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W.P.No.10374 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05..07..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition No.10374 of 2021

M.L.Sankaranarayanan

..... Petitioner

-Versus-

- 1.The Special Commissioner &
Commissioner Land Reforms,
Chepauk, Chennai 600 005.
- 2.The Assistant Commissioner / Competent Authority,
Urban Land Ceiling (Tondiarpet)
Office Kuralagam, Chennai 600 001.
- 3.The Tahsildar,
Perambur Taluk,
Chennai 600 011.

..... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a *Writ of Certiorari* calling for the records of the respondents especially, the order of the 2nd respondent under Section 9(5) dated 30.08.1983 in reference Rc.672/91 (C3) and notice under Section 11(5) vide reference Rc.576/96 (A2) and to quash the same insofar as the land measuring an extent of 3975 square feet comprised in Old Nanjai Paimash No.102 part, 106/1, 106/2 part, 112/1 and 2, Survey No.57/7, bearing Plot Nos.20 & 21 of Kolathur village, Ayanavaram Taluk, Chennai North so as to enable the 3rd



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respondent to correct the entry and thereby incorporate the names of the petitioner as the owner for the land referred to above.

For Petitioner *Mr.V.Ramesh*
 for Mr.T.Thiyagarajan

For Respondent (s) : *Mr.P.Sathish,*
 AGP for RR1 to 3

ORDER

This writ petition challenges notice dated 30.08.1983 under Section 9(5) as well notice dated 28.11.1991 under Section 11(5) issued by the 2nd respondent under The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [for short “ULC Act”] and seeks a consequential direction to the 3rd respondent to correct the entry thereby to incorporate the names of the petitioner in respect of land.

2.0. The brief facts leading to the filing the present writ petition are as follows:

2.1. The petitioner is the owner of the of the subject land. It was originally purchased by the grandfather of the petitioner viz., Margabandu from one Sarojini Ammal through sale deed dated 12.02.1982 registered as Doc.No.604 of 1982 on the file of office of the Sub Registrar, Sembiam. The said Margabandu executed a settlement deed dated 10.02.2023 registered as Doc.No.886 of 2023 bequeathing an extent 3975 square feet bearing Plot



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Nos.20 & 21 comprised in S.No.57/7 of Kolathur village in favour of the petitioner. The said Mari Pandithar, K.Somanathan and Yugendran and Mari Pandithar representing his two minors sons Master M.Sekar and Master M.Ramesh executed a power of attorney deed dated 19.03.1981 vide registered Doc.No.23 of 1981 in favour of Rajarathinam Mudaliar to deal with the properties measuring 63 cents of land comprised in S.No.56/5 and 36 cents comprised in S.No.57/7 of Kolathur Village. Pursuant to the said Power of Attorney Deed, properties were divided into pieces and were sold to different persons and one of pieces of land was sold to Sarojini Ammal by Mari Pandithar and others represented by the power agent - Rajarathinam Mudaliar by way of sale deed dated 24.08.1981 registered as Doc.No.3896 of 1981.

2.2. The said Sarojini Ammal converted the agricultural land purchased by her into house sites by forming a layout. The grandfather of the petitioner viz., Margabandu purchased the subject property from the said Sarojini Ammal on 10.02.1982. It was this land which was subsequently settled by Margabandu on his grandson-M.Sankaranarayanan, the petitioner herein.

2.3. While so, only when the petitioner approached the revenue authorities for mutation of records in his name, he was informed that the lands were acquired under the provisions of the ULC Act. Thereupon, he made a



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representation to the Assistant Commissioner, Urban Land Ceiling, seeking certified copies of the orders relating to the land acquisition proceedings under Sections 9(5) 10(1) and 11(5) of the ULC Act. On getting copies of the proceedings relating to the acquisition of lands, the petitioner came to know that the proceedings were initiated under the ULC Act in the name of Mari Pandithar who was not at all the owner of the subject lands at the relevant point of time. Thus, the ULC proceedings were initiated in the name of wrong persons and so the entire ULC proceedings vitiate.

2.4. The competent authority determined the excess vacant land as 7325 square meters after deducting 500 square meters towards family entitlement. The order under Section 9(5) of the ULC Act is in violation of the definition of the term “vacant lands” in Section 3(p) of the ULC Act as even according to the 2nd respondent, the notices were received by the daughters of Mari Pandithar. Hence, the writ petition.

