



W.A(MD)No.880 of 2019

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 23.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

W.A(MD)No.880 of 2019

1. G.D.Durairaj
2. Dr.Kalaivani
3. G.D.Thangam
4. G.D.Lingam

... Appellants

versus

1. The Secretary to Government,
Revenue (Urban Land Ceiling) Department,
Chepauk,
Chennai.
2. The Principal Secretary/Commissioner of
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai.
3. The Assistant Commissioner,
(Urban Land Ceiling),
Tirunelveli,
Presently office shifted to
O/o. The Assistant Commissioner,
Urban Land Tax,
Madurai.



W.A(MD)No.880 of 2019

4. The Tahsildar,
Palayamkottai Taluk,
Tirunelveli – 1.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to allow the writ appeal and set aside the order passed in W.P.(MD)No. 25438 of 2018 dated 17.06.2019.

For Appellants : Mr.K.K.Udayakumar
for Mr.H.Arumugam

For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by
Mr.M.Sarangan,
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

The appellants herein filed a writ petition in W.P.(MD)No.25438 of 2018 before the Writ Court for the issuance of a Writ of Mandamus, directing the respondents therein to convert the classification of land from surplus into patta land in respect of housing plot Nos.3, 18, 21, 41, 44, 49, 64, 68, 104, 106, 107, 125, 129, 157, 169, 180, 181, 184, 193, 198, 199, 209 and 236 at Arjuna Nagar



W.A(MD)No.880 of 2019

WEB COPY

comprised in S.No.53/2 pt. to an extent of 0.52.00 hectare, S.No.54/2 to an extent of 0.95.50 hectare and S.No.55/pt. to an extent of 0.93.00 hectare, totally, to an extent of 2.40.50 hectares situated at Melapalayam Village, Tirunelveli District and issue patta pursuant to the order passed in W.P.(MD)No.621 of 2013 dated 18.02.2024. After hearing both sides, the learned Single Judge, by order dated 17.06.2019, dismissed the writ petition as it is a second round of litigation. However, the learned Single Judge has observed that the earlier order passed in the writ petition filed by the writ petitioners in W.P.(MD)No.621 of 2013 dated 18.02.2014 has become final and therefore, the respondents are directed to consider the aforesaid developments, pass orders on merits and in accordance with law at the earliest. Challenging the order dated 17.06.2019 passed in W.P. (MD)No.25438 of 2018, the writ petitioners have filed the present Writ Appeal.

2. It is the case of the writ petitioners/appellants that the ayan punja lands comprised in S.No.53/2 part to an extent of 0.52.00 hectare, S.No.54/2 to an extent of 0.95.50 hectares and S.No.55/pt to an extent of 0.93.00 hectare, totally, to an extent of 2.40.50 hectares, originally belonged to one Appakutty Thevar. After his demise, his legal heirs, one Lakshmana Thevar and others had inherited



W.A(MD)No.880 of 2019

WEB COPY

the properties and subsequently, they sold the same to the writ petitioners' family members, under a registered sale deed dated 13.04.1983. From the date of sale, they were in possession and enjoyment of the same by converting the said lands into housing plots in the name of “Arjuna Nagar” Layout and they had executed necessary gift deeds, donating the lands for public street and for public purpose to the then Commissioner of Melapalayam Municipality. Thereafter, the layout was approved by the competent authority in the year 1987 and they sold more than 90% of the above said plots to various persons and now, they owned the remaining plots in Plot Nos.3, 18, 21, 41, 44, 49, 64, 68, 104, 106, 107, 125, 129, 157, 169, 180, 181, 184, 193, 198, 199, 209 and 236.

2.1. While so, they came to know that the 3rd respondent herein initiated proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 (hereinafter referred to as “the Act”), against the original land owner Lakshmana Thevar and thereafter, passed an order on 02.11.1988 declaring the above said lands and other lands as surplus lands and also directed the said Lakshmana Thevar to surrender the possession of the said lands. The said Lakshmana Thevar informed that the above said lands were sold to the writ petitioners/appellants and



W.A(MD)No.880 of 2019

WEB COPY

they have converted the lands into housing plots. Despite knowing well the fact that the writ petitioners/appellants purchased the property and they are in physical possession of the property, the 3rd respondent herein has not served any notice to the writ petitioners/appellants and has not initiated any proceedings against them for taking physical possession. While being so, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, has been repealed by the Government through the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (20 of 1999) (hereinafter referred to as “the Repeal Act”). As per Section 4 of the Repeal Act, all the proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act before any Court, Tribunal or any authority shall abate and as per Section 3 of the Repeal Act, it shall not affect the vesting of any land under Section 11(3) of the Act, possession of which has been taken over by the State Government or any person duly authorised by the competent authority.

