BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.8674 of 2021
and
W.M.P(MD)No.6544 of 2021

K.A.Ramila (Died)

K.A.Ramesh ... Petitioner

[Petitioner is substituted vide Order of this Court, dated 17.11.2021]

Vs.

1. The Commissioner for Land Administration,
   Chepauk, Chennai

2. The Assistant Commissioner,
   Urban Land Ceiling and Urban Land Tax,
   Madurai.

3. The District Collector,
   Madurai District.

4. The Tahsildar,
   Madurai South Taluk,
   Madurai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Mandamus,*** order or direction in the nature of a writ directing the respondents to delete the entry made in Revenue records in respect of the property bearing S.No.245/1 measuring 1.11.5 hectares, Avaniyapuram Village, Madurai South, Madurai District as Urban Land Ceiling excess vacant land and to restore the name of the Petitioner as owner considering the representation of the Petitioner, dated 08.04.2021.

For Petitioner : M/s.G.Prabhu Rajadurai

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for ***Writ of Mandamus,*** directing the respondents to delete the entry made in Revenue records in respect of the property bearing S.No.245/1 measuring 1.11.5 hectares, Avaniyapuram Village, Madurai South, Madurai District as Urban Land Ceiling excess vacant land and to restore the name of the Petitioner as owner considering the representation of the Petitioner, dated 08.04.2021.

2. The brief facts of the case is that the petitioner's father namely C.S.B.K.Rajarammaaiyar executed a registered Gift Deed dated 06.04.1960 in favour of the petitioner to the lands situated in land in re-survey No.243 (1.89 acre), 245 (3.50 acre), 250 (4.42 acres) 252(5.72 acres) and 329 (2.55 acres) Avaniyapuram Village, Madurai South, Madurai District and then Patta No.1078 was issued to the said properties to the petitioner. The said properties are Punja land and were subjected to Manavari cultivation and the petitioner's husband Ananthachari was looking after the same. By virtue of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [herein after referred as 'the Act'] proceedings were initiated against the petitioner's land. Earlier the properties were situated within the limits of Avaniyapuram Town Panchayat and not with Madurai Corporation. The 2nd respondent has published a draft statement Under section 9(1) of the Act and issued final statement under Section 10(1) of the Act on 10.12.1979.

3. As per the final statement, out of the total extent of 70,336.860 square meters comprised in above survey numbers, the petitioner was allowed to retain 3000 square meters and the remaining extent of 67,336.860 square meters was declared as surplus vacant land. The Notification under Section 11(1) was also published in Tamil Nadu Government Gazette dated 05.11.1980 with errata, dated 24.12.1980. The petitioner's husband has preferred an appeal to the Government seeking exemption from the provisions of the Act and the appeal was heard by the Commissioner of Land Reforms, Madras, vide Order, dated 22.02.1983 granted exemption in respect of the lands in S.Nos.243, 252, 329/1 and 250 under Section 5(3) of the Act. In respect of the land in S.No.245, the Commissioner has held that the law will take its course and that the 2nd respondent would take action to acquire the vacant land under Section 9-11 of the Act. Pursuant to the order of the Commissioner, the Government by letter, dated 11.05.1988 informed the Commissioner that the Government is cancelling its earlier order in G.O.Ms.No.2140 dated 29.09.1991. Subsequently, the Commissioner by his communication, dated 13.07.1988 directed the 2nd respondent to proceed under Section 9-11 of the Act in respect of the land in S.No.245 of Avaniyapuram Village.

4. The contention of the petitioner is that she was not aware of these further developments as no proceedings were taken subsequent to the order of the

Commissioner and the petitioner continued to possess and enjoy the properties without any interference. At no point of time any notice was served to hand over the possession or surrender the possession to any officials particularly the respondents. In the meanwhile, the Government repealed Tamil Nadu Act 24 of 1978 by Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999. By virtue of Section 3(1) of the said Act, if the possession was not taken, the proceedings under earlier Act would stand repealed. In the present case the possession was not taken at any point of time and the petitioner has not handed over possession, the proceedings under Act 24 of 1978 would lapse and hence the petitioner continued as the absolute owner of the land.

