



W.A.No.3621 of 2019

Prayer: Writ Appeal is filed under Clause 15 of the Letter Patent against the order of this Court dated 29.04.2013 made in W.P.No.6253 of 2008 on the file of this Court.

For Appellants : Mr.S.Silambanan, Senior Counsel
Additional Advocate General – II
assisted by Mr.Vadivel, Addl.Govt.Pleader
For Respondents : Mr.S.Sivashanmugam

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The present writ appeal is filed against the order of this Court dated 29.04.2013 made in W.P.No.6253 of 2008 on the file of this Court.

2.Pending appeal, Lakshmidevi, the petitioner in W.P.No.6253 of 2008, who is the respondent in the present writ appeal died and her legal representatives were impleaded as respondents 2 & 3 vide order of this Court dated 12.01.2023 in C.M.P.No.18863 of 2022 in W.A.No.3621 of 2019.

3.The 1st respondent is owner of land in S.No.190/2B1(part) measuring an extent of 33 cents in Chitlapakkam Village, Tambaram Taluk, Chengalpet District. The appellants initiated proceedings under



the Tamil Nadu Urban Land (Ceiling and Regulation) Act 24 of 1978

(hereinafter referred to as “the Act”) alleging that the 1st respondent possessed excess vacant land and passed an order on 31.05.1990 acquiring lands of the 1st respondent. The 1st respondent filed an appeal and the appeal was remanded back to the 2nd appellant. After remand, the 2nd appellant passed an order under Section 9(5) of the Act dated 09.03.1994 holding that the lands in Rajakilpakkam Village are agricultural lands and the extent of 3350 sq.mtrs of land in Chitlapakkam Village is excess vacant land, after allowing 1000 sq.mtrs towards family entitlement.

4. According to the appellants, after order under Section 9(5) of the Act, the 2nd appellant issued notice under Section 11(5) of the Act on 31.10.1996 for handing over possession of excess vacant land by the 1st respondent. The 1st respondent did not hand over the said land. The 2nd appellant took possession of the excess vacant land and handed over to the Revenue authorities.

5. It is the case of the 1st respondent that she was not aware of the proceedings initiated by the 2nd appellant after remand and she came to



know about the same from the Village Administrative Officer, only when she applied for issue of patta in her favour. The 2nd appellant did not take possession of the land from the 1st respondent and as per Section 4 of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “Repeal Act”), the proceedings initiated under Tamil Nadu Urban Land (Ceiling and Regulation) Act by the 2nd appellant lapsed and filed writ petition for the relief stated therein.

6.The appellants filed counter affidavit and submitted that the 1st respondent was aware of the proceedings, at each stage, order passed under Section 9(5) of the Act and notice under Section 11(5) of the Act have been served on the 1st respondent. The possession was taken by the appellants on 12.02.1997 and handed over to the Revenue Authorities. The appellants did not initiate any proceedings till Repeal Act came into force. The 1st respondent filed writ petition only in the year 2008 and the writ petition is liable to be dismissed on the ground of delay and laches. The appellants also stated that they took possession of the land from the 1st respondent on 12.02.1997 and therefore, Section 4 of the Repeal Act is not applicable. The 1st respondent is not entitled for the relief sought for and prayed for dismissal of the writ petition.



7.The learned Judge considering the materials placed before him and files produced by the appellants, held that 1st respondent did not surrender excess vacant land and appellants have not produced any materials to show that they have taken possession from the 1st respondent and allowed the writ petition.

8.Challenging the said order of this Court dated 29.04.2013 made in W.P.No.6253 of 2008, the present writ appeal is filed.

9.The appellants raised various grounds in the present writ appeal. The learned Additional Advocate General appearing for the appellants submitted that writ petition ought to have been dismissed on the ground of delay as the 1st respondent has filed the writ petition after 11 years of taking possession of excess vacant land by the appellants. The possession was taken by the Firka Revenue Inspector, Tambaram and handed over to the Revenue Department on 12.02.1997. The appellants proved the same by producing the file. In view of taking possession on 12.02.1997 itself, the 1st respondent is not entitled to the benefit under Section 4 of Repeal Act and prayed for setting aside the order of the learned Judge and allowing the appeal.



