IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WA.No.269/2022 & CMP.Nos.1919/2022 & 7617/2024

1.The Competent Authority of Urban
Land Ceiling and Assistant Commissioner
of Urban Land Tax, Madhavaram
Chennai-29.

2.The Competent Authority
Chennai Trichy Madurai
Pipeline Project,
4/2, Arockiasamy Street
Crawford Colony, Trichy-12.

3.The State of Tamil Nadu
rep.by the Secretary to Government
Revenue Department
Secretariat, St.George Fort,
Chennai-5. ... Appellants

Vs.

1.Sadhana Goel
2.Sashi Goel ... Respondents

Prayer : Writ Appeal filed under Section 15 of Letters Patent against the order dated 28.06.2019 made in WP.No.28072/2005.

For Appellant : Mr.A.Selvendran, Spl.GP
For RR 1 & 2 : Mrs.A.L.Gandhimathi, Senior counsel for Mr.G.Ilangovan

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

(1)The present writ appeal is directed against the order of learned Single Judge dated 28.06.2019 made in WP.No.28072/2005 by the official respondents in the writ petition which was filed by the respondents herein for issuance of a writ of certiorari to quash the proceedings dated 30.11.1985 and 15.11.1991 respectively of the 1st appellant.

(2)Brief facts that are necessary for the disposal of this appeal are as follows:-

(3)The respondents herein, who are the writ petitioners, purchased an extent of 0.97 cents of land in S.No.253/1 which was subsequently sub-divided as 253/1A2 and 253/1B by two Sale Deeds dated 17.05.1984 and

31.05.1984 respectively for a valuable consideration. It is the specific case of the writ petitioners/respondents herein that they are in absolute possession and enjoyment of the land. It is further stated that revenue records were also changed in the name of writ petitioners and patta in respect of the property stands in the name of the respondents/writ petitioners. It is the further case of respondents/writ petitioners that during first week of July 2005, the 1st appellant threatened to dispossess the writ petitioners/respondents under the pretext that the lands were the subject matter of acquisition under the Tamil Nadu Urban Land Ceiling Act [in short "the Act"].

(4)It is further stated that on verification of records, the writ petitioners / respondents came to know about the urban land ceiling proceedings initiated under the Act only against the erstwhile owner. Though the lands were purchased by the writ petitioners in 1984 and patta was also transferred in their name, it is stated that no notice was issued to the respondents / writ petitioners at any point of time under the Act. The Tamil Nadu Urban Land [Ceiling and Regulation] Act, 1978, was repealed in 1999. However, it is stated that the 2nd appellant herein is trying to take coercive steps to dispossess the respondents/writ petitioners. It in in these circumstances, the writ petition came to be filed.

(5)It is admitted before this Court that the lands were originally owned by one Sri.Siman and Sri.Lesile, sons of one Mathew. Through the Power of Attorney agent of the original owner, the property was sold in favor of the respondents/writ petitioners vide two documents. Even though the proceedings were initiated against the erstwhile owners just one year before the writ petitioners purchased the property, it is admitted that no notice was issued to the respondents/writ petitioners any time thereafter. From the records it is admitted that a notice dated 09.06.1983 was issued originally under Section 7[2] of the Act. After receipt of such notice, the erstwhile land owner contended that the land is used for agriculture and therefore, the provisions of Tamil Nadu Urban Land Ceiling Act are not attracted. However, on the basis of the report of the Deputy Tahsildar, dated 21.11.1983, notice was once again issued to the erstwhile owner under Section 7[2] of the Act on 05.12.1983 through RPAD. Since the previous owners did not inform about the sale of the land in favour of respondents/writ petitioners, it is contended by the appellants that the proceedings initiated against the erstwhile owner is binding on the writ petitioners as any alienation after commencement of the Act is wholly void. It is also stated that the previous owner did not produce records to show that the land was used for agriculture purpose and therefore, the appellants continued the proceedings against the original owner. It is also stated that the excess land was handed over to the revenue authorities on 15.10.1992.

