

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20900 of 2008

ORDER:

Seeking issuance of writ of mandamus to declare the action of the second respondent in passing orders under Section 8(1), 8(4), 9; issuing notification under Section 10(1), 10(3) and notice under Section 10(5) and 10(6) of the Urban Land Ceiling Act in File No.F1/6958, as illegal and arbitrary, the present Writ Petition came to be filed.

2) In order to appreciate the same, it is necessary to refer to certain facts, which are as under :

i) One late Sri Darga Malla Reddy was an absolute owner of the land admeasuring Ac.0-38 guntas in Sy.No.38; Ac.17.07 guntas in Sy.No.39; Ac.12.10 guntas in Sy.No.43; and Ac.13.38 guntas in Sy.No.44, totally admeasuring Ac.44.33 guntas situated in Peerzadiguda village, Ghatkesar Mandal, Ranga Reddy District. He was also the owner, in respect of the land situated in Sy.Nos.153 and 154 admeasuring Ac.2.30 guntas of Uppal Kalan village, Uppal Mandal, Ranga Reddy District.

ii) It is stated that subsequent to the Urban Land (Ceiling & Regulation) Act, 1976 (herein after referred to as "the Act") came into force, said D.Malla Reddy filed a declaration under Section 6(1)

of the Act in respect of the above lands. The said declaration was made as a 'Karthā' of a Hindu joint family. All the sons of Malla Reddy were majors as on the date of the said declaration and are entitled to one holding. The said declaration was numbered as F1/6958/76. Pending consideration of the said declaration, Sri Malla Reddy died on 20.04.1989, leaving his five major sons as his legalheirs, who are the petitioners herein. The family members of late Malla Reddy partitioned the above said lands and got their names mutated in the revenue records. The legalheirs of Malla Reddy are alleged to have alienated some of the lands to different persons and have retained the remaining lands with them. While things stood thus, in the last week of August, 2008 some of the purchasers of the lands approached the petitioners and shown them the notice issued by the respondent/authorities, which revealed that the lands belonging to joint family of late Malla Reddy were declared as excess lands. Pursuant thereto, an application under Right to Information Act was made requesting the authorities to furnish certain documents. On receiving of the said documents, the petitioners came to know that the joint family lands of late Malla Reddy, to the extent of 1,75,139.39 sq. meters, were declared as excess of the ceiling limit. However, the land to an extent of Ac.5.00 guntas in Peerzadiguda village has not been computed to the holding of the declarant by virtue of G.O.Ms.No.733 dated 31.10.1988. Challenging the action of the authorities, in passing the impugned proceedings as without any

notice to the petitioners and without furnishing any final order under Section 8(4) of the Act or final statement under Section 9 of the Act to the petitioners, the present Writ Petition came to be filed.

3) By an order, dated 24.09.2008, this Court while admitting the Writ Petition, passed the following interim order:-

"It is the case of the petitioners that the lands in question belong to the original declarant viz. Sri Durga Malla Reddy, who filed declaration under Urban Land (Ceiling & Regulation) Act, 1976 (for short 'the Act') and had died on 20.04.1989. Later, the second respondent-Special Officer & Competent Authority, urban Land Ceilings, Hyderabad, without issuing any notice to the legal representatives of the deceased Durga Malla Reddy or any interested persons, as contemplated under the Act, passed the impugned proceedings dated 09.03.1995 declaring the lands including the lands purchased by the petitioners as being in excess of the ceiling limit. The petitioners state that in pursuance of the said proceedings, the respondents are trying to dispossess them.

In the circumstances, status quo obtaining as on today shall be maintained by the parties."

4) The main ground urged by the learned counsel for the petitioners is that though the authorities were aware about the death of the declarant, but all the proceedings and orders came to be passed against a dead person, which are in nullity. It is further stated that no steps have been taken to put the legalheirs of the deceased on notice, while declaring the land as excess of ceiling limit and no proceedings were served on the legalheirs. It is urged that by virtue of the repealing Act, which came into force from 27.03.2008, and as the actual possession of the property is not taken, the entire procedure gets lapsed. It is urged that even assuming that the

notices were served on Narayana Reddy, the same should be in the manner prescribed under Rule 5 read with 8(3) of the Act.

