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WA NOs. 1928 of 2021, 3 of 2022 and 1923 of 2021

WA NO. 1928 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2025

CORAM

THE HONOURABLE MR JUSTICE S. S. SUNDAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WA NOs. 1928 of 2021, 3 of 2022 and 1923 of 2021

AND

CMP NOs. 12483,12487, 12489 of 2021 and CMP NO. 53 of 2022

W.A.No. 1928 of 2021

1. The State Of Tamil Nadu
Rep By The Revenue Secretary Government Of Tamil
Nadu, Fort St.George, Chennai 600 009

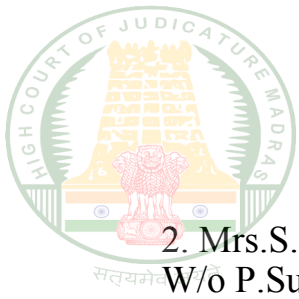
2.State of Tamil Nadu,
rep. By The Commissiner of Urban Land Ceiling &
Urban Land Tax,
Ezhilagam, Chepauk,
Chennai-600005.

3.The Assistant Commissioner,
Urban Land Tax &
Urban Land Ceiling,
No.5, Sannathi Street,
Second Floor, Poonamallee,
Chennai -600056

..Appellants

Vs

1. P. Sundaram
S/o Perumal Chettiar,



WA NOs. 1928 of 2021, 3 of 2022 and 1923 of 2021

2. Mrs.S.Prema Kumari
W/o P.Sundaram,

3. S.Chandrasekar
S/o P.Sundaram

4. Mrs.Sandhiya Bai
D/o P.Sundaram

5. The Member Secretary
Chennai Metropolitan, Development Authority (CMDA)
No.8, Gandhi Irwin Salai,
Egmore, Chennai 600 008

6. The National Highways Authority Of India
Rep By General Manager (PC)
Director, Corporate Office G-5 And 6,
Sector 10 Dwaraka,
New Delhi 110 075

7. The Tamil Nadu Road Development Co Ltd,
Sindur Pantheon Plaza,
Second Floor, No.346, Pantheon Road,
Egmore, Chennai 600 008

..Respondents

Respondent(s)

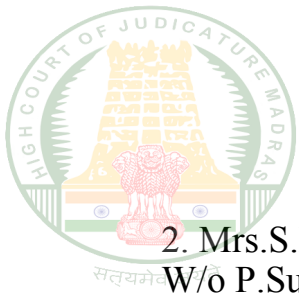
WA NO. 3 of 2022

The Member Secretary,
Chennai Metropolitan Development Authority, No.1,
Gandhi Irwin Road Egmore, Ch-08.

Appellant(s)

Vs

P. Sundaram
S/o Perumal Chettiar,



WA NOs. 1928 of 2021, 3 of 2022 and 1923 of 2021

2. Mrs.S.Prema Kumari
W/o P.Sundaram,

3. S.Chandrasekar
S/o P.Sundaram

4. Mrs.Sandhiya Bai
D/o P.Sundaram

5. State of Tamil Nadu Rep. By
The Revenue Secretary,
Government of Tamil Nadu,
Fort St.George, Chenna-600009.

6.State of Tamil Nadu,
rep. By The Commissiner of Urban Land Ceiling &
Urban Land Tax,
Ezhilagam, Chepauk,
Chennai-600005.

7.The Assistant Commissioner,
Urban Land Tax &
Urban Land Ceiling,
No.5, Sannathi Street,
Chennai -600056

8. The National Highways Authority Of India
Rep By General Manager (PC)
Director, Corporate Office G-5 And 6,
Sector 10 Dwaraka,
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9. The Tamil Nadu Road Development Co Ltd,
Sindur Pantheon Plaza,
Second Floor, No.346, Pantheon Road,
Egmore, Chennai 600 008
Second Floor, Poonamallee,

Respondents



WA NOs. 1928 of 2021, 3 of 2022 and 1923 of 2021

WA NO. 1923 of 2021

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1. The State Of Tamil Nadu
Rep By The Revenue Secretary Government Of Tamil
Nadu, Fort St.George, Chennai 600 009

2.State of Tamil Nadu,
rep. By The Commissioner of Urban Land Ceiling &
Urban Land Tax,
Ezhilagam, Chepauk,
Chennai-600005.

3.The Assistant Commissioner,
Urban Land Tax &
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No.5, Sannathi Street,
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..Appellants

Vs

1. P. Sundaram
S/o Perumal Chettiar,
2. Mrs.S.Prema Kumari
W/o P.Sundaram,

3. S.Chandrasekar
S/o P.Sundaram

4. Mrs.Sandhiya Bai
D/o P.Sundaram

5. The Member Secretary
Chennai Metropolitan, Development Authority (CMDA)
No.8, Gandhi Irwin Salai,
Egmore, Chennai 600 008



WA NOs. 1928 of 2021, 3 of 2022 and 1923 of 2021

6. The National Highways Authority Of India

Rep By General Manager (PC)

Director, Corporate Office G-5 And 6,

Sector 10 Dwaraka,

New Delhi 110 075

7. The Tamil Nadu Road Development Co Ltd,

Sindur Pantheon Plaza,

Second Floor, No.346, Pantheon Road,

Egmore, Chennai 600 008

..Respondents

Prayer in W.A.No. 1928 of 2021: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of this Court dated 25.02.2020 made in W.P.10383 Of 2017.