2.2. According to the writ petitioners, when they are in possession of the above said lands, the proceedings initiated by the respondents without issuing any notice to them is non-est one and the possession of the said lands had never been



W.A(MD)No.880 of 2019

WEB COPY

taken by the respondents in accordance with the provisions of the Principal Act, by issuing any notice to them under Sections 9, 10, 11 and Rule 15 of the Principal Act. In view of the Repeal Act, the land ceiling proceedings initiated against the original urban land owner were abated and as such, the respondents have no jurisdiction or authority of power to take the possession of the lands from the writ petitioners. But, the 3rd respondent has made an illegal attempt to take the possession of the said lands and refused to issue patta in the name of the writ petitioners. Therefore, they filed a writ petition in W.P.(MD)No.621 of 2013 for a Mandamus, forbearing the 3rd respondent herein from taking physical possession of the approved housing plots as mentioned above. The Writ Court, while entertaining W.P.(MD)No.621 of 2013 on 10.01.2013, granted an order of interim injunction and subsequently, allowed the writ petition, by order dated 18.02.2014 and directed the 4th respondent herein to consider the representation of the writ petitioners for grant of patta within a period of eight weeks from the date of receipt of a copy of the order and while considering the issuance of patta, the same shall not be refused citing the Urban Land Ceiling Proceedings. The said order has become final as there was no appeal.



W.A(MD)No.880 of 2019

WEB COPY

2.3. But, the 4th respondent herein dragged on the same stating that the patta will be changed after getting the consent from the 3rd respondent. Hence, they issued a contempt notice dated 11.09.2017 to the 4th respondent. On receipt of the same, the 4th respondent issued the proceedings in ROC.No.B7.1417/2016 dated 05.10.2017 stating that the Tahsildar is not competent to change the classification from surplus to patta lands and hence, he sent a proposal to the 3rd respondent. The 3rd respondent stated that he can give only NOC, but, the classification can be changed only by the Government. Since the Writ Court, in W.P.(MD)No.621 of 2013, has categorically directed the 4th respondent herein to issue patta without reference to the Urban Land Ceiling proceedings, by holding that the possession of the plots are with the appellants, the 4th respondent is the authority for issuance of patta. But, the respondents 3 and 4 stated that the classification has to be done only by the Government. Therefore, the writ petitioners/appellants sent a representation, dated 20.11.2018 to the respondents. Since the respondents have not considered their representation, they have filed the writ petition in W.P.(MD)No.25438 of 2018. But, the Writ Court has dismissed the writ petition in W.P.(MD)No.25438 of 2018 as it is a second round of litigation. Challenging the same, the present writ appeal has been filed.



W.A(MD)No.880 of 2019

WEB COPY

3. The case of the respondents is that the writ petitioners/appellants had purchased the excess vacant land to an extent of 21250 sq. meters from the urban land owner Lakshmana Thevar during the year 1983 which is against the provisions under Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Hence, the sale made in favour of the writ petitioners/appellants is null and void and the appellants did not have any marketable title. The possession of excess vacant land was taken over by the Revenue Authorities on 21.09.1989, i.e. before the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999 came into force and therefore, the Repeal Act had no effect on the above said acquisition. The said acquisition is saved under Section 3(1)(a) of the Repeal Act and hence, the acquisition shall not abate under Section 4 of the Repeal Act. The Government have issued G.O. (Ms.)No.565, Revenue Department, dated 26.09.2008 to regularize the lands so purchased by the innocent buyers category subject to the condition specified under which the writ petitioners/appellants may seek remedy and get their purchase regularized. But, the appellants failed to do the same and all the revenue records mutated in the name of the Government.



W.A(MD)No.880 of 2019

WEB COPY

3.1. According to the respondents, a notice under Section 9(4) of the Act with a draft statement under Section 9(1) of the Act was issued to the land owner on 21.11.1988 requesting to file objections, if any, for the proposed acquisition of excess vacant land. But, neither the land owner nor his representative had filed any objection against the acquisition of the excess vacant land held by him. Therefore, the 3rd respondent passed an order dated 29.11.1988 under Section 9(5) of the Act determining the extent of 21250 sq. meters as excess vacant land out of the total extent of 25250 sq. meters, after allowing 4000 sq. meters towards family entitlement area to the land owner under the provisions of the Act. A final statement under Section 10(1) of the Act was issued on 15.02.1989 and served on him on 24.02.1989. Thereafter, a Notification under Section 11(1) of the Act was issued on 17.05.1989 and published in Part-VI Section 1 in Government Gazette No.21 dated 31.05.1989 at Page No.275. Further, another Notification under Section 11(3) of the Act was issued on 08.06.1987 and published in Part-VI, Section-1 in Government Gazette No.26, dated 05.07.1989 that the lands stand vested with the Government free from all encumbrances. Subsequently, a notice under Section 11(5) of the Act was issued by the 3rd respondent herein on



