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WP.No.11393 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05..04..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.11393 of 2020

and

W.M.P.No.13905 of 2020

1.Smt.S.Shanthadevi

2.S.Veeraraghavan

..... Petitioners

-Versus-

1.The Principal Commissioner & Commissioner,
Land Reforms,
Chepauk,
Chennai 600 005.

2.The Assistant Commissioner /
Competent Authority,
Urban Land Ceiling and Urban Land Tax,
No.153, Karuneegar Street,
Adambakkam, Chennai 600 088.

3.The Tahsildar,
Tamil Nadu Housing Board (Sholinganallur),
Old Mahabalipuram Road,
Chennai 600 119.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents especially, the order of the 2nd respondent under sections 9 (5) and 10(1) dated 13.12.1990 and 28.11.1991 respectively in Ref.S.R.479/85/



WP.No.11393 of 2020

Nanmmangalam and notice under section 11 (5) dated 27.07.1992 in Ref.No.3335/90-A in respect of land measuring an extent of 61 cents comprised in Survey No. 188/ 4B of Nanmanagalam Village, Sholinganallur Taluk Chennai- 600 119 and to quash the same by treating the proceedings referred above as abated under section 4 of the Tamilnadu Urban Land(Ceiling and regulations) Repeal Act (Act 20 of 1999) and to further direct the 3rd respondent to incorporate the name of the 2nd petitioner as owner of the land referred to above in all the revenue records wherever required.

*For Petitioner(s) : Mr.V.Ramesh for
Mr.T.Thiyagarajan*

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

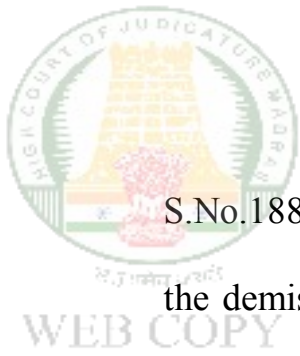
ORDER

CHECK PETITIONER/S

This writ petition has been filed challenging the order of the 2nd respondent under sections 9 (5) and 10 (1) dated 13.12.1990 and 28.11.1991 respectively in Ref.S.R.479/85/Nanmangalam and notice under section 11 (5) dated 27.07.1992 in Ref.No.3335/90-A in respect of land measuring an extent of 61 cents comprised in Survey No.188/ 4B of Nanmanagalam Village, Sholinganallur Taluk Chennai- 600 119 and for a consequential direction to the 3rd respondent to incorporate the name of the 2nd petitioner as owner of the land referred to above in all the revenue records wherever required.

2. It is the case of the petitioner that her husband – late

M.Santhanakrishnan became entitled to the property comprised in

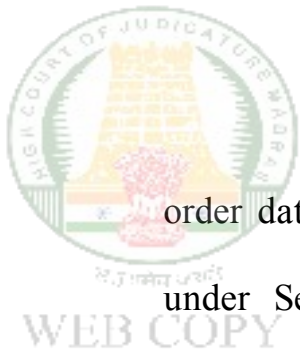


WP.No.11393 of 2020

S.No.188/4B situated at Nanmanagalam Village, Sholinganallur Taluk. After the demise of her husband, she (1st petitioner) had become entitled to succeed the property in S.No.188/4B stated supra.

3. It is the further case of the petitioners that on the death of the husband of the 1st petitioner, she became entitled to the estates of her husband including the property in S.No.188/4B and that she had settled a portion of that property in favour of her brother, the 2nd petitioner herein on 11.02.2017 by way of settlement deed dated 09.02.2009. After such settlement, when the 2nd petitioner took steps to mutate his name in the revenue records, she and the 2nd petitioner came to know that the land in S.No.188/4B had been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976 [for short “the ULC Act”]. When certified copies were applied, they came to know that none of the provisions of the ULC Act before the acquisition of land were followed. Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation), 1978 was also not complied with.

