



W.P(MD)Nos.13965 & 13966 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.13965 & 13966 of 2014

and

M.P.(MD)Nos.1 & 1 of 2014

In W.P.(MD)No.13965 of 2014

Nalla Meeral Beevi

... Petitioner

Vs.

**1.The Assistant Commissioner,
Urban Land Ceiling,
Tirunelveli.**

**2.The Tahsildar,
Tirunelveli Taluk,
Tirunelveli.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to forbear the first respondent from taking physical possession of the land to an extent of 0.61.68 hectares situated in S.No.785, Suthamalli Village, Tirunelveli Taluk, Tirunelveli from the petitioner on the basis of the order declaring the land as surplus in R.O.C.No.A1/1123/95, dated 31.10.1995 and further direct the second respondent to effect change of patta in the name of the petitioner.



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W.P(MD)Nos.13965 & 13966 of 2014

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

In W.P.(MD)No.13966 of 2014

M.A.S.Akbar Zindha Mohideen (died)

2.Nalla Meeral

3.Peer Fathima

4.Mohammed Abdul Latheef

5.Mahamudal Ibrahim

6.Ameena Saliha

(the petitioners 2 to 6 are impleaded vide order
dated 01.08.2023 in W.M.P.(MD)No.15487 of 2023)

... Petitioners

Vs.

1.The Assistant Commissioner,
Urban Land Ceiling,
Tirunelveli.

2.The Tahsildar,
Tirunelveli Taluk,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to forbear the first respondent from taking physical possession of the land to an extent of 1.44.88 hectares situated in S.No.766/1, Suthamalli Village, Tirunelveli Taluk, Tirunelveli from the petitioner on the basis of the order declaring the land as surplus in

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R.O.C.No.A1/1123/95, dated 31.10.1995 and further direct the second respondent to effect change of patta in the name of the petitioner.

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For Petitioners : Mr.H.Arumugam

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

COMMON ORDER

W.P.(MD)No.13965 of 2014 was filed by Nalla Meeral Beevi, while the other writ petition was filed by her husband. The petitioner in W.P.(MD)No.13966 of 2014 is no more and his legal heirs have come on record.

2. The subject matter of these writ petitions is comprised in Survey No.766/1 and 785/1, Suthamalli Village, Tirunelveli Taluk. The proceedings were initiated under the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. According to the Government, 2.06.56 hectare of land was the urban excess vacant land. The proceedings were initiated and final notice under Section 11(5) of the Act was also issued. It is not in dispute that Thiru.M.A.S.Akbar Zindha Mohideen received 25% of the compensation immediately. The Government proposed to pay the remaining balance amount in 13 installments. Since he refused to

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receive the balance amount, the same was kept in the revenue deposit.

These proceedings had taken place during the period from 1979 to 1982. The land owner filed W.P.No.11122 of 1996 before the Madras High Court and an interim order was also granted on 23.08.1996. The writ petition was transferred to Tamil Nadu Land Reforms Special Appellate Tribunal and re-numbered as T.R.P.No.407 of 1999. The said petition came to be dismissed on 14.11.2000. In the meanwhile, the Urban Land Ceiling Act itself was repealed on 16.06.1999. The case of the petitioner is that they continue to remain in possession and in view of the repealing of the Act itself, this Court should not only restrain the first respondent from taking physical possession of the land declared as excess but also direct the jurisdictional Tahsildar to issue patta in their favour.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for. His primary contention is that possession is still with the petitioners and that this Court should liberally construe the provisions of the repealing Act.



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4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The learned Additional Government Pleader would contend that the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 were not challenged as contemplated by the statute. Instead, the writ petition was filed in the year 1996. It was transferred to the Tribunal. The Tribunal eventually dismissed the petition. The order passed by the Tribunal was never assailed by the writ petitioners. The finding set out therein holds good. So long as the findings have not been vacated, the writ petitions are not maintainable. He also pointed out that one of the items involved was the subject matter of O.S.No.845 of 1996 on the file of the PDM, Tirunelveli.. Even while dismissing the suit vide Judgment and decree dated 17.04.2003, the trial Court had recorded the testimony of M.A.S.Akbar Zindha Mohideen that he is not in possession of the subject land. He therefore submitted that possession was taken over by the Government way back in the year 1982 and that the petitioners cannot claim advantage of the repealing Act. He pressed for dismissal of the writ petition.



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5. I carefully considered the rival contentions and went through the materials on record.

6. Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was enacted to give effect of the socialistic principles. The said Act came to be repealed vide Tamil Nadu Act 20 of 1999. Section 3 & 4 of the Act read as follows:-

“ 3. Savings:- (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 21 or any action taken thereunder.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 11 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings. - All proceedings relating to any order made or purported to be made under the principal Act



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pending immediately before the commencement of this Act, before any court, tribunal or any authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.”

