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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.06.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 17917 of 2008

and

M.P.Nos. 1 & 2 of 2008

S.Sampath

..Petitioner

Vs.

1.The District Collector,  
Vellore District  
Vellore.

2. The Special Tashildar,  
(ADW), Walajapet,  
Vellore District.

..Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records in respect of the land acquisition proceedings published in Vellore District Gazette dated 09.10.2000 in K 11/61 595/2000 in respect of the land in Survey No. 147/1B with an extent of 0.10.0 hectare at Koothampakkam Village in Arakonam Taluk and to quash the same.

For Petitioner : M/s.D.Rajagopal

For Respondents : Mr.J.Ramesh, AGP

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorari, calling for the entire records in respect of the land acquisition proceedings published in Vellore District Gazette dated 09.10.2000 in K 11/61 595/2000 in respect of the land in Survey No. 147/1B with an extent of 0.10.0 hectare at Koothampakkam Village in Arakonam Taluk and to quash the same.

2. The petitioner is an agriculturist doing agriculture in his village. He is the owner of the land bearing Survey No. 147/1B with an extent of 0.10.0 hectare and the patta also stands in his name. Previously, the property belonged to Srinivasa Naidu who is the father of the petitioner. The petitioner's father had expired. After his death patta stands in



the name of the petitioner and his brother as joined patta. Now the petitioner is paying the Revenue taxes also.

3. While being so, the 2<sup>nd</sup> respondent initiated land acquisition proceedings against the petitioner's land to wit the house sites to Adhi Dravidars. The District Collector passed an order and published a notification in the District Gazette on 09.10.2000, under Section 4 (1) of the Tamil Nadu acquisition of land for Haritan Welfare Act 1978, against which present writ petition is filed.

4. The learned counsel for the petitioner submitted that the petitioner is not aware of the land acquisition proceedings initiated by the respondents. The respondents have not issued any notice to the petitioner as contemplated under Section 4(2) of the act and passed an impugned notification, against which the present writ petition is filed by the petitioner.

5. The learned counsel for the petitioner would further submit that the petitioner's father died much earlier and the land revenue records settled infavour of the petitioner as well as his brother. Even, thereafter, the notification was passed against the death person and therefore, it is unsustainable and illegal. In support of his contentions, he relied on the decision of this Court in the case of Leelavathi vs. The State of Tamil Nadu and others in WP.No.12312 of 1998 reported in 2008 (3) CTC 490, wherein, the decisions of the Hon'ble Supreme Court were elaborately considered and the same is extracted hereunder:-

12. It is in the light of the factual situation in the files which has been perused, we have to consider the next contention of the learned senior counsel for the petitioner that Section 4(1) notification has been issued in the name of Karamadai Naicker and on the said date of 4 (1) notification, the said Karamadai Naicker died and therefore, the entire proceedings should be vitiated. In Savithiri Ammal vs. State of Tamil Nadu [2006 (3) MLJ 389], the Division Bench of this Court consisting of P.Sathasivam,J.(as he then was) and V.Dhanapalan,J., dealt with almost a similar circumstance wherein the daughter of deceased father has specifically raised an objection that 4(1) notification is illegal since her father died even on 06.03.1987 whereas 4(1) notification was issued on 14.06.1995. In spite of the objection raised, the authorities have not taken steps to rectify the 4(1) notification and also issued 6 declaration in



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the name of the deceased person. It was in those circumstances, the Division Bench, applying series of judgements on the issue, viz., Muthusamy vs. State of Tamil Nadu (1993 (1) MLJ 217); Devaraj vs. State of Tamil Nadu (2003 (4) CTC 134); Asiya Mariyan vs. Secretary to Government of Tamil Nadu (2000 (4) CTC 125), has quashed the notification issued under Section 4(1) of the Act in the following operative words:

" 5.This Court, in Muthusamy vs. State of Tamil Nadu (1993 (1) MLJ 217); Devaraj vs. State of Tamil Nadu (2003 (4) CTC 134); Asiya Mariyan vs. Secretary to Government of Tamil Nadu (2000 (4) CTC 125); and in series of other decisions, h held that Notice/Notification issued in the name of the dead person and the proceedings with respect to the said lands cannot sustained. By applying the said principle, we accept the contention of the learned counsel for the appellant and quash the Notification issued under Section 4(1), dated 14.6.1995. Consequent, the writ appeal is allowed. "

13. In a subsequent judgement of the Division Bench rendered in G.S.Gopalakrishnan & 2 Others vs. Government of Tamil Nadu and 2 Others (2006 (3) Law Weekly 936), wherein after the death of the original owner, the property has gone to various persons and the subsequent purchasers have challenged the acquisition on the ground that 4(1) notification was issued in the name of dead person C.Kondappa Naidu. While it was admitted that when the original owner died, the property has been transferred to various persons, and at the instance of the subsequent purchasers, 4(1) notification was challenged, the Division Bench in the above said case has considered the earlier judgement reported in 2006 (3) MLJ 389 (cited supra) and distinguished it by saying that the earlier case was relating to the legal heir of the deceased father, who in fact informed during the time of 5-A enquiry that her father died and in spite of it 6 declaration was issued in the name of dead person. By holding that as a general principle of law, proceedings against dead person are null and void, the Division Bench has found that Order 22 of the Code of Civil Procedure deals with the procedure to be



