

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.23634 of 2009

%31-12-2013

P.Vijaya Jyothi, D/o Dr.P.Muralinath Reddy Petitioner.

Versus

\$1. The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad
and another. Respondents.

< **GIST:**

> **HEAD NOTE:**

!Counsel for the petitioner: V.Jagapathi

^ Counsel for the Official respondents: Government Pleader for
Revenue

? Cases referred

1. 2000(4) ALD 596
2. 1989 (1) ALT 48
3. 1995 (2) A.P.L.J. 325
4. 2006 (5) ALD 132 (DB)

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

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O R D E R:

This writ petition, under Article 226 of the Constitution of India, is filed for the following relief:

“ to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the proceedings initiated by the 2nd respondent against the dead person, Late Mallaiah, in File No. F1/3272/6(1)/06 dt.6.2.06 under the provisions of Sections 6 to 10 of Urban Land (Ceiling & Regulation) Act, 1976, in so far as it relates to the lands in Sy.Nos. 30 & 31-P, situated at Guttala Begumpet Village accounts, Serilingampally Mandal & Municipality, Ranga Reddy District, as null and void abintio, without jurisdiction, illegal, unconstitutional and violative of the Principles of natural justice, and consequently restrain the Respondents from in any way interfering with the petitioner's peaceful possession and enjoyment of an extent of 400 sq. yards in Plot No. 1 in Sy.Nos. 30 & 31- situated at Guttala Begumpet Village covered vide Sale Deed Document NO. 7119/1996 dt. 19-8-1996, and with all other consequential benefits.”

2. The case of the petitioner, as per the pleadings in the affidavit filed in support of the writ petition is as under:

3. One Col. Cox was the owner and pattadar of the lands admeasuring Ac.2.13 gts in Sys.Nos.30 and 31 of Guttala Begumpet village and some time in the year 1954, the said Col. Cox sold the said lands to one Erram Mallaiah, son of Pochaiah, and pursuant to the said sale, the name of Erram Mallaiah was mutated in all the revenue records as the owner and pattadar of the said lands and he continued to be so till the year 1972 i.e., the year which is believed to be his year of death. The legal representatives of the said late Erram Mallaiah

appointed one Mr.D.Ravinder S/o late B.Ranganath as their G.P.A and the said Ravinder executed a registered sale deed vide Doc.No.3052/1996 in favour of one Sri P.Jagannadha Reddy, who in turn subdivided his land into three plots and the petitioner herein purchased the plot admeasuring 400 square yards from the said P.Jagannadaha Reddy vide registered sale deed vide Document No.7119/1996, dated 19.08.1986. In the sale deed dated 08.02.1996 executed by the G.P.A Sri B.Ravindra in favour of Sri P.Jagannath Reddy, it was specifically mentioned that the land admeasuring Ac.2-13 gts of his vendors i.e., the legal representatives of late Erram Mallaiah were exempted from the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called 'the Act') as per the orders issued by the Government of Andhra Pradesh in G.O.Ms.No.733, Revenue Department, dated 31.10.1988. The mutation in the name of the petitioner was effected and ever since the petitioner has been in possession and enjoyment of the property to the knowledge of one and all including the respondents herein. The second respondent/Special Officer and Competent Authority, despite the protection granted by the Government of Andhra Pradesh vide G.O.Ms.No.733, Revenue, dated 31.10.1998 and G.O.Ms.No.280, M.A, dated 01.06.1989, decided to apply the provisions of the Act in respect of the land admeasuring Ac.2-13 gts situated in Sy.Nos.30 and 31 of Guttala Begumpet village. On the instructions of the second respondent, Special Officer and Competent Authority, the enquiry officer submitted a report, asking the second respondent to issue notice to the pattadar under Section 6 (2) of the Act. Thereafter, the Special Officer and Competent Authority, the second respondent herein, issued a notice No.F1/3272/6(1)/06, dated 06.02.2006, under Section 6 (2) of the Act in the name of Sri N.Mallaiah, asking him to file the statement in Form-I on or before 24.02.2006 along with a petition for condoning the delay with reasons thereon. The second respondent/Special Officer and Competent Authority directed the

