

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2012

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.7125 of 2004

R.EKAMBARAM

[ PETITIONER ]

Vs

- 1 THE GOVERNMENT OF TAMIL NADU  
REP BY ITS SECRETARY  
REVENUE DEPARTMENT  
FORT ST.GEORGE  
CHENNAI.9.
- 2 THE ASSISTANT COMMISSIONER  
(URBAN LAND TAX) ,  
169 SANNADHI STREET, ADAMBAKKAM  
TAMBARAM, CHENNAI.88.

[ RESPONDENTS ]

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order communicated in S.R.No.249/96C dated 4.3.2002 on the file of the second respondent and quash the same.

For petitioner : Mr.S.B.Fazluddin

For respondents : Mr.S.Kanmani Annamalai  
Government Advocate (T)

O R D E R

Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing for the respondents.

2. It has been stated that the petitioner is the owner of 95 cents of land, in survey No.172/1 and 3 of Zamin Pallavaram village. It had been bequeathed in favour of the petitioner by way of a Will, dated 13.12.1973, executed by his father, Raji Naicker, bearing document No.27 of 1973. Accordingly, the petitioner had got 78 cents of land. By another Will, dated 9.6.1976, bearing document No.14 of 1976, 17 cents of land had been bequeathed to the petitioner, by his

mother, Rajammal. As such, the petitioner, was in possession of a total extent of 95 cents of land, along with his wife and children.

3. It had been further stated that the second respondent had issued a notice, dated 23.9.1996, under Section 7(2) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, (hereinafter referred to as the Act), stating that the petitioner was holding 3400 square meters of vacant land in excess of the ceiling limit. However, the said notice had not been served on the petitioner in the manner known to law. Thereafter, by the proceedings of the second respondent, dated 4.3.2002, it had been communicated to the petitioner that the Government of Tamil Nadu had acquired 3400 square meters of land belonging to the petitioner. However, the said order had not been served on the petitioner.

4. It had been further stated that the petitioner was not given an opportunity to state that the proceedings initiated to acquire the land belonging to the petitioner was arbitrary and illegal. The procedures prescribed under the Act had not been followed by the respondents, while acquiring the land in question. In fact, the land acquired from the petitioner cannot be held to be in excess of the ceiling limit, in view of the fact that there were five members in the family of the petitioner, including his wife and children. While so, the Act had been repealed by way of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, with effect from 16.6.1999. Accordingly, all the proceedings initiated under the Act had abated. As such, the proceedings initiated by the respondents to acquire the lands belonging to the petitioner, are illegal and void.

5. In the counter affidavit filed on behalf of the respondents, it has been stated that an extent of 3900 square meters of land, in S.Nos.172/1, 172/3, and 172/6B, in Zamin Pallavaram village, was being held by the petitioner. As the said land, belonging to the petitioner, had been converted as urban land, a notice had been issued to the urban land owner, under Section 7(2) of the Act. The said notice had been sent to the urban land owner, in S.R.No.249/96, dated 23.9.1996. The said notice had been served on the brother of the urban land owner. The draft statement, under Section 9(1) and the notice, under Section 9(4) of the Act, had been issued, on 13.1.1997. The said notice had also been served on the brother of the petitioner. Thereafter, an order under Section 9(5) of the Act had been passed, vide proceedings S.R.No.249/96/C, dated 31.1.1997, declaring an extent of 3,400 square meters, as excess vacant land allowing 500 square meters towards individual entitlement. The said order had been served on one of the family members of the urban land owner. The final statement under Section 10(1) of the Act had been issued, on 7.11.1997. The notification, under Section 11(1) of the Act, had been published in the Government Gazette No.13, dated 8.4.1998. The notification, under Section 11(3) of the Act, had been published in the Government Gazette No.26, dated 8.7.1998. However,

no objections had been filed by the urban land owner, at any stage.

6. It had been further stated that the notice, under Section 11 (5) of the Act, had been issued, on 9.9.1998, directing the urban land owner to surrender the possession of the excess vacant land held by the urban land owner, within a period of 30 days. The petitioner had not chosen to surrender the possession of the land. However, after the lapse of nearly 4 years, the petitioner had filed an appeal before the Principal Commissioner and Commissioner of Land Reforms, Chennai, who had informed the petitioner, by way of an endorsement, dated 22.8.2003, that the appeal could not be entertained, as the Act had been repealed by way of the Repeal Act, 1999, with effect from 16.6.1999. In such circumstances, the petitioner had filed the present writ petition before this Court, under Article 226 of the Constitution of India.

7. The learned counsel appearing on behalf of the petitioner had submitted that the impugned order of the second respondent, dated 4.3.2002, had been passed arbitrarily and illegally, without issuing a notice to the petitioner and to the other members of the family of the petitioner. No proper enquiry had been held, by the authorities concerned, by giving an opportunity to the petitioner and to his family members, to raise their objections, before the impugned order had been passed. In fact, no excess land was available in view of the fact that there were five members in the family of the petitioner. In such circumstances, as per Section 4 of the Tamilnadu Urban Land (Ceiling and Regulation) (Repeal) Act, 1999, the proceedings initiated by the respondents, in respect of the land belonging to the petitioner, had abated. As such, the impugned proceedings of the second respondent, dated 4.3.2002, cannot be sustained in the eye of law.

