

(2009) 11 MAD CK 0180

Madras High Court

Case No: Writ Petition No. 11334 of 2006

R.R. Nadham represented by
Power of Attorney N. Chiranjeevi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision: Nov. 2, 2009

Acts Referred:

- Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 - Section 10(1), 10(3), 10(6), 11, 11(3)
- Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 3, 4

Citation: (2009) 8 MLJ 1335

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: Venkatachalapathy for M. Sriram, for the Appellant; V. Viswanathan, Addl. Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

What is sought for in this Writ Petition by the petitioner is a Declaration, declaring that the entire proceedings, initiated by the respondents under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, finding that the petitioner's land in Survey No. 461/2A of Thirumullaivoyal Village, Poonamallee Sub-division of Chengalpet District under Patta No. 227 to an extent of 1633 sq.metres in excess of the ceiling, have abated.

2. The facts are as follows:

2.1. The petitioner owns lands in Survey No. 461/2, 461/3 and 461/4 of Thirumullaivoyal Village, Poonamallee Sub-division of Chengalpet District under

Patta No. 227 to an extent of 4654.5 square metres and the said lands were originally cultivable lands. Due to urbanisation, the said lands were wrongly treated within the urban agglomeration as defined u/s 2(n) of the erstwhile Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (in short, "the Act").

2.2. The petitioner submitted a statement on 09.02.1976 u/s 6(1) of the Act, in which it was brought out that the lands were cultivable lands and the Act had no application. The third respondent, without reference to the same, unilaterally proceeded to conduct an enquiry and started issuing notices. So, the petitioner, to get out of the Act, applied for exemption. Though the matter was prolonged under correspondence, simultaneous proceedings were taken to treat the land as surplus under the Act.

2.3. A Draft Notification u/s 9 (i) of the Act was made on 19.04.1978 and proceedings u/s 11 (3) were made under Notification No. 1030/83, dated 31.10.1983, declaring an extent of 1633 sq.metres in Survey No. 461/2A, after assessing the ceiling limit for the petitioner, as excess, and the same was published in the Tamil Nadu Government Gazette, dated 22.11.1983. The notice, fixing an enquiry u/s 12 (7), was also issued on 12.01.1984. An errata to the final statement u/s 10 (i), dated 28.10.1981, was issued on 06.06.1983. The award enquiry was prolonged and the compensation amount was fixed u/s 12 (6) and the Notice of the order was issued on 23.02.1984. Thereafter, the amounts were kept under Revenue Deposit as the petitioner did not receive the award amount and as he did not appear for enquiry before the authorities periodically. Ultimately, in G.O.Ms. No. 1485, Revenue, dated 11.11.1986, the Government passed orders u/s 21 (i) (a), dismissing the petitioner's application for exemption on the ground that the petitioner had not turned up for the enquiry and was not interested in establishing an industry in the land in question.

2.4. Since the erstwhile Act had a specific provision of taking possession, the entries if any made in the Revenue records will have no effect, as physical possession has not been taken away by the authorities under the Act. The petitioner is in effective possession of the land and, therefore, the entire proceedings shall stand abated, in view of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short, "the Repeal Act"). Hence, the petitioner has filed this Writ Petition.

3. Respondents have filed a counter, stating as under:

3.1. The petitioner, who is an urban land owner, has filed the return u/s 6(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, on 09.12.1976 for the land measuring 1.15 acres in S. No. 461 of Thirumullaivoyal village. He also applied to the first respondent to grant exemption and enable him to retain the lands. The actual extent of land held by the petitioner was arrived at by the competent authority, namely, the second respondent as follows:

S. No.	Survey No.	Name of the Village	Extent	Nature
1	461/2	Thirumullaivoyal	1821.50 sq.mts.	
2	461/3	Thirumullaivoyal	364.50 sq.mts.	
3	461/4	Thirumullaivoyal	2468.5 sq.mts.	4654.50 sq.mts. Treated as vacant land
4	Acharappan Street, Chennai -1.		236.00 sq.mts	
Land with building (residential house)				