3.0. On behalf of the respondents, 2nd respondent filed her counter affidavit opposing the writ petition and inter alia contending as follows:

3.1. That an extent of 32 grounds and 2046 square feet (7325 square meters) of land in S.Nos.57/7 and 79/1 of Kolathur village was registered in the name of Mari Pandithar as per the revenue records. As the urban land owner-



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Mari Pandithar did not file return under Section 7(1) of the ULC Act, a notice under Section 8(2) of the ULC Act was issued on in Rc.No.78/91 dated 03.04.1991 and the same was served on one Tmt.N.B.Devika, who is the daughter of Mari Pandithar on 11.05.1991. Even after the receipt of such notice, the urban land owner did not file his return. Hence, notice under Section 9(4) along with draft statement under section 9(1) of the ULC Act was issued vide S.R.125/91 dated 13.09.1991 and the same was served on N.B.Savithiri, who is the adopted daughter of the urban land owner on 04.12.1991. As no objection was filed by the urban land owner, an order under Section 9(5) of the ULC Act was passed in Rc.No.672/91/C3 dated 30.08.1993 for the acquisition of 6825 square meters of excess vacant land after allowing an extent of 500 square meters towards family entitlement in S.No.57/77 of Kolathur village and the order was served on Tmt.N.B.Devika, daughter of the urban land owner.

3.2. As no objection or representation was received from the urban land owner to the notice under Section 9(4) and draft statement under Section 9(1), final statement under Section 10(1) of the ULC Act was issued in Rc.No.672/1991/C3 dated 11.04.1994 was issued and it was served on Tmt.N.B.Devika, daughter of the urban land owner. Thereafter, notification under Section 11(1) of the ULC Act was issued in Rc.No.672/1991/C3 dated



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19.05.1994 and the same was published in the Tamil Nadu Government

Gazette dated 13.07.1994 as Notification No.VI(I), 807/94, dated 19.05.1994.

Subsequently, notification under Section 11(3) of the ULC Act was also issued on 16.12.1994 vesting the land with the Government with effect on and from 01.01.1995 and it was published in the Tamil Nadu Government Gazette dated 01.02.1995 as Notification No.VI(I)/101/1995, dated 16.12.1994. As there was no objection, final notice under Section 11(5) of the Act requesting to surrender or deliver the possession of excess land was issued in A3/672/1991 dated 10.03.1995 and the same was sent by Registered Post with Acknowledgement Due to the urban land owner as per the available address. It was however returned undelivered by the postal authorities under as the addressee 'died'. Therefore, notice under Section 11(5) of the ULC Act was served on Tmt.Deivanayaki wife of the urban land owner on 14.05.1997.

3.3. Finally, the acquired excess vacant land measuring a total extent of 6810 square feet in S.Nos.57/7B (950 square meter) and 79/1 (5860 square meter) was taken over and handed over to the revenue authority, Perambur-Purasaiwakkam Taluk on 20.10.1997. Hence, the acquisition proceedings are saved by provision in Section 3(1)(a) of the Repeal Act.

3.4. Pursuant to the notice issued on 12.12.2001 under Section 12(7) of



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the ULC Act, Tmt.Deivanayaki appeared for enquiry on 05.01.2005. The amount of compensation payable under Section 12(6) of the ULC Act was worked out as Rs.13,650/- and orders were issued by the Assistant Commissioner by his proceedings No.A/576/1996 dated 13.01.2005 and the urban land owner was informed to collect the amount vide letter A/576/1996 dated 15.03.2005 and lastly on 09.01.2009. But, none turned to collect the compensation hence, the cheque was returned to the Pay and Accounts Officer (East) vide A/519/1996, dated 11.04.2005 with a request to revise the cheque in favour of the Assistant Commissioner (Urban Land Tax) Egmore so that the amount can be ordered to kept in R.D.

3.5. The writ petition which came to be filed nearly 12 years after the possession of the land was taken over stating that his grandfather was a subsequent purchaser of the land is not maintainable. As per the revenue records, as on 03.08.1976, the land was owned by Mari Pandithar and the acquisition was initiated based on the revenue records. Hence, the acquisition proceedings were initiated against the urban land owner Mari Pandithar and as such purchase made by the grandfather of the petitioner is not valid. All notices were issued in the name of the urban land owner. The urban land owner despite having received notice at every stage of the proceedings did not choose to file



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his objections, if any. There was also no appeal filed as against the acquisition proceedings. Therefore, the respondents prayed for dismissal of the writ petition.

4. This court has heard Mr.V.Ramesh, the learned counsel appearing on behalf of Mr.T.Thiyagarajan, learned counsel on record for the petitioner and Mr.P.Sathish, learned Additional Government Pleader appearing on behalf of the respondents 1 to 3.