5) The same is opposed by the learned Government Pleader for Revenue stating that the statements were served on Narayana Reddy, who signed on it. It is strenuously contended that there is no provision in the Urban Land Ceiling Act, making the proceedings void on the death of the declarant and bringing the L.Rs., of the dead person on record. In fact, it is urged that the responsibility is on the petitioners to come on record and contest the matter. It is urged that since the notice under Section 8(3) of the Act was served on the first petitioner, the petitioners ought to have taken steps in challenging the order passed, instead of availing the remedy under Article 226 of the Constitution of India.

6) The averments in the counter further indicate that the orders passed under Section 8(1) and 8(3) of the Act were served upon the first petitioner on 09.05.1995, calling for objections if any, but he did not choose to file any objections. Subsequently, the consequential proceedings came to be issued and objections were not raised by the petitioner at any point of time. It is further urged that the land, which is vested with the Government under Section 10(3) of the Act, is free from all encumbrances and possession of the surplus land was taken over well before the date of repealed Act and as such

the writ petitioners cannot take advantage of the repealed Act and claim any concession under the said Act.

7) A reply came to be filed by the writ petitioners stating that though the respondents are claimed to have served notices under Section 10(5) of the Act, but no material is filed before this Court to show service of the said notice. He further requested the Court to have a look at the original file and compare the signatures made therein; so as to come to a conclusion as to whether the notices were served and whether the signatures made therein are that of Malla Reddy or the first petitioner herein.

8) Section 6 of the Urban Land Ceiling Act, casts an obligation on every person holding vacant land in excess of ceiling limit, to file a statement before the competent authority and after following all statutory procedures, the competent authority has to pass an order under Section 8(4) on the draft statement. Thereafter, a final statement has to be issued under Section 9 on the person concerned.

9) Sub-section (1) of Section 10 states that after the service of the statement, the competent authority has to issue a notification giving particulars of the land held by such person in excess of the ceiling limit. A notification has to be published for the information of the general public in the official gazette, stating that such vacant land is to be acquired and that the claim of the persons

interested in such vacant land, be made by them giving particulars of the nature of their interests in such land.

(i) Sub section (2) of Section 10 states that after considering the claims of the persons interested in the vacant land, the competent authority has to determine the nature and extent of such claims and pass such orders as it might deem fit.

(ii) Sub section (3) of Section 10 states that after publication of the notification under Section 10(1), the competent authority has to declare that excess land referred to in the notification, published under sub section (1) of Section 10 shall with effect from such date, as might be prescribed in the declaration, be deemed to have been acquired by the State Government. On publication of a declaration to that effect, such land shall be deemed to have been vested absolutely in the State Government, free from all encumbrances, with effect from the date so specified.

(iii) Sub section (4) of Section 10 states that during the period commencing on the date of publication under sub section (1), ending with the day specified with the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift or otherwise, any excess vacant land, specified in the notification and any such transfer made, in contravention of the Act, shall be deemed to be null and void.

(iv) Sub-sections (5) and (6) of Section 10, which are held to be mandatory, states that under sub Section (5) where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government. Sub-section (6) states that if any person refuses to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land by use of force. (**State of Uttar Pradesh v. Hari Ram¹**)

10) Keeping the scheme in view and the provisions of the Act in the background, it will now be useful to refer to the factual aspects of the case.

11) A declaration under Section 6 in Form-I came to be filed by Malla Reddy on 14.09.1976. A notice was said to have been issued asking the said Malla Reddy to appear before the authority on 12.10.1977. The second notice was issued in the month of March, 1978 again to Malla Reddy. Thereafter, Malla Reddy died on 20.04.1989 leaving behind his five sons. Proceedings under Section 8(1) along with 8(3) were issued on 09.03.1995 on the first petitioner, who is the son of Malla Reddy (as per the counter). But on a perusal of the original file, which has been placed before this court would show that though

¹ (2013) 4 Supreme Court Cases 280

the proceedings under Section 8(1) of the Act dated 09.03.1995 refers to expiry of Malla Reddy after filing of statement under Section 6, the same was dispatched to Malla Reddy in the month of March, 1995. The record further discloses as if the same was served by one D.Madhav Reddy, Enquiry Officer on the first petitioner on 09.05.1995. The said Narayana Reddy is said to have signed in English. Thereafter, the proceedings under Section 8(4) of the Act, which is an order on the draft statement, was directed to be served by Madhav Reddy on the declarant. Eventhough the authorities were aware about the death of Malla Reddy by then, still it was addressed to Malla Reddy only. Though the said Madhav Reddy was directed to serve the order under 8(4) of the Act, but the original record does not anywhere indicate, service of the same on legalheirs of Malla Reddy or on any of the family members of Malla Reddy. Thereafter, a notification under Section 10(1) was issued, which was published in the Official Gazette No.72 dated 08.03.2006. It is said that since no objection was received under Section 10(2) of the Act, declaration under Section 10(3) came to be issued on 05.12.2006 and the same was published in the Official Gazette on 07.12.2006. But a perusal of the documents and also the original file, which has been placed before this Court would show that in the notification under Section 10(1) of the Act, the name of the registered owner or the holder or other person interested in the land was shown as D.Malla Reddy. There is no reference to the names of the legalheirs of Malla Reddy.