W.A(MD)No.880 of 2019

WEB COPY

29.07.1989 requesting the urban land owner to surrender or deliver the possession of excess vacant land to the District Collector of Tirunelveli and the same was served on 02.08.1989. But, the land owner has not responded to the same. Therefore, the possession of the excess vacant lands were taken over and the same were handed over to the Revenue Inspector, Palayamkottai Firka on 21.09.1989 and subsequently, necessary changes were carried out in the Village and Taluk records. Thereafter, a notice under Section 12(7) of the Act was issued to the urban land owner on 07.12.1989, calling objections for the fixation of land value for the acquired excess vacant land and the same was served upon him on 14.12.1989. However, there was no response for the same. Therefore, on 12.01.1990, an order under Section 12(6) of the said Act was passed fixing the amount payable as Rs.5,313/-. Since the urban land owner did not turn up to receive that amount, it was kept in the revenue deposit vide Challan No.1089 dated 20.03.1991.

3.2. According to the respondents, the writ petitioners/appellants have purchased the above said lands during the year 1983 and as per Section 6 of the Act, any sale of urban land after the introduction of the Tamil Nadu Urban Land



W.A(MD)No.880 of 2019

WEB COPY

(Ceiling and Regulation) Act is null and void. Therefore, the sale made in favour of the writ petitioners is null and void. Further, all the proceedings have been completed even way back in the year 1991 itself, but, the Repeal of the Act came into force only in the year 1999. Therefore, the proceedings initiated by the respondents have not lapsed and much prior to the Repeal Act came into force, the possession was taken over and handed over to the revenue authority and consequently, revenue records have already been mutated in the name of revenue authority. Therefore, the appellants are not entitled to the relief sought for.

4. The learned counsel appearing for the appellants submits that though the order passed in writ appeals in W.A.(MD)Nos.511 and 512 of 2019 had given a quietus to the issue and the order passed in the earlier writ petition has become final, the 4th respondent expressed his inability in his proceedings dated 05.10.2017 that patta can be issued only after conversion of classification of land from surplus to patta land by the Government and therefore, the present writ petition was filed for a Mandamus, directing the respondents to convert the classification which is not a second round of litigation. But, the learned Single Judge has failed to consider the same. He further submits that the cause of action



W.A(MD)No.880 of 2019

and the prayer sought for in the present writ petition is entirely different, which arose only after the proceedings of the 4th respondent dated 05.10.2017. Even after giving a direction in the writ appeals in W.A.(MD)Nos.511 to 521 of 2019, the 4th respondent has passed the very same order and as such, the direction sought for in the present writ petition is necessarily to be granted.

5. The learned counsel appearing for the appellants further submits that in view of the Repeal Act, all the proceedings initiated by the respondents have lapsed. He further submits that despite the original land owner informed that the lands were already sold to the appellants, no notice was sent to the appellants even before the proceedings initiated under Section 7(2) of the Act. Even assuming that the sale is invalid, at the time of issuance of notice under Section 11(5) of the Act, the appellants were in possession of the property so called excess land and the respondents had not sent any notice to the appellants. He further submits that when the Repeal Act came into force, the appellants were in possession of the property and therefore, the respondents cannot initiate the proceedings for recovery of possession. He further submits that earlier, the appellants have filed the writ petition in W.P.(MD)No.621 of 2013 and the Writ



W.A(MD)No.880 of 2019

WEB COPY

Court, after considering all the facts, the Repeal Act and also considering that they are in possession of the lands, passed an order directing the Principal Commissioner and Commissioner of Land, Reforms cum Urban Land Ceiling, Chepauk, Chennai to consider the petitioners' representation, dated 09.08.2011 for mutation of patta and pass appropriate orders. Despite the same, the respondents have not acted upon the same. Therefore, the appellants have got a fresh cause of action. Hence, they have filed the present writ petition in W.P. (MD)No.25438 of 2018. However, the learned Single Judge has failed to consider the factual aspects as well as the legal position and simply dismissed the writ petition on the ground that it is only a second round of litigation. Therefore, the order of the learned Single Judge warrants interference.