Prayer in W.A.No. 3 of 2022: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of this Court dated 25.02.2020 made in W.P.10383 Of 2017.

Prayer in W.A.No. 1923 of 2021: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of this Court dated 25.02.2020 made in W.P.29445 Of 2015.

WA NO. 1928 of 2021

For Appellant(s):

P. Muthukumar, Aag Assisted By Mr. D. Ravichander, Sgp

For Respondent(s):

M/s P.Subba Reddy

For Rr1 To 3

Mr. P. Kumaresan, Aag Assisted By M/s P. Veena Suresh,sc

For R5 CMDA

Vide Court Order Dt.20/09/2021

M/s.M.Sivavarthanan For (r7) -



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WA NO. 3 of 2022

For Appellant(s):

MR. P. KUMARESAN, AAG ASSISTED BY M/S P. VEENA SURESH, SC

For Respondent(s):

M/S P. SUBBA REDDY FOR R1 TO R3
P. MUTHUKUMAR, AAG ASSISTED BY MR. D. RAVICHANDER, SGP FOR R5 TO R7
M/S. M. SIVAVARTHANAN FOR TNRDC (R9)

WA NO. 1923 of 2021

For Appellant(s):

P. MUTHUKUMAR, AAG ASSISTED BY MR. D. RAVICHANDER, SGP

For Respondent(s):

MR. P. KUMARESAN, AAG ASSISTED BY M/S P. VEENA SURESH, SC FOR R5 CMDA
M/S. M. SIVAVARTHANAN FOR (R7) -

COMMON JUDGMENT

(Order of the Court was made by the Hon'ble S.S. Sundar J.)

All these writ appeals are directed against the common order passed by the learned Single Judge dated 25.02.2020 in W.P.No. 29445 & 29446 of 2015 and W.P.No. 10383 of 2017. Writ appeal in W.A.Nos. 1928 of 2021 & W.A.No. 3 of 2022 were filed by the State and the Member Secretary, CMDA respectively



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against the order passed in W.P.No. 10383 of 2017 and the Writ appeal in

WEB COPY W.A.No. 1923 of 2021 is filed by the State challenging the order passed in W.P.No. 29445 of 2015.

Brief facts that are necessary for disposal of these appeals are as follows;

2.1 The 1st respondent herein who is the petitioner in all the writ petitions is the son of Perumal Chettiar and the owner of an extent of two acres of land which is equivalent to 8100 sq.meters in Sno. 103/3B2in Vayanallur Village, Poonamallee Taluk, Tiruvallur District. The said property was purchased by the 1st respondent by sale deed 04.07.1997 . The extend and title over the property is not in dispute in the present proceedings.

2.2 The 1st respondent who was in possession and enjoyment of the land, filed a writ petition along with his wife and children in W.P.No. 29445 of 2015 to quash the proceedings passed by the Commissioner of Urban Land Ceiling, dated 27.06.2014 and for consequential directions to pay compensation for the land acquired by the Urban Land Ceiling authorities as per prevailing market value.

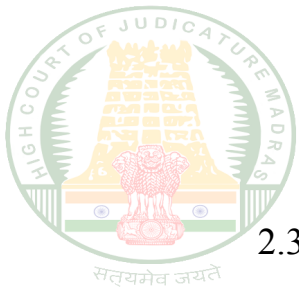


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The authorities under the Urban Land Ceiling Act initiated proceedings against the

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petitioner for acquiring surplus lands under Urban Land Ceiling Act. As against the proceedings dated 27.06.2014 rejecting the representation of the 1st respondent to release an extent of 31 cents of land on the ground that the land which was acquired under the Urban Land Ceiling Act, have been handed over to the CMDA for formation of outer ring road, the 1st respondent filed another writ petition in W.P.No. 29446/2015 seeking mandamus, directing the 3rd respondent to demarcate and allot an extent of 31 cents to which the petitioners are entitled. The writ petition in W.P.No. 10387 of 2017 was filed for declaration declaring that the entire proceedings initiated by the authorities under Tamil Nadu Urban Land Ceiling Act 1978, commencing from the proceedings dated 30.04.1997 till the completion of Urban Land Proceedings under Section 12 of the Act is null and void and consequentially to apply the provisions of Urban Land Ceiling Repeal Act 1999 to hold that Urban Land Ceiling Proceedings stand abated and to hold that the 1st respondent is entitled to compensation under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act 30 of 2013).



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2.3 Learned Single Judge taken up the writ petition in W.P.No.10383 of WEB (2017) as a leading case and found that the Urban Land Ceiling Act has abated since no compensation amount is paid. It is pertinent to mention that the learned Single Judge recorded a finding that the possession was taken on 14.06.1999. Though it is held that the writ petitioner cannot claim the benefit of Repeal Act 1999 by alleging that they have been in possession of the land, the learned Single Judge following the judgment of the Hon'ble Division Bench of this Court in the case of ***The Government of Tamil Nadu and Others v. M/s. Mecca Prime Tannery, represented by its Managing Director and Others [2012 (4) L.W. 289]***, held that the proceedings under Urban Land Ceiling Act ought to be taken as abated on coming to force of Repeal Act 1999 as compensation was not yet paid for the surplus lands. Thereafter, the proceedings under the Urban Land Ceiling Act was held to have abated by virtue of Repeal Act .