8. The learned counsel appearing on behalf of the respondents had submitted that the lands, in S.Nos.172/1 and 172/6B measuring a total extent of 3900 square meters, in Zamin Pallavaram village, was held by the petitioner. As the lands in question had been converted into urban lands, a notice, dated 23.9.1996, under Section 7(2) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, had been sent to the urban land owner, in S.R.No.249/96. The said notice had been served on the urban land owners' brother. Thereafter, a draft statement, under Section 9(1) and a notice, under Section 9(4) of the Act, had been issued, on 13.1.1997, and served on the owners' brother. The Assistant Commissioner had inspected the lands and had found that they had been converted into layouts. The urban land owner did not file any objection to the draft statement sent by the authorities concerned. Hence, an order, dated 31.1.1997, had been passed, under Section 9(5) of the Act, declaring the excess vacant land, as 3400 square meters, after allowing 500 square meters towards individual entitlement. The said order had been served on one of the



family members of the urban land owner. Thereafter, the final statement, under Section 10(1) of the Act had been issued, on 7.11.1997. A notification, under Section 11(1) of the Act had been published in the Tamilnadu Government Gazette, on 8.4.1998. Later, a notification, under Section 11(3) of the Act, had also been published in the Tamilnadu Government Gazette, on 8.7.1988. However, the urban land owner had not filed any objection, at any stage, in respect of the proceedings initiated by the respondents. Thereafter, a notice under Section 11(5) of the Act had been issued, on 9.9.1998 directing the urban land owner to surrender the excess vacant land, within a period of 30 days. The petitioner had not chosen to surrender the excess vacant land and therefore, the possession of the excess vacant land had been taken and handed over to the revenue department, on 30.3.1999. As such, the present writ petition, filed by the petitioner, is devoid of merits and therefore, it is liable to be dismissed.

9. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, it is noted that the second respondent had issued the impugned proceedings, dated 4.3.2002, under Section 9(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978. Thereafter, on receipt of the impugned proceedings, the petitioner had challenged the same, before this Court, in W.P.No.32141 of 2002, stating that the second respondent ought to have served a notice to the petitioner, in respect of the excess land, before passing the impugned order, dated 4.3.2002. As such, no proper opportunity had been given to the petitioner, or to his family members, before the said order had been passed by the second respondent.

10. It had also been stated that the land in question had been in continuous possession and enjoyment of the petitioner and his family members. While so, the Tamilnadu Urban Land (Ceiling and Regulation) (Repeal) Act, 20 of 1999, had come into force. Accordingly, the proceedings initiated, in respect of the land in question, had abated, as per Section 4 of the said Act. This Court, by an order, dated 5.8.2002, made in W.P.No.32141 of 2002, had disposed of the said writ petition directing the petitioner to avail the alternative remedy, by preferring an appeal before the Principal Commissioner and Commissioner (Land Reforms), within a period of thirty days from the date of receipt of a copy of the said order. This Court had also directed the Principal Commissioner and Commissioner (Land Reforms) to consider the appeal, on merits and dispose of the same, by giving an opportunity of hearing to the petitioner, in the manner prescribed by law. However, the appeal filed by the petitioner, as directed by this Court, by its order, date 5.8.2002, had been returned, by the office of the Principal Commissioner and Commissioner of Land

Reforms, Chepauk, Chennai, by an endorsement, dated 22.8.2003, stating that the appeal could not be entertained, on merits, due to the repeal of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, by way of the Tamilnadu Urban Land (Ceiling and Regulation) (Repeal) Act, 20 of 1999, which had come into force, from 16.6.1999, and as the appellate authority concerned had become 'functus officio'. Thus, it could be seen that the petitioner had no alternative remedy, to challenge the proceedings of the second respondent, dated 4.3.2002, except by filing the present writ petition before this Court.

11. Even though, it has been stated, by the respondents, in the counter affidavit filed on their behalf, dated 15.5.2006, that the possession of the excess vacant land in question had been taken over by the State government, by its duly authorized officers, there is nothing on record to substantiate the claim made by the respondents. It is also noted that, though the writ petition had been admitted, by this Court, on 22.3.2004, and Rule Nisi had been issued, calling for the original records relating to the matter, they had not been placed before this Court, till date.

12. It is also noted that the impugned order had been issued by the second respondent, on 4.3.2002, wherein, it has been stated that the draft statement, under Section 9(1) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, and the notice, under Section 9 (4) of the Act, had been served on the elder brother of the petitioner. From the said order it could be noted that the final statement, under Section 10(1) of the Act was due to be issued. As such, it could be noted that the land ceiling proceedings, in respect of the urban lands belonging to the petitioner, said to be in excess of the ceiling limit, had not been completed before the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, had been repealed, by the Tamilnadu Urban Land (Ceiling and Regulation) (Repeal) Act, 1999, with effect from 16.6.1999.

13. Further, it could be noted that this Court, in a number of decisions, had held that the proceedings initiated by the authorities concerned, under the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, would abate, in view of the coming into force of the Tamilnadu Urban Land (Ceiling and Regulation) (Repeal) Act, 1999, with effect, from 16.6.1999, unless actual physical had been taken over by such authorities and due compensation had been paid to the urban land owner. As such the land ceiling proceedings, said to have been instituted, in respect of the lands in question, is not sustainable in the eye of law, in view of the well settled position of law, as held in the following decisions.