6. The learned Additional Advocate General submits that the subject land was covered under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and as per Section 7(1) of the said Act, the original land owner, namely, Lakshmana Thevar ought to have filed a statement before the competent authority. But, the said Lakshmana Thevar had not filed any such statement. Therefore, the acquisition proceedings was initiated and the possession was taken



W.A(MD)No.880 of 2019

WEB COPY

over under due process of law and handed over to the revenue authority. The revenue records have already been mutated in the name of revenue authority.

7. The learned Additional Advocate General further submits that as per Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, any sale of urban land after the introduction of the Act is null and void. Further, the Central Act, namely, the Urban Land (Ceiling and Regulation) Act, 1976 came into force on 17.02.1976, whereas the State Act, namely, the Tamil Nadu Urban Land (Ceiling and Regulation) Act came into force on 03.08.1976. The appellants have purchased the said lands on 13.04.1983, i.e. after the enactment of both Central as well as the State Act. Therefore, the sale made in the name of the appellants, vide a sale deed dated 13.04.1983, cannot be considered as a valid sale as per the provisions of the said Act and the appellants are not the legal owners. Therefore, the proceedings under Section 9 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act was initiated. Though a notice under Section 9(4) of the Act with a draft statement under Section 9(1) of the Act was issued to the original land owner on 21.11.1988 requesting to file objection, if any, for the proposed acquisition of excess vacant land, neither the land owner nor his



W.A(MD)No.880 of 2019

representative filed objections against the acquisition of excess vacant land held by him. Therefore, the 3rd respondent passed an order dated 29.11.1988 under Section 9(5) of the said Act determining the extent of 21250 sq. meters as excess vacant land out of total extent of 25250 square meters. Thereafter, a final statement under Section 10(1) of the said Act was issued on 15.02.1989 and served on him on 24.02.1989. Subsequently, the Notification under Section 11(1) of the said Act was issued on 17.05.1989 and published in the Tamil Nadu Government Gazette on 31.05.1989. Thereafter, a notice under Section 11(3) of the said Act was issued on 08.06.1989 and published in the Government Gazette on 05.07.1989 that the land stands vested with the Government free from of encumbrance. Subsequently, a notice under Section 11(5) of the Act was issued by the 3rd respondent herein on 29.07.1989 requesting the urban land owner to surrender or deliver the possession of excess vacant land within 30 days to the District Collector of Tirunelveli and the same was served on 02.08.1989. Since the land owner had not come forward to surrender the excess vacant land, the possession of the excess vacant land was taken over by the competent authorities and handed over to the Revenue Inspector, Palayamkottai Firka on 21.09.1989 and necessary changes were carried out in the village and taluk records.



W.A(MD)No.880 of 2019

Thereafter, a notice under Section 12(7) of the Act was issued on 07.12.1989 to the urban land owner calling objections for the fixation of land value for the acquired excess vacant land and the same was served on him on 14.12.1989. Since there was no response, an order was passed under Section 12(b) of the said Act, fixing the amount payable as Rs.5,313/- on 12.01.1990. Even thereafter, the urban land owner had not come forward to proceed with the same. Therefore, the said amount was deposited in the Revenue Deposit vide Challan No.1089 dated 23.09.1991 at Sub Treasury, Tirunelveli.

8. The learned Additional Advocate General further submits that the Repeal Act came into force only in the year 1999. By that time, all the proceedings have been completed and possession was taken over by the Government and mutation was also made in the name of the revenue authority. Therefore, the Repeal Act would not be applicable to the present case. Since the acquisition proceedings attained finality and it is saved under Section 3(1)(a) of the Repeal Act, the acquisition proceedings shall not abate under Section 4 of the Repeal Act. The learned Additional Advocate General further submits that in the earlier writ petition, the said fact was not properly brought to the notice to this Court. The



W.A(MD)No.880 of 2019

WEB COPY

appellants, who are not the lawful owners, suppressed the material facts and entered into conspiracy with the urban land owner. Further, the Government have issued G.O.(Ms.)No.565, Revenue Department, dated 26.09.2008 for providing relief to the purchasers of the acquired land, by regularizing their purchase under “innocent buyer scheme”. If the appellants are the *bona fide* purchasers of the acquired lands, they ought to have invoked the said G.O. and availed the said benefits. The appellants, knowing fully well about the said benefit, failed to avail the said benefits and filed the present writ petition to grab the Government lands. Hence, the writ petitioners' request could not be considered. The learned Single Judge has rightly dismissed the writ petition as it is a second round of litigation. Therefore, there is no merit in the writ appeal and the same is liable to be dismissed.

