

WA-2485-of-2013- Appeal Petition_01

MEMORANDUM OF GROUNDS OF WRIT APPEAL

Under Clause 15 of Letter Patent

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Appellate Jurisdiction)

W.A.NO. _____ of 2012
Against

W.P.NO.24167 of 2009

1. The State of Tamil Nadu
Rep. by Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.

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

3. The Tahsildar,
Tambaram Taluk,
Chennai.

.... Appellants/Respondents,

V.R.Ramanathan,
S/o. RM.Veerappan Chettiar,
New No.2/133, Old No.1/283,
Sripuram Street,
Thoraipakkam,
Chennai-600 097.

Respondent/Petitioner

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The Address for service of all notices and processes on the Appellants are that of their Counsel, the Government Pleader, High court, Madras-104.

The Address for service on the respondent is as stated above.

The Appellants above named begs to prefer the Memorandum of Grounds of Writ Appeal against the order dated 14.03.12 made in W.P.No.24167 of 2009 passed by the Hon'ble Mr. Justice K.N. Basha for the following among others.

GROUNDS

1. The order of the learned Judge is contrary to law, weight of evidence and probabilities of the case.
2. The order of the learned Judge is not sustainable in law and the facts and circumstances of the case.
3. The learned Judge ought not to have allowed the writ petition setting aside the impugned order made in Rc.7009/85B, dated 30.06.1989 of the 2nd appellant herein.
4. The learned Judge failed to note that the impugned order has been passed as early as on 30.06.1989 and after 20 years, the said impugned order has been challenged during 2009.

5. The learned Judge failed to see that the writ petition is abuse of process of law and not maintainable. The possession of the land was taken in the year 1997 and the writ petition was filed after 12 years and it cannot be sustainable in the eye of law.
6. The learned Judge failed to see that the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999 is not applicable to the facts of the case.
7. The learned Judge failed to note that after following the procedure as laid down in the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 (herein after called as the Act) the possession of the excess vacant land measuring an extent of 5765 Sq.mts in S.No.341/51B was declared as excess and possession handed over to Revenue Authorities on 19.12.1997 prior to Repeal of the Act. Necessary changes were made in village accounts in TK 8A/3691/1405. The above case falls well within the saving clause provided under Section 3(1) (a) of the Repeal Act 20 of 1999. Thus the acquisition proceedings have attained finality and this case does not fall under section 4 of the Repeal Act.

8. The learned Judge failed to note that the land in question become vested with the Government with effect from 01.02.1995 after publication of notification under section 11(3) of the Act and the acquired land was handed over to the Revenue Authorities on 19.12.1997 and the land becomes Government land. In as much as the proceedings under the Urban Land Ceiling Act has been completed and possession handed over and the possession, if any, with petitioner could only be treated as encroachment of Government land. Therefore, the learned Judge erred in observing that the petitioner is in continuous possession of the land.
9. The learned Judge failed to note that all notices were issued and served on the ULO and the ULO had participated in the acquisition proceedings. The excess vacant land has been taken over and handed over to the Revenue Authorities on 19.12.1997 well before the introduction of the Repeal Act 20/1999 after observing all the formalities laid down in the Act 24 of 1978. The request for grating exemption was rejected by the Government on 7.11.86 and the subsequent appeals were rejected by then Principal Commissioner and Commissioner of

8. The learned Judge failed to note that the land in question become vested with the Government with effect from 01.02.1995 after publication of notification under section 11(3) of the Act and the acquired land was handed over to the Revenue Authorities on 19.12.1997 and the land becomes Government land. In as much as the proceedings under the Urban Land Ceiling Act has been completed and possession handed over and the possession, if any, with petitioner could only be treated as encroachment of Government land. Therefore, the learned Judge erred in observing that the petitioner is in continuous possession of the land.

