

WP 24167_ULC_Court Order_01

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2012

CONRM:

THE HONOURABLE MR. JUSTICE K.N.BASHA
W.P.No.24167 of 2009

V.R.Ramamathan

Petitioner

vs.

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

2.The Competent Authority,
Urban Land Ceiling,
Urban Land Commission,
Kanneeyar Street, Adambakkam,
Chennai 600 088.

3.The Tahsildar,
Tambaram Taluk,
Chennai

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the proceedings in Rc.7009/85B on the file of the Assistant Commissioner (ULC) Competent Authority/Respondent 2 dated 30.06.1989 or any other proceedings initiated in terms of the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the land comprised in Survey No.361/51B of Jamean Pallavaram Village, Tambaram Taluk as null and void since the same is abated in terms of the provisions contained in Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 and consequently, direct the respondents to make necessary changes in the name of the petitioner in all the revenue records and to issue patta in favour of the petitioner in respect of the said land.

For Petitioner : Mr.V.Ayyadurai

For Respondents : Ms.V.M.Valumani,
Special Government Pleader.

O R D E R

The petitioner has come forward with this petition seeking for the relief of a Declaration, declaring the proceedings in Rc.7009/85B on the file of the Assistant Commissioner (ULC) Competent Authority/ second respondent dated 30.06.1989 or any other proceedings initiated in terms of the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of

bg 0071

- 22 -

the land comprised in Survey No.341/51B of Jemeen Pallavaram Village, Tambaram Taluk as null and void, since the same is abated in terms of the provisions contained in Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 and consequently, direct the respondents to make necessary changes in all the revenue records and to issue patta in favour of the petitioner in respect of the said land.

2. The factual matrix of the case is as follows:

2.1. An extent of 3 acres of land comprised in Old S.No.341/6 corresponding to New S.No.341/51 was originally purchased by the mother of the petitioner by name VR.Annapoorani Achi for value by registered sale deed dated 23.08.1958 and a stone crushing industry was set up in a portion of the said land under the name and style as Sriam & Co. Necessary building and other infrastructures for running the blue metal business and crushing unit have been put up. The entire extent of land in S.No.341/51 was surrounded by pucca compound wall. At present only an extent of 2.19 acres is available out of 3.00 acres as the remaining 0.81 cents of land had been left out for usage of passage for the public.

2.2. The mother of the petitioner/owner has executed Registered Settlement Deed dated 26.05.2005 registered as Doc.No.2454/2005 on the file of the Sub Registrar, Pallavaram in favour of the petitioner herein and as such, the petitioner has been in continuous possession and effective enjoyment of the entire extent in S.No.341/51 till date. Recently, the petitioner came to know that the land in S.No.341/51 was sub divided into 341/51A and 341/51B. On his further verification, he was made known the above urban land ceiling proceedings initiated against his mother.

2.3. The petitioner has made a representation before the second respondent herein requesting to furnish the details of proceedings initiated in terms of provisions contained in the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and also required to release the land from such proceedings in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 inasmuch as the petitioner has been in continuous possession and enjoyment of the excess land measuring an extent of 1.43 acres as well. The petitioner has also enclosed all relevant documents such as copy of settlement deed, encumbrance certificate, SLR, a patta etc., along with the representation dated 29.09.2009, but no reply has been received from the second respondent till date.

2.4. In the meantime, third parties have attempted to trespass upon the property which was duly thwarted by the petitioner. However, the third parties fraudulently created documents in respect of the land of the petitioner and filed a suit in O.S.No.126 of 2009 on the file of the District Munsif Court, Alandur for declaration and permanent injunction and the same is pending. In these circumstances, the petitioner applied for patta for the entire extent previously comprised in S.No.341/51 which was sub-divided as 341/51A in the name of the mother of the petitioner

-23-

and 341/51B classifying as Government land before the third respondent. The petitioner was informed that he will not be issued patta in respect of the land in S.No.341/51B, since the same was classified as Government land unless order of the competent court setting aside the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act is obtained. The explanation offered by the petitioner contending that the impugned proceedings initiated under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act) 1978 are abated by operation of law in terms of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (T.N. Act 20 of 1999) inasmuch as the possession of the alleged excess land has not been taken over from the petitioner, was of no avail. Therefore, the petitioner has been constrained to approach this Court with the present writ petition with the above said prayer.