9. Heard both sides and perused the materials available on record.

10. Admittedly, the subject lands originally belonged to one Lakshmana Thevar. Based on the Central Act, namely, Urban Land (Ceiling and Regulation) Act 1976, the State Government has also passed an enactment, namely, the Tamil



W.A(MD)No.880 of 2019

WEB COPY

Nadu Urban Land (Ceiling and Regulation) Act, 1978, which came into force on 03.08.1976. As per Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, every land owners, those who are having vacant land in excess of the ceiling limit at the commencement of the Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location and extent. In this case, the original land owner Lakshmana Thevar did not file any such statement. Later, he made a reply that he sold the property to the third parties.

11. Further, as per Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, no person holding in excess of the ceiling limit immediately before the commencement of this Act vacant land, shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 11 and any such transfer made in contravention of this provision shall be deemed to be null and void. In this case, the appellants had purchased the subject lands only on 13.04.1983. The Tamil Nadu Urban Land (Ceiling and Regulation) Act came



W.A(MD)No.880 of 2019

WEB COPY

into force on 03.08.1976. Therefore, as per Section 6 of the said Act, the sale made in favour of the appellants itself is not valid.

12. A perusal of the counter affidavit filed by the respondents in the writ petition shows that as per Section 7(1) of the Act, the original land owner ought to have filed a statement to the competent authority. Since the original land owner Lakshmana Thevar had not filed any statement under Section 7(1) of the Act, notice under Section 7(2) of the Act was issued to him on 22.12.1986 requesting to file the statement along with the details of lands and family members. Further, the 3rd respondent inspected the lands in question on 18.11.1988 and found that the said lands were converted into house site, formed layout and sold out to various persons as house sites. The land owner also appeared for enquiry on 18.11.1988 and filed a statement that as per gift deed dated 06.10.1964, he owned the subject lands as on 03.08.1976 in Melapalayam Village. Thereafter, notice under Section 9(4) of the Act with a draft statement under Section 9(1) of the Act was issued to the land owner on 21.11.1988 requesting to file objection, if any, for the proposed acquisition of excess vacant land, for which, neither the land owner nor his representative filed any objection



W.A(MD)No.880 of 2019

WEB COPY

against the acquisition of excess vacant land held by him. Therefore, the 3rd respondent passed an order on 29.11.1988 under Section 9(5) of the Act determining an extent of 21,250 sq. meters as excess vacant land out of total extent of 25,250 square meters, after allowing 4,000 sq. meters towards family entitlement area to the land owner under the provisions of the Act. Thereafter, a final Statement under Section 10(1) of the Act was issued on 15.02.1989 and served on him on 24.02.1989. Subsequently, by initiating proceedings under Section 11 of the Act, possession was taken over by the Government and by proceedings under Section 12 of the Act, the amount was also deposited and the same was kept in Revenue Deposit vide Challan No.1089, dated 20.03.1991 at Sub-Treasury, Tirunelveli.

13. According to the appellants, though the original land owner informed about the sale of property to the 3rd respondent, no notice was served upon them and no proceedings were initiated against them. Further, the Tamil Nadu Urban Land (Ceiling and Regulation) Act has been repealed and as per Section 4 of the Repeal Act, all proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this



W.A(MD)No.880 of 2019

Act before any Court, Tribunal, or any authority shall abate and as per Section 3 of the Repeal Act, it shall not affect the vesting of any land under Section 11(3), possession of which has been taken over by the State Government. According to the appellants, the original land owner has appeared in the proceedings initiated in the said Act and gave a reply that he sold the said lands to the third parties. But, it appears that the original land owner had not given any particulars.

14. The Repeal Act came into force on 22.03.1999. Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, says about the abatement of legal proceedings, which reads as follows:

“4. Abatement of legal proceedings - All proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act before any court, tribunal or any authority shall abate.

Provided that this section shall not apply to the proceedings relating to Sections 12, 13, 14, 15, 15-B and 16 of the Principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government of any person duly authorised by the State Government in this behalf or by the competent authority.”



W.A(MD)No.880 of 2019

WEB COPY

Further, there is a saving clause under Section 3 of the Repeal Act, which reads as follows:

“3. Savings – (1) the repeal of the Principal Act shall not affect -

(a) the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 21 of any action taken thereunder.

(2) Where -

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

*(b) amount has been paid by the State Government with respect to such land,
then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”*



W.A(MD)No.880 of 2019

WEB COPY

15. The Repeal Act came into force only on 22.03.1999, whereas, the proceedings initiated under Section 11 of the Act was over on 21.09.1989, possession was also taken over and handed over to the revenue authorities and the proceedings initiated under Section 12 of the Act was also over on 20.03.1991 itself. Further, Section 4 of the Repeal Act clearly shows that it shall not apply to the proceedings relating to Sections 12, 13, 14, 15, 15B and 16 of the Principal Act. Therefore, the Repeal Act would not be applicable to the present case. When the Repeal Act came into force, the subject land was transferred to the Government. Therefore, the Repeal Act would not be applicable to the present case on hand.