12) Coming to the next stage viz., issuing of notification under Section 10(1), it was directed to be published in the Official Gazette on 08.03.2006. After considering the claims made, pursuant to a notice under Section 10(1), the competent authority has to determine the nature and extent of such claims and pass orders. Thereafter, the publication of the declaration under Section 10(3) of the Act would come, declaring the excess land referred to in the notification published under Section 10(1). The declaration under Section 10(3) came to be made on 05.12.2006 and a copy of the said declaration was again marked to D.Malla Reddy only, who was dead by then. Therefore, no reasons are forthcoming as to why declaration under Section 10(3) was sent to Malla Reddy though the authorities were aware, by 1995 itself, that the said Malla Reddy was no-more.

13) As stated earlier, there is no reference to the final statement in the original file and also service of any notice thereof on any one of the legalheirs of Malla Reddy. After publication in the Gazette, under Section 10(3), statute contemplates giving notice to the occupants to deliver possession under Section 10(5) of the Act. The counter, which has been filed before this Court, though states that the notice under Section 10(5) of the Act was issued on 03.01.2007 but the same is silent as to when it was served. A perusal of the original file indicates that it was again addressed to Malla Reddy. As seen from the notice under Section 10(5), though it was

addressed on 03.01.2007 but the original record is silent as to the very issuance of Section 10(5) notice. The proceedings of the Special Officer and competent authority, Urban Land Ceiling Act, dated 08.03.2007 are placed before this Court to show that one Sri Surya Prakash, Enquiry Officer was authorized to take possession of the land in question under Section 10(6) of the Act and handover the same to M.R.O. concerned. Even if the said order is treated as one under Section 10(6), the same was again directed against Malla Reddy. But as stated earlier, the record which is placed before this Court is silent with regard to final statement under Section 9, service of notification under Section 10(1), 10(3) and also the service of proceedings under Section 10(5) of the Act.

14) The question is whether the proceedings against a dead person can be continued?

A perusal of the proceedings issued under the provisions of the Act, clearly indicate that the same were directed against Malla Reddy, who was dead by then. Though the authorities claimed to have served 8(3) notice on Narayana Reddy, who is alleged to have signed in English, but there is any amount of doubt with regard to said service on Narayana Reddy. Firstly, it is urged that Narayana Reddy signs only in Telugu, the said fact is revealed from the Vakalath, which has been filed along with the writ petition. If really 8(3) notice was served on Narayana Reddy, there is no reason why the subsequent

proceedings were not issued in his name or in the name of any other legal heirs of Malla Reddy. On the other hand, all the proceedings were either addressed to Malla Reddy or were sent to Malla Reddy, who was dead by then. The law is well settled that any order passed against a dead person is void. Time and again, this Court and various High Courts have held that any order or proceedings in the name of a dead person is a nullity and it cannot give rise to any legal consequences.

15) One of the arguments, which was strongly contested by the learned Government Pleader is that there is no provision under Land Ceiling Act to bring the L.Rs., on record and the proceedings initiated under the said Act do not become void on the death of the declarant. He placed reliance on the judgment of the Apex Court in **D.R.Somayajulu, Secretary, Diesel Loco Shed and South Eastern Railway House Building Cooperative Society Limited, Visakhapatnam and others v. Attili Appala Swamy and others**². In the said case, one 'A' died after filing declaration under Section 6. L.Rs., of 'A' i.e., her sons, daughters and grandchildren were already on record in their individual capacity. They had filed their statements under Section 6(1) claiming certain extent of vacant land by virtue of family arrangement. A copy of draft statement and notice under Section 8(3) was duly served on the L.Rs., of 'A' and in response, they had also filed their individual objections which were duly considered by

² (2015)2 SCC 390

competent authority before passing order finding 'A' to be holder of surplus land. It was held that the L.Rs., in such a situation could not complain of any prejudice being caused due to formal non-impleading or non-serving of formal notice upon them.