5. The further contention is that the petitioner had verified the revenue records of the said village, to the surprise of the petitioner in 10(1) Adangal, the land is still shown as surplus vacant land under Tamil Nadu Urban Land Ceiling Act. Hence the petitioner sought for information wherein it was informed that by a certificate issued by the 2nd respondent on 19.02.1997, the possession of the land is shown as if it was handed over to the 4th respondent by the 2nd respondent and a sum of Rs.1,115/- is also remitted in the Revenue

Department accounts, as the petitioner did not come forward to receive the payment. The certificate dated 19.02.1997 is self-serving document as the possession was not taken from the petitioner with any endorsement and not directed to hand over the possession. No officials had come to the property to take possession from the petitioner and the certificate is not the proof of possession taken from the petitioner in accordance with the procedure prescribed under Tamil Nadu Act 24 of 1978. Hence, the petitioner is continued to be the owner of land by virtue of Tamil Nadu Repeal Act 20 of 1999. The petitioner had submitted representation dated 08.04.2021 to correct the records, but the respondents failed to consider, hence the present writ petition for Mandamus.

6. The respondents have filed counter stating that after allowing 3000 square meters towards the family eligibility of the petitioner, an extent of 77336.860 square meters was arrived as excess vacant under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and draft statement under Section 9(1) with Notice under section 9(4) was served to the petitioner on 05.11.1979. Since no objection was raised, the competent authority / 2nd respondent herein issued final statement under section 10(1) of the Act on 10.12.1979 and the notification under section 11(1) was published in the Gazette dated 05.11.1980 read with Errata dated 24.12.1980. Notification under section 11(3) was published in Gazette on 05.08.1981. The government on getting report from the Commissioner of Land Reforms in Rc.No.46331 / 1980 dated 08.07.1981 have order for the acquisition of excess vacant land in G.O.Ms.No.2140 Revenue Department dated 29.09.1981.

7. On issuing final notice under section 11(5) the possession of the excess land was taken on 25.02.1982. The petitioner's husband preferred an appeal under section 33 dated 12.08.1982 to the Commissioner of Land Reforms against the final statement issued under section 10(1) of the Act in SRA27(1)/79(B1) dated 10.12.1979 with the contention that the said survey numbers in Avaniyapuram Village are covered by lay out already approved by the Executive Officer, Avaniyapuram Town Panchayat in its No.34/62-62 dated 10.07.1962 and requested to exempt the same from the provisions of the Act. The appellate authority vide order dated 22.02.1983 held that lands in S. Nos.243,252,329/1,329/3 and 250 will attract the provisions of section 5(3) of the Act and exempt from acquisition proceedings and then after getting approval from the government in Govt. Letter No.23823/01/83-6 dated 11.05.1988 the cancellation notification under section 11(3) was published and restored the land in the name of the petitioner in revenue records. But the appellate authority directed to acquire the excess vacant land in S.No.245 since the S.No.245 is not included in the above said layout.

8. The 2nd Respondent in Rc.No.6379/86/B1, dated 10.04.1987 issued notice under section 9(4) along with statement under section 9(1) to the petitioner requesting to file objections, if any, for the proposed acquisition of excess vacant land measuring 11,150 square meters out of 14,150 square meters in S.No.245 of Avaniyapuram village owned by her. It was served on her on 12.06.1987. The petitioner neither appeared for enquiry nor filed any objections. Orders under section 9(5) of the Act was issued in Rc.No.6379/86(A), dated 12.09.1989 declaring an extent of 11,150 square meters, as excess vacant land after allowing 3000 square meters towards family entitlement and it was sent by RPAD acknowledge by her on 18.09.1989. Final statement under section 10(1) of the Act, was issued on 26.02.1990, sent by RPAD acknowledged by her on 21.03.1990. Notification under section 11(1) of the Act, was issued on 15.06.1990 and published in Tamil Nadu Government Gazette No.27, dated 11.07.1990 @ page Nos.566-567. Erratum to notification under section 11(1) of the Act, was issued on 25.05.1994 and published in Tamil Nadu Government Gazette No.25 dated 29.06.1994 @ page No.609. Then Notification under section 11(3) of the Act was issued on 14.02.1994 and published in Tamil Nadu Government Gazette. Notice under section 11(5) of the Act was issued on 04.11.1994 and the land was vested with Government on 10.09.1994. Necessary entries were carried out in taluk records as S.No.245/1 11150 square meters, as Government ULC lands vide Taluk 8A/02/1406, dated 10.07.1996. The possession of the excess vacant land was taken over by the Revenue Authorities i.e., Tahsildar, Madurai South on 19.02.1997. Order under section 12(6) of the Act was issued for the total amount of Rs.1115/- payable to the urban land owner for the excess vacant acquired from her. Since the land owner did not turn up to receive the same it was kept into Revenue Deposit. After a lapse of 25 years of the possession taken over by the revenue authorities the land owner filed this writ petition is not maintainable. Hence, the respondents prayed to dismiss the writ petition.