3. Mr.V.Ayyadurai, learned counsel appearing for the petitioner vehemently contended that the petitioner is in continuous possession and enjoyment of the subject property in this matter on the strength of the Settlement Deed dated 26.05.2005 executed by the mother of the petitioner, namely VR.Annapoorani Achi. It is contended that the petitioner is in continuous possession and enjoyment of the subject property and the possession of the said property is yet to be taken over by the competent authorities by following the established procedure as per the decisions of the Hon'ble Supreme Court. It is pointed out by the learned counsel for the petitioner that the disputed property is a pucca building with a compound wall and the said building is in continuous possession and enjoyment of the petitioner and such being the position, the contention of the respondents that the possession was already taken over is unacceptable. It is submitted that the mother of the petitioner was also not paid with any compensation. It is further contended that in view of the petitioner holding continuous possession and enjoyment of the disputed property, the proceedings initiated against the mother of the petitioner before execution of the settlement deed in favour of the petitioner and in the absence of any acceptable evidence to establish that the possession was already taken over from the petitioner, the impugned proceedings are abated by operation of law in terms of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (T.N. Act 20 of 1999). In support of his contentions, the learned counsel for the petitioner would place reliance on the following decisions:

(i) G.P.Saraswathi & Others v. The Assistant Commissioner cum Competent Authority (Urban Land Ceiling) & Another reported in CDJ 2010 MHC 4487

(ii) Saraswathi and Another v. The Principal Commissioner & Commissioner of Land Reforms reported in 2007 (4) CTC 714

(iii) V.Gurunathan v. The Assistant Commissioner of Urban Land Tax and Ceiling reported in 2007 (3) CTC 362.

-24-

4. Per contra, Ms.V.M.Valumani, learned Special Government Pleader contended that the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was already initiated against the mother of the petitioner by following the procedure of serving notices under Sections 9(5) and 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. It is contended that even the authorities have already taken over the possession of the subject property on 19.12.1997. In order to substantiate such contention, the learned Special Government Pleader produced the original records, namely, Land Delivery Receipt. It is further contended that in view of the possession already taken over on the basis of the records, namely, Land Delivery Receipt, the petitioner cannot contend that the possession is still with him and he is not entitled to seek the benefit of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (T.N. Act 20 of 1999). In support of her contentions, the learned Special Government Pleader placed reliance on the decision of the Hon'ble Supreme Court in Sulochana Chandrakant Galande v. Pune Municipal Transport and Others reported in (2010) 8 SCC 467.

5. This Court carefully considered the rival contentions put forward by either side and perused the entire materials available on record including the original records produced before this Court by the learned Special Government Pleader.

6. At the outset, it is to be stated that the authorities have initiated proceedings in respect of the subject property under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 against the mother of the petitioner, namely, VR. Annaspoorani Achi by issuing notices under Sections 9(5) and 11(5) of the said Act. However, the fact remains that the mother of the petitioner had executed registered Settlement Deed dated 26.05.2005 registered as Document No.2454/2005 at the Sub Registrar Office, Pallavaram in favour of the petitioner and it is stated by the petitioner that he is in possession and enjoyment of the property to an entire extent in S.No.341/51 and recently, the petitioner came to know that the land S.No.351/51 was subdivided into 341/51A and 341/51B. The petitioner has come forward with a definite and categorical statement in his affidavit to the effect that he is in continuous possession and enjoyment of the subject property till date. The said factor is not disputed by the respondents by filing any counter. However, the learned Special Government Pleader made a feeble attempt by producing certain documents before this Court to contend that the possession of the subject property was already taken over by the authorities.

7. The perusal of the original records produced before this Court, namely, Land Delivery Receipt reveals that the said document is not at all signed by the mother of the petitioner or any other authorized person as authorized by the mother of the petitioner. It is pertinent to note that there was some signature without even mentioning the name and even the date is also not clearly found in the said document under the title Land Delivery Receipt. This

- 25

Court is of the considered view that the authorities have not followed the established procedure for taking over possession as per the principles laid down by the Hon'ble Apex Court in a catena of decisions.

8. The learned counsel for the petitioner rightly placed reliance on the decision of this Court in G.P. Saraswathi & Others v. The Assistant Commissioner Cum Competent Authority (Urban Land Ceiling) & Another reported in CDJ 2010 MHC 4487, wherein the learned Single Judge of this Court has placed reliance on the decisions of the Hon'ble Apex Court relating to the procedure to be followed for taking possession of the property, as hereunder:

"15. The nature of taking possession of the acquired land came to be considered by the Supreme Court in Tamil Nadu Housing Board Vs. Viswan (D) by Irs. reported in JT 1996 (2) SC 549. In that case, after considering the judgment in Narayan Bhagde's case, this Court observed that while taking possession of 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's case had been rendered and held as under:

"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 Panchanama 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."

16. The said judgment came to be quoted with approval and followed by the Supreme Court recently in Sita Ram Bhandari Society, New Delhi Vs. Lt. Governor, Govt. of N.C.T. Delhi and others reported in JT 2009 (12) SC 324, where after referring to Viswan's case (cited supra), in paragraph 9, it was observed as follows:

"9. 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 biswas 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."