16) He also relied on a judgment of Division Bench of this Court in **District Collector, Mahabubnagar and others v. R.Venkataswamy Goud and others**³. The facts in the said case are that the land admeasuring Acs.1.12 guntas in S.No.1005/KK situated at Gadwal is Government land, which is part of the jagir known as Gadwal Samsthan. It was taken over by the Government in 1952 under Jagir Abolition Regulations. Smt.Lakshmiddevamma, Maharani of Gadwal, had granted the land to M/s.Mahanandi and Lakshman Goud, the predecessors of the respondents for construction of a rice mill, namely, Mahanandeswara factory. The Tahsildar, Gadwal (the MRO) initiated eviction proceedings under the Andhra Pradesh Land Encroachment Act, 1905 (the Act) and notice dated 23.3.1984 was issued under Section 7 of the Act to show cause as to why he should not be evicted from the land and buildings constructed thereon. A month thereafter i.e., on 22.4.1984, the Tahsildar issued an order/notice under Section 6 of the Act directing eviction. Then the petitioners filed an appeal under Section 10(2) of the Act before the Sub- Collector which was dismissed on 14.8.1987. The petitioners' revision to the Commissioner of Land Revenue (CLR) was also dismissed on 17.11.1989. Aggrieved by which they filed another revision petition before the Government, which was allowed and directed regularization in favour of the petitioners on payment of market value, "to meet the ends of natural justice". The petitioners were directed to pay the market value as fixed by the District Collector. After

³ 2012(1) ALT 212 (D.B)

issue of the orders in G.O.Ms. No.1062, dated 23.10.1992, the first petitioner made a representation to the Hon'ble Minister for Panchayat Raj on 17.2.1993 seeking directions to the Collector to fix the market value of the subject land at the rates prevailing in 1336 Fasli when they occupied the land and constructed the factory. It is not clear from the record as to what happened thereafter. But on 01.2.1996, the District Collector issued a notice informing that the market value was fixed at Rs.250/- per Sq.yard and advised the petitioners to pay a sum of Rs.15,73,000/- within fifteen (15) days from the date of receipt of the said notice. At that stage, in July, 1996, the petitioners filed W.P. No.13497 of 1996 seeking declaration that G.O.Ms.No.1062, dated 23.10.1992 is arbitrary, illegal and for a consequential direction to quash the said order as well as the orders passed by the other authorities. Pending the said writ petition, the petitioners filed revision petition before the Government praying to set aside the notice dated 01.2.1996 issued by the District Collector. The Government issued orders in G.O.Ms.No.721, dated 07.10.1999 dismissing the same, aggrieved by which the petitioners filed W.P.No.25566 of 1999 seeking its invalidation.

It is to be noted that the said judgment may not apply to the facts on hand.

17) Insofar as the plea of taking possession on 08.02.2008 is concerned, it is to be noted that the persons to whom the land was sold by Malla Reddy and also the extent of land which fell to the share of the writ petitioners is still in their possession. As stated earlier, the proceedings under Section 10(5) are not there on record and the proceedings under Section 10(6) were never served on the writ petitioner nor any steps were taken pursuant to the orders under

Section 10(6). If really there was an order under Section 10(6), there is no explanation as to why steps were not taken to forcibly dispossess the petitioners. Since there is any amount of doubt with regard to the possession being taken, all the proceedings which are taken upto the stage of 10(6) against late D.Malla Reddy, gets abated in view of the repealing Act. Infact, in identical circumstances, the Apex Court in **Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and others**⁴ held as under :

“12. We have, therefore, clearly indicated that it was always open to the authorities to take forcible possession and, in fact, in the notice issued under [Section 10\(5\)](#) of the ULC Act, it was stated that if the possession had not been surrendered, possession would be taken by application of necessary force. For taking forcible possession, certain procedures had to be followed. Respondents have no case that such procedures were followed and forcible possession was taken. Further, there is nothing to show that the Respondents had taken peaceful possession, nor there is anything to show that the Appellants had given voluntary possession. Facts would clearly indicate that only *de-jure* possession had been taken by the Respondents and not de facto possession before coming into force of the repeal of the Act. Since there is nothing to show that de facto possession had been taken from the Appellants prior to the execution of the possession receipt in favour of MRDA, it cannot hold on to the lands in question, which are legally owned and possessed by the Appellants. Consequently, we are inclined to allow this appeal and quash the notice dated 17.2.2005 and subsequent action taken therein in view of the repeal of the [ULC Act](#). The above reasoning would apply in respect of other appeals as well and all proceedings initiated against the Appellants, therefore, would stand quashed.”