3.2. An extent of 2000 sq.mts. was allowed as entitlement for his family and 1000 sq.mts. as notional shares of two married sons. The net excess vacant land was arrived at 1654.5 sq.mts. The exemption request was rejected by the Government in Lr. No. 40592/T1/78-4, Revenue Department, dated 18.08.1979, as there was no ground to comply with the request. The third respondent issued notices to the petitioner on 17.11.1979, 22.02.1980, 05.03.1980, 15.10.1980 and 10.04.1981. The petitioner had appeared for enquiry on 25.04.1981 and stated that he proposed to have layout road to have approach road to his land and if the road was formed, there would not be any excess in his holdings. After considering the objections, the notice u/s 9(4) along with statement was issued by the third respondent, calling for objections if any for the proposed acquisition of the excess vacant land. Since no objection was received, the third respondent passed orders u/s 9(5) of the Act in his file No. Rc.1963/81, dated 26.09.1981, to acquire excess vacant land of 1654.50 sq.mts. in Thirumullaivoyal village.

3.3. The final statement u/s 10(1) of the Act was issued on 28.10.1981. Since there was an error in the extent of total extent vacant land, an erratum was issued by the third respondent in his proceedings No. Rc.1983/81/D, dated 06.06.1983, by determining the total extent as 4633 sq.mts. After allowing an extent of 1800 sq.mts., excess vacant land was determined as 1633 sq.mts. The notification u/s 11 (1) was issued on 06.06.1983 and published in the Tamil Nadu Government Gazette Part VI, dated 17.08.1983. The notification u/s 11 (3), vesting the excess vacant land with effect from 16.11.1983 was issued on 31.10.1983, and the same was published in the Tamil Nadu Government Gazette, dated 23.11.1983. The notice u/s 11 (5) was issued on 09.12.1983 and the same was sent to the petitioner, which was refused to be received. Thereafter, the possession of excess vacant land measuring 1633 sq.mts. in S. No. 461/2A of Thirumallavoyal was handed over to the Revenue

Inspector, Ambattur (Revenue Department) on 19.01.1984.

3.4. After exemption request of the petitioner was processed, the third respondent in his letter No. Rc.1963/81, dated 24.10.1983, had recommended to negative the request of the petitioner to retain the excess vacant land for industrial purposes, as the petitioner had not turned up for the enquiry with documentary evidence in response to his claim. The third respondent issued the notice u/s 12 (7) on 12.01.1984 and served it by registered post with acknowledgement due on 27.01.1984 and another notice was also issued on 28.01.1984, which was served on the petitioner on 01.02.1984. The third respondent passed orders u/s 12 (6) in Rc. No. 1963/81, dated 23.02.1984, and determined the amount payable for the excess vacant land as Rs. 8165/-. Out of the total sum, Rs. 2041.25, being 25% of land value, was drawn and kept in revenue deposit on 21.07.1984, as the land owner did not turn up in spite of receipt of proceedings on 08.03.1984. The first instalment of land value of a sum of Rs. 408.25 and interest of Rs. 468.05 totalling to Rs. 876.30 was sanctioned by the respondent in proceedings No. 1963/81, dated 08.03.1985. The said proceedings were sent by registered post and the same were acknowledged on 29.03.1985.

3.5. The petitioner, in his letter dated 21.05.1985, had informed to the third respondent that there was no excess vacant land available; the common passage around his land had been taken into account and hence he was unable to accept the compensation. Therefore, the land value amount was drawn and kept in Revenue Deposit on 06.10.1986. The first respondent also examined the records and rejected the exemption request of the petitioner in G.O.Ms. No. 1485/Revenue Department, dated 11.11.1986, as the petitioner had not appeared for the enquiry and produced the required details in support of his claim. Hence, the writ petition is liable to be dismissed.

4. The one and only contention of the learned Senior Counsel for the petitioner is that in view of the commencement of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, the entire proceedings initiated by the respondents for acquisition of the excess vacant land of the petitioner would become ab initio void and that the entries, if any, made in the revenue records would have no effect, as physical possession had not been taken by the authorities and mere symbolic possession would not amount to actual possession. In support of his contention, the learned Counsel has relied upon the following decisions:

(i) [Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others](#), :

4. In the counter-affidavit, not a word has been said about the possession of the surplus land. In fact, it is maintained by the appellant that the possession is still with the appellant who was also granted an interim order regarding "status quo".