2.5 Learned Single Judge allowed all the writ petition. After holding that the proceedings issued under Urban and Land Ceiling Act are vitiated by non payment of compensation, the learned Judge held that the petitioner is entitled to the benefit of Repeal Act 1999. Learned Single Judge also directed appropriate



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authorities to issue fresh notification for acquisition of land under Act 30 of 2013

WEB GATE within a period of one month from the date of receipt of a copy of that order and to pay compensation in terms of Act . The writ Petitions in W.P.Nos. 10383 and 29445 of 2015 were thus allowed and the order impugned in the writ petitions i.e is the order passed by the 2nd respondent dated 27.06.2014 was quashed. In view of the order passed in other two writ petitions, the learned Single Judge held that no orders are required to be passed in W.P.No.29446 of 2015. Aggrieved by the common order dated 25.02.2000, the present writ appeals are filed by the Government and CMDA as stated above.

3. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and this Court also perused the materials available on record and this file. It is admitted that an extent of 500 sq.ft found to be within the ceiling area was also acquired under Land Acquisition (Central Act) 1894 by a notification under Section 4(1) dated 24.07.2000. However, from Rs.20/- was determined as compensation. Even this amount is not paid to the land owner. It is the contention of writ petitioner that no notice was issued to him



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before or after passing of award. Now entire extent of 8100 sq.meters (2 Acres) is

utilised for laying outer ring road by acquired by CMDA

4. This Court carefully gone through the records. Even though the learned Single Judge has recorded findings that the possessions have been taken over on 14.06.1999 i.e 2 days prior to the crucial date, and that the petitioner cannot claim the benefit of Repeal Act by alleging that they have been possession of land, the said finding was also challenged by the contesting respondents by referring to the facts that are borrowed from the records

5. It is contended by the learned counsel for the writ petitioner that the documents clearly shows the possession between Urban Ceiling authorities and the acquisition department. In other words it is specifically contended by the learned counsel for the 1st respondent that no notice under Section 11(3) of the Act was served on the petitioner. Similarly it is contended that no notice under Section 11(5) was also not issued by the 1st respondent at any point of time. Therefore, it is also contended before this Court that the conclusion of the learned Single Judge to



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the effect that the possession had been taken by the respondent before the crucial date is contrary to the records.

6. This Court has carefully examined the records and the original file relating to the proceedings issued by the respondent. Though an order was passed under Section 11(3) of the Act for acquiring excess land, notice under Section 11(1) dated 20.08.1998 and the notice under Section 11(3) dated 26.03.1998 were not served on the 1st respondent/land owner. Though the notice under Section 11(5) is found in the file and included in the typed set of papers, this Court specifically searched for any proof to show service of notice which was issued under Section 11(5) or 11(3) of the Act. However, without taking physical possession after issuing notice to the land owner, the document dated 14.06.1999 is produced to show that the possession was handed over to the Zonal Deputy Revenue Inspector, Thiruninravur Firka, Poonamalee by Deputy Tahsildar, Urban Land Tax, Poonamallee. It is just a paper delivery. After initiation of proceedings against the persons holding excess urban lands, draft statement was prepared under Section 8 regarding the vacant land which is in excess of ceiling limit. The final statement is contemplated under Section 9 after considering objections if any received, after the

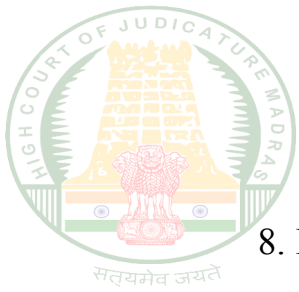


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service of notice under Section 8(4) of the Act. After service of statement under

WEB CON Section 9 on the land owners, the competent authority shall then issue a notice giving particulars of lands held by the individuals in excess of ceiling limit to know that the vacant land is required by the State Government. Thereafter, a notification is published declaring the acquisition of the land and from that date the property will be vested with the Government. Thereafter the State Government is required to pay compensation to the persons before taking possession.

7. In similar circumstances, this Court has repeatedly held that when physical possession was not taken by following the procedure contemplated under Section 11(3) of the Act, after paying compensation, the land ceiling proceedings are deemed to have abated. This Court in the case of ***The Secretary to the Government, Revenue Department, Secretariat, Chennai and Others Vs. B.Anand Kumar [reported in 2012 3 CTC 688]*** has held that, record of delivery of possession by way of land delivery receipt or panchanama is not sufficient and there should be exchange of physical possession as contemplated under the Act and by following the procedure



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8. In the present case, there is no proof to show that the notice under Section

WEB 11(3) and 11(5) of the Act was received by the land owner. Therefore it is proved

that the possession was not taken without following due procedure as contemplated under the Act. This issue was considered in several judgments by this Court, particularly in the case of *T.Kalasalingam & another Vs The Secretary, Revenue Department, Fort.St.George, Chennai & 3 Others in W.P.No. 12354 of 2002 dated 04.11.2022*, the Division Bench of this Court to which one of us is a party has elaborately considered by following precedents on this aspect. The relevant portions are extracted hereunder;

“26.As regards physical possession, the learned Special Government Pleader strenuously argued that the petitioners cannot be treated as one in possession of the property, as the sale deeds obtained by them are liable to declared as void in view of Section (6) of the Act. This Court has already held that the sale deeds cannot be declared as void, in view of the fact that no proceedings have been initiated against S.Venkatasubramanian, who is the actual owner of the property at any point of time, as admitted by the respondents before this Court. Merely because proceedings were initiated against the 3rd respondent, who is not the real owner, and the proceedings under the premise that the 3rd respondent was holding vacant lands in excess of the ceiling area is not binding on the petitioners, this Court is unable to



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countenance the argument of the learned Special Government Pleader by referring to Section (6) of the Act.