9. Heard M/s.G.Prabhu Rajadurai, the Learned counsel appearing for the petitioner, Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for the respondents and perused the material documents available on record.

10. In order to ascertain certain facts this Court had directed the respondents to produce the original records and the same was produced. The petitioner was permitted to peruse the records and make his submission.

11. From the records it is seen that after the order, dated 22.09.1983 passed by the Commissioner of Land Reforms, the respondents had issued notice under section 9(4) dated 14.02.1994 directing the petitioner to submit objections to the draft statement within a period of 30 days. The notice further states if no objection is made or no evidence is adduced it will be assumed that the petitioner have no objection to make and no evidence available to adduce and orders will be passed on that assumption. The said notice was received by the petitioner on 01.03.1994 and there is an endorsement to the effect that the notice is served. Thereafter the respondents issued notice under Section 11(5), dated 04.011.1994 and the petitioner's husband had received the same was received on 23.06.1995, which is evident from the affixture of signature of the petitioner's husband. The said notice reads as under:

> *"Please take notice that the vacant land / land specified in the Schedule below is/are vested with the State Government under sub-section (3) of Scion 11 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 with effect on and from the 10.9.94........... you are requested to surrender or deliver possession of the said land/lands to...Collector, Madurai,.......within thirty days of the service of this notice.*
>
> *2. If this order is not complied with, the said land / lands will be taken possession of by the authority mentioned above after using such force as may be necessary.*
>
> *3. If there are any constructions, they may be removed before the date fixed above. If they are not removed by the owner, they will be removed by the Officer authorised in this behalf to take possession of the said land who shall sell them and keep the proceeds thereof in deposit in the name of the person, after deducting the cost of removal and other incidental charges."*

12. Once the notice under section 11(5) is issued, the petitioner may to voluntarily surrender. When the petitioner had not surrender, then the respondents ought to take proceedings under section 11(6). The provisions under Section 11(5) and Section 11(6) are extracted hereunder:

> ***11. Acquisition of vacant land in excess of ceiling limit:***
>
> ***(5).*** *Where any vacant land is vested in the State Government under sub-section (3) the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.*
>
> ***(6).*** *If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary.*

13. When the owner had received notice under Section 11(5) of the Act, then owner may voluntarily surrender the land. In case, if the owner has not surrendered the land, the respondents is empowered to take over the possession of the land by invoking Section 11(6) of the Act. In the present case, after receiving notice under Section 11(5) of the Act, the petitioner has not handed over the possession under Section 11(5) of the Act, which is an admitted fact. Even after receipt of the notice issued under Section 11(5), when the petitioner failed to surrender or failed to hand over the possession of the land to the respondents, then the respondents have power to take possession forcefully under Section 11(6). On perusing the original file maintained by the respondents, it is seen that only 11(5) notice was issued and there is no evidence to show that that the petitioner had handed over physical possession voluntarily to the respondents. Without taking possession from the petitioner, the revenue authorities have handed over possession to the appropriate authorities through, proceedings, dated 19.02.1997, which will indicate only symbolic possession and hence the respondents have not taken over possession. For which the Learned counsel appearing for the petitioner has relied on the Judgment rendered in W.P.(MD)No. 12959 of 2019, vide order, dated 29.04.2019. The relevant portion is extracted hereunder:

8.....