5. 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.

(ii) Mrs. Ayesha Haque v. State of Tamil Nadu and Ors. 2003 Writ L.R.193:

9. A perusal of the above quoted Sections 3 and 4 makes it clear that the repeal shall not affect only the cases where the vesting of the land has taken place in favour of the Government u/s 11 (3) and possession having been taken by the State Government.

10. In this case, though orders have been passed, declaring the land as excess, there are two facts which would militate against the continued applicability of the Ceiling Act. Firstly, the possession remains with the petitioner and therefore no complete vesting has taken place in favour of the State Government. Secondly, as against the order passed by the third respondent, an appeal has been filed before the Principal Commissioner, the second respondent herein, and therefore the proceedings declaring the excess land cannot be stated to have become final. Therefore, I am inclined to hold that Section 3 of Act 20 of 1999 cannot apply and in terms of Section 4, the proceedings have to be held as abated.

(iii) K. Vijayakumar and Ors. v. The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5, and Ors. W.P. No. 22553 of 2003, dated 06.08.2004:

12. The notice u/s 11 (5) regarding surrender of delivery of the excess land has been sent to Second Street, Nehru Nagar and the same has been returned as "no such addressee". But, it is seen from the records that even in the year 1983, the respondents were aware that Tmt. Nagalakshmi Ammal was residing at Kasturba Nagar. The records amply indicate this. Further, this notice is also sent only to Tmt. Nagalakshmi Ammal and not to her three sons.

13. Thereafter, possession of the lands is stated to have been taken. By proceedings dated 20.01.1998, the Assistant Commissioner, Urban Land Tax has sent a communication to the Tahsildar, Tambaram Taluk, stating that the notice u/s 11(5) of the Act was served by way of affixure. The date on which the affixure was made is left blank. And the Tahsildar has directed to instruct the Firka Revenue Inspector and Village Administrative Officer to take possession of the excess vacant land immediately. On 12.03.1998, the Deputy Tahsildar (Urban Land Ceiling) submits a report that the excess land was taken from Tmt.Nagalakshmi Ammal and at that time, the land was vacant and possession thereof was taken on 12.3.1998. Of course, there is a land delivery receipt in which the name of the urban land owner is shown as Nagalakshmi Ammal; the mother of the petitioners and the details of structures, if any, is shown to be vacant. The Deputy Tahsildar (Urban Land Ceiling) has affixed a stamp over the words, "handed over by" and adjacent to that, the Revenue Inspector has signed. In the order of the second respondent, there is a clear mention of a dilapidated building in Survey No. 14/2A, whereas the land delivery receipt which is purported to be the record of taking delivery shows that the

land is vacant. It is clear that there was no actual taking of possession.

14. In this case, the proceedings are totally vitiated for the following reasons:

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(g) The records do not show that possession of the lands was actually taken.

(iv) S. Ramasamy v. State of Tamil Nadu and Ors. W.P. No. 6641 of 1997, dated 09.09.2004:

8. The declaration made under Sub-section 3 of Section 11 would result in the vesting of the land in State Government and the deemed possession of it. Under Sub-section 5 of Section 11, after the vesting of the land in State Government as provided under Sub-section 3 takes place, the competent authority will have to issue a notice in writing to the person who is in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government within 30 days of the service of the notice. If any person refuses or fails to comply with an order made under the Sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary. Thus, Section 11 of the Act provides the manner in which the excess land available with the person should be notified, declared and physical possession taken from the concerned person.

9. In the case on hand, though from the available materials on record, it transpires that the third respondent proceeded against the petitioner up to the stage of the notification u/s 11(5) of the Act, there is nothing on record to suggest taking over of the physical possession under Sub-section (6) of Section 11 from the petitioner, in order to make the act of acquisition complete in all respects. Even though the order of the second respondent dated 10/8/1996 would state that the possession was really taken on 30/10/1991, there is absolutely no material to support the said position.