⁴ (2014) 12 SCC 523

18) With regard to the necessity of issuing notice under Sections 10(5) and (6) of the Act, the Apex Court in **State of Uttar Pradesh v. Hari Ram**⁵ observed as under :-

"37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might resulting the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

19) Similarly a Division Bench of the Gujarat High Court in **Mamataben D/o. Narottam Chandulal Zaveri v. Urban Land Tribunal and Ex-Officio Secretary and two others**⁶ after referring to all the judgments of the Apex Court including the judgments of the Apex Court in **State of Assam v. Bhaskar Jyoti Sarma**⁷ and **State of Uttar Pradesh v. Hari Ram**⁸ observed as under :

"18. From the aforesaid judgments relied on by the learned counsel for the appellant-petitioner and looking to the provisions of subsections (5) and (6) of section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 it is clear that after notification issued under section 10(1) and 10(3) of the Act it is open for the respondents to issue notice under Section 10(5) of the Act asking the declarant to handover possession of the vacant land. Section 10(6) of the Act comes into play when the declarant/owner fails to handover possession pursuant to notice under section 10(5) of the Act. When possession is not handed over by the owner to the declarant even after receipt of notice under Section 10(5) of the Act, it is mandatory on the part of the authorities to give notice under Section 10(6) of the Act for taking forceful possession.

⁵ (2013) 4 Supreme Court Cases 280

⁶ 2016 SCC Online Guj 6060

⁷ (2015)5 SCC 321

⁸ (2013) 4 Supreme Court Cases 280

19. We also feel that there is logic behind such provision under section 10(6) of the Act that when declarant failed to deliver possession even after issuance of notice under section 10(5) of the Act. The authorities can notify date for taking possession by issuing notice under section 10(6) of the Act. If such notice under section 10(6) of the Act is not issued, declarant-owner will be in dark as to on which date possession will be taken. In view of the aforesaid provision and having regard to the judgments relied on by the learned counsel for the appellant, we are of the view that the plea of the appellant-petitioner deserves to be accepted.

20. The respondents have not taken possession in accordance with law. As it is not in dispute that the respondent-authorities have not issued notice under section 10(6) of the Act, the alleged taking over of possession on 30.04.1991 by drawing Panchanama is no possession in the eye of law, which can be reckoned to accept the plea of the respondents. Further it is also clear from the material placed on record that in Civil Suit No.1 of 2011 filed by the appellant-petitioner in the city civil court at Ahmedabad, Court Commissioner was appointed. The Court Commissioner clearly revealed that the appellant-petitioner is in physical and actual possession of the land in question. For the aforesaid reasons and having regard to the facts and circumstances of the case, we are of the view that the learned Single Judge has committed error in placing reliance on the judgment of the Hon'ble Supreme court in the case of State of Assam v. Bhaskar Jyoti Sarma reported in (2015)5 SCC 321. From perusal of the judgment of the Hon'ble Supreme Court in the aforesaid case of State of Assam, it is to be noticed that the persons claiming possession were third parties and when owners failed to challenge any proceedings taken under section 10(5) of the Act, in the present case when the very declarant before this Court challenging the orders of the authorities, it is also to be noticed that when the order restoring the writ petition and order allowing to raise additional pleas have become final and merely on the ground that alleged possession was taken by drawing panchanama about 22 years back, is no ground to deny the statutory benefits conferred on the declarant - appellant under the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. As much as we are of the view that no possession is taken in accordance with law by issuing notice under section 10(6) of the Act, we are of the clear view that the appellant-petitioner is entitled to have benefits under the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. No steps can be taken further. All the proceedings stand abated."

20) Having regard to the judgments referred to above; since there is any amount of doubt with regard to issuance and service of notice under Section 10(5) of the Act; no material to show that the notice under Section 10(6) of the Act was served on the legalheirs of Malla Reddy and since no possession is taken as on the cut-off date this Court is of the view that the entire proceedings got lapsed.

21) Accordingly, the Writ Petition is allowed. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

Dt:10.04.2017
GM



JUSTICE C. PRAVEEN KUMAR