27. Question whether the Competent Authority is bound to issue notice in writing to a person who is in physical possession, arose before this Court in several instances and in all those cases, this Court has consistently held that, in the absence of surrender or delivery of possession by the assessee to the State Government or any person duly authorized by the State, or the State or Competent Authority takes physical possession of the property, the person aggrieved can maintain a writ petition challenging the proceedings initiated under Section 11(5) of the Act. A Division Bench of this Court, in the case of ***V.Somasundaram and others v. Secretary to Government, Revenue Department, Chennai and others [2007 (1) MLJ 750]***, after considering the provisions of the Act, has 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 appellants 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



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30.4.1999 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 16.9.1999, 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.

10. Similar issue was considered by a learned single Judge of this Court (A.Kulasekaran, J.) in the decision reported in 2006 (5) CTC 52 (Vijay Foundation (P) Ltd. v. The Principal Commissioner and Commissioner of Land Reforms) and in para 7 the learned Judge held as follows,

“7. The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Section 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory. So, the



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defence that mutation proceedings contain only name of Krishnan, hence, the proceedings were not initiated against the petitioner is not a valid ground. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents.”

We are in entire agreement with the said decision of the learned Judge.

11.As rightly contended by the learned counsel for the appellants, the appellants were not entitled to file appeal due to enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999, from 16.9.1999. Hence the writ petition filed without availing the alternate remedy of filing appeal under section 33 of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, is maintainable.”

28.Again the same issue arose before another Division Bench in the case of ***M/s.Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to Government, Revenue Department, Chennai [2009 (4) L.W. 819]***, and the Division Bench has held as follows :

“11.On the other hand, the learned Special Government Pleader contended that the petitioner is not entitled to notice under Section 11(5) of the Act in view of the Division Bench decision of this Court in Prabhavathi Jain and 4 others Vs. The Government of Tamil Nadu and 8 others reported in 1995 (2) L.W. 200. We have perused



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the judgment. We are of the view that the judgment did not decide whether Section 11(5) contemplates service of notice on the person who is in possession of the concerned excess land. On the other hand, the judgments cited by the petitioner are on the point. Further it is not the case of the petitioner that he is entitled to notice under Section 7 or 9 while acquiring the land.

12. In view of such categorical pronouncements of this Court, we are of the view that the notice under Section 11(5) should be served on the petitioner. Though, his purchase by a sale deed is made invalid by Section 6 of the Act, in view of the word any person who may be in possession used in Section 11(5) of the Act, notice ought to have been served on the petitioner to surrender or deliver possession to the Government.

13. Further, the learned counsel for the petitioner argued from the records produced that even the vendor of the land was also not served with the notice under Section 11(5) of the Act read with Rule 10(3). According to him, the notice under Section 11(5) should be sent by RPAD. In this case, admittedly, the records do not indicate that notice was sent through RPAD to the erstwhile owner. The learned counsel also pointed out that there was no endorsement from the erstwhile owner for the receipt of the notice. On the other hand, the records reveal that an endorsement was made by the official at page No.937 of the record file that notice was served on the erstwhile



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owners. According to the learned counsel for the petitioner, this does not amount to service of notice under Section 11(5) of the Act. The learned counsel for the petitioner strenuously contended that if such a method is approved, then the officials would cook up the records by simply making an endorsement in the notice without getting endorsement from the concerned persons for proof of service or by sending through RPAD. We find force in the submission of the petitioner.

14. We therefore, hold that there was no notice served under Section 11(5) of the Act either on the petitioner or on the erstwhile owner, viz., the vendor of the land.

15. The learned counsel for the petitioner further argued that the take over of possession is complete only when it is signed by the land owner or the person in possession while delivering the excess land under Section 11(5) of the Act read with Rule 10(3) of the Rules. If no such delivery of possession took place, the third respondent has to resort to Section 11(6) of the Act. It was argued that neither the erstwhile land owner (vendor) nor the petitioner signed the Land Delivery Receipt and the alleged take over of possession was not actual and real and it was only a paper possession and therefore, the petitioner is entitled to the benefit of the Section 4 of the Repealing Act 20 of 1999.



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16.The learned counsel for the petitioner strenuously contended that the Tribunal erred in holding that the take over of possession on paper by the Revenue authorities on 31.12.1990 was sufficient. In view of such a finding, the Tribunal came to an erroneous conclusion that Section 4 of the Repealing Act 1999 would not help the petitioner, according to the learned counsel for the petitioner.

17.The learned counsel for the petitioner argued that there should be actual take over of possession and the take over of possession in record is not the physical possession of the surplus lands. If the land owner is not a party to the Land Delivery Receipt, the take over should be established by getting signature from independent witnesses, preparing Panchanama, etc. But the records reveal that it is only possession in papers.

