



WP 4 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-07-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.4 of 2022

And

WMP No.6 f 2022

1.Mr.V.Ramkumar

2.Mr.V.Gopinath

... Petitioners

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Revenue Department,
Secretariat,
Fort St. George,
Chennai-600 009.

2.The Commissioner,
Urban Land Ceiling and Tax,
Chepauk,
Chennai-600 005.

3.The Assistant Commissioner,
Urban Land Tax,
Alandur,
Chennai.



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4. The Tahsildar,
Office of the Taluk Office,
Sholinganallur,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in SR N.65/90/A dated 11.01.1991 and quash the same and consequently forbear the respondents 1 to 3 from taking any action under the Urban Land Ceiling Act in respect of the lands belonging to the petitioners comprised in Survey No.557/2 of Pallikaranai Village, Sholinganallur Taluk, Chennai District.

For Petitioners : Mr.P.Balamurugan

For Respondents : Mr.D.Ravichander,
Special Government Pleader.

ORDER

The relief sought for in the present writ petition is to call for the records pertaining to the impugned order passed by the third respondent in SR N.65/90/A dated 11.01.1991 and quash the same and consequently forbear the respondents 1 to 3 from taking any action under the Urban Land Ceiling Act in respect of the lands belonging to the petitioners comprised in Survey No.557/2



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of Pallikaranai Village, Sholinganallur Taluk, Chennai District.

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2. The petitioners state that they are the owners of the land measuring about 20 cents comprised in S.No.557/2 situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District, which is the subject property. The property forms part of a larger extent of property originally belonged to one Mr.Gopal Naidu, who sold the same to one Mr.Parasuram Naidu under two Sale Deeds dated 27.11.1967 and 27.11.1968, registered as document Nos.4427 of 1967 and 3621 of 1968 both in the Office of the Sub Registrar at Saidapet. The said Mr.Parasuram Naidu along with his wife Mrs.Yashodhammal executed a Will dated 31.12.1993, registered as document No.1 of 1994 in the office of the Joint II Sub Registrar at Saidapet. Under the said Will, the subject property was bequeathed in favour of the younger son of Mr.Parasuram Naidu and Mrs.Yashodhammal viz., Mr.P.Venkatesan. Mr.Parasuram Naidu died on 20.05.2003 and the said Mrs.Yashodhammal died on 09.01.2007. After the lifetime of the said Mr.Parasuram Naidu, the said Mr.P.Venkatesan became the absolute owner of the said property as per the terms of the Will dated 31.12.1993. The said Mr.P.Venkatesan executed a Settlement Deed dated 30.07.2021 registered as document No.8434 of 2021 in the Office of the Joint-I, Sub Registrar South Chennai in favour of the petitioners and thus they became



the joint owners of the subject property.

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3. The petitioners further state that they approached the fourth respondent seeking patta for the subject property in their names. They were informed that there is a proceeding under the Urban Land Ceiling and Regulation Act, in respect of the subject property. Therefore, they approached the third respondent and sought for details in respect of the said property. They also issued a letter dated 27.09.2021 to the third respondent seeking copies of the orders relating to acquisition under Sections 9(5), 10(1) and 11(5) of the Urban Land Ceiling and Regulation Act.

4. The grievances of the writ petitioners are that the subject land was taken over under the Land Ceiling Act by the Government but no notice was served to the writ petitioners as mandated 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. Question arises, whether the possession has been taken 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:-



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



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(5) of Section 10. Sub-section (6) of Section 10 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)



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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 benefit 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 also, the learned Special Government Pleader could not establish through original files that under Section 11(5), notice had been served to the owners through proper mode of service.

7. In view of the said discrepancies, this Court is unable to accept the acknowledgement produced before this Court. In respect of all other petitioners, the respondents are unable to produce any acknowledgement to establish that the Government has taken possession. Thus, the benefit of Repeal Act is to be extended and all these writ petitioners pursuant to the orders of the Hon'ble Supreme Court and the High court in batch of writ petitions.



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8. In view of the fact that the respondents are unable to establish that they have taken possession of the subject property in accordance with the provisions of the Land Ceiling Act, the petitioners are entitled to avail the benefit of the Repeal Act. Pertinently the lay out was approved by the Chennai Metropolitan development authority in the year 1993 itself and the employees of the Chennai Metropolitan Transport Corporation are in occupation of the land and they have constructed residential houses and are residing peacefully. Thus, the respondents failed to establish their case for the purpose of resumption of land and therefore, the petitioners are entitled to succeed.

9. Accordingly, the prayer as such sought for in the present writ petition is granted and consequently writ petition stands allowed. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To

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1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Secretariat,
Fort St. George,
Chennai-600 009.
2. The Commissioner,
Urban Land Ceiling and Tax,
Chepauk,
Chennai-600 005.
3. The Assistant Commissioner,
Urban Land Tax,
Alandur,
Chennai.
4. The Tahsildar,
Office of the Taluk Office,
Sholinganallur,
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S.M.SUBRAMANIAM., J

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