16. As per Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, at any time, after the publication of notification under sub-section (1), the competent authority may, by notification in the Tamil Nadu Government Gazette, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be



W.A(MD)No.880 of 2019

deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

17. Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act does provide that after the publication of the notification under sub-section (1), the competent authority may, by notification in the Tamil Nadu Government Gazette, declare that the excess vacant land be deemed to have been acquired by the State Government and vested in the State Government. After such land is vested in the State Government under Section 11(3) of the Act, the State Government has to initiate action for taking possession of the land as per Section 11(5) of the Act. Section 11(5) of the Act contemplates the issuance of notice by the State Government to any person, who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice. If the owner of the land and any person, who is in possession, refuses or fails to deliver the possession of the land to the competent authority, the competent authority may take possession of the land, even by using force, if necessary, as contemplated under Section 11(6) of the Central Act. Therefore, the



W.A(MD)No.880 of 2019

provision under Section 11(5) of the Act is very clear that notice has to be sent to a person, who is in actual possession of the land.

18. But, in this case, a perusal of the counter affidavit filed by the respondents shows that all the proceedings including the proceedings under Section 11(5) of the Act were initiated against the urban land owner, namely, Lakshmana Thevar. However, the subject land was kept as a vacant land. Therefore, there was no restriction for taking possession. Further, the appellants have not produced any materials to show that they were in actual possession of the land.

19. As already stated, under Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, the urban land owner has no authority to sell the land, after the commencement of the Principal Act and therefore, the sale made by the urban land owner Lakshmana Thevar in favour of the appellants is not valid and thereby, the appellants are not having any valid title and they cannot be treated as lawful owners. Further, all the proceedings were completed even in the year 1989 itself, i.e. much prior to the Repeal Act. Though the notice was issued



W.A(MD)No.880 of 2019

WEB COPY

to the urban land owner Lakshmana Thevar, he did not give any particular about the persons who are in actual possession. Therefore, the possession was taken and the same was also handed over to the revenue authorities. The revenue records stand as surplus land. Prior to that, patta never changed in the name of the appellants from the original land owner. Further, prior to the initiation of the proceedings, the appellants have also not filed any statement claiming ownership of the land and they have also not filed any statement under Section 7(1) of the Act. Further, the Government, vide G.O.(Ms.)No.565, Revenue Department, dated 26.09.2008, provided relief to the purchasers of the acquired land, by regularizing their purchase under innocent buyer scheme. But, the appellants failed to avail the same.

20. In the earlier writ petition in W.P.(MD)No.621 of 2013, this Court directed the second respondent herein to consider the representation of the appellants dated 09.08.2011 for mutation of patta and pass appropriate orders within eight weeks. Since the possession of the land was already taken over by the Government and classification was also changed in the revenue records as surplus land, the 4th respondent, in his proceedings dated 05.10.2017, has



W.A(MD)No.880 of 2019

WEB COPY

expressed his inability in issuing patta as the patta can be issued only after conversion of classification of land from surplus to patta land by the Government. But, the appellants, without prosecuting further, filed the second writ petition in W.P.(MD)No.25438 of 2018 before this Court seeking a direction to the respondents to convert the classification of land from surplus into patta land. Therefore, the learned Single Judge has rightly observed that the earlier order passed by this Court in W.P.(MD)No.621 of 2013 dated 18.02.2014 has become final and therefore, directed the respondents to take into consideration the aforesaid developments and pass orders on merits and in accordance with law. Therefore, there is nothing to clarify further.

21. From the above said facts, it is very clear that the appellants, with the connivance of the urban land owner and with an intention to grab the Government lands, had purchased the subject lands when the Tamil Nadu Urban Land (Ceiling and Regulation) Act was in force, which is totally prohibited. Further, till the final proceedings initiated under Section 12 of the Act, the appellants have never approached the respondents as well as the Court and only after passing the Repeal Act and by taking advantage of the Repeal Act, the appellants have approached



W.A(MD)No.880 of 2019

WEB COURT.

