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W.A.No.1612 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Writ Appeal No.1612 of 2021
and
C.M.P.No.10049 of 2021

1. The Competent Authority,
Tamil Nadu Urban Land
(Ceiling and Regulation) Act,
Tambaram, Chennai - 600 088.
2. The Assistant Commissioner,
Tamil Nadu Urban Land
(Ceiling and Regulation) Act,
Tambaram, Chennai - 600 088.
3. The Director,
Urban Land Ceiling and
Regulation Act,
Chennai - 600 005.
4. The Tahsildar,
Tambaram, Chennai.

... Appellants

Vs.

A.Arjunan

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the



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order dated 09.07.2018 made in W.P.No.14442 of 2003.

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For Appellants : Mr.A.Selvendran
Special Government Pleader

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The *lis* on hand has been instituted challenging the order dated 09.07.2018 passed in W.P.No.14442 of 2003.

2. The State is the appellant before us. The respondent filed the writ petition challenging the proceedings of the Assistant Commissioner of the Tamil Nadu Urban Land (Ceiling and Regulation) Act dated 27.08.1997.

3. Curiously, the order of the Assistant Commissioner itself has been challenged by way of writ petition after a lapse of about 6 years. Therefore, the writ petition itself hit by the principles of laches. The respondent/Mr.A.Arjunan has stated that he was in possession of 50 cents of



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land in S.No.23/2B4 in Vengadamangalam Village in Chengalpattu Taluk, which has been assigned to him *vide* Deed of Assignment dated 12.02.1980 executed by the Government of Tamil Nadu under the provisions of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965.

4. Admittedly, the respondent received a certified copy dated 29.05.2002 of an order bearing C.P.No.194/95B dated 27.08.1987 passed by the Assistant Commissioner under Section 9 (5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 stating that an extent of 1,050 sq.m. in excess of the permissible limit of 500 sq.m. of the subject land was proposed to be acquired under the provisions of the Principal Act.

5. Mr.A.Selvendran, learned Special Government Pleader appearing on behalf of the appellants would contend that the procedures as contemplated under the Act and Rules were followed by the Authorities and the original file would reveal that the notice was served to the respondent. The learned Single Judge allowed the writ petition solely on the ground that Section 11(6) notice has not been served on the respondent. In the writ order, it is observed that the appellant/State has not placed any materials before the



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writ court to show that the petitioner has surrendered the physical possession of the land at any time voluntarily after the notice dated dated 18.01.1999 under Section 11 (5) of the Principal Act. There is no material to show that the appellants herein, had taken possession of the land by use of force from the respondent under Section 11(6) of the Principal Act after a lapse of a period of 30 days from the date of service of that notice dated 18.01.1999 till 16.06.1999, when the Repeal Act came into effect. Based on the said observations, the learned Single Judge allowed the writ petition under the pretext that the Authorities have failed to serve notice under Section 11(6) nor initiated action to take forcible possession of the land within a period of 30 days.

6. The original file has been produced before this Court. Learned Special Government Pleader would submit that Section 11(5) notice was affixed and under Section 11(6) possession was also taken by the Authorities. Since, it is a vacant land, question of forcible possession would not arise at all. The Authorities have conducted survey, identified the land and taken possession. Once Section 11(5) has already been affixed, there is a reason to form an opinion that the Government has not taken possession of the land.



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Question of taking possession of vacant land forcibly by the Government would not arise at all. The original file would reveal that the procedures as contemplated under the Act was followed.

7. In this context, the Hon'ble Supreme Court of India in the case of ***State of Assam Vs. Bhasker JyothiSarma and Ors.*** reported in (2015) 5 SCC 321 observed as follows:

....15...."the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

...18.In the result, these appeals succeed and hereby allowed.

8. In the case of ***Balwant Narayan Bhagde vs. M.D.Bhagwat and other*** reported in ***AIR 1975 Supreme Court Civil Appeal Nos.75 and 76 of 1974 dated 23.04.1975***, it is stated as follows:



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"But here, in our opinion, since the land was laying follow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspection the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it"

9. In the case of ***Tmt.Sulochana Chandrakant Galanda Vs. Pune Municipal Transport and Ors,*** in Civil Appeal No.492 of 2007, it is observed as follows:

"34. the aforesaid factual position makes it clear that the appellant is not entitled for any relief whatsoever as per the law,



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as it exists today. The land once vested in the State cannot be divested. Once the land is vested in the State it has a right to change the user. The appellant cannot be heard raising grievance on either of these issues.

35. Thus, in view of the above, the appeal lacks merit and is accordingly dismissed. No order as to costs."

10. We are of the opinion that upto Section 5 proceedings, there is no dispute and it was followed by the Authorities. Section 11(5) notice was affixed by following the procedures. Section 11(6) pertains to taking of possession. The learned Judge observed that the Government has neither taken possession forcibly nor the respondent handed over the possession. Such a question would not arise in respect of a vacant land. In the present case, once Section 11(5) notice has been issued and the Authorities surveyed and identified the land, question of forcible possession would not arise at all. For all purposes, it is to be construed that the land vest with the Government and the Authorities competent have taken possession. In the event of holding that the Authorities have not taken forcible possession, then the very purpose and objective of the Act will be defeated and every person will claim that they are in possession of the land, which was already taken over by the Government under the Land Ceiling Act. Therefore, such a ground raised



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deserves no merit consideration.

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11. For all these reasons, the Writ appeal deserves to be considered.

Accordingly, the order dated 09.07.2018 passed in W.P.No.14442 of 2003 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [C.K.J.]
06.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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