18.The learned counsel for the petitioner relied on the judgment of the Honourable Mrs.Justice Prabha Sridevan in W.P.No.19845 of 2006 dated 31.07.2006, wherein in paragraph No.13, the learned Judge held that mere recording of possession by the authorities will not amount to actually taking of possession. The learned Judge rejected the plea of taking of possession based on the similar Land Delivery Receipt produced in that case. In this context, the learned Judge recorded in paragraph No.8 that the Land Delivery Receipt does not show in whose presence, the possession was taken.



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The learned Judge also relied on a paragraph in W.P.No.35490 of 2004, which is as follows:

"When the respondent does not say that the petitioner had surrendered possession on it's own, then the respondent ought to have taken possession. Under Section 11(6) of the Principal Act, whenever a urban land owner fails to surrender possession as demanded under Section 11(5) of the Act, then the competent authority may take possession of the lands and may, for that purpose, use such force as may be necessary. Therefore, from the above two aspects namely, the urban land owner was directed to surrender possession and since he is not shown to have surrendered possession and the power of the Government to use such force as may be necessary in taking possession, clearly indicate that physical possession of the land must be taken by the competent authority. There is nothing on record to show that "on what day possession was taken; was any representative of the writ petitioner present; the name of the person who took possession the person from whom possession was taken; are there any contemporary record to show that possession was in fact taken at such a time and on such a date when possession was handed over to the Revenue Inspector, Pallikaranai; are there any record to show such handing over to the Revenue Inspector, Pallikaranai and the name of the officer, who received possession of the lands.....

In 2002 (2) L.W.764 (C.V.Narasimhan Vs. The Government of Tamil Nadu etc., and 2 others), while considering the impact of the Repealing Act, had held that where physical possession of such land



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continues to be with the owner, the statutory vesting under Section 11(3) of the Act is of no relevance at all".

19. The learned counsel for the petitioner further cited the decision dated 25.09.2006 of the Honourable Mr. Justice F.M. Ibrahim Kalifulla in W.P.Nos.33839 and 33911 of 2004, wherein the learned Judge followed his earlier decision dated 09.09.2004 in W.P.No.6641 of 1997 and the same is extracted here-under:

"11. In this context, it is worthwhile to refer to the decision of S.JAGADEESAN, J in the judgment reported in C.V.Narasimhan rep. by his Power Agent Smt. Jayalakshmi, No.12, Bishop Garden, Raja Annamalaipuram, Chennai 28 vs. 1. The Government of Tamil Nadu, rep. by its Secretary, Revenue Department, Fort St. George, Chennai-9. 2. The Special Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5. 3. The Competent Authority, Urban Land Ceiling, Alandur (2002-2-L.W.-764), wherein the learned Judge has clearly stated that so long as the physical possession of the land continues to be with the owner, even the statutory vesting of the land will be of no consequence."

The learned Judge in paragraph No.7 of the same judgment dated 25.09.2006 has held as follows:

"7. To the same effect is the order of Justice R. Balasubramanian, dated 22.8.2006 passed in W.P.No.17416 of 2004, where the learned Judge, reiterating the position that the possession means taking physical possession, had held, "Therefore, the sine qua non to keep



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the property declared as surplus under the provisions of the Act is that physical possession of the said property ought to have taken by the competent authority despite coming into force of the Repealing Act."

20.The learned counsel for the petitioner heavily relied on paragraph No.10 of the judgment dated 19.10.2006 of the Honourable Mr.Justice K.Chandru in W.P.No.29061 of 2003, which is as follows:

"This Court in its judgment reported in (2006) 2 M.L.J. 664 (Sosamma Thampy vs. The Assistant Commissioner (ULT) - cum - Competent Authority (ULC), has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC Act and noting in the file that symbolic possession is taken cannot be accepted as taking of physical possession. This Court is in complete agreement with the ratio laid down in the aforesaid decision which also squarely applies to the facts and circumstances of the case."

21.The learned counsel for the petitioner strenuously contended that the Act contemplates that if the persons in possession failed to deliver possession within 30 days of receipt of notice under Section 11(5), the Competent Authority has to take possession under Section 11(6) of the Act. The learned counsel has brought to our notice that the words "may for that purpose use such force as may be necessary" used in 11(6) indicates that to take actual possession, the



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Competent Authority is clothed with power under Section 11(6). In the absence of delivery of possession by land owner pursuant to notice under Section 11(5), the possession should have been taken through the manner suggested under Section 11(6). Since the notice under Section 11(5) was not even served, the symbolic possession is not a possession as contemplated under Sections 11(5) and 11(6) of the Act. The learned counsel for the petitioner also produced various receipts for payment of tax and the latest receipt is dated 07.03.2007 and various electricity bills including the last one dated 14.11.2008 besides Small Scale Industries Registration Certificate about the carrying on the manufacturing of bricks, in support of his submission that the concerned lands are in his actual possession.

22.The learned Special Government Pleader vehemently argued that symbolic possession is sufficient when the actual take over of possession is not contemplated under the Act. We are not in agreement with that submission in view of the categorical pronouncements of this Court referred to above.

