**(2002) 03 MAD CK 0103**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 5417, 5418, 5419, 5420, 5421, 5422, 5423, 5424, 5425, 5426, 5427, 5428, 5429, 5430, 5431, 5432, 5433, 5434, 5435, 5436 5437, 6318, 6319, 6320, 6321, 6322, 6323, 6324, 6325, 6326 and 6327 of 2000 and WMP No''s. Nos. 8198, 8199, 8200, 8

T.A. Venkatesan, A. Vijayan, K. Ramarathinam, D. Saraswathy, T.A. Ksrishnamurthy, Vijayalakshmi Jayaraman, K. Subba Reddy, K. Rajaselvi, S. Ramakrishnan, A. Sugavanan, N. Srinivasan, K.S. Ammerashapir, V. Ramasamy, V. Hariharan Rep. by his Power of Attorney agent V. Venkatasubramanian, V. Shivram, V.Thiyagarajan rep. by Power of Attorney agent V.Venkatasubramanian, M. Munian, K.V. Theevathilagai, N. Balakumar, T. Shanmugam, M. Sureshkannan, V. Sundararajan, T. Raghavan, V.K. Kabirdoss, M. Ramakrishnan, Smt. Amutha, Mrs. R. Soundari, K. Karuppaiah, R. Kandasamy, L. Nagasundaram and S. Haridoss — APPELLANT

Vs

The Government of Tamil Nadu — RESPONDENT

**Date of Decision :** 04-03-2002

**Acts Referred:**

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10(1), 11(3), 12, 13, 14
Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

**Citation :** (2002) 03 MAD CK 0103

**Hon'ble Judges :** V. Kanagaraj, J

**Bench :** Single Bench

**Advocate :** T.S. Sivagnanam, for the Appellant; M. Mahalingam, G.A., for the Respondent

# Judgement

V. Kanagaraj, J.—All these writ petitions are filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the fourth respondent/the Assistant Commissioner, Urban Land Tax, Kancheepuram District in Na.Ka.No.1638/98, dated 28.2.2000 in W.P.Nos.5417 to 5437 of 2000 and dated 31.3.2000 in W.P.Nos.6318 to 6327 of 2000, quash the same and forbear the respondents from in any manner interfering with the petitioners'' peaceful possession and enjoyment of their respective properties.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the case of the petitioners in all the above writ petitions is that the properties in S.No.611/1 originally belonged to one Govindammal and the properties in S.No.611/2 belonged to one Kanniappa Naicker and from the said original owners, one T. S. Ananthanarayana Deekshadar purchased the lands comprised in S.No.611/1 part and S.No.611/2 part measuring a total extent of 64 cents; that from out S.No.611/1 part, which fell to the share of one of the sons of the said Govindammal by name Bakthavatsala Naidu, he sold the same to V.G.P.Housing Pvt.Ltd. On 31.8.1978 and the said V.G.P. Housing Pvt.Ltd. In turn sold the property to M/s.Venu Naidu and his sons by 22.8.1980, who sold this land plotting out the same to different persons like petitioners in W.P.Nos.6318 to 6327 of 2000; that the said Ananthanarayana Deekshadar submitted returns before the fourth respondent for exemption from Urban Land Tax for the faslis 1382 to 1384 and the fourth respondent by proceedings 196/1385, dated 31.1.1980, ordered that the lands comprised in S.No.611/1 and 611/2 measuring 65 cents and 61 cents respectively do not come under the purview of the Urban Land Tax Act; that thereafter the said Ananthanarayana Deekshadar sold different extents of land to all the petitioners, except to the petitioner in W.P.No.5417 of 2000, who is none other than the son of the said Ananthanarayana Deekshadar and who is alleged to have become entitled to the property of his father after his death on 26.12.1979 in a partition between himself and his bothers and this is only a part of the properties and the other part having been sold to different purchasers by his deceased father himself to other petitioners in all the writ petitions; that all the purchasers from the said Deekshadar were also granted pattas and they also constructed houses obtaining planning permission from the Madras Metropolitan Development Authority, through the Commissioner, St.Thomas Mount Panchayat Union.