9. The learned Judge failed to note that all notices were issued and served on the ULO and the ULO had participated in the acquisition proceedings. The excess vacant land has been taken over and handed over to the Revenue Authorities on 19.12.1997 well before the introduction of the Repeal Act 20/1999 after observing all the formalities laid down in the Act 24 of 1978. The request for grating exemption was rejected by the Government on 7.11.86 and the subsequent appeals were rejected by then Principal Commissioner and Commissioner of

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Land Reforms. Further, subsequent revision petition filed before the Special appellate Tribunal was rejected on 28.08.2000.

10. In as much as the entire acquisition proceedings were concluded during the year 1997 the so called settlement made in the year 2005 cannot be taken as valid in the eye of law.
11. The learned Judge failed to note that the authorities had followed every procedure before taking possession of the land, which cannot at any stage be found fault with.
12. The learned Judge failed to note that Sec.4 of the Repeal Act cannot be made applicable to this case for the reason being, no proceedings were pending immediately before the commencement of the Act before any court, tribunal or any authority. After observing all the formalities as laid down in the Act 24 of 78, the possession of the excess vacant land was handed over to the Revenue authorities on 11.08.1998 well before commencement of Repeal Act 20 of 1999 and therefore the the proceedings will not stand abated.
13. The learned Judge failed to note that after issue of a notice under section 11(5) of the Act, as the urban land owner did not object to the proposed acquisition, the possession of the

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excess vacant land was handed over to the Revenue authorities on 19.12.1997 by signing in the land Delivery Receipt. The signing in the Panchanama is not contemplated in the Urban Land Ceiling Act. The signatories in the LDR are the Government officials who signed for handing over and taking over the land acquired as excess vacant land. The procedures contemplated under the provisions of the Act have been followed and scrupulously, therefore, the petitioners' signature in the Land Delivery Receipt is not required. Then, necessary changes were made in the taluk accounts.

14. The learned Judge failed to note that the appeals and revision petition filed by the urban land owner have been rejected by the appropriate appellate forums.
15. The learned Judge also failed to note the observation of the Hon'ble Supreme court in Narayan Bhagde's case wherein the Hon'ble Supreme Court has inter alia observed that the physical possession could not be taken by the Government in respect of immovable property in the case of land acquisition matters.

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16. The learned Judge failed to note that the notice under section 11(5) of the Act directing the urban land owner to hand over the possession of the excess vacant land was issued on 28.7.1995 and served on the urban land owner, Tmt. V.R.Annapooraniammal by RPAD on 15.9.1995. The procedures contemplated in the Act were followed in the manner known to law. Hence, the learned Judge erred in pointing out that the possession was not taken over by the authorities. Once the notification under section 11(3) is published in the Tamil Nadu Government Gazette, the land become vested with Government. The possession of the acquired land was handed over on 19.12.1997 which is rightly saved under section 3(1)(a) of the Repeal Act.
17. The learned Judge ought to have noted that the findings of the Division Bench in Annie Jacob and others Vs State of Tamil Nadu and another is not applicable in this case as that was a case of subsequent purchaser of the acquired land.
18. The learned Judge ought to have dismissed the Writ Petition on the ground of delay and laches.

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19. In any event, the order passed by the learned Judge is not justifiable on the facts of the case.

It is therefore prayed that this Hon'ble Court may be please to allow the Writ Appeal by setting aside the order dated 14.03.12 made in W.P.No.24167 of 2009 and thus render justice.

MEMO OF VALUATION

Value of Writ Petition : Incapable

Court fee paid : Rs.200/-

Value of Writ Appeal : Incapable

Court fee payable : Rs.200

(Court fee exempted as per G.O.Ms.No.38/1998, Home (Court-I) Department, dated 9.1.1998).

Dated at Chennai, on this day of 2012

GOVERNMENT PLEADER

44 SR 92268/12
DISTRICT : CHENNAI

HIGH COURT : MADRAS

→ WP order.
W.A NO. 2485 / 2013

Against

W.P.NO. 24167 OF 2009

TYPED SET



GOVERNMENT PLEADER

M/s. G. R. M. Palaniappan, Advocate.
No: 222, New A.L.C.
Ch: 104