13.1. In Smt.Angoori Devi Vs. State of U.P. and others (JT 2000 (Suppl.I) SC 295, the Supreme Court had held as follows:

"2. These cases relate to the interpretation of different provisions of the Urban Land (Ceiling and Regulation) Act. During the pendency of these appeals in this Court, the Urban Land (Ceiling and Regulation) Act has been repealed by Act 15 of 1999 and the State of U.P. also has adopted the same by a Resolution. In view of the provisions contained in Section 3 of the Repealing Act and the fact that the possession of the vacant land has not been taken over by the State Government, which is asserted by the Counsel appearing for the appellants and is also apparent from the interim orders passed by this Court, the question for consideration no longer survives.

3. Further, under Section 4 of the Repealing Act all proceedings under the Act must be held to have abated. In that view of the matter, we do not think it necessary to proceed with this matter. These appeals stand disposed of accordingly."

13.2. In PT.Madan Swaroop Shrotiya Public Charitable Trust V. State of U.P (2000 (6) SCC 325), the Supreme Court had held as follows:

"3. Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, provides as under:

"4.Abatement of legal proceedings.-- 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 other authority shall abate;

Provided that this Section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act insofar 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."

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 under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999."



13.3. In Mukarram Ali Khan V. State of U.P and Others (2007-4-L.W. 797), the Supreme Court had held as follows:

"In view of the affidavit filed by the appellant to which no objection has been filed, undisputed position is that the State had not taken the possession over the surplus land. Therefore, the proceedings have to be treated to have abated under Section 4 of the Repeal Act. Appeal from the judgment of High Court of Allahabad allowed."

13.4. In Special Officer and Competent authority, Urban Land Ceiling, Hyderabad v. P.S.Rao (2000 (II) M.L.J. 101 S.C.), the Supreme Court had held as follows:

"We are, therefore, unable to accept the contention of the learned counsel for the State that an application for exemption can be maintained only before the excess is determined under Section 10. In our view, the scheme of the act is to the contrary. The view taken by the Court following the decision of this Court in T.R.Thandur V. Union of India, (1996) 3 S.C.C. 690: A.I.R. 1996 S.C.W. 700: A.I.R. 1996 S.C. 1643, Darothi Clare Parrriara (Smt.) V. State of Maharashtra, (1996) 9 S.C.C. 633: A.I.R. 1996 S.C.W. 3179: A.I.R. 1996 S.C. 2553 and State of A.P. V. Valluru Venkateswara Rao (1997) 3 An.L.T. 417 does not call for any interference."

13.5. In The Special Commissioner, Revenue Secretary to Government, Revenue Department, Fort St. George, Madras-9 V. N.Kannan (W.A.No.1133 of 2002) , a Division Bench of this Court had held as follows:

"This writ appeal is directed against the order of the learned Single Judge arising out of Urban Land (Ceiling and Regulation) Act, 1978. The said Act has been repealed later, and there is no saving clause as is contained in some legislative statutes. In fact, Section 4 saves only such action by which the excess land holder has been deprived of his possession and vested the property with the Government. But in so far as the proceedings before any Authority/Tribunal etc., arising under the Act, the legislative policy expressly states that such proceedings shall abate. Such abatement will ensure to the benefit of the party, who has filed a declaration and as such, the question of the appellate authority hearing appeal does not arise at all, as the order holding the first respondent as excess landholder under the Urban Land (Ceiling and

Regulation) Act had become non-est in law. In the circumstances, this writ appeal is dismissed....."

13.6. In V.Somasundaram and 2 others V. The Secretary to Government and 2 others (2007-2-L.W. 109), a Division Bench of this Court had held as follows:

"The main contention urged by the learned counsel for the appellants is that the appellants are interested persons as they have purchased the lands from the third respondent and are in possession of their respective extent of land and hence the second respondent ought to have issued notice to the appellants, who are the real owners and therefore the action of the respondents are in violation of Sections 9(4), 10(1) and 11(2) of the Act. The learned counsel ultimately argued that the vesting of the lands in question with the Government cannot be accepted in view of the non-compliance of the specific provisions contained in Section 11(5) .

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 this 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 delivery 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 30.4.1999, 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 16.9.1999, 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.

As rightly contended by the learned counsel for the appellants, the appellants were not entitled to file appeal due to enactment of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, from 16.9.1999. Hence, the writ petition filed without availing the alternate remedy of filing of filing appeal under Section 33 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, is maintainable."



13.7. In Allind Metal Fabricators Pvt. Limited Vs. The Secretary to Government, Revenue Department, Government of Tamil Nadu, Fort St. George, Madras. (2002 (2) CTC 716), a learned Single Judge of this Court had held as follows:

"The Tamil Nadu Urban Land (Ceiling and Regulation) Act has been repealed by the repealing Act (Act 20 of 1999) and all pending proceedings also having been declared to have abated. As held by the Supreme Court in the case of Angoori Devi V. State of U.P., JT 2000 Supp 1(SC) 295, a decision by a Constitution Bench, if the possession of the land had not been taken prior to the repeal, such possession cannot be taken thereafter and no proceedings can be thereafter initiated under the repealed enactment. During the pendency of this writ petition the petitioner had the benefit of an interim order protecting his possession. It is also not the case of the respondents that they have taken possession."

