BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.12 of 2014

N.Seethalakshmi ...Appellant

/Vs./

1.The Secretary to Government,
Government of Tamilnadu,
Revenue Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Land Reforms,
Chepauk, Chennai – 5.

3.The Assistant Commissioner of Urban Land Tax,
Trivandrum High Road Murugan Kurichi,
Palayamkottai,
Tirunelveli.

4.The Tamil Nadu Slum Clearance Board,
Rep. By Executive Officer,
Palayamkottai,
Tirunelveli-7. ...Respondents

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 03.11.2010 in W.P.(MD)No.25 of 2009 on the file of this Court and allow the above Writ Appeal.

For Appellant	: Mr.Sharan for Mr.C.Jegannathan
For Respondents	: Mr.T.Amjadkhan Government Advocate (R1 to R3) Ms.Latha (R4)

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.)**

This writ appeal has been filed by the writ petitioner, who was unsuccessful before the Writ Court in challenging G.O.Ms.No.254, Revenue (Urban Land V2) Department, dated 23.03.2006. She had sought a consequential direction to the respondents not to interfere with peaceful possession and enjoyment of the properties in S.Nos.693/2 and 696/3 admeasuring 0.54.5 hectares and 0.55.0 hectares in Palayamkottai

Taluk, Tirunelveli District (land / lands in question). The writ petition was dismissed on 03.11.2010.

2. The narration of facts as set out in detail in the order of the Writ Court is that the lands in question belonged to one Nambi Srinivasan, husband of the writ petitioner, who passed away on 19.06.1989. Even during his lifetime, proceedings had been initiated by the respondents for acquisition of lands in question in terms of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter referred to as 'Act' in short).

3. The Writ Court has found, after considering rival contentions advanced on either side, that possession of the lands had been taken by the third respondent on 30.09.1989 and thus ultimately concluded that the writ petitioner was not entitled to the relief sought.

4. The writ petitioner disputes that possession has, in fact, been taken by the respondents and this Writ appeal thus falls within a very narrow compass. The respondents were directed to supply complete records in order for the Court to appreciate the factual position. Compilation dated Nil, July, 2023 has been filed by the learned Government Advocate appearing for the respondents that reveals the following trajectory of events:

(i) On 06.07.1987, a notice had been issued to the land owner under Section 7(2) of the Act followed by notices under Section 9 (4) thereof.

(ii) An objection was filed by the land owners on 08.10.1987 and the proceedings culminated in order dated 29.07.1988 identifying the lands in S.Nos.693, 696 and 703/1A admeasuring, in toto, 1.49.5 hectares, for acquisition. The land owners were provided with the opportunity of appeal before the Special Commissioner and Commissioner of Land Reforms.

(ii) A final statement dated 30.11.1988 came to be prepared by the competent authority in terms of Section 10(1) of the Act confining the proceedings for acquisition of the lands in S.Nos.693 and 696 alone (in short 'lands in question').

(iii) Proceedings were dropped as regards the land in S.No. 703/1A.

Even prior thereto proceedings had been initiated under the Tamil Nadu Urban Land Tax Act, 1966 (hereinafter referred to as 'ULT Act' in short') in respect of the lands in question.

5. There had been no challenge to final statement dated 30.11.1988 prepared by the competent authority in terms of Section 10(1) of the Act. While this is so, the 1961 Act came to be repealed and the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as the 'Repeal Act' in short') came to be passed, which, in terms of Section 3 thereof, saved the acquisition of lands of which the Government had taken possession in terms of Section 11(3) of the 1961 Act.

6. This aspect assumes importance for the reason that the sole ground argued in writ appeal relates to whether possession of the lands in question had, in fact, been taken by the respondents. For this purpose, the following records assume importance:-

(i) Notification dated 08.06.1989 declaring acquisition of excess vacant land in terms of Section 11(3) of the Act in Form- VI.

(ii) Notice dated 29.07.1981 under Section 11(5) of the Act, relating to surrender or delivery of possession of excess vacant land acquired under Section 11(3) of that Act issued in Form-VII duly served on the writ petitioner, who has endorsed receipt of the same on 11.08.1989. That notice, placed at page 30 of the compilation contains a hand written note that the same has been served on the legal heirs of Nambi Srinivasan, who had passed away pending proceedings.

(iii) Proceedings in P.R.No.74/89 placed at page 33 of the compilation confirm the take-over of possession of the lands in question, and read as follows:

> *"P.R.74/89*
> *List of vacant lands declared as surplus under the*

TNUL (C&R) Act, 78 which belonged to Thiru.L.Nambi Srinivasan and the possession of the lands handed over to the Revenue Inspector, Palayamkottai.

Village	*Kulavanigarpuram*
S.No.	*Extent*
693/2	*0.54.50*
696/3	*0.55.00*

Total	*1.09.50*

Handed over. *Taken Charge*
AR (Signed) 15.09.1989 *(Signed)*
Revenue Inspector
Special Deputy Tahsildar
(Signed) ”

8. The Special Deputy Tahsildhar has endorsed the proceedings under his signature, dated 15.09.1989 and the Revenue Inspector has further endorsed the same stating *'taken charge'* on 15.09.1989. Proceedings continued on 19.09.1989 whereunder the Assistant Registrar reiterates the position that the lands acquired have been taken possession, and have been handed over to the concerned Revenue Inspector.