Enquiry Officer to serve the said notice to the addressee and by virtue of a letter No.F1/3272/6(1)/06 dated 04.03.2006, the Enquiry Officer reported to the Special Officer that he conducted panchanama on the lands in Sy.Nos.30 and 31 and the panchas said that the pattadar is not residing in the village and his legal representatives are also not residing and that he pasted the notice on the stone of the said land and also on the Notice Board of the Ward Office before the Panchas. Eventually, in the said report dated 04.03.2006, the Special Enquiry Officer recommended to initiate proceedings under the Act. On the said report dated 04.03.2006 of the Special Enquiry Officer, the second respondent herein mechanically issued orders in proceedings No.3272/6(1)/06, dated 25.03.2006, issuing draft statement under Sections (8) (1) and Section 8 (3) of the Act calling for objections, if any, within 30 days despite the death of the pattadar. On the ground that no objections were received, the Special Officer and Competent Authority vide proceedings No.F1/3272/6(1)/06, dated 04.05.2006, issued final statement under Section 9 of the Act. The Special Enquiry Officer, Urban Land Ceiling, Hyderabad, vide report No.F1/3270/6(1)/06 dated 15.02.2006 informed the second respondent that the pattadar died long back and his legal representatives are not residing in the Guttala Begumpet village. In the said report dated 15.05.2006, the Special Enquiry Officer also stated that he conducted panchanama and pasted the copy of the order dated 04.05.2006 in the above land as well as in the village ward office before the panchas. In spite of the said report wherein the death of original pattadar was clearly indicated by the Special Enquiry Officer, the second respondent/Special Officer and Competent Authority published notification in the A.P. Gazette No.351 under Sections 10 (1), 10 (2) and 10 (3) of the Act on 08.11.2006. Contending that the said action on the part of the respondents in initiating and concluding the proceedings under the Act against a dead person as contrary to the provisions of the enactment, illegal, arbitrary, null and void and

contending that the said initiation and completion of the proceedings is not permissible in view of the orders of the Government of Andhra Pradesh in G.O.Ms.No.733, Revenue, dated 31.10.1008 and G.O.Ms.no.280, MA, dated 01.06.1989, the present writ petition has been filed.

4. This Court, while admitting the writ petition on 14.10.2009, in WPMP.No.28675/2009, granted orders of *status quo*.

5. A vacate application in WVMP.No.816/2013 is filed by the respondents 1 and 2 in the writ petition supported by a counter affidavit, contending *inter alia* that the enquiry caused in the subject mater reveals that the pattadar of the land bearing No.30 and 31 of Guttala Begumpet sold out the property after commencement of the Act, as such, the sale effected is void as per Section 5 (3) of the Act and that after following the due procedure as per rule 5 (2)(c) of the Act and duly conducting panchanama on 28.03.2006 and in the absence of any objections received, final orders under Section 8 (4) of the Act were issued on 04.05.2006 determining Sri N.Mallaiah as a surplus land owner to an extent of 8407.51 sq. Mtrs. It is further stated in the counter that the final orders and statement under Section 9 of the Act were served as per Rule 5 (2) (c) of the Act by holding panchanama by the enquiry officer of the office. The counter further states that a notification under Section 10 (1) of the Act was issued and the same was published in A.P. Gazettee No.351 dated 08.11.2006, calling for objections and neither the petitioner nor any interested persons had filed their objections within the stipulated period and as a result declaration under Section 10 (3) of the Act was issued which was published in A.P. Gazettee No.396, dated 05.12.2006, which resulted in vesting of the land absolutely with the Government with effect from 12.12.2006.

Counter further states that a notice under Section 10 (5) of the Act was issued on 01.03.2007 followed by orders under Section 10 (6) of the Act on 11.03.2008 and eventually possession was taken over by

the Government on 11.03.2008, as such, the proceedings under the Principal Act are saved. It is further stated that the subject area is a core area as such the extension of benefit under G.O.Ms.No.733 does not arise and that writ petitioner does not have any title over the lands and being the third party occupant, he cannot question the proceedings under the Act and that the petitioner has no *locus standi* to challenge the proceedings. It is further stated in the counter that the land bearing Sy.Nos.30 and 31 admeasuring 8407.51 sq. mtrs situated at Guttala Begumpet village is declared as surplus vested with the Government vide Gazette No.396, dated 05.12.2006, and the Government issued policy guidelines vide G.O.Ms.No.455, Revenue, dated 29.07.2002 and G.O.Ms.No.747, dated 18.06.2008, to allot the land to the third party occupants of the surplus land and the petitioner has not availed the opportunity available under the said Governmental orders and has not applied for relaxation. The counter further states that as many as 22 occupants filed applications for relaxation of their possession to an extent of 9291.27 sq. Mtrs and out of the above extent an extent of 4477.81 sq. mtrs has already been regularised and the applications for relaxation of 4819.46 sq. mtrs is pending consideration and that the petitioner herein has not filed any application for regularisation.

