**(2009) 08 MAD CK 0323**

**Madras High Court**

**Case No:** Writ Petition No. 1584 of 2009 and M.P. No. 2 of 2009

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| Sree Jayalakshmi Brick Industries | APPELLANT |
| Vs | |
| The Special Commissioner and Secretary to Government, Government of Tamil Nadu Revenue Department, The Special Commissioner and Commissioner of Land Reforms, The Assistant Commissioner Competent Authority (Urban Land Ceiling) and The Tahsildar | RESPONDENT |

**Date of Decision:** Aug. 7, 2009

**Acts Referred:**

- Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 - Section 11(1), 11(3), 11(5), 11(6), 21
- Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 4

**Citation:** (2009) 4 LW 819 : (2009) 8 MLJ 522

**Hon'ble Judges:** P.K. Misra, J; D. Hariparanthaman, J

**Bench:** Division Bench

**Advocate:** V. Ramesh, for R.C. Paul Kanagaraj, for the Appellant; G. Desingu, Special Government Pleader, for the Respondent

**Final Decision:** Allowed

**Judgement**

D. Hariparanthaman, J.
The writ petitioner purchased the land comprised in Survey Nos. 141/1, 141/2A, 142/1 and 142/2 measuring an extent of 1.88 acres, 0.92 acres, 2.77 acres, 0.98 acres and 2.92 acres respectively, in all an extent of 9.97 acres in Ayanambakkam Village, Poonamallee Taluk, during 1980 by way of two sale deeds dated 04.09.1980 from one Thiru. A.L. Sreeramulu and three others.

2. The vendors manufactured bricks at the said lands in the name and style of M/s. Sree Jayalakshmi Brick Works. According to the petitioner, he continued the manufacturing of bricks in the changed name viz., M/s. Sree Jayalakshmi Brick Industries.

3. The learned Counsel for the petitioner states that he sought exemption from the first respondent under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as the Act), by making an application u/s 21 of the Act. According to him, he did not receive any orders on his application.

4. While so, according to the petitioner, he received a memo u/s 39 of the Act to show cause why prosecution could not be made for contravening the Act. Only thereafter, he came to know that the third respondent acquired lands under the Act and a notification dated 06.06.1990 u/s 11(1) of the Act was published in the Tamil Nadu Government Gazette dated 11.07.1990 and later a notification dated 08.08.1990 u/s 11(3) of the Act was published in the Tamil Nadu Government Gazette dated 12.09.1990 vesting the excess land with the Government. As per those notifications, the excess land was 73 Ares in Survey No. 141/1, 31 Ares and 5 Sq.mts. in Survey No. 141/2A2, 1 Hectare 17 Ares in Survey No. 141/2C, 39 Ares and 5 Sq.mts in Survey No. 142/1 and 2 Hectares and 1 Ares in Survey No. 142/2.

5. The petitioner filed a Writ Petition in W.P. No. 19602 of 1992 before this Court to quash the aforesaid notifications dated 11.07.1990 and 12.09.1990. The writ petition was transferred to Tamil Nadu Land Reforms Special Appellate Tribunal and was renumbered as T.R.P. No. 313 of 1999. After hearing both sides, the Tribunal dismissed the T.R.P. No. 313 of 1999 on 11.10.2000.

6. This writ petition is against the said order of the Tribunal confirming the acquisition made by the respondents by notifications dated 11.07.1990 and 12.09.1990.

7. We heard the submissions made on either side. The learned Special Government Pleader has produced the entire records for our perusal.

8. The learned Counsel for the petitioner vehemently argued that though the third respondent was aware of the purchase of the concerned lands by him in the year 1980 itself, no notice was issued to him u/s 11(5) of the Act. He further argued that the Tribunal erred in holding that the petitioner need not be given notice u/s 11(5) of the Act as the sale in 1980 is hit by Section 6 of the Act. The learned Counsel for the petitioner draws attention of the word "any person" used in Section 11(5) of the Act. He further contended

that any person who is in possession of the land is entitled to notice to surrender or deliver possession to the Government. He heavily relied on the judgment of the Division Bench of this Court (presided over by Honourable Mr. Justice Sathasivam as he then was) in V. Somasundaram, Nityakalyani and V. Sugandhi Vs. The Secretary to Government Revenue Department, The Assistant Commissioner (Land Reforms and Urban Land Ceiling) and S. Pitchai,
. Paragraph No. 9 of the said judgment is heavily relied on by the learned Counsel for the petitioners, which is extracted here-under:

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 deliver 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 30.04.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 16.09.1999, 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.