5. Mr.V.Ramesh, learned counsel for the petitioner would submit that Mari Pandithar and others sold a larger extent of land comprised in S.No.57/7 besides the land comprised in S.No.56/5 as agricultural land to one Mrs. Sarojini Ammal on 24.08.1981 and the said Sarojini Ammal, in turn, converted it into house plots by plotting out and two of such plots bearing Plot Nos.20 & 21 were purchased which is the subject land in issue were sold to the grandfather of the petitioner herein on 12.02.1982. The grandfather of the petitioner thereafter, settled the subject land on the petitioner by way of settlement deed dated 10.02.2023. Whereas notices were said to have been issued in the name of Mari Pandithar, the vendor of the grandfather of the petitioner. Thus, according to the learned counsel for the petitioner, no procedure whatsoever as contemplated under ULC Act was followed and no



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notice was served on the person who was the owner of the land at the time when acquisition of land was proposed to be made by registered post as per Rule 76 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978. Therefore, the learned counsel would submit that the entire acquisition proceedings was initiated and proceeded with as against a wrong person. No notice was issued to the person who was actual owner of the property at the relevant point of time and as such the entire acquisition proceedings is vitiated.

6. According to the learned counsel, the petitioner came to know about the acquisition proceedings only when the petitioner wanted to mutate his name in the revenue records and therefore, he cannot be non-suited merely on the ground of delay.

7. Per contra, Mr.P.Sathish, learned Additional Government Pleader, would contend that notice at every stage of the acquisition proceedings was served on Mari Pandithar who was the urban land owner as per the revenue records. According to him, notices were served at different stages either on Mrs.N.B.Devika, daughter of the urban land owner or Mrs.N.B.Savithiri, adopted daughter of the urban land owner. Therefore, the learned Additional Government Pleader would contend that the grandfather of the petitioner was being subsequent purchaser from the vendor of the urban land owner, the



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petitioner cannot have any legal right to challenge the acquisition proceedings that too after lapse of more than 12 years from the date of taking possession of the urban land.

8. This court called for the entire records relating to the acquisition proceedings. The respondents have produced the entire records through Additional Government Pleader for the perusal of this court.

9. This court has considered the rival submissions and perused the materials available on record in the form of typed set of papers and also the records produced by the respondents carefully.

10. The records produced by the respondents would show that the acquisition proceedings were initiated under Section 7(2) of the ULC Act with the issuance of notice on 03.04.1991 in Rc.No.78/91 by the Assistant Commissioner of Urban Land and Tax, Madhavaram in the name of one Mari Pandithar. All subsequent proceedings were continued to be proceeded in the name of Mari Pandithar.

11. It is relevant to note here that by the time when the acquisition proceedings were initiated, the subject land had already been sold by Mari Pandithar as early as in 1981 itself. Whereas the acquisition proceedings were initiated against a wrong person who was not the real owner. Thereafter, the



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grandfather of the petitioner purchased the subject property as house site in 1982 from one Sarojini Ammal by way of sale deed dated 12.02.1982 registered vide Doc.No.604 of 1982 on the file of the office of the Sub Registrar, Sembiam.

12. The entire records produced by the respondent do not show that notice was served by registered post as mandated under the ULC Act and the rules thereunder. Further, the sale deed produced by the petitioner would indicate that in 1981 itself, the subject property was sold as agricultural land and the agricultural land will not come under the purview of urban land.

13. Further, as per sub-section (1) of section 7 of the ULC Act, every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent and such other particulars as may be prescribed of all vacant lands and of any urban or other land on which there is a building, whether or not with a dwelling unit therein in any urban agglomeration held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain.



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14. Section 9 of the ULC Act deals with the preparation of draft statement as regards vacant land held in excess of ceiling limit and service of such draft statement in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

15. Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules, 1978 reads as under:-

“8. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same.- (1) Every draft statement prepared under sub-section (1) of Section 9 shall contain the particulars specified in Form III.

(2) (a) The draft statement together with notice referred to in sub-section (4) of section 9 shall be served on -

- (i) the holder of the vacant lands, and
- (ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in, the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned -

- (i) in the case of the holder of the vacant



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lands, to his address as given in the statement filed in pursuance to sub-section (1) of section 7, and

(ii) in the case of other persons, at their last known addresses

(b) Where the draft statement and the notice are returned as refused, by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, on any other person referred to in clause (a), in the manner specified in that clause are not successful for reasons other than the reason referred to in clause (b), the draft statement and the notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

(3) the notice under sub-section (4) of section 9 shall be in form IV.”

16. The above provision would make it clear that draft statement together with notice as per sub-section (4) of section 9 of the Rules, 1978 has to be served by registered post addressed to the holder of the vacant land concerned.



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But, the fact remains that no notice under Registered Post was ever issued in the name of the land owner and served. On the other hand, available records would only show that proceedings were initiated in the name of erstwhile owner and the proceedings were concluded as such. It could be seen from the counter affidavit filed by the respondents that their stand is that notice under Section 7(2) was served on Mrs.N.B.Devika, the daughter of the urban land owner- Mari Pandithar on 11.05.1981 and thereafter, notice under Section 9(1) was served on Mrs.N.B.Savithiri, adopted daughter of the urban land owner – Mari Pandithar.