Pleading in the manner stated above, it is prayed by the respondents herein to dismiss the writ petition.

6. Heard Sri V.Jagapathi, learned counsel for the petitioner and the learned Government Pleader for Revenue for the respondents and perused the material available on record.

7. It is contended by the learned counsel for the petitioner that the impugned proceedings starting from Section 6 to Section 10 of the Act are null and void, without jurisdiction, illegal, unsustainable and violative of principles of natural justice. It is further contended by the learned counsel that since the impugned proceedings were issued against a dead person, the same are *non est* in the eye of Law. It is

also the contention of the learned counsel for the petitioner that the subject property falls under peripheral area, as such, the subject land is exempted from the provisions of the Act in view of the orders of the Government of Andhra Pradesh in G.O.Ms.No.733, Revenue Department, dated 31.10.1988 and the further instructions of the Government vide G.O.Ms.No.280, M.A, dated 01.06.1989. It is also the contention of the learned counsel for the petitioner that the entire proceedings did take place behind the back of the interested persons and the persons in possession of the property. It is further contended by the learned counsel for the petitioner that no notices as stipulated under the mandatory provisions of the legislation were issued to the affected parties.

8. The learned counsel for the petitioner, to bolster his submissions and contentions, places reliance on the judgment of this Court in **KOTHURU BABU SURENDRA KUMAR (DIED) AND OTHERS Vs. SPECIAL OFFICER AND COMPETENT AUTHORITY, ULC, VIJAYAWADA AND OTHERS^[1]**, **Y.SRI RAMA KRISHNAIAH Vs. SPECIAL OFFICER AND COMPETENT AUTHORITY, URBAN LAND CEILING, VIJAYAWADA & OTHERS^[2]**, **M/S. L.S. & CO. Vs. STATE OF A.P.^[3]** and unreported judgment of this Court in WP.No.4064/2010, dated 04.03.2010.

9. Per contra, reiterating the contents of the counter affidavit, it is strenuously argued by the learned Government Pleader that Guttala Begumpet area, where the subject land is situated, is a core area, as such, the subject land is not exempted from the operation of the Act and no exemption can be claimed in the light of G.O.Ms.No.733, Revenue Department, dated 31.10.1988 and G.O.Ms.No.280, MA, dated 01.06.1989. It is also submitted by the learned Government Pleader that the petitioner herein purchased the property in the year 1996 and the said transaction is null and void in view of the provisions of sub-Section (3) of Section 5 of the Act. It is further argued by the

learned Government Pleader that the authorities conducted the proceedings by strictly and scrupulously adhering to the mandatory provisions of the Act. In support of the contentions, the learned Government Pleader places reliance on the judgment of this court in the case of **PARCHURI RATNAKAR RAO Vs. STATE OF A.P. AND OTHERS**^[4].

It is also contended by the learned Government Pleader that the notification under Section 10 (1) of the Act was issued and published in A.P. Gazette No.351,dated 08.11.2006,calling for objections from the interested persons, but the petitioner did not file any objections and that the petitioner has not filed any application for regulation in terms of the orders in G.O.Ms.No.455, Revenue (UC-I) Department, dated 29.07.2002 and G.O.Ms.No.747, Revenue (UC-I) Department, dated 18.06.2008.

10. The legislation which is germane and relevant for the purpose of resolving the controversy in the present writ petition is the Urban Land (Ceiling and Regulation) Act, 1976. The Government of India enacted this legislation to provide for imposition of a ceiling on vacant land in urban agglomeration and for the acquisition of such land in excess of ceiling limit and to regulate the construction of buildings on such land and for the matters connected therewith with an intention to prevent concentration of urban land in the hands of a few persons and speculations and profiteering therein and with a view to bring about an equitable distribution of land in urban agglomeration to sub-serve the common good. The provisions of the said legislation which are relevant for the present case are Sections 5, 6, 8, 9 and 10 of the act, which read as under:

5. Transfer of vacant land:-

- (1) In any State to which this Act applies in the first instance,where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending

with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage', gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purposes of this Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee: Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

- (2) Where any excess vacant land is selected out of the vacant land transferred under sub- section (1), the transfer of the excess vacant land so selected shall be deemed to be null and void.
- (3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 6 and a notification regarding the excess vacant land held by him has been published under sub- section (1) of section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

6. Persons holding vacant land in excess of ceiling limit to file statement:-

- (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall,

within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain:

Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words "Every person holding vacant land in excess of the ceiling limit at the commencement of this Act", the words, figures and letters "Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement" had been substituted.