(6)The learned Single Judge of this Court after recording the contentions of the writ petitioners/respondents held that no notice was issued to the writ petitioners before taking possession of the lands in terms of Section 11[5] of the Act. Since no notice was issued to the writ petitioners who are in physical possession of the property, the learned counsel appearing for the respondents contended that possession cannot be treated as taken under Section 11[5] of the Act without notice to the respondents/writ petitioners. Since patta had been transferred in the name of respondents/writ petitioners, the learned Single Judge held that the entire proceedings initiated against the erstwhile owner is illegal and void.

(7)Referring to the judgment of this Court in ***V.Somasundaram and Others***

Vs. Secretary to Government rep.by its Secretary, Revenue Department, Chennai and Others [2007 [1] MLJ 750], the learned Single Judge of this Court also found that Section 11[5] notice was not sent to the writ petitioners herein. The competent authority is bound to issue notice in writing to any person and further held that the argument of the appellants that they had taken possession without notice to the respondents/writ petitioners, is not acceptable. Since the Tamil Nadu Urban Land [Conversion and Regulation] Act, 1978, is repealed with effect from 16.09.1999, the learned Judge while allowing the writ petition held that proceedings initiated under the Act should be closed as abated.

(8)Mr.A.Selvendran, learned Special Government Pleader appearing for the appellants submitted that the respondents/writ petitioners have come before this Court with the delay of 13 years as possession of land was taken over on 18.05.1992. Since the Sale Deed in favour of the respondents herein is after the introduction of the Act, in 1978, learned Special Government Pleader submitted that the Sale Deed obtained by the respondents/writ petitioners is void and the respondents are bound by the final order and the writ petition is liable to be dismissed on the ground of delay and laches.

(9)This Court is unable to countenance any of the submissions of the learned Special Government Pleader as the issues raised are no more *res integra* in view of several precedents of this Court and Hon'ble Supreme Court.

(10)One of us [S.S.SUNDAR, J.] has considered similar issue earlier in the case of ***M/s.Forgetech Pvt. Ltd Vs The Special Commissioner & Commissioner of Land Reforms, Chennai and Others [WP.No.2967/2019 order dated 09.02.2021]*** and held in favour of the purchaser when physical possession was not taken from the writ petitioner therein. In the said case, this Court has held as follows:-

> *"21. The learned counsel for the petitioner strenuously contended that the Act contemplates that if the persons in possession failed to deliver possession within 30 days of receipt of notice under Section 11(5), the Competent Authority has to take possession under Section 11(6) of the Act. The learned counsel has brought to our notice that the words "may for that purpose use such force as may be necessary" used in 11(6) indicates that to take actual possession, the Competent Authority is clothed with power under*

Section 11(6). In the absence of delivery of possession by land owner pursuant to notice under Section 11(5), the possession should have been taken through the manner suggested under Section 11(6). Since the notice under Section 11(5) was not even served, the symbolic possession is not a possession as contemplated under Sections 11(5) and 11(6) of the Act. The learned counsel for the petitioner also produced various receipts for payment of tax and the latest receipt is dated 07.03.2007 and various electricity bills including the last one dated 14.11.2008 besides Small Scale Industries Registration Certificate about the carrying on the manufacturing of bricks, in support of his submission that the concerned lands are in his actual possession.

22.The learned Special Government Pleader vehemently argued that symbolic possession is sufficient when the actual take over of possession is not contemplated under the Act. We are not in agreement with that submission in view of the categorical pronouncements of this Court referred to above.