- 26 -

17. But, the Supreme Court in *MPC Ltd. v. Mahesh Dutta* reported in (2009) 8 SCC 339 in paragraphs 16, 25 to 30, 37, 39 and 44 has held as follows:

"16. It is a well-settled proposition of law that in the event possession of the land, in respect whereof a notification had been issued, had been taken over, the State would be denuded of its power to withdraw from the acquisition in terms of Section 48 of the Act. Whether actual or symbolic possession had been taken over from the landowners is essentially a question of fact. Taking over of possession in terms of the provisions of the Act would, however, mean actual possession and not symbolic possession. The question, however, is as to whether the finding of fact arrived at by the High Court that physical possession, indeed, had been taken over by the Collector is correct or not.

25. Strong reliance has been placed upon a decision of this Court in *Balwant Narayan Bhagde v. M.D. Bhagwat* wherein it has been held: (SCC pp.711-12, para 28)

"28.... We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolic' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard-and-fast rule laying down that act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspecting the land for the purpose of determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to affectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular

time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner even coming to know of it."

The principles laid down by the Hon'ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant case, as in this case also, the procedures contemplated as laid down by the Hon'ble Apex Court in the decision cited supra are not at all followed. The respondents were able to produce only a piece of receipt called Land Delivery Receipt, which does not contain the signature of the mother of the petitioner or any other authorized person and there is absolutely no witness to certify the same in the said document.

9. The learned counsel for the petitioner also placed reliance on the yet another decision of this Court in *Baraswathi* and another. The Principal Commissioner & Commissioner of Land Reforms reported in 2007 (4) CTC 714, wherein this Court has held that the urban land ceiling authorities have not produced valid evidence and proved that they have taken over the possession of the land in dispute.

10. It is also relevant to refer certain other decisions regarding delivery or taking over possession of the property by the urban land ceiling authorities. A Division Bench of this Court by the judgment dated 18.06.2007 in W.A.Nos.693 to 695 of 2003 [*Annie Jacob and Others v. State of Tamil Nadu and Another*] held as hereunder:

"8. There is nothing on the record to suggest that the competent authority issued any notice in writing directing the original land holder or the appellants to surrender or deliver possession of the lands in question.

Nothing has been produced to suggest that the original land holder or the appellants refused or failed to comply with such order and on failure the possession of the lands were taken by force. In absence of such notice under Section 11(5) or action taken under Section 11(6), a bald statement as made by the respondents that possession was taken on 10.02.1995, cannot be accepted....."

22. In view of categorical pronouncements of this Court, we are of the view that the notice under Section 11(5) is mandatory and in the absence of 11(5) notice, the entire proceeding is vitiated."

In the said decision, the Division Bench of this Court further held regarding the taking over of the possession as hereunder:

"24. The learned counsel for the petitioners strenuously contended that the Act contemplates that if

-28-

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 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.

25. Further, it is surprising that while the third respondent issued a letter dated 13.11.1990 signed on 27.11.1990 directing the Deputy Tehsildar-II to serve notice under Section 11(5) of the Act, the Land Delivery Receipt was signed by the third respondent on the same day i.e. 17.11.1990 at the place "handing over" and the FIRKA Revenue Inspector signed at the place "taking over." That is, before the notice under Section 11(5) was served as per his own letter dated 13.11.1990 that was signed on 27.11.1990, the alleged taking over of possession in papers took place on 17.11.1990 and the same was relied on by the Government to sustain the order of the Tribunal.

26. The letter dated 13.11.1990 of the Competent Authority states that four Land Delivery Receipts were enclosed with the 11(5) notice in Form VII and those receipts are found at page 191-195 of the Notes File. The letter directed the Deputy Tehsildar-II has to serve two notices to the land owner. The Land Delivery Receipts state as follows:

"The above extent has been delivered by me and taken possession of by FIRKA REVENUE DEPARTMENT.
(LAND OWNER) (REVENUE INSPECTOR)
HANDEDOVER BY TAKEN OVER BY"

Therefore, it is very clear that the take over of possession is complete only when it is signed by the land owner while delivering the excess land pursuant to under Section 11(5) of the Act in Form VII prescribed under the Rule 10(3) of the Rules. As stated above, if no such delivery of possession took place, the third respondent has to resort to 11(6) of the Act. Admittedly, in this case, the petitioners did not sign in the Land Delivery Receipt.

b

-29-

27. The learned counsel for the petitioners argued that there should be actual take over of possession and the take over of possession in paper 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."

The Division Bench of this Court in the said decision also referred another order of the learned Single Judge of this Court dated 25.09.2006 in W.P.Nos.33839 and 33911 of 2004, which reads hereunder:

"7. To the same effect is the order of Justice R.BALASUBRAMANIAN, dated 22.08.2006 passed in W.P.No.17416 of 2004, where the learned Judge, reiterating the position that the possession means taking physical possession, has held, "Therefore, the sine qua non to keep 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."