Explanation:- In this section, "commencement of this Act" means,-

- (i) the date on which this Act comes into force in any State;
- (ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;
- (iii) where any notification has been issued under clause (n) of section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification.

(2) If the competent authority is of opinion that-

- (a) in any State to which this Act applies in the first instance, any person held on or after the 17th day of February, 1975 and before the commencement of this Act or holds at such commencement; or
- (b) in any State which adopts this Act under clause (1) of article 252 of the Constitution, any person holds at the commencement of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such

person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub- section (1).

(3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit; so, however, that the period or the aggregate of the periods of such extension shall not exceed three months.

(4) The statement under this section shall be filed,-

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf;

(b) in the case of a family, by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both;

(c) in the case of a company, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by a person competent to act on his behalf.

Explanation:- For the purposes of this sub- section," principal officer",-

(i) in relation to a company, means the secretary, manager or managing- director of the company;

(ii) in relation to any association, means the secretary, treasurer manager or agent of the

association, and includes any person connected with the management of the affairs of the company or the association, as the case may be, upon whom the competent authority has served a notice of his intention of treating him as the principal officer thereof.

8. Preparation of draft statement as regards vacant land held in excess of ceiling limit.

- (1) On the basis of the statement filed under section 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement under section 6.
- (2) Every statement prepared under sub- section (1) shall contain the following particulars, namely:-
 - (i) the name and address of the person;
 - (ii) the Particulars of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;
 - (iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;
 - (iv) the particulars of the right, title or interest of the person in the vacant lands; and
 - (v) such other particulars as may be prescribed.
- (3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.
- (4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub- section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under that sub-

section and the competent authority shall, after giving the objector a, reasonable opportunity of being heard, pass such orders as it deems fit.

9. Final statement.

After the disposal of the objections, if any, received under sub- section (4) of section 8, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire- purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land.

10. Acquisition of vacant land in excess of ceiling limit.

(1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub- section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.]

- (3) At any time after the publication of the notification under sub- section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub- section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.
- (4) During the period commencing on the date of publication of the notification under sub- section (1) and ending with the date specified in the declaration made under sub- section (3)--
- (i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and
 - (ii) no person shall alter or cause to be altered the use of such excess vacant land.
- (5) Where any vacant land is vested in the State Government under sub- section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.
- (6) If any person refuses or fails to comply with an order made under sub- section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Govern- ment or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary. Explanation.- In this section, in sub- section (1) of section 11 and in sections 14 and 23," State Government", in relation to-

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under section 3 of the Cantonments Act, 1924 , (2 of 1924 .) means that State Government.”

10. As per the provisions of Section 5 of the Act there is a prohibition on the transfer of vacant land in excess of ceiling limit and the said provision renders such transaction null and void. Section 6 of the Act imposes obligation on the person holding vacant land in excess of the ceiling limit at the time of commencement of the Act to file a statement before the competent authority and Section 6 (2) of the Act empowers the competent authority to serve a notice upon the person holding vacant land in excess of the ceiling limit, requiring him to file statement as per Sub-section (1) of Section 6 of the Act. Section 8 of the Act deals with the preparation of draft statement with regard to vacant land held in excess of the ceiling limit. The said provision of law obligates the competent authority to prepare a draft statement on the basis of the statement filed under Section 6 of the Act after holding enquiry.

Sub-Section (3) of Section 8 of the Act mandates that draft statement shall be served on the concerned person, inviting objections. As per sub-section (4) of Section 8, it is obligatory on the part of the competent authority to consider the objections received and to pass orders after giving the objector a reasonable opportunity of being heard. Section 9 of the Act, which deals with final statement, mandates the competent authority to pass orders on the objections submitted under Section 8 and to determine the vacant land held by the person concerned and to serve the said statement on the person concerned as per the procedure under sub-Section (3) of Section 8. Section 10 of the Act mandates that after service of statement under Section 9 on the person concerned, the competent authority shall cause a notification, giving

particulars of the vacant land and it also provides for filing claims by all the persons interested and it also obligates publication of the same in the official Gazettee. Sub-section (2) of Section 10 obligates the competent authority to determine nature and extents of the claims filed under Section 10 (1) and to pass orders. Sub-section (3) of Section 10 stipulates that a notification shall be published by the competent authority, declaring the excess vacant land and the said provision deals with vesting of the property with the Government. Sub-sections (5) and (6) of Section 10 of the Act deal with the procedure to take possession of the excess land.