3. The petitioners would further submit that when the matter stood thus, the fourth respondent by the impugned order, in a cyclostyled manner, has stated that the petitioners have encroached into the lands which have been declared `surplus'' under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and in spite of the lands having been acquired under the said Act, the petitioners have purchased the lands and have entered into the lands illegally. In the impugned order, the 4th respondent has further stated that even though the Government could evict the petitioners, since it came to be known that the petitioners have purchased the lands in ignorance of the statutory provisions of law, the Government is desirous of allotting the said lands in favour of the petitioners on payment of such amounts determined by the Government and called upon to convey their consent within a period of 15 days failing which the lands would be allotted to third parties without reference to the petitioners'' possession. In the penultimate paragraph of the order, the 4th respondent further stated that though the Tamil Nadu Urban Land (Ceiling and

 

Regulation) Act, 1978 has been repealed, still, by the saving provision adequate safeguards have been made to allot the vacant sites which have already been acquired as surplus lands in favour of any one as the Government is willing to do, since the said lands have been declared `surplus'', the Government is entitled to allot the same at its discretion and has relied upon a Government Order in G.O.Ms.No.649, Revenue dated 29.7.1998.

4. The case of the respondents is that a notice u/s 7(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 was issued to the original owners of the lands viz. Govindammal and Kannaiappa Naicker on 30.8.1985 and as per Deputy Tahsildars Inspection report dated 28.7.1992, Draft notice u/s 9(4) and Draft statement u/s 9(1) of the Act for the proposed acquisition of excess vacant land i.e. 2100 sq.fts in S.No.611/1 and 1850 sq.fts in S.No.611/2 were issued on 31.7.1992; that as these lands were converted into house sites and the land owners did not file any objection to the proposed acquisition order u/s 9(5) of the Act was issued on 15.3.1995 declaring the said land as excess; that thereafter an erratum proceeding was issued on 5.9.1995 modifying the extent of excess vacant land in S.No.611/2 as 1850 sq.mts. and then final statements u/s 10(1) of the Act were issued on 23.8.1995 and 7.12.1995 regarding S.Nos.611/1 and 611/2 respectively and the above notices and Order u/s 9(5) of the Act were served by affixture as the land owners were not residing in the village and their addresses were also not known and thus following all the procedures under law, the Government have taken the possession of excess vacant land and handed over the same to the Revenue Department on 19.3.1998.

5. The respondents would further submit that the certificate under the Tamil Nadu Urban Land Tax Act was issued during 1989 and after conversion of the land into urban, action was taken under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and therefore the certificate issued under the Tamil Nadu Urban Land Tax Act is not relevant to the Urban Land Ceiling Act; that as per the instructions issued in G.O.Ms.No.649 Revenue dated 29.7.1998, the 4th respondent has issued the impugned notices regarding regularisation of the plots innocently purchased; that notices were issued to the urban land owners who owned land as on 3.8.1976 as per Revenue Records; that the excess lands in S.Nos.611/1 and 611/2 were acquired with buildings thereon and handed over to the Revenue Department on 19.3.1998 and therefore, the repeal Act will not apply to the cases in hand; that it is not the duty of the Department to apply encumbrance certificate for each land to decide the ownership; that in these matters the said Deekshadar did not file returns as required u/s 7(1) of the Act, therefore, as per Revenue records, action was taken against the registered holders Tmt. Govindammal and Kanniappa Naicker and since the said registered holders were not residing in the village and their present addresses were also not known to the Department, notices were issued by affixture in the presence of village assistants; that the sale of land in excess vacant land is contrary to Section 6 of the Act and it becomes null and void and therefore the petitioners have to apply for regularisation of the plots purchased by them. On such

averments, the respondents would pray to dismiss all the above writ petitions.