10. On a perusal of the counter affidavit filed on behalf of the respondents also, there is no specific averment to the effect as to how the physical possession of the land was taken on 30/10/1991, by following the procedure prescribed under the provisions of the Act. In such circumstances, it will have to be necessarily held that though the declaration u/s 11(3) of the Act came to be issued on 2/3/1991, the possession after issuance of 11/5 notice had not been validly taken as contemplated under the provisions of the Act.

(v) Sosamma Thampy v. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and Anr. 2006 (3) L.W.50:

8.12. In *Aarkay Distilleries Pvt.Ltd. v. The Assistant Commissioner (ULT) cum Competent Authority*, in W.P. No. 35490 of 2004, by an order, dated 23.09.2005, this Court has held that when physical possession continues with the owner, the statutory vesting u/s 11(3) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, is of no relevance and therefore u/s 4 of the Repealing Act, Act 20 of 1999, the entire proceedings initiated under the Principal Act would stand abated.

(vi) [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](#), :

In view of Section 11 (5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, 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. Proceedings initiated against the erstwhile owner is non est in law. Non compliance of Section 11 (5) of the Act, cannot be rectified at a later stage.

"When the alternative remedy of appeal is lost due to the enactment of the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 1999 from 16.9.1999, the aggrieved party can maintain a writ petition against the proceedings initiated u/s 11 (5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978.

(vii) *Kalliyaperumal v. Pudupettai Chokkanathaswamy and Anr.* 2007 (1) MLJ 755:

2. Though many points were urged in support of the appeal, the preliminary point urged was that possession has not been taken pursuant to orders passed by the authorities under the Act. An affidavit has been filed indicating that the possession of the land has not been taken and the land in question continues to be in possession of the appellant and his sons.

6. In view of the affidavit filed by the appellant to which no objection has been filed, undisputed position is that the State has not taken the possession over the surplus land. Therefore, the proceedings have to be treated to have abated u/s 4 of the Repeal Act.

(viii) *S. Sivaparamam and Ors. v. The State of Tamil Nadu and Ors.* CDJ 2007 MHC 3110:

8. ...When the respondent does not say that the petitioner had surrendered possession on its 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 land 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 the 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 the 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 Revenue Inspector, Pallikaranai and the name of the officer, who received the possession of the land.

(ix) *Sree Jayalakshmi Brick Industries v. The Special Commissioner and Secretary to Government and three Ors.* 2009 (4) L.W.819:

18. ...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 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 office, who received possession of the lands...

20. 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.

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 (Suppl.1) SC 295.

(x) *Mangalore Urban Development Authority v. Leelavathi and Ors.* CDJ 2009 Kar HC 004:

7. Learned AGA relied upon the so-called mahazar in proof of taking over possession of the land in question. Copy of the said mahazar is produced as Annexure-R4 along with the statement of objections filed by 4th respondent to the writ petition. After perusing the same, it is seen that it was prepared on 3/7/1998. Before the description of the land, it is mentioned that as per the direction of the Deputy Commissioner dated 2/7/1998 the land has been transferred to the Revenue

Inspector. Immediately after the description of the land, the Revenue Inspector of Urban Land Ceiling has signed. It is not known who took possession of the land and who transferred to it to the Revenue Inspector. Thereafter, it is mentioned that the possession of the land is taken over by the Revenue Inspector of Urban Development Authority as he has signed it.

8. That apart, though it is captioned as "mahazar", no witness has signed it to evidence the fact that the possession of the land in question was taken by the competent authority. Except the signatures of aforementioned two Revenue Inspectors, only the names of witnesses are mentioned and they have not signed it. It is also pertinent to note that the entire document is in Kannada language but the names of the witnesses are typed separately in English. This clearly indicates that the said names have been subsequently got typed. In view of all these factors, we hold that the said document is not a genuine document and possession of the land is not at all taken by the competent authority as required u/s 10(6) of ULC Act.

9. Assuming that the Revenue Inspector took possession of the land, no document is produced to show that he was the competent authority u/s 10 (6) of ULC Act to take possession of the land which is declared as surplus urban land u/s 10(3) of the Act.

