IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM

THE HON'BLE **MS.JUSTICE P.T.ASHA**

W.P.No.19883 of 2024
and
W.M.P.No.21758 of 2024

1. Mrs.G.Anuradha
2. D.Gurumurthy ... Petitioners

Vs.

1. The Additional Chief Secretary / Commissioner,
Urban Land Ceiling and Urban Land Tax,
Cheppakam,
Chennai – 600 108.

2. The Director,
Land Reforms/Urban Land Ceiling
and Urban Land Tax,
Cheppakam,
Chennai – 600 005.

3. The Assistant Commissioner,
Urband Land Tax, Tondaiyarpet Zone,
4th Floor, Kuralagam,
Broadway,
Chennai – 600 108. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 2nd respondent dated 25.05.2023 in Na.Ka.No.J2/4761/2023 to quash the same and consequently direct the respondent to issue No Objection Certificate and Revenue Patta in favour of the 1st Petitioner relating to the property bearing Plot No.57, Ambedkar Road, Krishnamoorthy Nagar, T.V.K.link Road, Kodungaiyur Village, Perambur Taluk, Chennai – 118, measuring to an extent of 1050 sq.ft out of 1800 sq.ft of land comprised in Survey No.295/2, Kodungaiyur Village.

For Petitioners : Mr.V.C.Janarthanan
for Mr.C.Prabakaran

For Respondents : Mr.A.Selvendran
Special Government Pleader

ORDER

This Writ Petition has been filed for a Certiorarified Mandamus to call for the records relating to the order passed by the 2nd respondent dated 25.05.2023 in Na.Ka.No.J2/4761/2023 to quash the same and consequently direct the respondent to issue No Objection Certificate and Revenue Patta in favour of the 1st Petitioner relating to the property bearing Plot No.57, Ambedkar Road, Krishnamoorthy Nagar, T.V.K.link Road, Kodungaiyur

Village, Perambur Taluk, Chennai – 118, measuring to an extent of 1050 sq.ft out of 1800 sq.ft of land comprised in Survey No.295/2, Kodungaiyur Village.

2. In order to appreciate the Petitioners grievance to the order passed by the 2nd Respondent it would be appropriate to briefly allude to the facts set out in the affidavit filed in support of the Writ Petition.

3. It is the case of the Petitioners that the property comprised in S.No.295/2 at Kodungaiyur Village, Perambur Taluk, Chennai District belonged to one Manickammal who had purchased the property under a registered Sale Deed bearing Document No.1045 of 1942. In the year 1971, the said Manickammal after obtaining due approval from the Deputy Director of Urban Planning, Chennai-Chengalpet Zone had divided the same into housing plots. The layout was thereafter approved for the Burma Repatriates. After the approval, Plot No.57 in the said layout measuring to an extent of 1800 sq.ft. was purchased by one Guruswami Subramani under a registered Sale Deed Document No.5113/1971. Guruswami Subramani had mortgaged the said plot to the Indian Government under the "President of India" Scheme

for the Burma Repatriates for obtaining a loan based on the conditions laid down in the bond vide Mortgage Deed dated 25.12.1971.

4. The time for repayment of the loan was granted till 31.03.1984. Thereafter the property was sold to one Radhirani by the Guruswami Subramani under a registered Sale Deed dated 04.05.1983. Meanwhile, the Government had completely waived the loan amounts granted to the Burma Repatriates. Consequently, the loan received by the Guruswami Subramani was also stood waived. Originally the sale documents were received by said Guruswami Subramani from the Revenue Divisional Officer, Saidapet. On 29.03.1995 under a registered Sale Deed Rathirani sold the property to one Amalraj who was in absolute possession and enjoyment of the said property. The said Amalraj executed a Settlement Deed dated 11.05.2016 in favour of his daughter Amalorpava Estine measuring to an extent of 609 sq.ft. The remaining extent of 1050 sq.ft. was sold by the said Amalraj to the Petitioner under a registered Sale Deed dated 01.11.2019. The Petitioner has also been in possession and enjoyment of the property and he has also been paying the property tax, water tax, etc. The Petitioner when he attempted to obtain Patta came to learn that the land had been marked under Urban Land Ceiling by the Urban Land Ceiling Department. He therefore approached the 3rd Respondent