22. Unfortunately, the officials, in order to help the appellants and after knowing the fact that the Tamil Nadu Urban Land (Ceiling and Regulation) Act was in force, gave approval for layout. The 3rd respondent inspected the subject land on 18.11.1988 and found that it was converted into house sites, formed layout and sold out to various persons. Further, the original land owner also informed that he sold the said lands to the third parties. There are no materials to show that patta stood in the name of the appellants at the time of taking possession and transferring patta to the revenue authorities. However, there are no materials to show that the appellants were in physical possession of the said lands and they have raised objections. Though the Government, vide G.O. (Ms.)No.565, Revenue Department, dated 26.09.2008, provided relief to the purchasers of the acquired land, by regularizing their purchase under innocent buyer scheme, the appellants have not utilized the said benefits.

23. The Urban Land (Ceiling and Regulation) Act, 1976, is a self-contained code. Various Provisions of the Act make it clear that if any orders are



W.A(MD)No.880 of 2019

WEB COPY

passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. Admittedly, all the proceedings were completed and the excess lands were taken over by the competent authority and handed over to the revenue authority. The revenue records have also been mutated in the name of the revenue authority even on or before 21.09.1989. But, the appellants have not filed any appeal or revision challenging the same. The Repeal Act came into force only in the year 1999, till then, the appellants have not challenged either the land acquisition proceedings initiated under Section 11(5) of the Act or the mutation order. But, the appellant seeking the benefit of the Repeal Act by filing the writ petition only on 13.09.2012, i.e. after 22 ½ years. Further, the appellants have also not proved that when the Repeal Act came into force, they were in actual physical possession of the property.

24. In this case, the lands were declared as surplus lands under Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. Notice is required to be issued under Section 11(5) of the Act to the holder of the surplus lands to surrender the surplus lands. But, there was no response from the original



W.A(MD)No.880 of 2019

WEB COPY

land owner. The lands are vacant sites. Therefore, the competent authority took over the possession and handed over the same to the revenue authority and the classification was also changed in the revenue records as surplus land. But, The appellants have not challenged the same. They filed the writ petition only on 13.09.2012, i.e. 22 ½ years after the Repeal Act came into force.

25. It is pertinent to refer the decision of the Hon'ble Supreme Court in the case of ***State of M.P. vs. Ghisilal (Civil Appeal No.2153 of 2012)***, wherein, it has been held as follows:

“14. The Urban Land (Ceiling and Regulation) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any orders are passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. In view of such remedies available for aggrieved parties, the jurisdiction of the civil courts to try suit relating to land which is subject-matter of ceiling proceedings, stands excluded by implication. Civil court cannot declare, orders passed by the authorities under the ULC Act, as illegal or non est. More so, when such orders have become final, no declaration could have been granted by the civil court. In this regard reference may be made to the judgment of this Court in the case of



W.A(MD)No.880 of 2019

WEB COPY

Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976 and another v. David Mantosh and others (2020) 12 SCC 542. We are totally in agreement with the aforesaid view taken by this Court.

15. In this case, it is clear from the orders passed by the competent authorities, that the original declarant was holding excess land to the extent of 16000.32 square meters. When the orders passed by the competent authority and consequential notifications issued under Section 10(1) and 10(3) of the ULC Act have become final, it was not open for the respondent to file a suit seeking declaration, as prayed for. As we are of the view that jurisdiction of the civil courts is barred by necessary implication, trial court fell in error in entertaining the suit, as filed by the respondent and even the first appellate court and second appellate court have not considered the various grounds raised by the appellant in proper perspective.

16. Although it is contended by the learned counsel appearing for the respondent to mould the relief, it is trite principle that where the suit is filed with particular pleadings and reliefs, it is to be considered with reference to pleadings on record and the reliefs claimed in the suit only. The judgments relied on by the learned counsel for the respondent would not render any assistance to support the case of the respondent. As we are in agreement with the view taken by this Court earlier in the case of **Competent**



W.A(MD)No.880 of 2019

WEB COPY

Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976 this appeal is to be allowed by setting aside the judgment and decree passed by the trial court as confirmed by the appellate court on the ground that such suit itself was not maintainable.”

26. In the case of *Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others*, reported in *AIR 1996 SC 1239*, the Hon'ble Supreme Court has held as follows:-

“4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4- 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.”



W.A(MD)No.880 of 2019

WEB COPY

27. The Hon'ble Supreme Court in the case of **Tamil Nadu Housing Board Vs. A. Viswam(Dead) by LRs.**, reported in **AIR 1996 SC 3377** has held as under :-

“9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.”

