



W.A.No.895 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.895 of 2018
&
C.M.P.No.7794 of 2018

1.State of Tamilnadu
Rep by the Secretary
Revenue and Urban Land Department
Fort St.George,Chennai-9

2.The Competent Authority and
Assistant Commissioner
Urban Land Ceiling, Coimbatore

.. Appellants

Vs.

S.Shanmugasundaram

.. Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent to set aside the order passed in W.P.No.95 of 2006 dated 20.04.2012 on the file of this Court.



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W.A.No.895 of 2018

For Appellants : Mr.U.M.Ravichandran, Spl.G.P

For Respondents : Mr.R.Ganesh Kumar

J U D G M E N T

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

This intra court writ appeal has been preferred by the State, aggrieved by the order passed by the writ court in W.P.No.95 of 2006 dated 20.04.2012.

2. The Writ Petition was filed seeking issuance of a writ of Certiorarified Mandamus to quash the proceedings dated 18.12.1992 and to consequently forbear the appellants herein from interfering with the peaceful possession and enjoyment of the respondents, relating to petitioner's house site property. The writ court found that on the date of repeal of The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 possession was with the respondent/writ petitioner and on that ground allowed the Writ Petition.

3. The main ground of challenge to the order of the writ court, in the present writ appeal, is that the department had taken possession of the



W.A.No.895 of 2018

property and all statutory notices had been served on the original owner and therefore the repeal of the parent Act would not have any bearing.

4. We have heard Mr. U.M Ravichandran, Special Government Pleader for the appellants and Mr.R.Ganesh Kumar, learned counsel for the sole respondent. We have also perused the records placed before us.

5. The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was repealed on 16.06.1999. The respondent herein had purchased the property in the year 1982 and he was in possession of the same, having constructed a residential building in or around 2005.

6. Section 11(1) notification came to be issued on 31.08.1998 which was also duly gazetted on 14.10.1998. Thereafter, the Section 11(3) declaration was published in the official gazette on 24.11.1998. In pursuance thereof, Section 11(5) notice to take possession of the property was served on the respondent/writ petitioner on 22.04.1999. We also find a communication in NA.Ka.6383/92/B2 dated 24.05.1999, in and by which it is stated that by invoking Section 11(6) possession would be taken by the



W.A.No.895 of 2018

appellants. It is the case of the appellants that they took possession on 04.06.1999 which was much before the repeal of the Act itself and therefore the respondent/writ petitioner cannot seek to avail the benefit of the repeal Act.

7. However, on perusal of the records we see that the possession said to have been taken on 04.06.1999 is only a symbolic act of taking over possession and reducing the same to writing, by way of a possession certificate. We find that the procedure contemplated under the Act has not been followed. The appellants have to take physical possession of the property in question. Consequent to issuance of the Section 11(5) notice, if the land owner refuses or fails to comply with the demand for surrendering vacant possession under Section 11(5), then it is open to the appellants to take possession by using such force as may be necessary. However, from the records, we do not find that actual physical possession was taken by the appellants. The respondent had also not signed the delivery receipt which is required to evidence the claim of taking over physical possession. Further we also find that in proceedings, Na.Ka.No.6383/92/A2 dated 21.03.2001, it is stated that the excess urban land was handed over to the Tahsildar on



W.A.No.895 of 2018

WEB COPY

04.06.1999 and in turn on the same day, the Tahsildar handed over possession to the Revenue Inspector. There is nothing to show that the mandate of Section 11(6) was followed and complied with and that forcible possession was taken over from the respondent/writ petitioner. On the contrary, the records available on the file of the appellants also do not indicate that the due process had been followed before taking physical possession forcibly, from the respondent/writ petitioner.

8. The next argument of the learned counsel for the appellant is that the writ petitioner was a subsequent purchaser and therefore he is not entitled to challenge the proceedings initiated against the erstwhile owner. In this regard, it is seen from the affidavit filed in support of the writ petition that the writ petitioner purchased the property along with his wife in the year 1984. Only in 2005, in and by proceedings dated 16.12.2005, the appellant brought it to the notice of the respondent that the lands in Survey No.164/1C purchased by the respondent was subject matter of urban land ceiling proceedings and Section 9(5) was also invoked as against the erstwhile owner. The counsel for the appellants would submit that as a purchaser, the respondent was not entitled to notice as contented



W.A.No.895 of 2018

WEB COPY

before the writ court and the appellant had taken all proceedings against the erstwhile land owner and no infirmity can be attributed to the actions of the appellants. We are unable to accept this limb of the argument. Section 11(5) of the principal Act mandates notice being issued in writing to persons who are in possession of the alleged excess lands. Therefore, even the statute recognizes and requires a notice to be served on the respondent, a subsequent purchaser and that being so it cannot be gain said that the purchaser is not entitled to notice and consequently challenge the proceedings initiated by the authorities. Infact, this question is also answered by a Division Bench of this Court in ***The Secretary, Revenue Department, Fort St. George and Ors Vs. K. Gopal*** reported in **2013 (2) CWC 593** where the Division Bench held that even though the petitioner before the court was not the real owner, in terms of Section 11(5) of the Act, the competent authority is bound to issue notice to him.

9. In any event the principal Act having been repealed with effect from 16.06.1999, we do not deem it fit to accept the argument that a subsequent purchaser who is in physical possession of the property is not entitled to seek relief. Section 4 of the Act 20 of 1999, is very specific and



W.A.No.895 of 2018

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unambiguous to the effect that whenever physical possession of the property has not been taken over on or before the relevant date namely 16.06.1999, all the pending proceedings would stand abated. Therefore, to give an interpretation that a subsequent purchaser cannot challenge the urban land ceiling proceedings especially after the repeal of the principal Act, would result in a situation where the very letter and spirit of Section 4 stands defeated. The Courts have consistently held that the only point that would require adjudication in urban land ceiling proceedings, after the repeal of principal Act is as to whether the State has taken over physical possession of the subject property. If the answer is in the negative, then automatically all pending proceedings would stand abated. Therefore, in the light of Sections 3 and 4 of the repeal Act (Act 20 of 1999), if we were to hold that challenge is made by the subsequent purchaser who is in physical possession of the subject property and therefore he would not be entitled to maintain a writ petition, then the resultant proceedings would be that the authorities under the Act will have to continue the proceedings in respect of the which, physical possession has not been taken over. Therefore, any such interpretation that a subsequent purchaser cannot challenge the urban land ceiling proceedings, after the coming into force of



W.A.No.895 of 2018

the repeal Act (20 of 1999), would run contrary to Section 4 of the Act 1999. Therefore, viewed from any angle, be it as a person in possession of the property or whether in the capacity of a subsequent purchaser, such a person would be entitled to canvass a ground that since physical possession has not been taken over, all pending proceedings would stand abated & the authorities would have no right continue the proceedings thereafter.

10. For all the above reasons, we are unable to accept the contentions of the counsel for the appellants that respondent being a subsequent purchaser, he was not entitled to maintain the writ petition.

11. The Learned Single Judge has considered all these aspects and rightly held that the respondent/ writ petitioner was in physical possession on the date of the coming into force of the repeal Act. We do not find any infirmity in the findings arrived at by the writ court.

In fine, the writ appeal fails and is accordingly dismissed. There shall



W.A.No.895 of 2018

be no order as to costs.

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(D.K.K.J) & (P.B.B.J)
20.07.2023

Internet : Yes
Neutral Citation: Yes/No

D.K.KRISHNAKUMAR, J.,
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W.A.No.895 of 2018

P.B.BALAJI,J

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W.A.No.895 of 2018

20.07.2023