Hence, the said Certificate at the best can be treated only as a proof of symbolic possession and not that of physical possession, especially, when, admittedly, the land owner has not signed the delivery receipt to establish that either he has handed over possession or that the revenue officials have taken possession in his presence and knowledge. The very same issue was considered by two decisions the Division Bench of this Court in 2015(2) CWC 20 (Mad), R.Siddiah vs. State of Tamilnadu and 2015(1) CWC 388. The Government of Tamilnadu vs. Aalim Muhammed Salegh Trust, Rep by its Managing Trustee, (wherein I am a party) in which this Court found that paper possession cannot be construed as that of possession as required under the Act, since symbolic possession is different from physical possession. It is also found therein that there should be a proof of voluntary surrender of vacant land or forceful dispossession under Section 10(6) of the said and in the absence of such proof, it cannot be construed that physical possession has been taken from the land owner. It is not the case of the respondents that the petitioner has voluntarily handed over possession or that they have dispossessed him forcefully by resorting to procedure contemplated under Section 10(6) of the said Act. Hence, it is evident that the physical possession continues with the petitioner".

14. In the case of Government of Tamil Nadu Vs. Aalim Muhammed Salegh Trust represented by its Managing Trustee, filed in W.A.No.297 of 2011 reported in 2015(1) CWC 388, the Hon'ble Court has rendered more or less the same finding and the relevant paragraph No.10 is extracted hereunder:

> *"10. In our considered view, all the above issues need not be gone into at this stage, as the only relevant issue for consideration is as to whether the land owner was dispossessed by the appellants in pursuant to the impugned proceedings or not. For such purpose, we have perused the files. The files disclose that a notice under Section 11(5) of the Act was issued on the said Baskara Pillai on 28.12.1992, calling upon him to surrender or deliver possession of the subject matter lands. Further, the competent authority addressed the District Collector of the then Chengalpet-MGR District at Kancheepuram, through proceedings dated 28.12.1992 requesting that the Tahsildar, Saidapet may be instructed to take possession of the lands from the urban land owner. Similar proceedings were also addressed to the Tahsildar of Saidapet on the very same day. Thereafter, there is nothing in the files to show that the land owner has either voluntarily surrendered the possession or the authorities have taken steps to take physical possession of the lands forcibly as per the procedures contemplated under the Act. On the other hand, only a Land Delivery Receipt, dated 24.2.1994 is available in the files, which shows that the subject matter lands have been handed over by the Revenue Inspector,*

Poonamallee and taken over by Firka Revenue Inspector, Mori Firka. The said Land Delivery Receipt does not show anywhere that the said Baskara Pillai delivered the possession of the lands on his own or he was dispossessed forcibly, except showing him as the owner. Therefore, it is evident from the perusal of the files that only a symbolic or paper possession was taken by the Revenue officials of the appellants and factual and physical possession was never taken from the hands of the original owner or from the writ petitioner at any point of time".

15. The petitioner further relied on the judgment dated 15.02.2023 passed in W.P.No.3402 of 2007 in the case of M/s Anchor Breweries Limited Vs. State of Tamil Nadu and the relevant paragraph Nos.22 & 23 are extracted hereunder:

"22. In a catena of cases, some of which referred to in the above said paragraphs, it has be held, and by now it is a settled proposition, that after the publication of the declaration under section 11(3), steps should have been taken to the physical possession of the lands declared to be surplus and in case possession was not taken before the advent of the Repeal Act, proceedings the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (Parent Act) shall be deemed to be one continuing as on the date on which Repeal Act came into force and hence the same would stand lapsed and abated by

section 4 of the Repeal Act. Only completed proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 have been saved. Such a completion of the proceeding would have taken place only on taking physical possession of the property after the publication of the declaration under section 11(3). If the owner or the person in possession, pursuant to the declaration was ordered by a notice in writing under section 11(5) of the Act and in obeyance of the order such person surrendered or delivered possession and the same was accepted by the government or the competent authority, then it would have been evidenced by a Delivery Note or the acknowledgment signed by the person concerned. In case of refusal or failure to comply with the order, we cannot expect the authorities to get the signature of the person in the Delivery note. In such cases, physical possession would have he taken even by using force, if necessary. Such act of taking forcible possession would arose only her issuing a notice under section 11(5) Any paper delivery and simple mutation in the revenue records shall not be enough to show that the physical possession of the land was taken by the government.