7. A careful reading of the aforesaid provisions would indicate that the entire issue boils down to this namely, whether possession of the land remains with the writ petitioners or it had been taken over by the department. It is true that the original writ petitioner in W.P. (MD)No.13966 of 2014 obtained an interim order in his favour on 23.08.1996 in W.M.P.(MD)No.14889 of 1996 in W.P.No.111292 of 1996. The prayer in W.M.P. was as follows:-

“Petition praying that the High Court will be pleased to grant ad-interim injunction restraining the respondent or their subordinate from in any way dealing with the lands in S.No.785/1 and 766/1 in Suthamalli Village, Tirunelveli Taluk, Tirunelveli Kattabomman District pending disposal of the above writ petition.”

Grant of injunction in such W.M.P cannot advance the case of the writ petitioners. If any finding of fact had been recorded that the writ petitioner was in possession and that he should not be dispossessed,



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that would be a different matter altogether. But that is not the case.

The only injunction which the writ petitioner obtained was to restrain the authorities from dealing with the petition mentioned lands. The learned Additional Government Pleader appearing for the respondents drew my attention to the writ prayer. It reads as follows:-

“Writ Petition No.11122 of 1996 was filed in the High Court praying for the issue of a Writ of Certiorarified Mandamus calling for the records from the file of the respondents in their proceedings No.SRA 17/79, dated 25.08.80 on the file of the second respondent and EE3/28365/95, dated 20.10.19956 and j1/40232/95, dated 30.01.1996 on the file of the first respondent and quash the same and further direct the respondents to restore the lands in survey No.785/1 and 766/1 in Suthamalli Village, Tirunelveli Taluk, Tirunelveli Kattabomman District which were acquired under the Tamil Nadu Land Ceiling and Regulation Act, 1976.”

The writ petitioner therein sought restoration of the lands. Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 reads as follows:-

“(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”



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8. In this case, it has been mentioned in the counter affidavit that notice under Section 11(5) of the Act was issued and thereafter, possession was also taken over in the year 1982 and mutation was also made in the revenue records. The handicap expressed by the learned Additional Government Pleader is that the files were produced before the civil Court and therefore, the relevant document could not be produced before this Court. But the present case is not the first round of litigation. The writ petition filed by M.A.S.Akbar Zindha Mohideen was transferred to the tribunal and it was taken up for final disposal only on 14.11.2000. It is not as if an exparte order was passed. The petitioner was represented by counsel. The repealing Act had come into force on 16.06.1999 itself. If the possession was still with the land owner, advantage would have been taken under Section 4 of the Repealing Act (Tamil Nadu Act 20 of 1999). That such an argument was not advanced would definitely come in the way or definitely raising the very same contention in the next round. Paragraph No.5 of the order dated 14.11.2000 passed by the tribunal reads as follows:-



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“(5) Point:- The relief prayed for in this petition is to quash the order dated 20.10.1993 passed by the Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5 and to direct the respondents to restore the excess land to him. The said impugned order dated 20.10.1995 states as follows:-

“I find from the records that the excess vacant land measuring 20656 sq.mt. In the case lands was handed over to the Tahsildar, Tirunelveli Taluk on 13.04.1991. The appellant has received 25% amount and also 13 installment amount so far as payment for the excess vacant lands acquired from him.

In view of the reasons set out in para 3 above, the appeal petition is dismissed.”

9. In O.S.No.845 of 1996 on the file of the PDM, Tirunelveli conducted between Umar Pulavar Mohideen and others on the one hand and M.A.S.Akbar Zindha Mohideen and others as defendants, M.A.S.Akbar Zindha Mohideen was examined as D.W.1. In Paragraph No.14 of the judgment rendered by the trial Court, it has been categorically mentioned that M.A.S.Akbar Zindha Mohideen admitted that the writ petition was dismissed and that the suit property was in the possession of the Government. The trial Court had rendered a categorical finding that the suit property was not in the possession of M.A.S.Akbar Zindha Mohideen.



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10. In view of the aforesaid three aspects namely the findings rendered by the civil Court in O.S.No.845 of 1996, the findings rendered by the Tribunal vide order dated 14.11.2000 and the writ prayer in W.P.No.11122 of 1996 categorically showing that possession was lost by the petitioners and that a stale claim was sought to be revived a full 14 years after parting with possession, I come to the conclusion that possession is not with the petitioners. Both the writ petitions necessarily fail. These writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.



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To

1.The Assistant Commissioner,
Urban Land Ceiling,
Tirunelveli.

2.The Tahsildar,
Tirunelveli Taluk,
Tirunelveli.

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