with all the requisite documents seeking release of the lands purchased by the 1st Petitioner. On 14.01.2020, the 1st Petitioner had also submitted an application to the 3rd Respondent for issue of NOC (No Objection Certificate) by regularizing the land as it was not covered under the land ceiling proceedings. The Petitioner had also made an application for regularization under the innocent buyers category on the basis of G.O.Ms.No.649 of the Revenue Department dated 29.07.1998 and G.O.Ms.No.565 by the Urban Land Ceiling. This request was rejected by the 2nd Respondent by his Impugned Order. Therefore, the Petitioner has come forward with the return question. The grounds on which the challenge was made was that when the alleged proceedings under the Tamil Nadu Urban Land (Ceiling and Regularization) Act, 1978 had been initiated the property had been formed into a lay out and purchased by Guruswami Subramani. It did not remain in the name of Manickammal. The possession of the property had not been taken and by reason of the repeal act, the proceedings under the Tamil Nadu Urban Land (Ceiling and Regularization) Act, 1978 had come to an end. The 3rd Respondent has filed a counter affidavit *inter alia* denying the contentions made in the affidavit filed in support of the Writ Petition.

5. The contention of the Respondents is that the notice under Section

7(2) of the Act had been served on the land owners grandson and acknowledged by him. Thereafter, neither the grand son nor the owner had filed any statement before the authorities as contemplated under Section 7(1) of the Act. Therefore, all other proceedings followed. However, the 3rd Respondent would also submit that the notice sent to the said Manikammal returned with the endorsement party died. The 3rd Respondent would further submit that notice under Section 11(5) to surrender or deliver possession of excess vacant land was issued on 28.11.1991 and the same was served by affixture on 27.12.1991. Thereafter, possession of of the excess vacant lands were handed over to the Assistant Grade Revenue Inspector on 31.01.1997. The Respondents would further admit that the notices under Section 12(6) and 12(7) of the Act had been returned with the endorsement party deceased.

6. The Respondents would justify the Impugned Order stating that no doubt the land owner was not alive but the notices were served on the son and grandson who had not raised any objections and it also understand that the Petitioner is a subsequent purchaser and therefore, he cannot sustain the Writ Petition.

7. Heard Mr.V.C.Janarthanan, learned counsel for the Petitioner for

Mr.C.Prabakaran and Mr.A.Selvendran, learned Special Government Pleader for the Respondents.

8. The learned counsel for the Petitioner has challenged the Impugned Order on the following grounds:-

> i. *Notice under the Act has been issued to a dead person and therefore, all subsequent acts are non-est;*
> ii. *There is no taking of possession as contemplated under the Act; and*
> iii. *Subsequent purchaser can question the proceedings under the Act.*

9. With reference to the 1st ground admittedly it is only the notice under Section 7(2) of the Act that has been served at the address of this land owner. However, the notice has not been received by the land owner but it has been received by his grandson and as on that date admittedly the land owner Manickammal was no more. All subsequent notices and proceedings have been initiated only in the name of Manickammal. Further, Manickammal had even as early as in the year 1971 obtained approval for forming housing plots and plots have been sold out even in the year 1971 itself much before the enactment of the Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978. Notices have not been issued to any of the purchasers but initiated against a dead person. In the Judgement of this Court in the case of **K.R.Kothandaraman** vs. **The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax, Chepak, Chennai – 600 005**, reported in 2005-4 L.W. 299, the issue that fell for the consideration of the Court was whether an action initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 against a dead person was a nullity, the learned Judge held that the proceedings were void and with the repeal act having come into force the proceedings should be taken to have abated.

10. As discussed supra even prior to the coming into force of the Act the said Manickammal had formed the layout and plots had been sold even in the year 1971. The subsequent purchasers were not kept informed about the proceedings initiated under the Act. The Division Bench of this Court in the case of **V.Somasundaram and two others** vs. **The Secretary to Government, Revenue Department, Fort St.George, Chennai - 9**, reported in 2007-2-L.W.114, the Court held as follows:-

> *"9. From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the applicants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner. As per Section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and delivery possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days time. No notice having been issued against the appellants who are in possession of the lands as stated supra, taking possession of lands on 30.04.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.09.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act."*

Therefore, the 1st ground has to be answered in favour of the Petitioner.