13.8. In C.V.Narasimhan V. The Government of Tamilnadu, etc & 2 others (2002-2-L.W. 764), this Court had held as follows:

"A perusal of the impugned order reveals that the petitioner's revision was dismissed on the ground that the Tamil Nadu Act 24 of 1978 had been repealed. When the case of the petitioner is that the possession of the land still continues to be with him and the petitioner did not receive any compensation in respect of the land acquired by the Government, it is for the first respondent to consider the claim of the petitioner and to give a finding on that aspect, which is essential to decide as to whether the repealing of the Tamil Nadu Act 24 of 1978 abates the proceedings pending before the first respondent.

It is clear that the repealed Act gives certain right to the owners of the land where the physical possession of such land continues to be with the owner. The statutory vesting is of no relevance. In the case on hand, the petitioner claims to be in possession of the disputed land. When sub-section (2) of Section 3 of the repealed Act specifically makes a provision to refund the compensation and retain possession if possession remain with the land owner. Hence, it is for the first respondent to consider the question of physical possession and decide the issue. Virtually, the first respondent has failed to consider this vital factor. This Court is of the view that the non consideration of this vital factor by the first respondent will amount to an error apparent on the face of the record, as well as the impugned order suffers from non application of mind with regard to the legal implications of the repealed Act.

It is also contended by the learned counsel for the petitioner that the land did not fall within the purview of the Tamil Nadu Act 24 of 1978 and if that is so, even assuming that the petitioner had voluntarily submitted the return, the same cannot be taken as an estoppel by conduct as there cannot be any estoppel against the statute. When the land did not fall within the purview of the Tamil Nadu Act 24 of 1978, then the authorities have no jurisdiction to proceed with the acquisition of the said land. If any action was taken in respect of the land which did not fall within the purview of the repealed Act, then the said action of the authorities is non est in law, as the petitioner cannot be deprived of the land under a proceeding which is contrary to the statute."

13.9. In *Mothi S.Rajamma and 2 others Vs. The Secretary to Government, Revenue Department, Fort St. George, Chennai-9 and 2 others* (W .P.Nos.16898 to 16900 of 1999) , this Court had held as follows:

"12. In the case on hand, nowhere it is stated by the respondents that the compensation has been paid to the petitioners especially when the petitioner plead that they have not received any compensation. Hence, where the possession has not been taken over by the Government such lands are also attracted the amending Act 20 of 1999 and consequently, the Government cannot claim any right over such lands.

13. As already held when the petitioners are in possession of the land, even assuming that they have received the compensation it is open to them to refund the name and claim the restoration of the property with them. Only in view of the amending provision the petitioners filed before the State Government and the State Government had returned proceeding to lapse. When that so, now appeals cannot be entertained and it is unnecessary to go into the question because actually when it is found that the possession has not been taken over by the State Government and the compensation also has not been paid to the land owners the petitioners are entitled for the benefit of the amending Act 20 of 1999 and consequently the entire proceedings initiated under the Tamil Nadu Act 24 of 1978 would lapse it is found that the possession has not been taken over by the State Government and the compensation also has not been paid to the land owners, the petitioners are entitled for the benefit of the amending Act 20 of 1999 and consequently the entire proceedings initiated under the Tamil Nadu Act 24 of 1978 would lapse."

13.10. In Mrs.Ayesha Haque V. State of Tamil Nadu and others (2003 Writ L.R. 193) , this Court had held as follows:

"A perusal of the above quoted sections 3 and 4 (of Act 20 of 1999 which has repealed the Tamil Nadu Urban Land Ceiling Regulations Act) 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 under Section 11(3) and possession having been taken by the State Government. 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"

13.11. In Ganesan Chettiar Vs. The Commissioner (competent authority under the Urban Land (Ceiling and Regulation) Act, 1978), Land Reforms, Chepauk, Chennai (W.P.No.34546 of 2002), this Court had held as follows:

"Mrs.Bagyalakshmi, learned counsel appearing for the petitioner relied on a decision of this Court reported in 2002(2) CTC 716 ( Allind Metal Fabricators Pvt Ltd.,) rep. by its Managing Director Vs. The Secretary to Government, Revenue Department, Government of Tamil Nadu, Fort St. George, Madras, wherein it was held thus:-

"1. The Tamil Nadu Urban Land (Ceiling and Regulation) Act has been repealed by the repealing Act (Act 20 of 1999) and all pending proceedings also having been declared to have abated. As held by the Supreme Court in the case of Angoori Devi Vs. State of U.P. (JT 2000 Supp 1 (SC) 295, a decision by a Constitution Bench, If the possession of the land had not been taken prior to the repeal, such possession cannot be taken thereafter and no proceedings can be thereafter initiated under the repealed enactment. During the pendency of this writ petition the petitioner had the benefit of an interim order protecting his possession. It is also not the case of the respondents that they have taken possession.

2. The writ petition is therefore allowed. The W.P.M.P is closed."



4. Relying on the above decision, the learned counsel appearing for the petitioner submitted that the decision of this Court cited supra squarely applicable to the case on hand and prayed for granting the relief sought for in this writ petition....."