10.The learned counsel appearing for the respondents submitted that the appellants did not take possession of alleged excess vacant land.

Even now the 1st respondent is in possession of the said land. The learned counsel further submitted that this Court and the Hon'ble Apex Court held that when land owner fails to surrender possession, the authority must take possession in the presence of the witnesses by preparing Panchanama. In the present case, no such proceedings was followed. The learned Judge after considering entire materials allowed the writ petition. There is no delay as entire proceedings initiated by the appellants has lapsed on coming into force Tamil Nadu Urban Land and Regulation Ceiling Repeal Act (Act 20 of 1999) and prayed for dismissal of the appeal.

11.Heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel appearing for the respondents and perused the entire materials on record.

12.It is admitted that the 2nd appellant has initiated proceedings and passed order under Section 9(5) of the Act that the 1st respondent is in possession of excess of land measuring 3350 sq.mtrs. Notice under



Section 11(5) of the Act was also issued to the 1st respondent. After issuing such notice, the 1st respondent did not surrender excess land identified by the 2nd appellant. When the 1st respondent did not surrender excess land, the appellants ought to have taken possession by initiating proceedings under Section 11(6) of the Act. Merely stating that possession is taken from the 1st respondent will not amount to complying with the procedure contemplated by this Court and Honb'le Apex Court. The authority can take possession only in the presence of the witnesses after preparing Panchanama and after obtaining signature of the witnesses in proof of taking possession of the land in question. In the present case, the appellants did not follow the procedure. As per the Repeal Act, when possession is not taken from the land owner, the proceedings initiated under old Tamil Nadu Urban Land (Ceiling and Regulation) Act automatically lapsed. In view of the same, there is no question of delay and laches on the part of the 1st respondent. The learned Judge considering all the materials produced before him passed the following order:

“8. However, it has to be seen, as to whether possession was taken from the petitioner. The records



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produced by the learned Additional Government Pleader disclose that the petitioner has not Kulasekaran, the ULT Revenue Inspector, Tambaram has signed the file saying that she has handed over the delivery of possession to Firka Revenue Inspector of Tambaram on 12.2.1997. This will clearly reveal that possession has not be taken from the petitioner. Even in the counter affidavit, it is stated that the petitioner has not surrendered possession of the excess vacant land and hence, it was taken over by the department and handed over to the Revenue Department represented by the Firka Revenue Inspector, Tambaram on 12.2.1997. Even assuming, if the land owner or person in possession fails to surrender the land in his possession, then power is conferred on the respondents to take possession of the land by using force under Section 11(6) of the Act. Since it is not the case of the respondents that the petitioner has surrendered the land under Section 11(5) of the Act, the proceedings under Section 11(6) of the Act should have been taken and there is nothing on record to show that such proceedings were initiated against the petitioner.

9. In the decisions reported in AIR 1975 SC 1767- B.N. Bhagte vs. M.D. Bhagvt and AIR 1996 SC 3377- Tamil Nadu Housing Board vs. A. Viswam, the



Hon'ble Apex court has held that a person shall be deprived of possession only after preparation of a Memorandum or Panchanama signed by witnesses. In the given case on hand, there is nothing in the file to show that the possession has been taken over by the ULT Revenue Inspector, Tambaram in the presence of the witness. Therefore, in my considered view, the claim made by the respondents that possession has been taken over from the petitioner and the possession vests with the respondents cannot be accepted.

10. In view of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, (Act 20 of 1999), the entire proceedings taken under the Act has abated, since the possession has not been taken from the petitioner. As stated already, though it is stated that possession has been taken from the petitioner, there is nothing on record to prove the same, It could be only a paper delivery from one department to another. ”

In view of the above, there is no infirmity in the said order of the learned Judge warranting interference by this Court. The appeal is devoid of merits and is liable to be dismissed.



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13.In the result, the writ appeal stands dismissed confirming the order of this Court dated 29.04.2013 made in W.P.No.6253 of 2008. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (R.H., J)
12.01.2023
(2/2)

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V.M.VELUMANI, J.
and

R.HEMALATHA, J.

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Writ Appeal No.3621 of 2019
and C.M.P.No.23215 of 2019

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