23.Once the possession is not taken over by the Government as held by us, all the proceedings under the Act must be held to have abated under Section 4 of the Repealing act, in view of the categorical pronouncement of the constitutional Bench of the Honourable Apex Court in Smt.Angoori Devi Vs. State of Uttar Pradesh and Others reported in JT 2000 (Suppl.1) SC 295." In the above case, a similar argument was considered by the Division Bench. It was contended by the Revenue that no notice need be given to the purchaser, as the sale in 1980 was hit by Section 6 of the Act. Rejecting the said contention, the Division Bench accepted the case of the appellant that a person in possession of the land is entitled to notice to surrender or deliver possession of land to Government and, in the absence of actual physical possession being taken from the person in possession, all proceedings under the Act must be held to have abated under Section 4 of the Repeal Act.

13.The Hon'ble Supreme Court, in the case of Vinayak Kashinath Shilkar v. Deputy Collector and

Competent Authority, 2012 (4) SCC 718, with reference to Urban Land (Ceiling and Regulation) Act,1999, as applicable to State of Maharashtra, held that while possession of the vacant land had not been taken over by the State Government, proceedings under the old Act would not survive. It was further held that mere vesting of vacant land with State Government by operation of law without actual possession is not sufficient for operation of Section 3 (1) of the saving clause of the Repeal Act. It is to be pointed out that the provisions of Maharashtra Act are in pari materia and, therefore, the decision of the Hon'ble Supreme Court can be applied to the present case.

14.Another Division Bench of this Court, in Government of Tamil Nadu and Others v. M/s.Mecca Prime Tannery, rep.by its Managing Director, 2012 (4) L.W.289, had an occasion to consider the tenability of the arguments advanced by the respondents in the present case to the effect that the Government became the owner of the property after vesting of the land under Section 11 (3) of the Act and that even if *possession of the land is retained by the land holder or any other person, it will be considered as unlawful and illegal. The Division Bench negatived the argument and held that the appeals of the State were liable to be dismissed on the ground that the Revenue failed to satisfy the Court that possession of the land was taken over by the competent authority.*

15.In view of the categorical pronouncements of the Hon'ble Supreme Court and also the Division Benches of this Court, this Court, agreeing with the principles laid down therein, coupled with the reiterated precedents, holds that the petitioner, though had purchased the property in the year 1982, is entitled to claim the benefit of Section 4 of the Repeal Act. Accordingly, the impugned proceedings initiated by the respondents against the erstwhile owner shall be treated as abated and the lands, which are the subject matter of proceedings under the Act, stood released from the purview of the Act so as to enable the petitioner to deal with the property as the absolute owner. Third respondent or any other revenue authority concerned is directed to incorporate the *name of the petitioner as the owner in respect of the lands in question in the revenue records."*

(11)The same issue was subsequently considered by a Division Bench of this Court in which one of us is a party [SSSRJ]. In ***WP.No.12354/2002, vide order dated 04.11.2022,*** the Division Bench has reiterated the position elaborately after referring to several judgments. The view expressed by learned Single Judge is in tune with our judgments in similar cases. The contentions of Mr.A.Selvendran, learned Additional Advocate General do not impress in having regard to the admitted facts.

(12)In the instant case, the fact that the respondents/writ petitioners are in possession of the property is not in dispute. Even though it is stated that proceedings were initiated against the erstwhile owner, as admitted, physical possession was never taken from the respondents/writ petitioners. Unless physical possession had been taken under Section 11(5) of the Act, repeal of the Act as per the Repealing Act would come into play and the proceedings so far under the Urban Land Ceiling Act would abate. This Court, in the said judgment, also reiterated that there cannot be paper delivery and there must be actual physical possession being taken after issuing notice to the person in possession.

(13)It is surprising to note that the appellants have now filed the above appeals knowing fully well that the writ petitioners are in physical possession. Patta, chitta, adangal and kist receipts produced by respondents are not disputed. It is also admitted by appellants that no notice was issued to the petitioners at any point of time. Despite the fact that the petitioners have narrated the crucial facts about their title and that they are in exclusive possession and enjoyment as seen from revenue documents, the appellants have chosen to file appeals. Accordingly, **these Writ Appeal is dismissed.** No costs.

[S.S.S.R., J.] [K.R.S., J.]
12.09.2024

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