13.12. In G.Ramasamy V. The District Collector, Villupuram and another (2004-4-L.W.207), this Court had held as follows:

"On perusal, the aforesaid provision, it is clear that the decision to acquire the land is to be taken by the District Collector and not by any other Officer or authority including the District Revenue Officer.

The power under Section 4 is a statutory power conferred by the Act and there is no provision in the statute which authorises the Collector to delegate such power to any other authority.

The delegation contemplated in Section 16 relates to the delegation of any power or duty imposed on the Government and it does not contemplate delegation of any power or function of the Collector. The explanation indicates that for the purpose of this section (meaning thereby Section 16) the expression Collector includes District Revenue Officer."

13.13. In A.Joseph Louis and another V. State of Tamilnadu and 3 others (2004-3- L.W. 208), this Court had held as follows:

"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.

In the present case, the possession of the land had not been taken over by the State at any time. On the other hand, exemption had been granted. The impugned order indicates that the authority wanted to take action on the ground that the order of exemption has been violated by the petitioners and requested the Special Commissioner of Land Reforms to take appropriate action to acquire the land by giving proper instructions to the Assistant Commissioner. This clearly indicates that possession had not been taken

and the authority wanted to proceed further for acquisition of the land under the Act. Since such Act had been repealed, there is no jurisdiction vested with the authorities to proceed further.

In this context the provision containing Section 3(2) of the Repealing Act makes it clear that if possession has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority; and any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

13.14. In K.Vijayakumar and 5 others V. The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5 (W.P.No.22553 of 2003), this Court had held as follows:

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

(a) Service has not been effected on the petitioners at the last known correct address which is found in the records.

(b) When Tmt.Nagalakshmi Ammal, the mother of the petitioners, had given the names of her major sons who are obviously interested persons, notice was not served on them; the entire proceedings had taken place behind their back.

(c) The Assistant Commissioner, who recommended that the excess land being a very small area can be ignored, also failed to take note that the excess land should be calculated taking into account the three major sons of Tmt.Nagalakshmi Ammal. This recommendation only refers to Tmt.Nagalakshmi Ammal and her minor unmarried daughters.

(d) Rule 8(2) has been violated. As per the said Rule, service has not been sent to the correct address by registered post and when the returns under Section 7(1) clearly refer to the residential address, service ought to have been sent to that address. Affixture on the land will not be proper service.

(e) The appellate authority has also dismissed the proceedings as abated. The order does not say that since possession has been taken, the proviso to Section 4 will come into effect. On the other hand, even the appellate authority appears to have been aware of the fact that the proviso to section 4 of the Repeal Act will come into play.

(f) The notice under Section 7(2) of the Act was signed on 15.6.1989, but served one day earlier, i.e., on 14.6.1989.

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

(h) In any event, right from the commencement of the proceedings, there has been total violation of the statutory provisions relating to service of notice and notice to interested parties.

(i) The entire proceedings having been vitiated, no possession could have been taken lawfully by the authorities and even indeed, in fact, it was not taken. In fact, photographs have been produced to show that no possession was taken.

15. In the result, the order of the second respondent, dated 15.3.1990 is quashed and since the proceedings have not attained a finality by the authorities taking possession, Section 4 of the Repeal Act will come into operation and all proceedings will abate. The writ petition is ordered accordingly....."

13.15. In S.Ramasamy Vs. State of Tamil Nadu rep. by its Revenue Secretary to Government, Fort St. George, Madras-8. (W.P.No.6641 of 1997), this Court had held as follows:

"9. In the case on hand, though from the available materials on record it transpired that use third respondent proceeded against the petitioner upto the notification under Section 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 material to support the said position.

10. On a perusal of the counter affidavit filed on behalf of the respondents also there is no special 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 under Section 11(3) of the Act came to be issued on 07.03.1991, the possession after issuance of 11 (5) notice had not been validly taken as contemplated under the provisions of the Act.

11. In this context, it is worthwhile to refer to the decision of S.Jagadeesan, in the judgment reported in C.Narasimhan rep. by His Power Agent Smt. Jayalakshmi, No.12, Bishop Garden, Raja Annamalaipuram, Chennai-28 Vs.



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.

12. In the above said background, when the application of Act 20/1999 is considered, it will have to be held that there is no scope to hold that the respondents could be entitled to invoke Section 3(1)(a) of Act 30/1999. In as much as the physical possession of the land has never been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority, automatically the application under Section of the said Act, comes into play and all the proceedings including the proceedings impugned in this writ petition should abate without anything more.

13. In result, the writ petition succeeds and the orders impugned in the writ petition are set aside."

13.16. In B.Pratap and 3 others Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Revenue Department, Fort St. George, Chennai-600 009 (W.P.No.40847 of 2002), this Court had held as follows:

"2. It is not in dispute that the subject matter of the writ petition is covered by the decision of the Apex Court as well as this Court in a batch of cases. The learned Government Advocate has not disputed the legal position.

3. In the light of the judgment of the Supreme Court in Angoori Devi Vs. State of U.P. (JT 2000 Supp 1 (SC) 295), consequent to the repealing Act, viz., Act 20 of 1999 repealing Tamil Nadu Urban Land (Ceiling and Regulation) Act, the petitioners are entitled to succeed in this writ petition."