The Division Bench of this Court also referred yet another order of the learned Single Judge of this court dated 19.10.2006 in W.P.No.29061/2003, which reads hereunder:

"This Court in its judgment Sossamma Thampy v. Assistant Commissioner (ULI)-cum-Competent Authority (ULC), (2006) 2 MLJ 664 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."

Lastly, the Division Bench of this court also referred to a decision of the Hon'ble Apex Court, as hereunder:

"34. The learned senior counsel for the fourth respondent argued that the Government has allotted the concerned land to them and the fourth respondent is involved noble cause of helping the disabled persons. He therefore, argued that the writ petition deserves to be dismissed.

35. We are not in agreement with his submission. Even according to the fourth respondent, the land is still remain vacant due to the stay granted by this Court while the earlier W.P.No.12892 of 1991 was admitted. Further, in view of our categorical findings that the respondents failed to comply with the mandatory

30 -

provisions of Sections 11(5) and 11(6) and since there was no actual take over of possession, the writ petitioners are entitled to for the benefits of Section 4 of the Repealing Act 20 of 1999.

36. The learned counsel for the petitioners also relied on the judgment of the constitutional Bench of the Honourable Apex Court in *Bmt. Angoori Devi v. State of Uttar Pradesh and Others* JT 2000 (Suppl.1) SC 295 wherein it is held that all the proceedings under the Act must be held to have abated if the lands were not taken possession by the Government."

The principles laid down by the Division Bench of this Court in the decision cited supra by placing reliance on the earlier Division Bench decision of this Court and the decision of the learned Single Judge of this Court and the decision of the Hon'ble Apex Court, are squarely applicable to the facts of the instant case, as in this case also, as already pointed out there is absolutely no evidence available on record to substantiate the claim of the respondents that the possession of the subject land was already taken over. In the absence of any evidence to establish to the effect that the possession was already taken over in respect of the subject property, it goes without saying that the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 are abated in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (T.N. Act 20 of 1999).

11. This Court is also constrained to state that the respondents have not produced any material or evidence before this Court to substantiate that the mother of the petitioner was paid with any compensation. At this juncture, it is relevant to refer the decisions in *Sosamma Thampy v. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and Others*, 2006 (2) MLJ 664; *Anees Leather Manufacturers, rep. by its Proprietor, Mr. Annes Ahamed v. The Government of Tamil Nadu, rep. by its Secretary, Revenue Department, Fort St. George, Chennai and Others*, 2006 (3) LW 437, and *Jayaseelan & Retnascelan v. The Government of Tamil Nadu, rep. by its Secretary, Revenue Department, Fort St. George, Chennai and Others*, 2006 (3) LW 440, wherein this Court, while dealing with the effect of the provisions of the Tamil Nadu Urban Land Ceiling Repeal Act, 1999 (Act 20 of 1999) on the land acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, has held that all such proceedings initiated under the Act of 1978, would abate on the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, if the possession of the land had not been taken by the authorities concerned prior to the repeal, and if due compensation had not been paid to the petitioners. The principles laid down by this Court in the decisions cited supra are squarely applicable to the facts of the instant case, as in this case also, even the mother of the petitioner was not paid with the compensation and the possession also not taken by the authorities concerned and as such, the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and

-31-

Regulation) Act, 1978 would abate on the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

12. In view of the aforesaid reasons, this writ petition is allowed and the impugned proceedings in Rc.7009/858 on the file of the Assistant Commissioner (UIC) Competent Authority/Second Respondent dated 30.06.1989 or any other proceedings initiated in terms of the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 are unsustainable in law as the same are treated as abated in terms of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (T.N. Act 20 of 1999) in respect of the extent of land comprised in Survey No.341/5B of Jemeen Palloveran village, Tambaram Taluk. Consequently, the third respondent herein is directed to incorporate the name of the petitioner as owner in all revenue records like patta, chitta and adangul. It is made clear that the above said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

Sd/
Assistant Registrar

/True Copy/


Sub Assistant Registrar

jvm

To

1.The Secretary to Government,
The State of Tamil Nadu,
Revenue Department, Fort St.George,
Chennai 600 009.

2.The Competent Authority,
Urban Land Ceiling,
Urban Land Commission,
Kanneeyar Street, Adambakkam,
Chennai 600 088.

3.The Tahsildar,
Tambaram Taluk,
Chennai.

+ 1 C.C. To Mr. G.R.M.Palanisappan Advocate Sr.17903

+ 1 C.C. To the Government Pleader Sr.18131

W.P.No.24167 of 2009

JSV[CO]
KS 11/05/2012

bg 007