23.Once the possession is not taken over by the Government as held by us, all the proceedings under the Act must be held to have abated under Section 4 of the Repealing act, in view of the categorical pronouncement of the constitutional Bench of the Honourable Apex Court in Smt.Angoori Devi Vs. State of Uttar Pradesh and Others reported in JT 2000 (Suppl.1) SC 295.”

The Division Bench which decided *M/s.Sree Jayalakshmi Brich Industries'* case has again reiterated the position in a subsequent



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judgment in the case of ***G.Krishnamoorthy and others v. Government of Tamil Nadu, represented by its Secretary, Revenue Department, Chennai and others [2009 (8) MLJ 85]***.

29.A Division Bench consisting of His Lordship Mr. Justice M.Y.Eqbal, Chief Justice, as he then was, speaking for the Bench, in the case of ***The Government of Tamil Nadu and others v. M/s.Mecca Prime Tannery, represented by its Managing Director and others [2012 (4) L.W. 289]***, has elaborately considered the terms 'vesting' and 'vesting free from encumbrance' used in different Statutes, having different connotations. It was held that, even after declaring excess vacant land and vesting of the land free from encumbrance, the State has to initiate action for taking possession of the land, as evident from Sections 11(5) and 11(6) of the Act. For proper appreciation of the judgment, this Court has to extract the following portion of the said judgment :

“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)



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contemplates issuance of notice by the State Government to any person, who may be in possession, to surrender and deliver possession of the land to the State Government or any person duly authorised 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.

33.The phrases "shall be deemed to have been acquired" and "shall be deemed to have been vested absolutely in the State Government" occurring in Section 11(3) of the Act, in our considered opinion, mean that the right, title and interest in respect of the land shall be deemed to have been vested in the State Government and not possession of the land. After the right, title and interest is vested in the State Government by notification under Section 11(3), the State Government has to take further action for taking possession of the land, if the land owner or any person in possession refuses or fails to surrender or deliver possession of the land so vested in the Government.

34.There are cases where after notice under Section 11(5) of the Act, the land owner delivers possession of the land and acknowledges the same in writing, and the State, after taking possession of the land so delivered voluntarily by the land owner, either comes into possession of the same or allots those lands to other



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persons, then in such cases, even thereafter, if the land owner or any person claims to be in possession of those lands, then we have no hesitation in holding that continuance of such possession even after surrendering or delivering the land to the State is illegal possession and they shall be treated as encroachers.

35. However, there are cases where although the competent authority issued the notice under Section 11(5) of the Act to the land owners or persons in possession to surrender or deliver possession of the land, but the land owner or the person in possession fails to deliver the land and continues to be in possession of such land and the authority of the State did not take action under Section 11(6) of the Act for taking delivery of possession, then in such cases, the State Government shall not be deemed to be in possession of those lands.”

The Division Bench, ultimately after referring to every judgment that was cited on behalf of the State, rejected the same and accepted the case of the persons who were in physical possession of the property to grant relief on account of the repeal of the Act on the ground that physical possession was not taken from those persons.

30. The issue whether physical possession is a *sine qua non* to conclude the proceedings to render the Repealing Act ineffective, was considered by the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. Hari Ram* [2013 (4) SCC 280]**. Interpreting the provisions of the similar Act which is applicable to the State of Uttar



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Pradesh and its repeal, the Hon'ble Supreme Court has held as follows
:

“Voluntary Surrender

31. The ‘vesting’ in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in Maharaj Singh v. State of UP and Others (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that ‘vesting’ is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in Rajendra Kumar v. Kalyan (dead) by Lrs. (2000) 8 SCC 99 held as follows:

“We do find some contentious substance in the contextual facts, since vesting shall have to be a “vesting” certain. “To vest” generally means to give a property in.” (Per Brett, L.J. Coverdale v. Charlton. Stroud’s Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To “vest”, cannot be termed to be an executor devise. Be it noted however, that “vested” does not necessarily and always mean “vest in possession” but includes “vest in interest” as well.”

32. We are of the view that so far as the present case is concerned, the word “vesting” takes in every interest in the property including de jure possession and, not de facto but it is always open to



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a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act.

33. Before we examine sub-section (5) and sub-section (6) of Section 10, let us examine the meaning of sub-section (4) of Section 10 of the Act, which says that during the period commencing on the date of publication under sub-section (1), ending with the day specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made in contravention of the Act shall be deemed to be null and void. Further, it also says that no person shall alter or cause to be altered the use of such excess vacant land. Therefore, from the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made in sub-section (3), there is no question of disturbing the possession of a person, the possession, therefore, continues to be with the holder of the land.

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of “possession” which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.



35.If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) to Section 10, there is no necessity of using the expression “where any land is vested” under sub- section (5) to Section 10. Surrendering or transfer of possession under sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36.The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) to 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



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by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under sub-section (5) to 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), than “forceful dispossession” under sub-section (6) of Section 10.

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

The Hon'ble Supreme Court then has considered the effect of Repeal Act in Para Nos.41 and 42 of the said judgment, which reads as follows :



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“Effect of the Repeal Act

41. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.”