13.17. In Sukumar Ramanan Vs. The Competent Authority of Urban Land Ceiling and Assistant Commissioner of Urban Land Tax, T.Nagar at No.84 Arcot Road, Kodambakkam, Chennai-600 024 (W.P.No.27432 of 2004), this Court had held as follows:

"2. According to the petitioner, in the light of the Tamil Nadu Urban Land (Ceiling and Regulation) amendment Act 20 of 1999 and since the petitioner continues to remain in possession of the land in question, the acquisition

proceedings automatically abates and therefore, the possession of the petitioner cannot be interfered with.

3. On hearing the learned Special Government Pleader and also on perusing the records produced before this Court, I find the report of the Assistant Commissioner (Urban Land Ceiling), dated 7.4.2004, which confirms that the above said land which was allotted to the Housing Board was not used by the Housing board and that the land remains vacant. It is also stated that the land is also covered by compound walls on all sides. This also confirms the stand of the petitioner that the land continue to remain in the possession of the petitioner.

4. In such circumstances, since there is no other acceptable material documents on record to show that the possession of the land in question was taken by the Urban Land Ceiling Authorities or the Department to which it was allotted, the claim of the petitioner that he continues to remain in possession of the land cannot be doubted.

5. In the result, the writ petition stands allowed and any proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, gets abated by virtue of the subsequent amendment Act 20 of 1999....."

13.18. In K.R.Kothandaraman V. The Special Commissioner and Commissioner for Urban Land Ceiling and Urban Land Tax and another (2005-4-L.W. 299), it has been held as follows:

"5. .... The fact that the petitioner is continuing in physical possession is also not challenged in any manner in the counter. The contention of the respondent to the effect that even symbolical delivery of possession must be taken as the possession of the respondent, can have be of no assistance in the peculiar facts and circumstances of the present case.'

6. The proceedings had been initiated against a dead person and the persons in possession of the land are obviously not bound by the so called symbolical delivery of possession, particularly when notice had not been served on them. Nothing has been produced in this Court to indicate that possession had been taken from the present petitioner who apparently was in possession of the disputed land from the date of the registered deed of partition. In such view of the matter, it must be taken that the possession continued with the petitioner and since the urban land ceiling proceedings were void having been initiated and continued against a dead person, the proceedings must be taken to have abated in view of the repeal of the Act.

7. In such view of the matter, the writ petition is allowed and it is declared that the petitioner is the owner in possession of the land and the respondents are not entitled to interfere with his right over the land. There will be no order as to costs."

13.19. In *Sosamma Thampy Vs. The Assistant Commissioner (ULT) cum Competent Authority (ULC) and another* (2006-3-L.W 50), this Court had held as follows:

"The learned Government Advocate appearing for the respondents, was not in a position to show from the records that the actual possession of the lands in question had been taken by the Government or that any compensation was paid to the petitioner for the lands sought to be acquired. In these circumstances, it is clear that the proceedings initiated by the respondents for acquiring the lands of the petitioner, under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, stood abated on the passing of the Repealing Act 20 of 1999 and therefore, the lands in question continues to be vested in the petitioner and neither the State Government nor the land Ceiling Authorities had any lien over the said properties of the petitioner. Therefore, the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in R.C.No.254/87A, dated 31.8.1989, read with R.C.No.5633/93A, dated 25.2.1994, by the first respondent, will stand abated on the promulgation of Act 20 of 1999. Hence, the writ petition is allowed.

13.13. In *Jayaseelan and another V. The Government of Tamil Nadu and others* (2006-3-L.W. 440), this Court had held as follows:

"Proceedings initiated under the 1978 Act were not proceeded against the petitioners who were shown to be in actual possession of the lands in question. On coming into force of Act, 20 of 1999, the acquisition proceedings stand abated in accordance with Section 4 of the Act. Order of the third respondent, dated 15.12.1995, in respect of the lands belonging to the petitioner, set aside."

13.21. In *S.Subramaniam Vs. State of Tamil Nadu rep. by the Secretary to Government, Revenue Department, Secretariat, Fort St. George, Chennai-600 009.* (2006-3-L.W. 445), this Court had held as follows:



"From the facts, it is found that all the proceedings under the Act, had been proceeded against a dead person. Only for the purpose of claiming payment for Urban Land Tax from fasli 1410, the authorities have addressed proceedings to the petitioner, which is a clear admission on the part of the respondents that physical possession and ownership continued with the petitioner. Land Ceiling proceedings initiated against the petitioner stand abated."

13.22. In C.N.Chandran V. Government of Tamil Nadu (2006(3) M.L.J. 1050), this Court had held as follows:

"Section 3 of the Repeal Act should not be read in isolation, but, it should be read with Section 4 of the Repeal Act. Section 4 of the Repeal Act contemplates that 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, which means that any orders passed by the authorities including the impugned notifications issued under Section 11(3) of the Act, against which any proceedings is pending before any Court, Tribunal or any authority shall abate. It means that if the possession has not been taken over by the Government, even after an order is passed under Section 11(3) of the Act, the proceedings must be held to have abated. The possession of the petitioners is asserted by the learned senior counsel for the petitioners and it is also apparent from the documents mentioned above and also from the interim orders passed by this Court. It is also not in dispute that no compensation was paid to the petitioners. This Court is the considered view that the petitioners proved that they are in continuous possession of the lands in dispute upto date, notwithstanding the impugned proceedings initiated by the respondents under the Act and that they are entitled to the benefits of the Repeal Act 20 of 1999."