(iv) Vide proceedings in ROC.No.A2/8460/86 dated 30.09.1989 the Assistant Commissioner (ULT) brings to the attention of the Special Commissioner and Commissioner (Land Reforms) the acquisition and taking possession of the lands in question that have been handed over to the Thasildhar, Palayamkottai on 15.09.1989.

9. In light of the trajectory of events, there is no further ambiguity on the position that the lands in question have been acquired and taken possession by the authorities as early as in September, 1989.

10. Pending these proceedings, the writ petitioner approached this Court by way of writ petitions assailing the proceedings for acquisition as well as levy of Urban Land Tax (in short 'ULT'). In the interest of completion of narration, those writ petitions are also documented in the paragraphs to follow.

11. W.P.(MD)No.2834 of 2006 had been filed seeking a mandamus directing the Assistant Commissioner to hand over the lands in question to the petitioner. The prayer in the aforesaid writ petition

gives a cue that the possession of the lands was already with the respondents as otherwise there was no need for the petitioner to seek a mandamus for return of possession.

12. Various proceedings noted in the preceding paragraphs would establish the position that the possession of the lands in question have been taken by the respondents as early as in 1989. An interim order was obtained on 24.03.2006 from the Writ Court that granted an interim injunction in respect of dispossession alone, if not already dispossessed. That Writ Petition came ultimately to be dismissed as withdrawn by order dated 09.03.2007.

13. The withdrawal was on account of institution of W.P. (MD)No.442 of 2001 before this Court, wherein the prayer was for a Writ of Certiorarified Mandamus challenging proceedings dated 14.09.2000 levying ULT for rejecting the request for refund of tax paid.

14. The learned Judge in order dated 19.01.2007 has referred to the proceedings for acquisition as well. The prayer of the writ petitioner was accepted and the order rejecting the request of refund of ULT came to be quashed on 19.01.2007. The matter was remanded to the file of Assistant Commissioner, ULT for reconsideration bearing in mind the proceedings taken under the Repeal Act as well. The respondents were directed to consider the matter afresh after affording proper opportunity.

15. Though there has been some exchange of proceedings between the parties post the passing of order dated 19.01.2007, there is no compliance of the direction that has been issued in that case till date, as confirmed by learned Government Advocate.

16. Instead, the lands in question were handed over to the Tamilnadu Slum Clearance Board by way of impugned proceedings dated 22.03.2006 triggering, and paving the way for W.P.(MD)No.25 of

2009. No doubt, this is a lacuna, insofar as there is a specific direction for the ULT assessments to be re-done bearing note of the Repeal Act as well, that called for timely compliance. However, we do not find it to be a fatal flaw in light of the official documents that have been produced before us now, establishing the position that the possession of the lands in question has been taken by the respondents as early as in September, 1989.

17. That apart, out attention is also drawn to the Review Petition that was filed by the writ petitioner before the authorities seeking cancellation of the ULT demands, where there are averments that clearly reveal that the writ petitioner was well aware of the proceedings for acquisition as well. A critical factor to be looked into is as to whether orders of acquisition have been the subject matter of challenge or even otherwise, whether possession of the lands in question has been taken by the respondents, which would save such proceedings in terms of Section 3 of the Repeal Act.

18. Admittedly, the orders of acquisition have not been challenged at any stage. The challenge to the Government Order passed in 2006 is itself only by way of writ petition filed in 2009, belatedly. That apart, the clinching factor is that admittedly, possession of the lands in question has been taken in 1989 itself by the respondents. The Writ Court has considered all aspects of the matter in extentso and the conclusions therein are well supported by the official records.

19. Finally, compensation has been determined in respect of lands in question as early as on 06.06.1990 at a sum of Rs.5,475/-, of which 25% was to be received in cash by the writ petitioner and the balance was to be remitted over a period of 15 years in equal installments carrying interest at the rate of 6% with effect from 10.07.1989. In this case, though the cash component was adjusted against previous arrears of ULT, some of the subsequent installments have infact been received by the writ petitioner. The receipts have placed at pages 51 to 53 of the

compilation filed by the respondents.

20. No doubt the factum of such receipt of consideration would not, by itself, establish the case of the respondents, as the savings clause in Section 3(2)(b) of the Repeal Act provides for refund of compensation in those cases where possession has not been taken. However, in this case, possession has admittedly been taken by respondents.

21. In light of the discussion as above, this Writ Appeal is dismissed. No costs.

[A.S.M.J.,] & [R.V.J.,]
19.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
sm

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

sm

TO:

1.The Secretary to Government,
Government of Tamilnadu,
Revenue Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Land Reforms,
Chepauk, Chennai – 5.

3.The Assistant Commissioner of Urban Land Tax,
Trivandrum High Road Murugan Kurichi,
Palayamkottai,
Tirunelveli.

Judgment made in
W.A.(MD)No.12 of 2014

Dated:
19.07.2023