

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1090 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard the learned Government Pleader (Assignment) for appellants and Mr.A.Narasimha Reddy, learned counsel for respondents.

Respondents 1 to 4 in W.P.No.20900 of 2008 are the appellants. The appeal is directed against the order dated 10.04.2017 in W.P.No.20900 of 2008.

The issue arises under the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act').

The parties are referred with their status in the writ petition.

D.Narayana Reddy and six others filed W.P.No.20900 of 2008 for Mandamus declaring the orders made by the Special Officer and Competent Authority/2nd respondent right from Sections 8(1), 8(4), Section 9 notification, proceedings under Sections 10(1); 10(3) notice under Section 10(5) and 10(6) in File No.F1/6958 on the file of the Special Officer/Competent Authority/2nd respondent, as illegal and violative of the mandatory requirement of the provisions under the Act and unconstitutional. The petitioners consequently pray for setting aside all the proceedings in File No.F1/6958 in the declaration filed by late D.Malla Reddy.

The case of writ petitioners is that late D.Malla Reddy (declarant) filed declaration under Section 6 (1) of the Act and the declaration is taken on File as F1/6958/76 for agricultural land

measuring Ac. 0.38 gts in Survey No.38; Acs.17.07gts in Survey No.39, Acs.12-10 gts in Survey No.43 and Acs.13.38 gts in Survey No.44, in total Acs.44-33 gts in Peerzadiguda Village, Ghatkesar Mandal. On 20th April, 1989, the declarant/Malla Reddy died leaving behind the petitioners as his legal representatives. The petitioners allege that the subject matter is agricultural land, satisfies the definition of Section 2(q) of the Act and hence the declarant or his heirs were not holding urban ceiling surplus land. The declarants are entitled for the relief under G.O.Ms.No.733 dated 31.10.1988. The petitioners have sold substantial extent in the subject matter as agricultural land. The purchasers, in the last week of August, 2008, have intimated to petitioners that notices under the Act were issued by 2nd respondent treating the subject matter as ceiling surplus land and that the purchasers are under obligation to deliver possession to respondents. The petitioners upon enquiry have come to know that the respondents though are aware that on 20.04.1989 the declarant/Malla Reddy died, the proceedings were continued and concluded against a dead person. The respondents in other words have not impleaded the legal representatives in the pending proceedings, much less afforded opportunity to them of hearing etc., and consequently the proceedings are illegal, void and *non est* in the eye of law. Therefore, it is contended that the possession, if any is claimed pursuant to various steps starting from 8(4) declaration till the possession said to have been taken under Section 10(6), is not binding on the petitioners. The gist of petitioners' pleas is that the respondents have knowledge of death of declarant/Malla Reddy. The respondents did not bring the LRs on

record, proceeded as if notices at various stages are received by declarant and passed orders.

The respondents contested the writ petition. According to respondents, the reply on principal objection of petitioners is that the notices have been served on the LRs of the deceased declarant/Malla Reddy. The learned Single Judge in the order impugned in extenso considered the reply of respondents. Both for brevity and also that after perusing the certified copies of various proceedings from Section 6(1) till the declaration under Section 10 (3) and alleged possession said to have been taken on 08.02.2008 pursuant to notice under Section 10(5) of the Act, we are satisfied that the respondents have failed to discharge the onus fastened on them to satisfy the writ Court that the proceedings have been taken up in accordance with law in the presence of persons who are entitled to participate and thereafter possession was taken or claimed. In the order under appeal, the learned Single Judge has considered each one of the objections independently and held as follows:

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 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. Even though 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 legal heirs 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 legal heirs 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 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 legal heirs 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 consequences.

15) One of the arguments, which was strongly contested by the learned Government Pleader is that there is 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 (2015) 2 SCC 390. 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 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 (2012 (1) ALT 212 DB). 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 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 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 G.O.Ms.No.1062, dated 23.10.1992 is arbitrary, illegal and for 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. dismissing the same, aggrieved by which the 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.”

We have noted the consideration of this issue from applicable facts and documents and the resultant findings recorded by the learned Single Judge in Paragraph Nos.11 to 16. The respondents could not point out a single error on any one of the reasons recorded by the learned Single Judge. As the learned Government Pleader insisted upon consideration of the plea of respondents that fair opportunity was given to legal representatives of declarant/Malla Reddy, we have independently examined the various orders passed.

The gist of our consideration of these issues on hand is that the 2nd respondent in order dated 09.03.1995 records the demise of declarant/D.Malla Reddy and also the necessity to bring LRs on record. The order dated 09.03.1995 is purported to have been sent to the LRs of declarant/Malla Reddy. The subsequent proceedings viz., the notification under Section 10(1) dated 08.03.2006, Section 10(3) declaration dated 05.12.2006 and notice under Section 10(5) dated 03.01.2007 and also the order dated 05.01.2008 under Section 10(5) do not refer to or at least communication of any of those orders to LRs. The proceedings on the contrary reflect that steps have been continued against the dead person and orders were also communicated to the dead person. The proceedings since have been continued against dead person, the respondents cannot and could not claim possession through panchanama

dated 08.02.2008 in File No.F1/6958. Except the ground of challenge adverted to above, no other ground against the order under appeal is canvassed.

For the aforementioned reasons, we are satisfied that the appeal deserves to be dismissed and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:29.08.2018
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