(xi) P.T.R. Rice and Dhall Mill rep. by its Proprietor v. Competent Authority, Chennai CDJ 2008 MHC 5435:

5. ...A combined reading of Section 3(1) and 3(2) of the Repealing Act makes it clear that unless possession had already been taken after payment of entire compensation, the State Government would not have jurisdiction to retain the land. On the other hand, if the compensation had been paid by the Government the person is allowed to take possession of the land provided to refund the amount received. Since in the present case neither possession had been taken nor compensation had been paid, there is no jurisdiction for the State Government or for any authority to pass impugned order...

(xii) V. Balaguru and Ors. v. The Assistant Commissioner of Urban Land Tax and Ors. CDJ 2009 MHC 1819:

11. ...It has not been shown by the learned Counsel appearing for the respondents that a notice u/s 11(6) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had been issued to the petitioners requiring them to comply with the notice issued u/s 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Therefore, it could be construed that actual physical possession of the lands had not been taken by the respondents. Further, the compensation amount due to the land owner had not been paid. In fact, the first respondent had issued a notice, dated 3.6.2002, inviting the petitioners to appear before him with regard to the amounts payable to them, as compensation u/s 12 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Thus, it is clear that the compensation amount had not been paid to the petitioners, as prescribed by the relevant provisions of the Act....

(xiii) K. Munusamy v. The Principal Commissioner and Commissioner of Land Reforms and Ors. CDJ 2009 MHC 3039:

6. Without proper notice as contemplated under the rules, the impugned proceedings has been passed and that cannot be accepted. In the counter-affidavit, it is stated that possession of excess vacant land of 400 square meters was handed over to Revenue Department. A mere statement cannot be accepted as valid handing over of possession in the eye of law. None of the procedures envisaged under Act 24 of 1978 has been followed. Further in view of Section 4 of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 20 of 1999), the proceedings initiated by the respondents abates.

(xiv) S. Nasira Anjum and Ors. v. The State of Tamil Nadu, rep. by its Secretary to Government and Ors. CDJ 2009 MHC 2960:

7. The said Transfer Charge Certificate is only an exchange of letters between the officials to the effect that symbolic possession of the land in dispute was taken on 23.08.1990. Other than this, there is no record to show that physical possession was taken from the owners of the land. The specific averment made by the petitioners that in respect of the said land declared as surplus and consequently, stated to have been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, no compensation has been paid, has not been denied in the counter affidavit filed by the respondents 1 to 3. It is also not the case of the said respondents that they have paid compensation in respect of the excess land.

12. The Supreme Court in similar circumstances in Smt. Angroori Devi v. State of U.P. and Ors. JT 2000 Supp.1 (SC) 295 held that when it is proved that possession under the principal Act was not taken in accordance with law, the subsequent repealing Act would abate all proceedings under the old Act....

13. Applying the said established judicial precedents to the facts of the present case which have been narrated above, on reference to the original file produced by the learned Additional Government Pleader, which shows that there is nothing on record that respondents 1 to 3 have taken physical possession of the property in dispute from its owners viz., the petitioners or late M. Ahmed Basha. Further, pending writ petition, injunction was granted and the same continues till date. In such circumstances, it has to be held that there is no vesting of alleged surplus land in favour of the Government under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and therefore, there is no question of continuance of vesting u/s 11 (3) of the Act, even after the Repeal Act, 1999, came into existence. In such circumstances, the writ petition stands allowed.

(xv) Annie Jacob v. State of Tamil Nadu W.A. No. 693 to 695 of 2003:

8. There is nothing on 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 Feb., 1995, cannot be accepted. On the other hand, the appellants have produced documents, such as panchayat tax receipts, reassessment notice, tax acknowledgement and demand notice, pattas, chittas, house tax receipt, panchayat payment receipts, electricity bills/cards, etc., to suggest that they are still in possession of the lands in question.

9. In the aforesaid circumstances, the respondents cannot take advantage of Section 3 of the Repealing Act 20 of 1999 and nor deny the advantage u/s 4 to the appellants. Such provisions being in favour of the appellants, we hold that the total proceeding shall stand abated.