4. It is the further case of the petitioner that though the adjacent land of the petitioner comprised in S.Nos.188/1A, 1882A, 1883A1 & 188/4A belonging to one Mrs.Varalakshmi were originally acquired, pursuant to the orders of this court in W.P.No.15501 of 1993, Mrs.Varalakshmi, had preferred an appeal under Section 33 of the ULC Act and the the 1st respondent by his

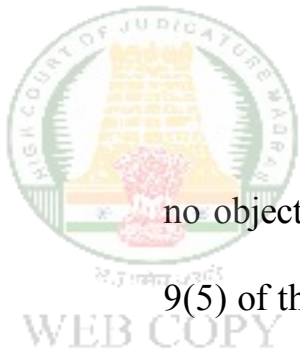


WP.No.11393 of 2020

order dated 12.09.1996 excluded the lands belonged to the said Varalakshmi under Section 3(o)(2) of the ULC Act as it was agricultural land. The possession of subject matter of land was never taken by the 2nd respondent from the petitioners.

5. It is the further case of the petitioners that there was no record available with the respondents to show that an inspection was conducted by the authority concerned before the acquisition. No notice whatsoever was issued before the acquisition. Selective acquisition of land comprised in one sub-division in S.N.188 would show the lack of application of mind on the part of the 2nd respondent. Hence, the present writ petition challenging the proceedings initiated under the ULC Act and rules thereunder.

6. A counter affidavit has been filed by the 2nd respondent *inter-alia* contending that notice under Section 7(2) of the ULC Act was issued on 20.05.1988 to S.Santhanakrishnan directing to return the excess land held by him in S.NO.188/4B (part). Such notice was served by affixture as it was refused to be received by the urban land owner. Thereafter, a notice under Section 9(4) along with statement under Section 9(1) of the ULC Act was issued on 30.09.1989 proposing for the acquisition of an extent of 1950 square meters in the said Survey Number. Since the land owner was out of station, the said notice was also served by affixture by the Village Assistant. As, thereafter,



WP.No.11393 of 2020

no objections were received from the urban land owners, orders under Section 9(5) of the ULC Act were passed by the competent authority by his proceedings dated 13.12.1990 in SR.479/85 declaring an extent of 1950 square meters of land as excess vacant land after allowing 500 square meters of land for family entitlement. Since the urban land owner was not residing in the village, the orders issued under Section 9(5) of the ULC Act was served by affixture in the presence of witnesses. Finally, notice under Section 10(1) of the ULC Act was issued on 28.11.1991 and the same was also served by affixture since the land owner was not residing in the address on 26.12.1991. Similarly, notice under Section 11(1) was issued on 29.01.1992 and thereafter, notice under Section 11(3) was issued on 15.05.1992 and the same was published in Tamil Nadu Gazette No.26, dated 01.07.1992. Thereupon, a notice under Section 11(5) of the ULC Act was issued on 22.07.1992 and the same was served on one Ms.Vimala, sister of the urban land owner (M.Santhanakrishnan). The acquired land was handed over to the revenue authorities on 07.07.1994. This writ petition has been filed after 26 years after vesting the land with the Government. The Government is the owner of the land w.e.f. 15.06.1992. Hence, the 2nd respondent prays for dismissal of the writ petition.

7. Heard Mr.V.Ramesh learned counsel appearing on behalf of Mr.T.Thiyagarajan, learned counsel on record for the petitioners and



WP.No.11393 of 2020

Mr.P.Sathish, learned Additional Government Pleader appearing for the respondents 1 to 3.

8. The learned counsel for the petitioners would submit that no notice whatsoever was served on the land owners as required under the ULC Act. Further no material whatsoever was made available to substantiate that proper inspection was done before the acquisition as required under the land when the subject of land was an agricultural land in character. The learned counsel for the petitioner would also submit that when the adjacent agricultural land comprised in S.No.188/4B was excluded from the acquisition by the appellate authority by order dated 12.09.1996, the petitioners who were placed in similar footing were also entitled to have their land excluded from the purview of land ceiling proceedings but, their case was not considered by the respondents. This would only indicate that there was no inspection done by the authorities prior to the acquisition, however notices were sought to be served based on the selective acquisition. Therefore, the learned counsel for the petitioner would submit that the entire acquisition proceeding is liable to be quashed.

9. In support of his submission, the learned counsel for the petitioner would place reliance upon the judgment of the Hon'ble Supreme Court in the cases of (i) **Mangalsen v. State of Uttar Pradesh** [(2014) 15 SCC 332] ; (ii) **State of Uttar Pradesh v. Hari Ram** [(2013) 4 SCC 280]; (iii) **The**



WP.No.11393 of 2020

Government of Tamil Nadu and others v. M/s.Mecca Prime Tannery and others [2012-4-L.W. 289]; (iv) **The Competent Authority, ULC, Kundarathur Zone at Alandur, Chennai and two others v. B.Sathiyavathy** [W.A.No.229 of 2021 judgment dated 15.04.2021] and (v) **The Government of Tamil Nadu v. Nandagopal** [2011 (3) CTC 843].

10. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would contend that since the land owner refused to receive the notice, the same was served by affixture. He would further contend that this writ petition has been filed 26 years after the entire proceedings had been concluded. According to the learned counsel for the petitioner, one of the notices was received by Mrs.Vimala, the sister of the original urban land owner-Santhanakrishnan. At this stage, the petitioners cannot challenge the acquisition proceedings and therefore, the writ petition has to be dismissed.

11. The specific case of petitioners is that no notice under Section 7 (2) of the ULC Act was served upon them before acquisition or before allegedly taking possession of the surplus land by the authorities from the urban land owner. The 2nd respondent in his counter affidavit specifically stated that 7(2) notice was served only by way of affixture and not by registered post as mandated under the rules.

12. It is relevant to note that before taking possession of the surplus land,



WP.No.11393 of 2020

a notice under Section 11 (5) of the ULC Act is mandatory.

13. A careful perusal of the records produced today by the 2nd respondent would go to show that while serving notice under Section 7 of the ULC Act, except the name and village of the land owner, nothing like door number and street is found to have been mentioned in the notice. What was mode of service is also totally absent. It could be seen from the records that the village headman made an endorsement on the notice to the effect that since notice was refused to be received by the land owner, he served it by 'affixture'. Service in respect of all other notices was also made in the same way.

14. Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 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,



WEB COPY



WP.No.11393 of 2020

by sending the same by registered post addressed to the person concerned -

(i) in the case of the holder of the vacant 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.”

15. 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 shall be served



on the holder of the vacant land by registered post. But, the fact remains that no notice under Registered Post was ever issued to the land owner.

16. 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 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.”

17. In the case of **The Competent Authority, Urban Land Ceiling v.**



WP.No.11393 of 2020

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 300A 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 room for non-compliance.

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,



WEB COPY



WP.No.11393 of 2020

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 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."

18. 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-



WEB COPY



WP.No.11393 of 2020

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 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-



WEB COPY



WP.No.11393 of 2020

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”.”

19. 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 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



WEB COPY



WP.No.11393 of 2020

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.”

20. The ULC Act would further 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 possession was taken after giving proper notice and the procedures prescribed under the ULC Act was never 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 petitioners.

21. Considering the well settled law on the subject and as no notice under Section 7 (2) was served on the petitioners as provided under the act and no notice to show that possession of the land was taken mere contention that as the notices were refused to be received by the land owner, service was effected by affixture cannot be countenanced. As already stated supra, there were no details like door number and street name mentioned in the notice issued under Section 7(2) of the ULC Act. It is also not disputed by the respondents in the counter affidavit that the adjacent land was excluded from the proceedings as it was agricultural land. The fact that the adjacent lands of the petitioner comprised in



WP.No.11393 of 2020

S.Nos.188/1A, 1882A, 1883A1 & 188/4A belonging to Mrs.Varalakshmi were excluded from the land ceiling proceedings on the ground that it was an agricultural, the land of the petitioner alone was sought to be acquired without conducting an inspection was not all disputed by the respondents in the counter affidavit filed by the 2nd respondent. Therefore,when the contiguous and adjacent land was excluded on the ground that it was an agricultural land without showing any evidence to show that proper inspection was done in the presence of land owners to hold that the land was only dry land, the action of the 2nd respondent cannot be sustained in the eye of law. Further, the possession alleged to have taken in this case was not an actual physical possession as contemplated under the ULC Act. The 2nd petitioner has remained in possession of the land till now. When the very mandatory procedures as required under the ULC Act and rules thereunder have not been followed, the entire proceedings initiated under the ULC Act is vitiated. Therefore, the impugned order is liable to be set aside by treating the proceedings referred above as abated under section 4 of the Tamilnadu Urban Land(Ceiling and regulations) Repeal Act (Act 20 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 2nd petitioner as the owner of the



WP.No.11393 of 2020

subject matter of land on proper application from the 2nd petitioner in all the revenue records. No costs. Consequently connected miscellaneous petition is closed.

05..04..2024

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

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WP.No.11393 of 2020

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W.P.No.11393 of 2020

05..04..2024