



WA No.536 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

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- 1.State of Tamil Nadu,
rep. By its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai 600009
- 2.State of Tamil Nadu,
rep. By its Secretary,
Revenue Department,
Fort St.George, Chennai 600009
- 3.The Special Commissioner and
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai 5
- 4.Tamil Nadu Housing Board,
rep. By its Chairman,
Anna Salai, Nandanam,
Chennai 35
- 5.Tamil Nadu Slum Clearance Board,
rep. By its Chairman,
5, Kamarajar Salai, Chennai 5



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6.The Special Commissioner and Commissioner,
Urban Land Ceiling and Urban Land Tax,
Ezhilagam, Chepauk, Chennai 5

7.The Assistant Commissioner of Urban Land Tax and
Competent Authority under the
Urban land Ceiling Act (Mylapore)
345, Arcot Road, Kodambakkam,
Chennai 600 024.

Now at No.130, Slum Clearance Board Building,
R.K. Mutt Road, Mylapore, Chennai 5

: Appellants.

Versus

Chinnamma Abraham (deceased)

1.Philip Abraham

2.Susan Varghese

3.Asha George Peter

(Legal representatives and substituted in the place
of deceased 1st petitioner)

: Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 31.03.2016 passed in WP No.19802 of 2003.

For Appellant

: Mr.U.M.Ravichandran,
Special Government Pleader,
for appellants 1 to 3

Mrs.Shyaamala,
Standing Counsel for TNHB
for appellant No.4

No appearance,
for appellants 5 to 7

For Respondents

: No appearance



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JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The intra court appeal has been filed by the appellant challenging the order dated 31.03.2016 in W.P.No.19802 of 2023 by the writ court.

2. This Court has ordered notice in writ appeal on 12.03.2018 returnable by 26.03.2018, granting interim stay. Subsequently, this Court has ordered for the issuance of notice through Court as well as privately on 28.03.2018, 18.04.2018 and 10.08.2018. Subsequently, this Court, by order dated 07.02.2018 in C.M.P.No.2460 of 2018 has also permitted to take substituted service to the respondents. However, despite all this, proof of service has not been filed by the appellants before the Registry of this Court, but only a paper publication as substituted service, taken out by the appellant department has been produced. The appellants have not taken steps to file proof of service before the Registry, but produced only a paper publication.



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3. According to the Government Pleader, the property in question namely Survey No.97/7 and Plot No.2 A 84/6 belonged to family of one Abraham in Thiruvanmiyur village and Nungambakkam village. The legal heirs of the said Abraham had filed the writ petition in W.P.No.19802 of 2023 before this Court, challenging the order dated 30.09.1986, in S.R.No.1235/76(A) of the 7th appellant herein on the ground that the proceedings dated 30.09.1986 initiated by the 7th appellant herein is abated in view of Section 4 of the Repeal Act, 1999 since the physical possession of the land in question was with the respondents herein. The said writ petition was allowed by order dated 31.03.2016. Challenging the aforesaid impugned order dated 31.03.2016, this intra court appeal is filed.

4. According to the appellants, Notice under Section 11(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 has been issued by the appellant Department on 21.10.1992, followed by a further notice under Section 11 (5) of the Act, 1978 on 26.11.1998 and possession has been taken by the appellant department in respect of the land in Survey No.84/9B covering an extent of 1500 square meters. The said contention was also raised by the appellants before



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the learned Single Judge in the counter-affidavit.

5. The learned Government Pleader, appearing on behalf of appellants 1 to 3 submits that possession has already been taken over by the appellant department, as per the delivery receipt dated 21.10.1972 and this fact was not taken note of by the learned Single Judge and hence the order passed by the Writ Court is liable to be set aside.

6. The respondents have made a specific averment in the writ petition that the appellant department has not taken possession of the property in question on the date of the Act is coming into force. The specific contention of the respondents before the Writ Court, that "possession" as defined under the Repeal Act is actual possession of the property and not symbolic possession. The case of the respondents herein is that Notification dated 06.08.1981 was published by the first appellant herein to acquire the entire extent of 86 cents of land in S.No.84/9B owned by the respondent, for the use of fourth appellant herein. The respondent herein has challenged the said notification in a writ petition W.P.No.3253 of 1985 wherein an interim stay of the



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acquisition proceedings was granted by this Court on 17.04.1986 and subsequently the writ petition came to be allowed on 08.10.1991. Challenging the said order passed by the Writ Court, the appellants have filed an appeal before this Court in W.A.No.656 of 1994, but the said writ appeal was dismissed by the Division Bench of this Court on 25.01.1995 and hence the order of the Writ Court has become final. It is clear from the above proceedings that the respondents had the benefit of interim order throughout the pendency of the writ petition, the final verdict of which went in favour of the writ petitioners. Therefore, the appellant-department cannot dispute the fact that they been in possession of the land in question. Thus, taking note of the said factual aspect of the case, namely that possession of the land in question has not been taken by the appellant and a portion of the land has also been sold by the respondents as early as in the year 1995, the Writ Court allowed the writ petition.

6.1. The phraseology "*possession of which has been taken over*" has been the subject matter of discussion in various decision 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



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usage of words "*possession...taken over*" can only imply physical possession and not mere symbolic 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 insofar 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



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concerned voluntarily came forward to surrender/ deliver vacant possession or that subsequent proceedings were taken under Section 11(6) of the Act and possession was taken over forcibly from the land owner concerned. The authorities are unable to establish the fact or 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 a plain reading of Section 3 of the Act, it is clearly reads that even, if excess vacant lands stand vested with the State Government under Section 11(3), if the physical possession of the said excess vacant land was not taken over all proceedings shall abate under the Repeal Act.

7. The appellant-department has not produced any contra-evidence before this Court to prove that the appellant department has taken actual possession of the property in question and thus there is no substance in the grounds raised by the appellant-department. Therefore, we are of the view that there is no ground to interfere with the order of the writ court.



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8. In fine the writ appeal is dismissed, confirming the order dated 31.03.2016 passed by the Writ Court in W.P.No.19802 of 2003. There will be no order as to costs. Consequently, connected C.M.P.No.5198 of 2018, is closed.

[D.K.K., J.] [P.B.B., J.]
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Index : Yes/No
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