13.23. In V.Foundation (P) Ltd. V. Principal Commissioner and Commissioner of Land Reforms (2006(4) M.L.J. 676), this Court had held as follows:

"Proceedings for acquisition of excess urban land under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, initiated against the erstwhile owner and not against the real owner who had purchased the lands from the erstwhile owner will not be binding on the real owner."

13.24. In *Simpson and General Finance Company Limited V. The State of Tamil Nadu and another* (2006 -4-L.W. 787), this Court had held as follows:

"In the case on hand, during the period the Act 1978 was in force, the petitioner's possession of vacant land was found excess, possession of which was not taken over by the State Government, but granted exemption. The case of the petitioner is that after the Repeal Act no action can be initiated to withdraw the exemption on the ground of non-compliance of conditions, since, Section 21(2) is not saved by Repeal Act.

A joint reading of Section 3(1) of Section 3(2) of Repeal Act would reveal that the compensation must have been paid and possession been taken pursuant to that. Section 3(2)(b) also provides "then such land shall not be restored unless the amount paid, if any, shall be refunded to the State Government" which makes it clear that even in cases where compensation is paid by the Government, the owner is allowed to take possession of the land, but that can be done only after the amount is refunded to the State Government.

"Saving clause" is used to preserve from destruction certain rights, remedies or privileges already existing not that it gives any new right. The assumption is that legislature enact laws with complete knowledge of existing laws pertaining to the same subject. The failure to add saving clause indicates that the intent was not to save the existing legislature. In this case, Section 21(2) was not saved in the repeal Act. In view of the fact that no action has been taken by the State Government for the alleged violation of conditions imposed while granting exemption prior to the repeal Act and also the fact that Section 21(2) is not saved, it is not even open to the State Government to take any action for the alleged violation of conditions, even if any. The impugned notice is issued only by the second respondent, which is admittedly after the Repeal Act came into force. It is also a fact that neither compensation is paid to the petitioner nor the lands were taken prior to the Repeal Act. In view of the same, either the first respondent or the second respondent has jurisdiction to initiate any action against the petitioner's lands, hence, I hold that the impugned communication is illegal and without any authority of law and the same is quashed accordingly."

13.25. In *M/s.Sri Vittal Combines V. The Commissioner and Secretary (Revenue) and 2 others* (2007-4-L.W.349), this Court had held as follows:

"Court is of the considered view that once it is found that the actual possession of the land in question had not been taken over by the State Government or by any person authorised by the State Government, the possession would continue to vest with the petitioner, even if a final decision had not been taken, under Section 21 of the 1978 Act. Decisions of the Supreme Court and of this Court are to the effect that if the actual possession of the land in question has not been taken over by the Government or by the concerned authority, and if the due compensation had not been paid, all pending proceedings with regard to the land in question would abate and the land in question would continue to vest with the owner."

13.26. In V.Gurunathan V. Assistant Commissioner of Urban Land Tax and Ceiling (2007 (5) MLJ 103), this Court has held as follows:

"Mere vesting of the land in the Government is not sufficient. Taking actual possession of the land and payment of compensation therefor to the land owner, are crucial factors which, if not done prior to the coming into force of the Repeal Act of 1999, proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978, would abate."

13.27. In C.Ram Mohan and others V. The Government of Tamil Nadu and 2 others (2008 Writ L.R. 93), this Court had held as follows:

"No valid evidence is produced by the respondents to show that the Draft Statement was served on the petitioners, as regards vacant land held in excess of ceiling limit by them. Plea of respondents was that Final Statement was also served on the petitioner by affixture, which is contrary to Rule 8. Without sending it by Registered post as contemplated under Section 10 read with Rule 8, it was allegedly affixed, hence, it is not a valid service - Moreover, this Court also verified the affixture procedures followed by the respondents, which is also not satisfactory.

Respondents have not complied with the mandatory provisions of serving notice. Final statement and delivery of possession, and failed to give opportunity to the petitioners to file their objections. There is no discussion in the order about the suitability of the lands for construction of houses as the said lands admittedly used only for the purpose of manufacturing bricks as well as agricultural purpose.



Alleged take over of possession is not proved by any valid evidence - As petitioners are in continuous possession of the lands in dispute all along even prior to the Repeal Act and after the Repeal Act, the petitioners possession is protected by this Court during the pendency of this writ petition by granting interim order, the prayer as sought for in this writ petition is to be granted."

13.28. In *Saraswathi V. Principal Commissioner and Commissioner of Land Reforms* (2007 (5) MLJ 540), this Court had held as follows:

"I. As per Section 10 of 1978 Act read with Rule 8 of the Rules, mandatory on part of authorities under the act, to send all notices in respect of taking over possession of excess vacant land, by registered post, acknowledgment due."

II. "The criterion for taking over excess vacant land is its suitability for building purposes. If land unfit for building purposes is taken over by Government, such take over is liable to be challenged on that ground."