11. In the light of the above provisions of law, now it is required to see as to whether the authorities in the instant writ petition conducted the proceedings in accordance with the above provisions of law and whether the impugned proceedings, in the light of the submissions and contentions advanced by the parties to the litigation are sustainable?

12. The material available on record discloses that the legal representatives of the original pattadar, one Sri Mallaiah sold the property in favour of one P.Jagannadha Reddy from whom the petitioner herein purchased the property by way of a registered sale deed dated 19.08.1996 bearing Document No.7119/1996. In the instant case, the respondent authorities initiated the proceedings in the year 2006. The Special Enquiry Officer, F Section, Zone III, ULC, Hyderabad, submitted a report No.F1/G'pet/6 (2)/2006, dated 04.02.2006, to the Special Officer and Competent Authority, ULC, Hyderabad, stating that a declaration statement under Section 6 (1) of the Act was not filed by the pattadar for Sy.Nos.30 and 31 of Guttala Begumpet Village, Serlingampally Mandal, Ranga Reddy District and that the said land stands in the name of Mallaiah/pattadar as on the date of commencement of the Act. In the said report, the Special Enquiry Officer also requested the competent authority to issue notice under Section 6 (2) of the Act. In pursuance of the said report dated 04.02.2006, the Special Officer and Competent Authority, ULC,

Hyderabad issued notice No.F1/3272/6(1)/06, dated 06.02.2006, under Section 6 (2) of the Act, showing the name of the addressee as N.Mallaiah while asking the said addressee to file statement in Form-I on or before 24.02.2006 along with the petition for condoning the delay with reasons. Subsequently, vide proceedings No.F1/3272/6(1)/06, dated 04.03.2006, the Special Enquiry Officer, F Section, Zone III, ULC, Hyderabad, submitted a report saying that he enquired about the pattadar, Sri N.Mallaiah for Sy.Nos.30 and 31 of Guttala Begumpet Village and his enquiry recorded that he is not residing in the village and his legal representatives are also not residing in the village and that a notice under Section 6 (2) of the Act could not be served to the land holders. The said report also states that the Special Enquiry Officer conducted the panchanama on the lands and the panchas informed that the pattadar is not residing in the village and so also his legal representatives. The said report also discloses that the notice was pasted on the stone of the said land and also in the notice board of the ward office before the panchas. The report further reveals that in the *suo motu* enquiry held by the enquiry officer, the villagers informed him that the pattadar already sold the subject land after the commencement of the Act. Eventually, in the said report, the Special Enquiry Officer recommended for initiation of proceedings under the provisions of the Act. Subsequently, by virtue of proceedings No.F1/3272/6(1)/06 dated 25.03.2006, the Special Officer and Competent Authority, issued a draft statement under Section 8 (1) of the Act and also a notice under Section 8 (3) of the Act, calling for objections within 30 days. Subsequently, on the ground that no objections were received under Section 8 (3) of the Act, the Special Officer and Competent Authority vide proceedings No.F1/3272/6(1)/06, dated 04.05.2006, confirmed the provisional orders and issued final statement under Section 9 of the Act.

13. A significant aspect which needs mention at this juncture is that the Special Enquiry Officer, F Section, Zone III, ULC, Hyderabad, vide

report No.F/3270/6(1)/06, dated 15.05.2006, informed the Special Officer and Competent Authority that his enquiry revealed that the pattadar/N.Mallaiah died long back and the LRs were not residing in Guttala Begumpet Village. In the said report, the Special Enquiry Officer also stated that he conducted panchanama and pasted the copy of the proceedings dated 04.05.2006 in the above said land as well as the village ward office before the panchas. Subsequently, in spite of the report of the Special Enquiry Officer, dated 15.05.2006, informing the death of original pattadar, the Special Officer and Competent Authority published notices under sub-Sections (1), (2) and (3) of Section 10 of the Act in the A.P. Gazette, dated 08.11.2006, showing the name of N.Mallaiah once again. The provisions of the Act empowers the State to take possession of the land in excess of the ceiling limit notwithstanding the wish of the land owners who are required to adhere to the provisions of the Act strictly.