23. In this case, admittedly no notice under section 11(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 was issued to the petitioner. There is nothing on file to show that after the declaration under section 11(3), possession of the land held to be excess holdings was voluntarily delivered/surrendered by the petitioner either to the government or to the competent authority or anybody authorised by the government in this behalf. There is also no record to *show that after service of notice under section 11(5), forcible possession was taken under section 11(6). In fact, there is nothing on record to show that possession was taken on a particular day. On the other hand, records have been created as if possession of the property was handed over to the Revenue Department on 07.06.1999. The Repeal Act came into force on 16.06.1999. Till the Repeal Act came into force, no notice under section 11(5) came to be issued calling upon the petitioner to surrender or deliver possession of the land to the government. After the Repeal Act came into force, records seem to have been created by making an entry in the revenue records as if possession was delivered to the Revenue Department by the competent authority on 07.06.1999. The same will not be enough to prove that physical possession of the land had been taken prior to the said date. Hence this court has to accept the contention of the learned Senior Counsel appearing for the petitioner that the proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 in respect the property concerned in the writ petition had not been concluded as on 16.06.1999, the date on which the Repeal Act (Act 20 of 1999) came into force repealing the Parent Act, namely Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, since possession of the land had not been taken by the Government or by the competent authority in the manner contemplated under section 11(5) and 11(6) of the Parent Act and that the said proceedings by the advent of the Repeal Act stand lapsed and abated".*

16. But the Learned Counsel appearing the respondents vehemently opposed to the claim of the petitioner and submitted that the petitioner has filed this writ petition belatedly. Moreover, the respondents have taken possession of the lands and in such circumstances, the petitioner cannot re-claim the possession and relied on the Judgment reported in 2010 SCC Online Mad 6305 : (2012) 1 CWC 955 in the case of R.Saraswathi and Ors., Vs. The Special Commissioner & Commissioner Land Reforms, Chepauk, Chennai and Ors. In W.A.No.2275 of 2011 and the relevant Paragraph Nos.17 & 19 are extracted hereunder:

......

> *"17.Further more, waiting from 1999, the appellants have come forward with the above Writ petition only in the year 2005 with a reason that they wanted to incorporate their names in the Revenue records. It was only when the appellants approached the Village Administrative Officer in March 2005 for getting chitta and adangal extracts for the purpose of sub-dividing the property among themselves, they were informed that the lands were already acquired. Then only they came to know about the initiation of Land Ceiling Act by the Government and accordingly, they approached this Court."*
>
> ....

"19. Both on the question of facts and the position of law, the writ petition filed by the appellants cannot be maintained. The background of the facts and the circumstances discussed above were gone into in detail by the learned single Judge and, of course, the finding of the learned single Judge is based on facts and the materials on record. The proceedings referred to in the order passed by the learned Single Judge and a perusal of the records give a clear indication that the competent authority has conducted proceedings strictly in accordance with the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The possession of the property was also taken and it was handed over the Revenue Department as early as on 04.06.1999".

17. The respondents further relied on the judgement dated 06.02.2018 rendered by Hon'ble Division Bench in W.A.No.1104 of 2016 in the case of Special Commissioner Vs. Nagapillai wherein it is held as under:

.....

" 7. The main contention of the learned counsel for the respondent is that since the connected Writ Appeal in W.A.No. 1030 of 2015 was dismissed by the Division Bench, this Writ Appeal also should be dismissed in limine. It is pertinent to mention here that the Writ Appeal No.1030 of 2015 was dismissed on the ground that though one Ramadas was having

land only to an extent of 1180 sq. feet equivalent to 0.027 acre, the Government served notice on him as if he was in ownership and possession of 1500 sq.mt equivalent to 0.38 acres. But, no notice was served on the landowners there in. Notice was served on a wrong person and the landowners having title were not aware of the proceedings. Whereas, in this case, notice under Section 7(2) of the Act was issued on 12.02.1993. The notice under Section 9(4) together with the draft statement under Section 9(1) of the Act was sent in person on 01.11.1996 and later by Registered Post with Acknowledgment Due, which was returned by the postal department with endorsement 'not claimed'. Thereafter, the order under Section 9(5) of the Act, by which, an extent of 6250 sq.mt. of land was declared as excess vacant land, after allowing 500 sq. meters for family entitlement, was passed on 18.04.1997. The said order was received by the respondent on 25.04.1997. After receiving the order, the respondent sent a letter dated 13.05.1997 giving details about the family members and stating that except 5= grounds he sold the remaining lands. The respondent also submitted a copy of the said letter to the first appellant. The final statement under Section 10(1) of the Act was issued on 25.7.1997 and the same was sent to the respondent by Registered post, which was also received by him on 25.07.1997. The notifications under Sections 11(1) and 11(3) of the Act were published on 14.10.1998 and 30.12.1998 respectively. On 10.02.1999, notice under Section