6. The main contention of the petitioners is that no notices were issued to them by the respondents prior to passing the impugned order. The petitioners'' further contention is that the Government of Tamil Nadu by Act 20 of 1999 i.e. The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, has repealed the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and under the repealing Act, Section 3 deals with savings wherein sub Section 2 clearly states that `in respect of lands deemed to have been vested in the State Government, u/s 11(3) of the principal Act, but possession of which has not been taken by the State Government or by a person authorised by the State Government under the provisions of the principal Act, the repeal of the said Act would not affect. Citing the above provision of law, the petitioners would submit that since the petitioners are in possession of the disputed lands, the impugned order is bad for want of jurisdiction.

7. The petitioners would also cite Section 4 of the Repeal Act, which reads:

"All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or any authority shall abate:

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

The petitioners would also cite a judgment of the Apex Court delivered in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, wherein dealing with the U.P.Urban Land(Ceiling and Regulation) Repeal Act (15 of 1999), under the same set of facts and having regard to Section 4 of the said Act, which is similar in its verbatim to that of Section 4 of the T.N.Act No.20 of 1999 (extracted supra), the Apex Court held:

"Since there is nothing on record to indicate that the State had taken possession over the surplus land, the present proceedings have to be abated and are hereby abated u/s 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999."

8. On the other hand, the main contention of the respondents is that since the possession of the excess vacant lands in question have been taken of by the Government and were handed over to the Revenue Department on 19.3.1998 itself, the writ petitions are not maintainable in law and hence would pray to dismiss all the above writ petitions.

9. In consideration of the facts pleaded and the circumstances brought forth, having regard to the materials placed on record and upon hearing the learned counsel for both what could be gathered is that there is no controversy regarding the ownership of these lands which are in dispute originally by one Govindammal

and Kanniappa Naicker from whom the lands relevant for our purpose in S.Nos.611/1 part and 611/2 had been purchased by one Ananthanarayana Deekshidar totally extending to 64 cents as on 21.2.1974 and the other S.No.611/1 part had been purchased by V.G.P. Housing Limited from the son of Govindammal, who got it by partition, on 31.8.1978. and thereafter on 22.8.1980, the said V.G.P. Housing Limited sold the lands to M/s.Venu Naidu and his sons, who laid out the plots and sold it to different persons afterwards. It is relevant for consideration at this juncture that the purchase of lands by Ananthanarayana Deekshidar had taken place even 2 " years prior to the advent of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 w.e.f. 3.8.1976.

10. The Urban Land Ceiling authorities have issued notice u/s 7(2) of the Urban Land Ceiling Act pertaining to the properties concerned with all the writ petitions above on 30.8.1985, but this notice does not seem to have been served on the then owners Anantha Narayana Deekshidar and M/s.Venu Naidu and sons since immediately after coming into being of the Urban Land Ceiling Act, as required by the relevant provisions of law, neither the said Anantha Narayana Deekshidar nor Bakthavatsala Naidu, the original vendor of S.No.611/1 part concerned with W.P.Nos.6318 to 6327 of 2000 have filed any returns before the Government, as a result of which their names did not enter into the Revenue Records. Therefore, notice u/s 7(2) of the Urban Land Ceiling Act had been issued only in the names of the original owners Govindammal and Kanniappa Naicker. Therefore, the government cannot be blamed for having issued the notice in the names of the original owners in spite of the same having been sold by them. Neither the said Anantha Narayana Deekshidar nor Bakthavatsala Naidu have taken any step to file returns before the Government nor even to regularise the lands for the purpose of Urban Land Ceiling, but they seem to have sold the lands bit by bit in the names of the writ petitioners, except the petitioner in W.P.No.5417 of 2000, who is none other than the son of the said Anantha Narayana Deekshidar, who got his share in a family partition between himself and his brothers soon after the death of his father.

11. Records of the respondents would further show that possession of all these lands had been taken by the Government on 19.3.1998 itself.