11. The next ground that was placed for the consideration of this Court is that possession has not been taken and the same continues with the Petitioner and therefore with the enactment of the Repeal Act, 1999 the proceedings under the Act stood abated. Mr.Selvendran, the learned Special Government Pleader would submit that possession was handed over in the year 1997 itself. This statement was denied by Mr.V.C.Janarthanan, the

learned counsel appearing for the Petitioner. To understand the above argument it would be necessary to touch upon the provisions of Section 11(3), 11(5) and 11(6) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Section 11(3) provides that once a notification under Sub-section (1) is published there is a deemed vesting of the land in the State Government. Section 11(5) talks about the competent authority calling upon the person in possession to surrender or deliver possession. Section 11(6) talks about how possession has to be taken where the person in possession fails to comply with the order made under Section 11(5). In the case on hand the original land owner against whom all the proceedings had been initiated had sold the property as plots to several persons and was dead at the time of initiation of proceedings. The notices sent have been returned as “person dead”. Therefore, the Respondents are bound to show proof of having taken physical possession of the property. Mr.Selvendran, the learned Special Government Pleader would argue that the land in question is a vacant site and possession was taken in the year 1997. The Division Bench of this Court in the case of **The Secretary, Revenue Department, Fort St.George, Chennai – 600 009 and two others** vs. **K.Gopal,** reported in 2013-4-L.W.103, had held that notice under Section 11(5) has not been served on the person in possession of the land observed as follows in paragraph 20:-

> *"20. Once we hold that the writ petitioner is in possession of the land, it is mandatory on the part of the official respondents to serve notice on the writ petitioner in terms of Section 11(5) of the Act. But, admittedly, no notice whatsoever, has been served on the respondent/writ petitioner. The learned Single Judge also considered the said issue in extenso and found that the official respondents without complying with the provisions of the Act in letter and spirit, have passed the impugned proceedings and accordingly, allowed the writ petition. This Court, on an independent application of mind to the materials placed, is of the considered opinion that there is no error apparent or infirmity in the impugned order passed by the learned Single Judge in allowing the writ petition and this Court finds no merit in the writ appeal and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed."*

12. Another Division Bench Judgment in the case of **State of Tamil Nadu and 9 others** vs. **Sumathi Srinivas**, reported in 2015-2-L.W.391, the Court held that where only a symbolic possession is taken when actual real possession is with the Petitioner, the Petitioner would be entitled to avail the benefits of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

13. Another Division Bench Judgment in the case of **Principal Commissioner and Commissioner for Land Reforms and Another** vs. **B.Booshanam and** Another, reported in (2020) 1 LW 410, the Court held that when possession is not given under Section 11(5) of the Act, forcible possession has to be taken. Relevant portion of the said Judgment reads as follows:-

> *"14. A perusal of the above position would show that Section 10(5) postulates that the land owner himself surrenders the possession. If the land owner does not surrender possession, then procedure under Section 10(6) of the Ceiling Act has to be adopted. Section 10(6) of the Ceiling Act, therefore, postulates that authorities must go to the land and taken physical possession on the land itself. This procedure cannot be adopted while sitting inside the office of the authorities. Notice under Section 11(5) of the Act was served, on the land owners only by affixture. There is nothing to show where the notice was pasted. There is no witness to show whether there was actual pasting or not. The possession certificate only shows that the land was handed over by the Deputy Tahsildar to the Zonal Deputy Tahsildar. As observed earlier, the words "from the urban land owner" has been struck off. There is nothing on record to satisfy us that the Government took physical possession of the property from the land owners. There are no witnesses to show that the officers went to the land physically and took over possession which is normally done in favour of independent witnesses. It looks as if the entire exercise of affixture and taking over of the possession of the land was done inside the*

> *office of the respondents. This Court is of an opinion that there has to be some form of material showing service of notice under Section 11(5) of the Ceiling Act having being done through affixture. There has to be some material to show voluntary surrender of possession. In the absence of any material, it cannot be presumed that there has been a voluntary surrender of the land. In the absence of voluntary surrender of the land, the State Government will have to resort to the procedure under Section 11(6) of the Ceiling Act. Admittedly, Section 11(6) of the Ceiling Act has not been resorted to. The stand of the State Government that unless there is a physical resistance, Section 11(6) need not be resorted at all, cannot be accepted."*

14. In the instant case, there is nothing to show a voluntary surrender of possession and admittedly the Respondents have not resorted to the procedure contemplated under Section 11(6) of the Act. Therefore, it is clear that possession continues with the Petitioner and with the Repeal Act coming into force the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 stands abated/closed.

15. As regards the argument of the Respondents that the Petitioner does not have the *locus standi* to question the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 proceedings. It has to be seen that this Court has held that the very proceedings initiated is non-est as the

proceedings have been initiated against a dead person and the owners/persons in possession of the property at the time of initiation of the proceedings have not be put on notice. Therefore, once the proceedings itself is found to be non-est the Petitioner is well within his right to question the order and seek issue of Patta in his name. In fine, the Writ Petition is allowed. Accordingly, the Impugned Order dated 25.05.2023 stands quashed. No cost. Consequently, connected Miscellaneous Petition is closed.

29.11.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

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