31. The same principle was followed subsequently in few judgments of the Division Benches and in several judgments of



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learned Single Judges of this Court, viz., in the cases of *The Government of Tamil Nadu represented by its Secretary, Revenue Department and others v. J.Richardson [2014 (3) L.W. 328]*, *State of Tamil Nadu represented by its Secretary to Government, Revenue Department, Chennai and others v. Sumathi Srinivas [2015 (2) L.W. 391]*, *A.N.Visalakshi and others v. The Special Commissioner, Urban Land Ceiling and Land Reforms, Ezhilagam, Chepauk, Chennai and others [2015 (5) CTC 823]*, etc. In *A.N.Visalakshi's* case, a Division Bench of this Court noticed that the land delivery receipt recorded by the authority can be considered only as paper delivery as it is not authorised by law, especially in a case where no authenticated records are available to show that authorities have taken physical possession of the land in accordance with law.”

9. Now coming to the case on hand, based on the documents produced before this Court and the judgments relied by this Court in the preceding paragraphs, this Court believes and accepted the contentions of the landowner that the proceedings under the Urban Land Ceiling laws are abated since physical possession was not taken by following the procedure contemplated under the Urban Land Ceiling Act, particularly under Section 11 of the Act. Even though the learned Single Judge held that the acquisition under the Urban Land Ceiling proceedings is vitiated and declared null and void on the ground that the

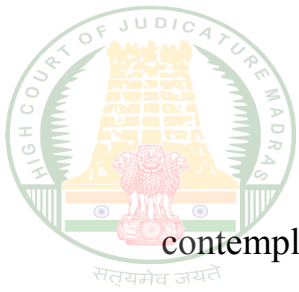


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compensation was not paid to the landowners. This Court, upon a careful reading

of the judgment of the Hon'ble Division Bench in the case of ***The Government of Tamil Nadu and Others v. M/s. Mecca Prime Tannery, represented by its Managing Director and Others [2012 (4) L.W. 289]*** noticed that the Division Bench followed a few precedents, where it has been held that Urban Land Ceiling proceedings would lapse, if it is found that possession has not been taken over by the State Government and compensation also not been paid to the land owners and that the land owners are entitled to the benefit of Repeal Act, 1999.

10. It is to be noted that the Division Bench in the said judgment considered the issue in light of the specific provisions under the Urban Land Ceiling Repeal Act, 1999. Since taking possession of lands is contemplated only after payment of compensation, in the absence of any notice regarding compensation and it is admitted that no compensation was determined or tendered, we have no hesitation to hold that proceedings under Urban Land Ceiling Act had lapsed under the Urban Land Ceiling Repeal Act, 1999. Since this Court has also found that the Urban Land Ceiling proceedings initiated earlier had abated, as physical possession was not taken from the landowners by following the procedure



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contemplated under Section 11 of the Act, consequently, the writ petitioner/1st

respondent is entitled to the relief as prayed for. Since the land has been utilised for

the formation of the outer ring road by the CMDA, this Court has no hesitation in approving the order of the learned Single Judge, directing the respondents to initiate proceedings to acquire the land and to pay compensation to the landowners for an extent of 7,600 sq. ft. under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. Even though the learned counsel appearing for the CMDA produced a communication dated 04.09.2003, the notice under Section 12 (2) under the Land Acquisition Act issued to the landowner, namely, the 1st respondent. It is true that the proceedings dated 04.09.2003, produced by the appellant, shows one Sundaram/land owner signed and received a copy of the notice under Section 12 (2) of the Act. However, the signature found in the document does not match the representations of the landowner and the depositions recorded by the Special Tahsildar during the award enquiry. Apart from that, in the counter-affidavit filed by the 5th respondent/CMDA in W.A.No. 1928 of 2021, it is stated as follows



“5. I further submit that the Land value was fixed by the Land Acquisition Officer at the rate of Rs. Rs.2.45 per Are and the compensation worked out to Rs.20.47 as per item No.52 of the award since the acquired land was a pit land, the requisitioning body has spent Rs.1,24,500/- for refilling charges.”

12. It is clear from the above statement made in the counter affidavit that the said compensation was fixed at the rate of Rs.2.47 per Are, which is equivalent to Rupee one per cent. Such a low compensation was determined and fixed by the Land Acquisition Officer consciously in the year 2001 without any justification, solely on the ground that there was a pit in the land and refilling charges Rs.1,24,500/- had to be met. This exposes how the official respondents are unfair in dealing with the writ petitioner. Our conscience does not permit to confirm the award to drive the land owner to spend further in litigation seeking enhancement under Land Acquisition Central Act. We declare that the award is void and vitiated by patent illegality and unconstitutional approach.

13. Therefore, this Court is of the view that the amount of compensation was fixed without any application of mind and that the authorities under the Land



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Acquisition Act have taken valuable private lands of the 1st respondent by fixing an unreasonably low compensation amount of Rs.20/- for an extent of 12 cents of land. Having regard to the conduct of the Land Acquisition Officer, this Court would not wonder if the officers concerned would create records to show that the landowner acknowledged the notice issued under Section 12(2) of the Act.

14. During the course of the hearing, this Court persuaded the writ petitioner/1st respondent to accept reasonable compensation since the land has been utilized for a public purpose. Even though the writ petitioner/1st respondent was willing to accept compensation calculated based on the guideline value which is certainly less than 1/10 of the compensation payable as per the current market value of the property, the official respondents were unable to agree to a reasonable compensation for the 1st respondent. It is to be noted that the respondent authorities had already fixed the market value in respect of other lands acquired for the formation of the outer ring road.