28. The Hon'ble Supreme Court in the case of **Sita Ram Bhandar Society, New Delhi Vs. lieutenant Governor, Government of NCT, Delhi and others**, reported in **(2009) 10 SCC 501** has held as under :-

“28. A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N. Housing Board v. A. Viswam [(1996) 8 SCC 259 : AIR 1996 SC 3377] after considering the judgment in Narayan Bhagde case [(1976) 1 SCC 700], observed that while taking possession of



W.A(MD)No.880 of 2019

WEB COPY

a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in Narayan Bhagde case [(1976) 1 SCC 700] had been rendered and held as under: (Viswam case [(1996) 8 SCC 259 : AIR 1996 SC 3377] , SCC p. 262, para 9)

“9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land.

29. In *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* [(1996) 4 SCC 212 : AIR 1996 SC 1239] yet again the question was as to the taking over of the possession of agricultural land and it was observed thus: (SCC p. 215, para 4)

“4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4- 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal



W.A(MD)No.880 of 2019

WEB COPY

position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.”

30. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.”

29. The Supreme Court in the case of *Land & Building Department through Secretary and Another Vs. Attro Devi and others*, reported by judgment dated 11.04.2023 decided in Civil Appeal No.2749/2023 has held as



W.A(MD)No.880 of 2019

WEB COPY under :-

“12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in **Indore Development Authority's** case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is D.No.23608/2021 complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any reentry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section



WEB COPY 24(2) of Act of 2013, the expression "physical possession" is used.

It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has D.No.23608/2021 no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start



W.A(MD)No.880 of 2019

WEB COPY

cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any reentry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is D.No.23608/2021 deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

XXXX

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the



W.A(MD)No.880 of 2019

WEB COPY

landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such D.No. 23608/2021 possession of trespasser enures for his benefit and on behalf of the owner."

(emphasis supplied)"

30. In the case of *State of U.P. vs. Hari Ram*, reported in (2013) 4 SCC 280, the Hon'ble Supreme Court has held as follows:

"16. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has



WEB COPY

suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] . That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] considering whether the word “may” appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant’s version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of



WEB COPY taking possession for the purposes of Section 3 of the Repeal Act.

That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.” (Emphasis supplied)

31. In the case of *Banda Development Authority vs. Moti Lal Agarwal* reported in *(2011) 5 SCC 394*, the Hon'ble Supreme Court culled out principles concerning the mode of taking possession of a piece of land from the landholder. The relevant portion of the judgment is extracted below:

“37. The principles which can be culled out from the abovenoted judgments are:

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to



WEB COPY

the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(iv) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.

38. In the light of the above discussion, we hold that the action of the State authorities concerned to go to the spot and prepare panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to BDA. The utilisation of the major portion of the acquired land for the public purpose for



W.A(MD)No.880 of 2019

WEB COPY

which it was acquired is clearly indicative of the fact that actual possession of the acquired land had been taken by BDA. Once it is held that possession of the acquired land was handed over to BDA on 30-6-2001, the view taken by the High Court that the acquisition proceedings had lapsed due to non-compliance with Section 11-A cannot be sustained.”

(Emphasis supplied)

32. From the above decisions, it is clear that one of the permissible mode of taking possession is that if acquired land is vacant land, it can be done by preparing panchanama. Therefore, it cannot be said that possession of surplus lands was not taken.

33. Section 6 of the Act itself prohibits the sale of urban lands after the commencement of the Principal Act. Moreover, all the proceedings initiated under the said Act were completed before the Repeal Act came into force and possession was taken over by the competent authority and handed over to the revenue authorities. In this case, the revenue records have already been mutated in the name of the revenue authority even way back on 21.09.1989 and till the Repeal Act came into force, the appellants have not taken any steps to challenge



W.A(MD)No.880 of 2019

the same and thereafter, they have filed the writ petition in W.P.(MD)No.621 of 2013 before this Court belatedly after 22 years and the appellants have not approached the Court with clean hands. Therefore, the appellants are not entitled to the relief as sought for. Hence, this Court does not find any merit in this writ appeal.

34. In the result, this Writ Appeal is dismissed. No costs.

[P.V.,J.] [K.K.R.K.,J.]
23.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ogy



W.A(MD)No.880 of 2019

WEB COPY

To

1. The Secretary to Government,
Revenue (Urban Land Ceiling) Department,
Chepauk,
Chennai.
2. The Principal Secretary/Commissioner of
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai.
3. The Assistant Commissioner,
(Urban Land Ceiling),
Tirunelveli,
Presently office shifted to
O/o. The Assistant Commissioner,
Urban Land Tax,
Madurai.
4. The Tahsildar,
Palayamkottai Taluk,
Tirunelveli – 1.



WEB COPY



W.A(MD)No.880 of 2019

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

ogy

Pre-delivery Judgment made in
W.A(MD)No.880 of 2019

23.10.2024