requirements of Section 11 of the 1978 Act. In that case too, no notice was sent to the land owners or the persons in possession of the land. It was held the land owners have to be given the benefit of the repeal act. In the present case too, the records do not reveal that possession had been taken in the manner contemplated under the Act. Therefore, the said judgment is applicable to the case at hand.

6. Learned Additional Advocate General would state that though there is no acknowledgment of service of notices on the respondent herein, from the files relating to service of notice or orders on the proceedings of the land owner, there is a seal in the Despatch Register stating “அனுப்பப்பட்டது” and therefore, the Court has to presume that notice had been, in fact, sent and served on the land owner.

7. We are unable to accept this contention. When the Act specifies a particular manner of service of notice and that manner has not been



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complied with, self-serving endorsement on the files does not comply with the requirements of law. The files do not show the service of notice on the land owner nor taking of possession prior to the repeal act. The learned Single Judge was bound by the view taken by the Division Bench in the batch of cases and he had rightly applied the law.

8. We do not find any irregularity or illegality in the order passed by the learned Single Judge and therefore, the order of the learned Single Judge dated 22.01.2013 passed in W.P.No.11933 of 2005 is confirmed and the writ appeal is dismissed. No costs. Connected miscellaneous petitions are closed.

Internet : Yes / No
Neutral citation : Yes/No
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(V.M.V.,J.) (V.L.N.,J.)
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