9. The learned Counsel for the petitioner relied on another decision dated 18.06.2007 of the Division Bench presided over by the Honourable Mr. Justice S.J. Mukhopadhaya, in W.A. Nos. 693 to 695 of 2003 in Annie Jacob and Ors. v. The State of Tamil Nadu and Anr. wherein also a similar view was expressed. Paragraph No. 8 of the decision is extracted here-under:

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 u/s 11(5) or action taken u/s 11(6), a bald statement as made by the respondents that possession was taken on 10th February, 1995, cannot be accepted....

10. The learned Counsel for the petitioner contended that while notices u/s 9(4) or u/s 7(2) of the Act ought to be addressed to the owner of the land for the purpose of determining the excess vacant land, the notice contemplated u/s 11(5) of the Act is to be issued to the person in possession also, since the purpose was seeking delivery of possession. He further pointed out that notice contemplated u/s 11(5) of the Act is quite different from notice contemplated under other provisions of the Act. He also pointed out that the words used in Section 11(5) of the Act "any persons who may be in possession"

and no such wording is found in Sections that deals with the acquisition of the land.

11. On the other hand, the learned Special Government Pleader contended that the petitioner is not entitled to notice u/s 11(5) of the Act in view of the Division Bench decision of this Court in Prabhavathi Jain and 4 Ors. v. The Government of Tamil Nadu and 8 Ors. reported in 1995 (2) L.W. 200. We have perused 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 u/s 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 u/s 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 u/s 11(5) of the Act read with Rule 10(3). According to him, the notice u/s 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 owners. According to the learned Counsel for the petitioner, this does not amount to service of notice u/s 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 u/s 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 u/s 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.

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. 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. u/s 11(6) of the Principal Act, whenever a urban land owner fails to surrender possession as demanded u/s 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 v. The Government of Tamil Nadu etc., and 2 Ors.), while considering the impact of the Repealing Act, had held that where physical possession of such land continues to be with the owner, the statutory vesting u/s 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 v. 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 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 Sosamma Thampy Vs. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and The Special Commissioner and Commissioner of Land Reforms, Government of Tamilnadu,
, 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 u/s 11(5), the Competent Authority has to take possession u/s 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 u/s 11(6). In the absence of delivery of possession by land owner pursuant to notice u/s 11(5), the possession should

have been taken through the manner suggested u/s 11(6). Since the notice u/s 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 u/s 4 of the Repealing act, in view of the categorical pronouncement of the constitutional Bench of the Honourable Apex Court in Smt. Angoori Devi v. State of Uttar Pradesh and Ors. reported in JT 2000 (Supp.1) SC 295.

24. In these circumstances, we are inclined to set aside the order passed by the Tamil Nadu Land Reforms Special Appellate Tribunal. Accordingly, the order dated 11.10.2000 passed in T.R.P. No. 313 of 1999 by the Tamil Nadu Land Reforms Special Appellate Tribunal is quashed and all the proceedings under the Act must be held to have abated in view of Section 4 of the Repealing Act 20 of 1999. Accordingly, the writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

P.K. Misra, J.
I have gone through the draft judgment prepared meticulously by my learned brother Judge and I agree with the views expressed. However, I would like to highlight one point which was raised at the fag end of the hearing.

2. At the time of conclusion of the arguments, learned Counsel for the State raised a technical objection that the Land Reforms Tribunal, whose order is being impugned in the present writ petitions, has not been impleaded as a party and, therefore, the writ petitions should be dismissed for non-joinder of necessary parties.

3. It is no doubt true that in Certiorari proceedings, the inferior Tribunal whose order is being impugned before this Court, is required to be made as a party. The basic principle in impleading the inferior Tribunal as a party is with a view to ensure production of records before the High Court. The inferior Tribunal, which is obviously discharging judicial function, is not impleaded as a party with a view to give any opportunity of hearing as it cannot be said that the Tribunal has got any interest in one way or the other. Since, in the present case, being called upon, the Counsel for the State has produced all the records including that of the Tribunal, non-impletion of the Tribunal as a formal party

cannot be considered as a ground to dismiss the writ petition, particularly when no such objection was raised when the writ petition was filed and entertained or subsequently when the matter had remained pending in the High Court for a pretty long period. Since the objection of impleading of inferior Tribunal has been achieved and as a matter of fact learned Counsel for the State has been heard at length, non-impletion is fatal in the present case.