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W.P.No.15857 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.15857 of 2007
and M.P.Nos.1 & 2 of 2007
and M.P.No.1 of 2010

Kanna Pillai

.... Petitioner

Vs

1.The Special Commissioner &
Commissioner of Land Reforms
Chepauk, Chennai - 600 005.

2.The Assistant Commissioner / U.L.Y.
Competent Authority (Urban Land Ceiling)
Ambattur, E.V.R. Road
Aminjikarai, Chennai.

3.The Tahsildar
Ambattur Taluk
Ambattur, Chennai - 600 053.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents, especially the order of the second respondent dated 30.4.97



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vide Na.Ka.3402/96/A1 under Section 9(5) and Notice dated 25.9.98 vide 3402/96/A2 under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in respect of lands in Survey Nos.42/1A, 37/4A, 37/4b and 43/1A4 measuring 3950 sq.mts. of Pandeswaram Village, Ambattur Taluk, Tiruvallur District and quash the same and treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, (Act 20 of 1999), so as to enable the third respondent to correct the entries in their records.

For Petitioner : Mr.V.Ramesh

For Respondents : Mr.A.Selvendran
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the second respondent dated 30.04.97 issued under Section 9(5) and notice dated 25.09.1998 issued under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 [hereinafter 'said Act' for brevity] and to treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, (Act 20 of 1999) [for brevity 'Repeal Act'].



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2. The case of the petitioner is that he is the Power Agent of one Munuswami Pillai, who is the owner of the property. Proceedings were initiated under the Act and the orders passed by the second respondent and the notice issued to the petitioner, have been put to challenge in the present writ petition.

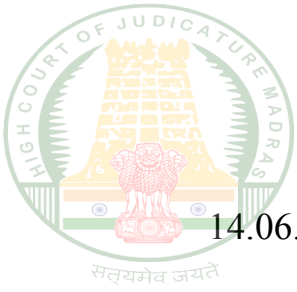
3. The respondents have filed the counter affidavit. It is stated in the counter affidavit that Kanna Pillai, the petitioner herein is the owner of lands in various survey numbers in Pandeswaram village. The said Kanna Pillai did not file any return under Section 7(1) of the Act, for the urban lands owned by him. Hence, notice was issued by the second respondent under Section 7(2) of the Act on 06.08.1996, directing the owner to file necessary statement under Section 7(1) of the Act. This notice was received by the petitioner and there was no reply for the notice. Thereafter, a draft statement under Section 9(1) along with notice under Section 9(4) of the Act was issued on 30.10.1996, allowing 500 sq.mtrs. as petitioner's entitlement area and bringing the excess



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vacant land available as 3450 sq.mtrs. The owner of the land was directed to submit his objections. Thereafter, the draft statement under Section 9(1) r/w.

9(4) was served on one Navanithammal, the wife of said Kanna Pillai, on 12.02.1997. Since no objections were received, the land was inspected by the concerned authority, who found the land to be vacant. In the absence of objections, orders were issued under Section 9(5) of the Act through proceedings dated 30.04.1997, determining the excess vacant land available as 3450 sq.mtrs., after allowing 500 sq.mtrs. of land towards petitioner's entitlement. These notices were said to have been received by one Kanthammal, who is the wife of the urban land owner's brother. Even thereafter, no objections were received from the land owner, hence, a notification under Section 11(1) was issued on 01.04.1998 and it was published in the Gazette on 20.05.1998. Thereafter, a notification under Section 11(3) vesting the land with the Government was issued and it was published in the Gazette on 26.08.1998. This was followed with a notice under Section 11(5) of the Act dated 25.09.1998, directing the urban land owner to surrender possession of the excess land. Since the land owner failed to hand over possession, the possession of excess lands was taken over on



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14.06.1999 and it was handed over to the revenue authorities.

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4. In the light of the above stand taken by the respondents, they have sought for dismissal of this petition.

5. Heard Mr.V.Ramesh, learned counsel appearing for the petitioner and Mr.A.Selvendran, learned Special Government Pleader for respondents.

6. Various issues were raised by the counsel for the petitioner questioning the proceedings of the second respondent. It is not necessary for this Court to go into all the issues since this Court finds that the possession was not taken in line with Section 11(5) of the Act r/w. Rule 8 of 1978 Rules. If possession has not been taken as mandated, the Repeal Act will automatically come into play.

7. This Court had the advantage of going through the original files that were submitted in the Court today. Even though the notice under Section 11(5) is available, there is absolutely no indication that this notice was served



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on the owner of the property.

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8. The land in question is a vacant site. Hence, the notice must first be sent by registered post to the owner/occupier, and inspite of sending such notice, no objection having been received, the authorities can proceed further. For resorting to affixture, it is a condition precedent that a notice must first be sent through registered post to the owner of the property. If that step has not been taken, mere affixture of notice on the vacant site, pales into insignificance. Once the possession is not taken as mandated under Section 11(5) of the Act, it will not be taken as a valid taking over of the possession in the eye of law. Hence, the moment the Repeal Act comes into force, the proceeding itself abates. The law on this issue is too well settled by a catena of judgments passed by this Court and the Apex Court.

9. In the light of the above discussion, this Court is inclined to interfere with the proceedings of the second respondent on the simple ground that the possession was not validly taken by following the procedure under Section 11(5) r/w. Rule 8 of the Rules and therefore, the benefit of the Repeal Act



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must enure in favour of the petitioner.

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10. Accordingly, this writ petition stands allowed. In the light of interfering with the proceedings of the second respondent, the revenue records have to be mutated in the name of the petitioner by the concerned authority namely, the second respondent-Tahsildar, within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

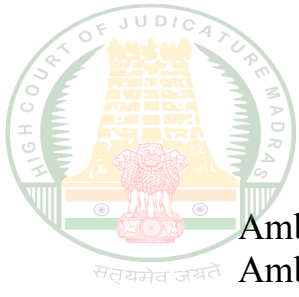
17.02.2025

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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