(xvi) S. Antony and Ors. v. The Special Commissioner, Commissioner Land Reforms, Chennai, and Ors. W.P. No. 19845 of 2006:

12. In the present case, there are enough records to show that the transfer by the original owner had been made as early as 1982 and it was also brought to the notice of the authorities. The person to whom the authorities had sent notice had intimated to the competent authority that there was no owner and that there were other owners and yet the authorities had issued notice only to Tmt.Rajabai. The issuance of the notice offering reasonable opportunity is not empty formality and the competent authority cannot merely issue notice to some one, who is no longer interested and can go through the motions of having complied with the formalities of the Act. Here, the persons who are interested were neither heard nor even put on notice. More importantly before the authority takes possession u/s 11(6) of the Act, the provisions u/s 11(5) of the Act have to be complied with. The records do not indicate this.

13. The entire proceedings stand vitiated...

5. Conversely, the learned Additional Government Pleader, appearing for the State, would submit that the proceedings initiated in this case are valid as per Section 3(1) (a) of the Repeal Act and the proviso to Section 4 would not apply to this case, as no proceedings were pending before any authority on the date of commencement of the Repeal Act. To substantiate his contention, the learned Additional Government Pleader has relied upon a Division Bench decision of this Court in S. Balasubramaniam and Anr. v. The Special Commissioner and Commissioner of Land Reforms and Ors. 2009 (4) L.W. 826, wherein it has been held as under:

8. ...Section 9 deals with preparation of draft statement as regards vacant land, and the draft statement will be served in the manner prescribed on the person concerned. This has been done in this case. Then, a final statement u/s 10 has also been made after determining the vacant land as provided u/s 10 (1). This notice u/s

10 (1) was also served on the vendor of the appellants and the notification u/s 11 (1) was effected. Section 11 (5) deals with taking of possession. The land has already vested with the State Government u/s 11 (3) and we have already seen that possession has been taken u/s 11 (5).

9(c) In [Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others](#), the Supreme Court held that there can be no question of symbolical possession and there should be actual possession. That was in relation to the Land Acquisition Act. But in the same decision, the Supreme Court has held, "the presence of the owner or the occupier of the land is not necessary to effectuate 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..." The Supreme Court also held in that case that it is not an absolute and inviolable rule that a declaration by beat of drum or otherwise would be sufficient to constitute the taking of possession. They held that it would depend on the facts of the case...

10. It is true that sometimes, the records do not reveal whether the officers went to the site in question before finalising the proceedings. Here, we find that the Field Survey Officer concerned had gone to the site, earmarked the land and the exact location of the excess land. In addition, the adjacent Plot Nos. 15 and 16 are in the possession of the appellants, according to them, where they are running an industry. Therefore, their statement that they came to know about the proceedings all of a sudden only in 2005 is not true. The records show that possession has been taken. In these circumstances, we are unable to see how we can interfere with the order passed by the learned single Judge...

6. On the basis of the above pleadings, I have heard the learned Counsel for the parties and also given my thoughtful consideration to the rival submissions, coupled with the authorities relied upon by the learned Counsel.

7. To decide the issue involved in this Writ Petition, it is more relevant and important to refer to Section 3 (1) (a) of the Repeal Act, which reads as under:

3. Savings :- (1) The repeal of the principal Act shall not effect:

(a) the vesting of any vacant land under Sub-section (3) of Section 11, 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.

8. In this case, Statement u/s 6 (1) of the Act was filed by the petitioner on 09.12.1976, seeking exemption of the excess vacant land u/s 19 (1). Thereafter, a Draft Statement u/s 9(i) of the Act was made on 19.04.1978. The third respondent issued notices to the petitioner on 17.11.1979, 22.02.1980, 05.03.1980, 15.10.1980 and 10.04.1981. The petitioner appeared for enquiry on 25.04.1981 and stated that he proposed to have layout road to have approach road to his land and, if the road

was formed, there would not be any excess in his holdings. After considering the objections, the notice u/s 9 (4) along with statement was issued by the third respondent, calling for objections if any for the proposed acquisition of the excess vacant land. Since no objection was received, the third respondent passed orders u/s 9(5) of the Act in his file No. Rc.1963/81, dated 26.09.1981, to acquire excess vacant land of 1654.50 sq.mts. in Thirumullaivoyal village.