15. The respondents calculated the compensation payable for the lands as on the date of passing the award in the year 2013. However, for unknown reasons, the



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officials refused to agree for fair compensation. This Court disapproves the

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attitude of the official respondents. Due to their conduct, the Government is now compelled to pay compensation which would certainly costs the exchequer, by acquiring the land afresh. This will lead to the position that compensation must be determined based on the market value as on the date of the preliminary notification to be issued under Section 11 and Act 30 of 2013. Realising the consequences, we tried our best to persuade the officials by giving ample time. However we realised that some officials who are in the helm of affairs probably knowing that the writ petitioner may not survive another litigation, refused to agree for a fair settlement. This attitude would only show that the officials still believe that compensation can be fixed in the same manner by which Rs.20/- was fixed for 12 Cents earlier. As a result, the Government is likely to suffer a great loss. The entire amount of compensation, which must now be determined based on today's market value, could have been avoided had the respondents agreed to pay compensation as suggested by this Court during earlier hearings.

16. It is open to the State to argue the case on merits by filing an appeal before the Hon'ble Supreme Court on the law settled by this Court, which has also

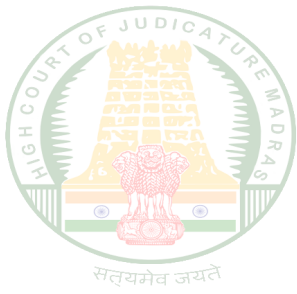


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been confirmed by the Hon'ble Supreme Court. However, with a great sense of responsibility, this Court firmly believes that the attitude of the officials in positions of authority should be made accountable, as their actions have now compelled the State to pay compensation based on the market value as on the date of the fresh acquisition notification.

17. In fine, these appeals are dismissed with the following directions;

- i. The State shall issue preliminary notification to acquire the land of the 1st respondent under Act 30 of 2013, within a period of two weeks from the date of receipt of a copy of this order in respect of the land which was covered by Urban Land Ceiling proceedings which had now been declared abated.
- ii. Entire compensation shall be disbursed after passing the award, within a period of eighteen weeks from the date of preliminary acquisition notification. The enquiry under Section 15(2) shall be dispensed with as the land had already been utilised for a public purpose.
- iii. The compensation determined under Act 30 of 2013 should be paid within a period of four weeks after passing the award. The sum of



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Rupees one crore which is paid pursuant to the interim order granted by this Court shall be deducted out of the amount payable by the respondent.

- iv. Since the 1st respondent is deprived of his enjoyment all along, the land acquisition officer or the competent authority shall also determine the compensation for depriving the petitioner's right of enjoyment of property by awarding a lumpsum after hearing the writ petitioner.
- v. The 1st respondent/writ petitioner is also entitled to compensation redetermined in respect of land to the extent of 500 sq.meters. However the market value as on the date of notification issued under the Land Acquisition Act. However, market value and other statutory benefits shall be determined and compensation shall be paid in the manner specified under Act 30 of 2013. It is needless to say that it will be open to the writ petitioner to seek reference under Section 64 of Act 30 of 2013 if he has objections to the award, to seek enhancement.



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vi. In case of any delay in the disbursement of compensation or passing of an award, for no fault of writ petitioner, beyond the time specified in this order, the appellant shall pay a further sum of Rs.2 Crores, as interim compensation. This Court has found that the compensation paid to other land owners, for smililar land acquired in the year 2000 for the same purpose, is more than twice this amount if interest is calculated up to date. Learned Additional Advocate General appearing for CMDA has also produced a working sheet arriving at a sum of Rs. 5,34,92,225/- on the basis of guideline value.

viii.No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.S.SUNDAR J.) (P.DHANABAL J.)
29-01-2025

Index : Yes/No

Internet : Yes

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To

1. The Member Secretary
Chennai Metropolitan, Development Authority (CMDA)

No.8, Gandhi Irwin Salai,
Egmore, Chennai 600 008

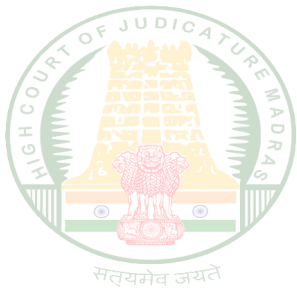
2. The General Manager (PC)
National Highways Authority Of India
Director, Corporate Office G-5 And 6,
Sector 10 Dwaraka,
New Delhi 110 075

3. The Tamil Nadu Road Development Co Ltd,
Sindur Pantheon Plaza,
Second Floor, No.346, Pantheon Road,
Egmore, Chennai 600 008

4. The Revenue Secretary,
Government of Tamil Nadu,
Fort St.George, Chenna-600009.

5. The Commissioner of Urban Land Ceiling &
Urban Land Tax,
Ezhilagam, Chepauk,
Chennai-600005.

6 The Assistant Commissioner,
Urban Land Tax & Urban Land Ceiling,
No.5, Sannathi Street,
Chennai -600056



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S. S. SUNDAR, J.
and
P. DHANABAL, J.

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and 1923 of 2021
AND
CMP NOs. 12483,12487, 12489 of 2021
and CMP NO. 53 of 2022

29-01-2025