11(5) of the Act was issued directing the respondent to hand over possession of the land and it was alleged to have been served upon him by affixture. Finally, on 01.06.1999, possession of the land is alleged to have been taken and handed over to the revenue department. The competent authority has taken possession of land and it was handed over to the Revenue Department well before the Repeal Act came into force. The respondent has not challenged the said proceedings. There was no proceeding pending as on the date on which the Repeal Act came into force. Further, the respondent even after the receipt of notice under Section 9(5) of the Act, did not file any statutory appeal under Section 33 of the Principal Act. It is not in dispute that only eight years after the repeal Act came into effect in 1999, and 10 years after passing the impugned orders, the respondent has belatedly filed the Writ Petition in the year 2007. Therefore, this writ appeal cannot be equated with the facts of the Writ Petition in respect of which an order was passed in the alleged connected writ appeal in WA.No.1030 of 2015. There is absolutely no explanation forthcoming from the respondent for not challenging the impugned orders at the earliest point of time."

18. The respondents also relied on the judgement dated 13.12.2017 rendered by Hon'ble Division Bench in W.A.No.756 of 2015 in the case of the

Principal Secretary to Commissioner, Land Reforms Vs. B. Govindammal wherein it is held as under:

> *". It is clear from the original file that the competent authority has conducted the entire proceedings strictly and meticulously in accordance with the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The possession of the property was also taken and it was handed over to the Revenue department long prior to the Repeal Act came into force. There were no proceedings pending before the statutory authority as on the date on which the repeal Act came into force."*

19. The aforesaid three Judgements rendered in W.A.No.756 of 2015, W.A.No.1104 of 2016 and W.A.No.2275 of 2011 which are referred by the respondents had specifically recorded the fact that the possession of the property was already taken and handed over to the revenue authorities and hence the claim of the land owners was declined. In the present case, the physical possession was not handed over and therefore, the said Judgments referred by the respondents are not applicable to the present case.

20. The judgments relied on by the petitioner specifically held that when there is no proof of handing over physical possession, then it ought to be taken as symbolic possession. Further it is held there should be proof for voluntary surrender of vacant land under section 11(5) or there was forceful dispossession under section 11(6) and in the absence of such proof, it cannot be construed that physical possession has been taken from the land owner. In the present case also, there is no proof for voluntary surrender of vacant land under section 11(5) or there was forceful dispossession under section 11(6). Further is not the case of the respondents that the petitioner has voluntarily handed over possession or that they have dispossessed the petitioner. In other words, there is no evidence to show that the respondents have taken physical possession, when the owner has not handed over the possession of the land to the respondents. When the petitioner had not handed over the physical possession, the respondents are empowered to take physical possession by invoking Section 11(6) of the Act. But there are no proceedings to this effect. Hence, it is evident that the physical possession continues with the petitioner. Therefore, the aforesaid judgments rendered in W.P.No.12959 of 2019, W.P.No.3402 of 2007 and W.A.No.297 of

2011, which are relied on by the petitioner are squarely applicable to the petitioner's case.

21. Moreover the possession of land is guaranteed under the constitution. The government is empowered to dispossess but the procedure ought to be scrupulously followed, when the same is not followed then the owners are entitled to be protected. Therefore, the claim of the petitioner ought to be allowed and accordingly allowed.

22. The respondents submitted the land was muted on 11.06.2016 in respect of S.No.245/1. Since this Court had held that the petitioner is entitled to reclaim the property, hence the said mutation is cancelled. The respondents are directed to enter the petitioner's name in the revenue records. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of the order.

23. With these observations this writ petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No **11.09.2023**
Internet : Yes
ksa

To:

1. The Commissioner for Land Administration,
   Chepauk,
   Chennai.

2. The Assistant Commissioner,
   Urban Land Ceiling and Urban Land Tax,
   Madurai.

3. The District Collector,
   Madurai District.

4. The Tahsildar,
   Madurai South Taluk,
   Madurai.

<u>S.SRIMATHY, J</u>

ksa

Order made in
W.P.(MD)No.8674 of 2021

11.09.2023