14. Right to property is a constitutional right enshrined under Article 300-A of the Constitution of India, which in clear and unequivocal terms mandates that no citizen shall be deprived of his/her property except in accordance with law. Section 8 (3) of the Act mandates that the draft statement shall be served on the person concerned so as to enable him to file objections. In the instant case, even as per the respondents herein no notice was served on the persons concerned. Rule 5 (2) (a) of the Urban Land Ceiling Regulation Rules, 1976 framed by the Central Government in exercise of its powers conferred by sub-Section (1) read with sub-Section (2) of Section 46 of the Act manifestly mandates service of draft statement together with notice referred in sub-section (3) of Section 8 on the holder of the vacant land and all other persons, so far as may be known, who have, or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned. In the instant case, it is the categorical case of the petitioner herein that after purchasing the

property, he submitted an application dated 17.06.1998 to the Commissioner, Serilingampally municipality enclosing a copy of the registered sale deed dated 28.03.1998 and requested to mutate his name in the records in respect of the subject property and the Commissioner, Serilingampally effected the said mutation by virtue of proceedings A/177/98, dated 30.10.1998, and the same was also incorporated in the list of demand of the property tax from the year 1998-99. In spite of the report of the Special Enquiry Officer dated 15.05.2006, informing the death of the pattadar long back, the authorities proceeded further with the matter and issued further proceedings which culminated in issuance of Section 9 statement as also Gazettee notification under Sections 10 (1) to 10 (3) of the Act showing the name of the dead person.

15. In the case of **KOTHURU BABU SURENDRA KUMAR (DIED) AND OTHERS Vs. SPECIAL OFFICER AND COMPETENT AUTHORITY, ULC, VIJAYAWADA AND OTHERS** (supra 1), this Court at paragraph 28 held as under:

“28. What is culled out from the above discussion is that the competent authority who has finalised the statement under Section 8(4) of the Act and final statement under Section 9 and notification issued under Section 10(1), 10(3) and Section 10(5) of the Act failed to follow the mandatory provisions by issuing notice to the persons likely to be affected viz., the petitioners, who are purchasers of the above lands and it is also within their knowledge; and the records also reveal that Smt Tulsamma, the 4th and 5th respondent in the writ petitions admitted that she has no interest in the above lands as she has sold the same to the society and the same was also discussed by the competent authority in his earliest proceedings dated 28-5-1984. In view of the same non-issuance of notice and its service upon the interested persons is fatal and the entire proceedings and the final statement under Section 8(4) of the Act; and the proceedings of the second respondent dated 12-4-1990 and the consequential orders of the first respondent under Section 8(4) and Section 9 of the Act dated 9-2-1991 and the notification issued under Section 10(1); 10(3) and 10(5) of the Act are all of no consequences and consequently they are declared as non

est. The writ petitions are accordingly allowed. There shall be no order as to costs.”

16. This Court, when the similar question fell for consideration, passed an order in W.P.No.4064/2010, dated 04.03.2010, holding that the order passed against a dead person is *non est* and does not give rise to any legal consequences. In the case of **Y.SRI RAMA KRISHNAIAH Vs. SPECIAL OFFICER AND COMPETENT AUTHORITY, URBAN LAND CEILING, VIJAYAWADA & OTHERS** (supra 2), this Court held that the notification issued under Section 10 (3) without notice to the interested persons is not a valid one and that the proceedings issued without adherence to the mandatory requirement under Rule 5 (2) are invalid and illegal. In the case of **M/S. L.S. & CO. VS. STATE OF A.P** (supra 3), this Court categorically held that the service of notice upon the interested persons is mandatory.

17. In the present case, in spite of the report of the Special Enquiry Officer informing the death of the original pattadar, the authorities instead of restraining themselves from proceeding further, issued further proceedings, as such, the impugned proceedings are nonest and cannot sustain for the judicial scrutiny. The contention with regard to entitlement as per G.O.Ms.No.733, dated 31.10.1988 and G.O.Ms.no.280, MA, dated 01.06.1999, this Court holds that exemption is not available to the land of the petitioner in view of the map produced by the learned Government Pleader, which shows that Guttala Begumpet Village falls in core area.

18. For the aforesaid reasons and having regard to the mandatory provisions of the legislation and the rules framed thereunder, the Writ Petition is allowed and the proceedings in File No.F1/3272/6(1)/06 are set aside. Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

A.V.SESHA SAI,J

Date: 31-12-2013
grk

Note: LR copy to
be marked.

b/o grk

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.23634 of 2009

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Dated 31st December, 2013

Grk

[\[1\]](#) 2000(4) ALD 596

[\[2\]](#) 1989 (1) ALT 48

[\[3\]](#) 1995 (2) A.P.L.J. 325

[\[4\]](#) 2006 (5) ALD 132 (DB)