



Writ Appeal No.2376 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
01.07.2024

PRONOUNCED ON
08.08.2024

CORAM

**THE HONOURABLE MR. ACTING CHIEF JUSTICE
D. KRISHNAKUMAR**

AND

THE HONOURABLE MR. JUSTICE K. KUMARESH BABU

Writ Appeal No.2376 of 2022
and C.M.P.No.18062 of 2022

1. The State of Tamil Nadu,
Represented by the Secretary,
Revenue Department,
Fort St. George, Chennai – 600 009.
 2. The Special Commissioner and Commissioner for
Land Ceiling and Urban Land Tax,
Chepauk, Chennai – 600 005.
 3. The Assistant Commissioner for Urban,
Land Tax and Ceiling (Competent Authority),
Tambaram Zone, Adambakkam,
Chennai – 600 088.
 4. The Tahsildar,
Saidapet, Chennai.
- ... Appellants

Vs

Uthirakumar (Died)
1. R. Parasuraman
2. P. Geetha



Writ Appeal No.2376 of 2022

3.P.Paramila
4.P.sivakumar
5.P.Renuka
6.P.Vinothini
7.P.Usha
8.Rani
9.Chandra
10.Jothi
11.Lakshmi
12.Vanaja

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 29.07.2019 made in W.P.No.9338 of 2006 and pass such further order.

For Appellants : Mr.V.Manoharan
Additional Government Pleader

For Respondents : Mr.K.Govi Ganesan

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred challenging the order of the learned Single Judge, who had held that the Urban Land Proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation), 1978 had stood abated in view of the Repeal Act 20 of 1999.

2. Heard Mr.V.Manoharan, learned Additional Government Pleader



Writ Appeal No.2376 of 2022

for the appellants and Mr.K.Govi Ganesan, learned counsel for the respondents.

3. Mr.V.Manoharan, learned Additional Government Pleader for the appellants would contend that the lands held by one Annamal was in surplus to the lands a person is entitled to hold under the 1978 Act. Hence, proceedings were initiated in the year 1988 and notices were all served on the land owners. He would contend that some of the notices are being received by the legal heirs of the said Annamal, but, however they have not indicated that the said Annamal was no more. Had such an indication had been made by her legal heirs, then appropriate proceedings would be initiated against the surviving legal heirs. However, such notice was not intimated to the Authorities and had also taken symbolic possession of the land. When such possession has been taken, then the respondents would not be entitled to the benefit of the Repeal Act, 1999. He would submit that however, the learned Single Judge without considering the same had allowed the Writ Petition filed by the respondents. He would further submit that once the land has been vested with the State, then it cannot be divested and such divesting can only be done in accordance with the provisions of



Writ Appeal No.2376 of 2022

the Enactment. Therefore, he would seek interference with the orders passed by the learned Single Judge.

4. Countering his arguments, Mr.K.Govi Ganesan, learned counsel appearing for the respondents would contend that Annamal, the original owner had died on 12.03.1984. Admittedly, the proceedings had been initiated much after the death of the said Annamal. He would submit that no physical possession of the lands had been taken by the appellants. He would further submit that even the Transfer Charge Certificate issued by the Revenue Inspector, Alandur would indicate that he had taken only symbolic possession on 15.10.1999 and even in the said Transfer Charge Certificate, he had indicated that there was a structure standing in the land. When that being so, at no stretch of imagination, without removing the structure by dispossessing the occupier of the land, no physical possession could have been taken and hence, he would submit that there is no infirmity in the order passed by the learned Single Judge. Further, he had also relied upon a judgment of the Division Bench of this Court in W.A.No.1194 of 2018 dated 22.08.2023 in which one of us (D.K.K.J., A.C.J.) was a party and



Writ Appeal No.2376 of 2022

contended that the possession of the land has not been taken as indicated in the said order.

5. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on records.

6. It is trite law that any proceedings, particularly a proceedings initiated to disposses a person of his immovable property would have to be preceeded with a notice to the respective individuals. It has been repeatedly held by the Hon'ble Apex Court as well as the High Court that the notices that are sought to be served on a dead person is invalid under law. The appellants have not disputed the fact that the land owner, Annamal died in the year 1984. It is also an admitted fact that the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation), 1978 had been initiated in the year 1988. Notices under the Enactment had been issued in the name of Annamal who had died in the year 1984 and had been proceeded with.



Writ Appeal No.2376 of 2022

Therefore, as rightly submitted by the learned counsel for the respondents and held by the learned Single Judge, any Proceedings initiated against a dead person is an *non-est* proceedings and all further proceedings thereon would also have to be held as *non-est*.

7. It is also not disputed that the Repeal Act 20 of 1999 had envisaged that in cases where no physical possession had been taken on conclusion of the proceedings under the Act 1978, then all such proceedings shall abate.

8. A reading of the alleged land Transfer Charge Certificate would clearly indicate that only a symbolic possession of the land had been taken. However, what has been envisaged under the Act, 1978 is taking actual possession of the land. The Hon'ble Apex court as well as this Court in various number of cases has held that in cases where only symbolic possession has been taken by the Repealed Act, the proceedings under the Act, 1978 would become abated. Further, from the judgement relied upon by the learned counsel for the respondents, it could be seen that the



Writ Appeal No.2376 of 2022

Division Bench of this Court had held that it is the onus of the Authorities to establish that while taking the physical possession invoking Section 11(6) of the Principal Act, in which the land owner is not a signatory, then such possession should be taken either in the presence of an independent witness or by preparing a Panchanama with the independent witnessess who had subscribed their names to the said Panchanama. What had been placed before this Court is only a Transfer Charge Certificate and not any Panchanama evidencing to take possession in the manner known to law. With the aforesaid reasons, we are of the conclusive view that the actual possession of the land had not been taken from the respondents to deny the application of the Repealling Act. Hence, the proceedings initiated in respect of the land would automatically stand abated.

9. For the aforesaid reasons, we do not find any infirmity or illegality in the order passed by the learned Single Judge warranting interference of this Court.

10. In fine, this Writ Appeal fails and is accordingly, dismissed.



Writ Appeal No.2376 of 2022

However, there shall be no order as to costs. Consequently, connected

Miscellaneous Petition is closed.

(D.K.K.,ACJ.,)

(K.B., J.)

08.08.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Writ Appeal No.2376 of 2022

D. KRISHNAKUMAR., ACJ.
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
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