12. While such is the state of affairs, based on G.O.Ms.No.649 Revenue dated 29.7.1998 since the Government is entitled to allot the surplus lands declared at its discretion, the impugned notices have been issued by the fourth respondent on 28.2.2000 and 31.3.2000. In the said G.O., the Government have issued orders for regularisation of those lands which have been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 between the period ranging from 3.8.1976 to 31.12.1994 on such terms and conditions enumerated therein and in terms of the said G.O. Only, the impugned notices have been issued. Therefore, the impugned notices are nothing but the offshoot and continuity of the G.O.Ms.No.649, Revenue dated 29.7.1998.

13. So far as the petitioners in all the above writ petitions are concerned, they

 

are simply questioning the validity of the notices issued, which is the opportunity for the petitioners to be heard, but the pith and substance of the notices are in the said G.O. Dated 29.7.1998 which is not at all under challenge nor sought to be quashed. Right from the beginning of the acquisition of these lands under the Urban Land Ceiling Act, the then owners of the property viz. Ananthanarayana Deekshidar and Bakthavatsalu Naidu did not bother about filing their returns which they were incumbent to file as per the relevant provisions of the Urban Land Ceiling Act and sold the lands in favour of the petitioners and these petitioners also have not bothered about doing anything in accordance with the legality thatis concerned with the subject either regarding Section 7(2) notice issued under the Urban Land Ceiling Act on 30.8.1985 or any other act that took place thereafter including the taking of possession on 19.3.1998. Not only all these legal actions but also the very G.O.Ms.No.649 Revenue dated 29.7.1998 which sets the norms and conditions for regularisation of such lands taken over by the Government under the Urban Land Ceiling Act go unchallenged and it is the mere notice issued based on the said G.O., calling for the petitioners to comply with the conditions of the G.O., that has been challenged in all these writ petitions.

14. The only argument very strongly put forth on the part of the petitioners is that they purchased the properties for value and that they are in physical possession and enjoyment of the property and that they need not have to pay any amount as sought to be paid in the impugned notices. Merely based on their alleged bare physical possession, without having any legal compliance from the time of the Urban Land Ceiling Act coming into force, there is no point in urging the Court to recognise their possession and quash the notice impugned.

15. In short, the petitioners have adopted a repugnant attitude towards each and every legal developments that had taken place right from the date of introduction of the Urban Land Ceiling Act in getting their properties regularised filing necessary returns which should have been done initially by the predecessors-in-title to the petitioners, from whom the petitioners are said to have purchased the lands and the petitioners should have been conscious prior to purchase of the lands in checking the details whether there was any legal impediment and only after ruling out the possibilities of any legal hurdle, they should have ventured to purchase the lands from the original owners.

16. For the fault committed in having purchased the said lands during the pendency of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, since they have been declared `surplus lands'' under the relevant provisions of the said Act, which according to the petitioners are in their possession and enjoyment and based on such declaration alone, all the legal consequences that have taken place regarding these lands and orders passed accordingly, cannot by themselves get nullified and so long as they are in force, the petitioners are left with no option but to comply with the requirements of the notice and hence this Court is not inclined to cause interference into the impugned notices as it is

 

sought for on the part of the petitioners nor to pass any restraint order as it is further sought for in the writ petitions since even the possession of these lands which are sought to be with the petitioners is only subject to proof which factual position cannot be gone into by this Court.

17. Even regarding the judgment cited by the learned counsel for the petitioners, reported in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, , the same is not applicable to the facts of the cases in hand since in the above said case, there is nothing on record to indicate that the State had taken possession of the surplus lands, the Honourable Apex Court had held that the proceedings under the Urban Land (Ceiling and Regulation) Act were abated in accordance with Section 4 of the Repeal Act, but in the present case, it is very clearly projected by the Government that the possession of the lands in question have been taken by the Government on 19.3.1998 itself which order also still stand unchallenged.

18. For all the discussions held supra, the only conclusion that could be arrived at by this Court is to dismiss all the above writ petitions.

In result, all the above writ petitions do not merit acceptance and they are dismissed as such.

However, in the circumstances of the cases, there shall be no order as to costs.

Consequently, all the connected W.M.Ps. are also dismissed.