13.29. In *Sivaparamam and 2 others V. The State of Tamil Nadu and 4 others* (2007-4-L.W. 361), this Court had held as follows:

"A combined reading of the sections will make it clear that action under the old Act would abate except in respect of cases where possession has already been taken over by the Government or in respect of cases where possession has not been taken over but deemed to have vested under Section 11 (3) with the State Government and the Government paid the amount for the value of the land and the same has not been refunded. That is relating to deemed possession under Section 11(3) of the Principal Act.

Petitioners have categorically stated that they are in physical possession of the properties and have also produced various certificates including urban land tax receipts, certificates issued by the village karnam, patta issued by the Tahsildar etc. to show that the petitioners continue to be in physical possession of the properties in dispute."

13.30. In *Tessy John Vs. Principal Commissioner and Commissioner of Land Reforms* (2008 (1) MLJ 838), this Court had held as follows:

"I. "When the acquisition proceedings were not initiated against the real land owner and the real owner was not served with proper notices in terms of the Tamil Nadu Urban

Land (Ceiling and Regulation) Act, 1978, the entire exercise of acquisition is an exercise in futility and it would also amount to deprivation of property of real owner by misusing the power vested under the Act."

II. "When the physical possession of the property acquired has not been taken over from the land owner and she continues to be in possession and enjoyment of the said property, she is entitled to have the benefit of Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 20 of 1999."

13.31. In Gannon Dunkerley and Company (Madras) Limited V. The Government of Tamil Nadu and others (1999-I-L.W. 621), this Court had held as follows:

"Power of Government to exempt any vacant land in public interest and to avoid undue hardship to any person is a power coupled with a duty. The discretion must be used when the facts so warrant or exist and the authority cannot refuse to exercise the power of discretion where debts and liabilities of a company in liquidation can be cleared off only by sale of vacant land in question."

13.32. In Saraswathi and another V. The Principal Commissioner and Commissioner of Land Reforms (2007(4) CTC 714), this Court had held that the land acquisition proceedings would stand abated, if the respondents are not in a position to show that actual physical possession of the land in question had been taken over by the respondents and due compensation had been paid to the urban land owner concerned.

14. As such, this Court finds it appropriate to pass an order allowing the writ petition. Hence, the writ petition stands allowed.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

csH

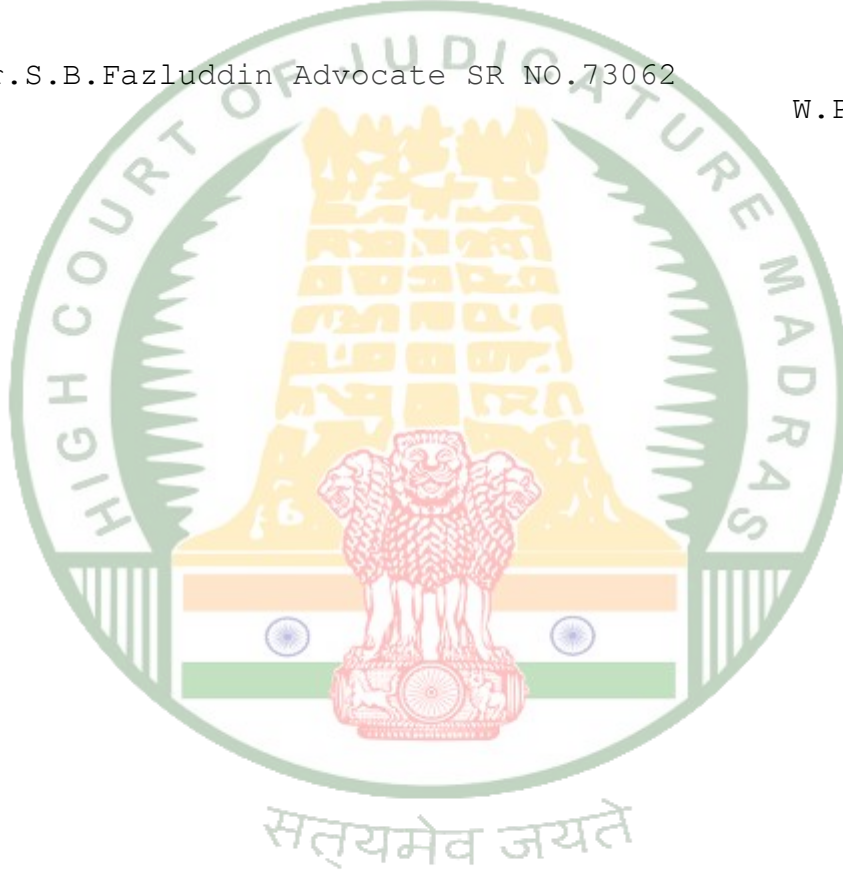
To

- 1 The SECRETARY  
THE GOVERNMENT OF TAMIL NADU  
REVENUE DEPARTMENT  
FORT ST.GEORGE  
CHENNAI.9.
- 2 THE ASSISTANT COMMISSIONER  
(URBAN LAND TAX) ,  
169 SANNADHI STREET, ADAMBAKKAM  
TAMBARAM, CHENNAI.88.

1 CC To Mr.S.B.Fazluddin Advocate SR NO.73062

W.P.No.7125 of 2004

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