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W.P.No.20144 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20144 of 2023

V.Preetha

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep by its Secretary,
Revenue Department,
St George Fort, Chennai-600 004.

2.The Special Commissioner and
Commissioner of Land Reforms,
Government of Tamilnadu,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner(ULT).
-cum-Competent Authority(ULC)
Alandur Zone,
153, Karuneeagar Street,
Adambakkam,
Chennai 600 088.

4. The Tahsildar,
(Formerly Tambaram Taluk)
Sholinganallur Taluk,
Shollinganallur, Chennai

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, to declare that all the proceedings initiated under the Tamil Nadu Urban Land(ceiling and Regulation) Act 1978, and order passed in Na.Ka.No.2242/1996 dated 26.9.1996 under section 9(5) of the Act, read with Rc.No.2242/1996(B), dated 05.07.1997 and consequential notice dated 31.12.1998 under section 11(5) of the Act by the 3rd respondent as null and void has abated on the promulgation of repeal Act 20 of 1999 as the physical possession of the property was not taken over as per the procedure known to law and the petitioner is the owner of the property measuring 2888 sq ft comprised in Survey No. 165/6B2 situated in Madipakkam Village, in Sholinganallur Taluk (formerly Tambaram Taluk), Chennai and to direct the respondents to make necessary corrections in the revenue records and issue patta after correcting the revenue records within the time stipulated.

For Petitioner : Mr.M. Udaya Kumar

For Respondents 1 to 4 : Mr. D.Ravichandar,
Special Government Pleader

ORDER

The relief sought for in the present writ petition is to declare that all



the proceedings initiated under the Tamil Nadu Urban Land(ceiling and Regulation) Act 1978, and order passed in Na.Ka.No.2242/1996 dated 26.9.1996 under section 9(5) of the Act, read with Rc.No.2242/1996(B), dated 05.07.1997 and consequential notice dated 31.12.1998 under section 11(5) of the Act by the third respondent as null and void has abated on the promulgation of repeal Act 20 of 1999 as the physical possession of the property was not taken over as per the procedure known to law and the petitioner is the owner of the property measuring 2888 sq ft comprised in Survey No. 165/6B2 situated in Madipakkam Village, in Sholinganallur Taluk (formerly Tambaram Taluk), Chennai and to direct the respondents to make necessary corrections in the revenue records and issue patta after correcting the revenue records

2. The petitioner claims that she is the owner of the subject property fully described in the present writ petition.

3. The details regarding the title as enumerated in the writ petition are not in dispute between the parties. The petitioner submitted an application before the fourth respondent seeking for grant of patta for the subject



property in her name. It was informed that the proceedings under the Urban Land Ceiling and Regulation Act, in respect of subject property was initiated and accordingly, the petitioner was advised to approach the Assistant Commissioner, Urban Land Ceiling. The petitioner approached the third respondent who in turn furnished the copies of the proceedings initiated in the Urban Land Ceiling and Regulation Act.

4. The main contention raised by the petitioner is that the subject land was taken over by the Government under the Land Ceiling Act, but no notice was served on the petitioner, which is mandatory under section 11(5) of the Land Ceiling Act. After the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, the lands which were not taken over possession by the competent authorities were vest with the original owners. The question arises, whether the possession has been taken over by the Government or not? In this context, the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh vs. Hari Ram [(2013) 4 SCC 280]** in paragraphs 34 to 36 held as follows:-

“34. Sub-section (5) of Section 10, for the first time,



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speaks of “possession” which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of its to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression “where any land is vested” under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10



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again speaks of “possession” which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force-as may be necessary- can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e., taking possession by giving notice, that is, “peaceful dispossession” and on failure to surrender or give delivery of possession under Section 10(5), then, “forceful dispossession” under sub-section (6) of Section 10.”

5. In respect of the cases, where the notice has not been served through proper mode of service, then the lands are declared to vest with the original owners. Many such persons claimed right over the property based on the Repeal Act. High Court also allowed number of writ petitions, mainly on the



ground that the mode of service effected to the owners under Section 11(5) of the Land Ceiling Act was improper and not in compliance with the established procedures to be followed for service of notice under Section 11(5) of the Land Ceiling Act. In all those cases, the Government is unable to establish that the original owners have received notice issued under Section 11(5) of the Land Ceiling Act. Thus, the Courts held in favour of the owners that the Government has lost its right to possess the property, since the possession notice was not served to those owners. Accordingly, the benefits of the Repeal Act was extended to all these owners who had not been served with the notice through proper mode of service.

6. In the present case, the learned Special Government Pleader submitted the original file, which would reveal that no notice as contemplated under the Act was served on the writ petitioner. In the absence of any proof to establish the service of notice on the holder of the land, the petitioner is entitled for the relief. Since the respondents are unable to establish that the notice as contemplated under the Act was served on the holder of the land and possession had not been taken, the relief as such sought for is to be considered. Accordingly, the relief as such sought for in



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the present writ petition stands granted and the respondents are directed to issue appropriate proceedings to that effect. The said exercise is directed to be completed by the respondents within a period of twelve (12) weeks from the date of receipt of a copy of this Order.

7. With these directions, the writ petition stands allowed. No costs.

28.08.2023

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Index : Yes

Speaking order

Neutral Citation : Yes



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