

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.NO.17368 OF 2004

ORDER:

This writ petition is filed, seeking to declare the proceedings No.HYD/291/95, dated 12.06.2003, of the 1st respondent, confirming the orders of the second respondent in proceedings No.D1/2496/76, dated 19.09.1995, as illegal and arbitrary.

2. It is the case of the petitioner that he is the owner and possessor of agricultural lands admeasuring Ac.49.00 guntas in Sy.No.103/1 and 103/11, situated at Bandlaguda Khalsa Village and Sy.No.94 and 95 of Mylardevpalli Village, Rajendranagar Mandal, Ranga Reddy District. While so, the second respondent by his proceedings No.D1/2496/76, dated 01.11.1994, issued draft statement under Section 8(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act), but the petitioner could not file his objections within the stipulated time, as he had no notice of the same. Thereafter, the second respondent passed orders under Section 8(4) of the Act, vide proceedings No.D1/2496/76, dated 19.9.1995, declaring that the petitioner is the surplus holder of 1,20,675.14 Sq.meters in Sy.No.103/1 and 103/11 of Bandlaguda Khalsa Village, Charminar Mandal, Hyderabad District, contrary to the draft statement under Section 8(1) of the Act. Challenging the same, the petitioner filed an appeal before the 1st respondent and the appellate authority by proceedings No.HYD/291/95, dated 12.06.2003, confirmed the order passed by the second respondent. Aggrieved by the said action, the present writ petition is filed.

3. The second respondent filed a counter affidavit contending that the draft proceedings under Section 8(1) and notice under Section 8(3) dated 1.11.1994 were issued for filing objections, if any, within 30 days and the proceedings were sent through registered post acknowledgement due, which was returned un-served, stating that the party is absent for 6 days and that the same was sent through enquiry officer as the declarant was continuously absent for 7 days. The notice was affixed on the door of the house of the declarant. Again notice was also served on the brother of the declarant on 14.5.1995 by the enquiry officer as the declarant was stated to be residing in Calcutta. As the declarant failed to surrender the possession of the surplus land after expiry of 30 days from the date of service of 10(5) notice, the enquiry officer was authorized to take over possession of the surplus land in question under Section 10(6) of the Act, which was issued on 18.8.1999 and possession was handed over to Mandal Revenue Officer, Bandlaguda Mandal, on 9.10.1999.

4. Heard.

5. The learned counsel appearing for the petitioner would submit that both Bandlaguda Khalsa Village and Mylardevpalli villages are situated outside the limits of Municipal Corporation of Hyderabad and in the peripheral area of Hyderabad Urban Agglomeration, for which there was no Master Plan at the time of commencement of the Act in the year 1976 and therefore, the impugned proceedings passed on the basis of the date of commencement of the Act are illegal, void and without jurisdiction. The lands are agricultural lands even as per the extended Master

Plan and therefore, they cannot be treated as vacant lands within the meaning of the Act and that they cannot be treated as surplus lands. He further contended that no notice under Section 8(3) of the Act was served on the petitioner or his General Power of Attorney holder and therefore, the petitioner could not file his objections. To support his arguments, he relied on the judgment reported in **Kothuru Babu Surendra Kumar V. Special Officer and Competent Authority, ULC., Vijaywada**¹.

6. Learned Assistant Government Pleader appearing for the respondents, submits that the petitioner has not filed objections to the draft notification issued under Section 8(1) of the Act. It is contended that the enquiry revealed that the lands are not suitable for agriculture and they were kept fallow and that the declarant has not produced any evidence to the effect that the lands were being cultivated during the crucial date and that the lands were not within the municipal limits. The respondents passed orders by following due process of law after issuing notice by affixture and therefore, the writ petition is liable to be dismissed.

7. Notice is mandatory under Section 8(3) of the Act, which is supposed to be served on the petitioner. The respondents have not indicated in the impugned order with regard to the effective service of notice. It is stated that on 14.05.1995, notice has been served on the brother of the declarant as the declarant is stated to be residing at Calcutta and the principle laid down under Order V, Rule 15 of CPC, has been complied with, which reads thus:

15: Where service may be on an adult member of defendant's family:-

Where in any suit the defendant is absent from his residence at the time

¹ 200 (4) ALD 596

when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.- A servant is not a member of the family within the meaning of this rule.

8. It cannot be construed that service of notice is effectively made upon the petitioner by serving it upon the brother of the petitioner. No where, it is indicated that the brother of the petitioner resides with the petitioner. The efforts made to make effective service of notice on the petitioner have not been established. The respondents cannot develop their case by way of a counter affidavit when the original order and the order in appeal are silent about the factual issues. Order V, Rule 17 CPC., categorically provides for service of notice by way of affixture under a panchanama in the event of addressee not available and the same is not complied with, and the said provision is extracted below:

17. Procedure when defendant refuses to accept service, or cannot be found: Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

9. In the appellate order dated 12.06.2003, the appellate authority has not dealt with the issue of affording any opportunity to the petitioner by the original authority to submit his case, which has been denied is the one against the doctrine of *audi alteram*

partem in the absence of service of notice under Section 8 of the Act, the opportunity was shut and the petitioner could not represent his case. In **Kothuru Babu Surendra Kumar's** case (1 supra), this Court held that the Competent Authority who has finalized 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 interested to be affected viz., the petitioners therein and 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 and the consequential orders of the first respondent under Sections 8(4) and 9 of the Act and the notification issued under Section 10(1), 10(3) and 10(5) of the Act are all of no consequence and consequently they are declared as *non-est*.

10. The other contention urged by the learned counsel for the petitioner is that the subject lands are situated outside the limits of Municipal Corporation of Hyderabad and hence they should be exempted as per the ratio laid down in **Audikesava Reddy V. State of A.P.**². There are no laches on the part of the petitioner and the impugned order in original and the order in appeal which are passed subsequent to the notice under Section 8 of the Act, which is not served on the petitioner becomes the orders in nullity as they are in gross violation of principles of natural justice and without appreciating the case on merits and thus, the order in original

² 2002(1) ALD 31 SC

dated 19.09.1995 and the order in appeal dated 12.06.2003 are liable to be set aside.

11. Accordingly, the writ petition is allowed, setting aside the proceedings No.HYD/291/95, dated 12.06.2003, of the 1st respondent, confirming the orders of the second respondent in proceedings No.D1/2496/76, dated 19.09.1995. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

Date:26-10-2018
Shr

T.AMARNATH GOUD,J