17. In the case of **The Government of Tamil Nadu v. Nandagopal**, [2011 (3) CTC 843], a Division Bench of this Court has held as under:-

“7. In order to find out as to whether the notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the competent authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in



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the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the respondents must be accepted.”

18. In the case of **The Competent Authority, Urban Land Ceiling v.B.Sathiyavathy** [W.A.No.229 of 2021 judgment dated 15.04.2021], another Division Bench of this court in paragraphs 6 & 8 has held as under:-

“6. The learned Single Judge has also verified the records and satisfied that what is done is only the affixture. Therefore, there is no dispute on facts. Now, we are dealing with the statute, which stood repealed. Section 9(2)(b) of the Tamil Nadu Urban Land (Ceiling Regulation) Rules, 1978 makes the service as mandatory. It states that the deemed service would arise when notices are returned as refused by the addressees. Thus, it presupposes service of notice on the addressees. Affixture would arise only when it is preceded by refusal and therefore, it is not a substitute. Any enactment involving taking over the land is expropriatory in nature and, therefore, will have to be followed strictly. This is in tune with Article 300-A of the Constitution of India as there is no fundamental right after the amendment to the Constitution. Therefore, when a law prescribes a certain procedure to be followed, it shall be followed with precision and without any



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room for non-compliance.

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7. Considering the very same issue, the Division Bench in The Government of Tamil Nadu and others (supra) was pleased to hold as follows:-

"7. In order to find out as to whether the notice as required under Section 11(5) of the Act read with Rule 8 of the Rules was served on the respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the competent authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11(5) of the Act read with Rule 8 of the Rules was not complied with. On this ground alone, the contention of the respondents that in the event of physical possession not being taken in the prescribed manner, the provisions of the Repealing Act would come to the benefit of the respondents must be accepted."

8. In such view of the matter, we do not find



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any reason to interfere with the order of the learned Single Judge and the writ appeal stands dismissed. No costs. Consequently, connected C.M.P.No.1363 of 2021 is closed.”

19. In the case of **State of Uttar Pradesh v. Hari Ram**, [(2013) 4 SCC 280], the Hon'ble Supreme Court has held that requirement of giving notice under Section 10 (5) and (6) of the ULC Act is mandatory. The relevant paragraphs of the judgment read as under:-

“36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of “possession” which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force—as may be necessary—can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, “peaceful dispossession” and on failure to surrender or give



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delivery of possession under Section 10(5), then “forceful dispossession” under sub-section (6) of Section 10.

37. The requirement of giving notice under sub- sections (5) and (6) of Section 10 is mandatory. Though the word “may” has been used therein, the word “may” in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word “may” has to be read as “shall”.

20. In the case of **Government of Tamil Nadu v. Mecca Prime Tannery**, [2012-4- L.W. 289], a Division Bench of this court has held as under:-

“32. Section 11(3) of the Act very clearly provides that after the notification is issued under Section 11 declaring the excess vacant land, the same shall be deemed to have been acquired and vested in the State Government, free from all encumbrances. Section 11(3), therefore, does not provide that after the notification, the State Government shall be deemed to have come into possession of the land so declared as excess land. After such vesting of the land in the State under Section 11(3), the State has to initiate action for taking possession of the land, which is evident



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from the provisions contained in Section 11(5) and Section 11(6) of the Act. Section 11(5) contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorized by the State Government in this behalf. If the owner of the land or the person in possession refuses or fails to deliver possession of the land to the competent authority, the latter may take possession of the land even by using force, if necessary, as contemplated under Section 11(6) of the Act.”

21. But, on a perusal of the entire records, this court has found that there is no proof to show that the notice as set out in the counter affidavit were served on the persons referred to herein above. The ULC Act would make it clear that when a person refuses to handover the possession, he should be forcefully dispossessed. In the instant case, the available records do not indicate that the possession was taken after giving proper notice and the procedures prescribed under the ULC Act and the rules thereunder were followed by the authority right from the notice under Section 7(2) till notice under Section 11(5) of the ULC Act. Admittedly, the physical possession of the subject matter of land is still with the petitioner.

21. Since the entire proceedings were initiated against a wrong person



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and no notice was served and the petitioner is continued to be in possession of the subject land and physical possession had not been taken and only paper possession is said to have been taken, this court is of the view that the entire land acquisition proceedings initiated against a wrong person and not against the owner of the property at the relevant point of time is liable to be set aside treating the proceedings as abated under section 4 of the Tamilnadu Urban Land (Ceiling and Regulations) Repeal Act, 1999 (TN Act 29 of 1999).

In the result, the writ petition is allowed and the proceedings impugned in the writ petition stands quashed. In the light of the above, it is for the 3rd respondent to incorporate the name of the petitioner as the owner of the subject matter of land on proper application from the petitioner in all the revenue records. No costs.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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- To
- 1.The Special Commissioner &
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