9. The final statement u/s 10(1) of the Act was issued on 28.10.1981. Since there was an error in the extent of total extent vacant land, an erratum was issued by the third respondent in his proceedings No. Rc.1983/81/D, dated 06.06.1983, by determining the excess vacant as 1633 sq.mts. The notification u/s 11 (1) was issued on 06.06.1983 and published in the Tamil Nadu Government Gazette Part VI, dated 17.08.1983. The notification u/s 11 (3), vesting the excess vacant land with effect from 16.11.1983 was issued on 31.10.1983, declaring an extent of 1633 sq.metres in Survey No. 461/2A, after assessing the ceiling limit for the petitioner, as excess, and the same was published in the Tamil Nadu Government Gazette, dated 22.11.1983.

10. The notice u/s 11 (5) was issued on 09.12.1983 and the same was sent to the petitioner, who refused to receive it. Thereafter, the respondents took possession of the excess vacant land on 19.01.1984. Further, the third respondent issued the notice u/s 12 (7) on 12.01.1984 and served it by registered post with acknowledgement due on 27.01.1984. Another notice was also issued on 28.01.1984, which was served on the petitioner on 01.02.1984. Only thereafter, the third respondent passed orders u/s 12 (6) in Rc. No. 1963/81, dated 23.02.1984, and determined the amount payable for the excess vacant land as Rs. 8165/-. Out of the total sum, Rs. 2041.25, being 25% of land value, was drawn and kept in revenue deposit on 21.07.1984, as the land owner did not turn up in spite of receipt of proceedings on 08.03.1984. Also, the first instalment of land value of a sum of Rs. 408.25 and interest of Rs. 468.05 totalling to Rs. 876.30 was sanctioned by the respondents in proceedings 1963/81, dated 08.03.1985. The said proceedings were sent by registered post and the same were acknowledged on 29.03.1985. Thereafter, the amounts were kept under Revenue Deposit, as the petitioner did not receive the award amount and as he did not appear for enquiry before the authorities periodically. Ultimately, in G.O.Ms. No. 1485, Revenue, dated 11.11.1986, the Government passed orders u/s 21 (i) (a), dismissing the petitioner's application for exemption on the ground that the petitioner had not turned up for the enquiry and was not interested in establishing an industry in the land in question.

11. Since the notice u/s 11 (5) was issued on 09.12.1983 and the same was sent to the petitioner, which was not complied with, the respondents, under Sub-section (6), took possession of the land. Thereafter, the possession of excess vacant land measuring 1633 sq.mts.in S. No. 461/2A of Thirumallavoyal was handed over to the Revenue Inspector, Ambattur (Revenue Department) on 19.01.1984, who signed the Land Delivery Receipt, for having taken over possession. This is evident from the

records produced by the Additional Government Pleader at page 353, which shows that the possession was handed over by the Assistant Grade Revenue Inspector (ULC), Ponnammallee, and taken over by the Revenue Inspector, Ambattur, and the same was duly signed by both the authorities. It is also not the case of the petitioner that the excess vacant land has been granted exemption. Besides, the petitioner has not produced any records or tax receipts to show that he is in possession of the land in question. All the above proceedings of the respondents have not been disputed by the petitioner. The authorities had followed every procedure before taking possession of the land, which cannot, at any stage, be found fault with. In the given situation, the possession of the petitioner, if any, has to be treated only as an encroachment on the Government land.

12. Section 4 of the Repeal Act cannot be made applicable to this case, the reason being, no proceedings were pending immediately before the commencement of the Act, before any court, tribunal or any authority. Therefore, the possession, which was taken by the authorities way back on 19.01.1984, had become final. As such, there shall not be any abatement of proceedings, as contemplated under the said proviso.

13. The decisions relied upon by the learned Senior Counsel for the petitioner are of no avail to the instant case, as the facts and circumstances therein are not exactly the same as in the present case, but they are different in one way or other.

14. For all the foregoing reasons, this Writ Petition is devoid of merit and, accordingly, it is dismissed. No costs.