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followed in the case of death and held that the Land Acquisition Act does not make it obligatory on the authority to conduct a roving enquiry to find out the actual owners, beyond the names reflected in the revenue records for the reason that it cannot be expected of the acquiring authorities to find out whether the patta holder is alive or dead. In that view of the matter, based on the judgement of the Supreme Court in U.P. Jal Nigam vs. Kalra Properties (P) Ltd. [1963 (3) SCC 125], the subsequent Division Bench has held that the land acquisition proceedings are not nullity on the basis that the proceedings were issued in the name of a dead person unless it is established that the fact of death was brought to the notice of the authority at the appropriate stage. The operative portion of the judgement of the Division Bench is as follows:

" 10. A Division Bench of this Court considered, in the case of SAVITHIRIAMMAL vs. STATE OF TAMIL NADU (2006 (3) MLJ 389), the validity of a notification issued in the name of a dead person and held that "the notification issued in the name of a dead person is a nullity and the proceedings cannot be sustained based on the said notification". But in para-3 of the said judgement, the learned Judges recorded a finding that the factum of death of the original owner was brought to the notice of the authorities even during the enquiry under Section 5-A and that despite the same, the authorities did not carry out necessary changes in the Section 6 declaration also. In view of such a finding, the Bench quashed the entire proceedings and that too at the instance of the legal heir of the deceased owner. But in the case on hand, the property has changed several hands and the appellants purchased the plots much after the award enquiry was over. It is not the case of the appellants that anyone ever brought to the notice of the acquiring authorities, the fact that the original owner was dead. Under such circumstances it is difficult to comprehend as to how the authorities can be expected to know that the original owner was dead. We are entirely in agreement with the views expressed by the learned Judges in the aforesaid cases,



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especially in the light of their finding in those cases that the acquiring authorities had knowledge of the death of the owner of the lands.

11. It is true that as a general principle of law, proceedings against dead persons are null and void. But this principle is not without exception. Order 22 of the Code of Civil Procedure which deals with the procedure to be followed in the case of death, marriage and insolvency of parties, carves out one such exception to the said principle under Sub-Rule (4) of Rule 4, which reads as follows:-

"(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgement may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

12. This Sub-Rule (4) under Rule 4 of Order 22 was introduced by way of the Code of Civil Procedure (Amendment) Act, 1976 and this amendment drew its inspiration only from an amendment already made by Calcutta, Madras, Karnataka and Orissa High Courts.

13. Thus it could be seen that even under the Code of Civil Procedure where the rigours of impleading necessary and proper parties and service of notice are more pronounced than in proceedings under special enactments, it is not made an universal rule that such proceedings against dead persons are null and void.

14. In a case arising under the Bombay Land Requisition Act, 1948, in SMT. LILA VATI BAI vs. STATE OF BOMBAY (AIR 1957 SC 521), the Constitution Bench of the Supreme Court had an occasion to consider whether an order of requisition issued under the said Act in the name of a dead person was enforceable or not. Over-ruling the contention of the petitioner that such a notice was unenforceable, the Apex Court held as follows:-



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"13. The only other contention which remains to be dealt with is that the order impugned in this case is not enforceable because it was directed against the petitioner's husband, who was dead at the date of the order, besides the other two persons indicated in it who were not concerned with the premises. In our opinion, there is no substance in this contention either. An order like the one passed under Section 6(4) (a) of the Act is not in the nature of an order in judicial proceedings between the Government on the one hand and other parties named. If the proceedings were intended by the Act in the sense of judicial or quasi-judicial proceedings between named parties, it may have been legitimately argued that an order passed against a dead man is a complete nullity. But the order proceeds on the basis that the tenant had ceased to be in occupation of the premises in October 1952, apparently by reason of the fact that he had handed over possession of the premises to the so called "lodger" or "paying guest". Admittedly the petitioner's husband died after October 1952. The occupation by the said Narottamdas Dharamsey Patel was in the nature of an unauthorised occupation. The fact that the petitioner's husband was dead on the date of the order impugned has only this effect that in so far as it mentions his name as one of the persons to be served under Section 13 of the Act should be erased from the order. But even so, it does not affect the enforceability of the same. Section 13 lays down the different modes of service of an order passed under the Act according as the order is of a general nature or affecting a class of persons or an individual, corporation or firm. We are here concerned with the case of an individual and the section lays down that it can be served either personally by delivering or tendering the order to him or by post or where he cannot be found, by affixing a copy of the order to some conspicuous part of the premises in which he is known to have last resided."

15. Thus, it could be seen from the law laid down by the Apex Court that a distinction was always maintained between judicial/quasi-judicial proceedings and other proceedings. In so far as the scheme of the Land Acquisition



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Act, 1894 is concerned, it envisages various types of notices at various stages. Section 4 (1) notification is required to be gazetted followed by publication in two dailies having circulation in the locality and a local publication. The opportunity provided under Section 5-A is actually for 'persons interested' and not necessarily the land owners. This enquiry is followed by a Section 6 declaration and the Act thus provides innumerable opportunities to "persons interested" in objecting to the acquisition. The Land Acquisition Act does not limit its reach to "owners of land", but enables any person interested in the land to have a say. Moreover, the liability of the acquiring authorities to serve a notice of enquiry is also restricted only to persons whose names find a place in the revenue records. When the Act does not even make it obligatory for the acquiring authorities to conduct a roving enquiry to find out the actual owners, beyond the names reflected in the revenue records, it cannot be expected of the acquiring authorities to find out if the patta holder is alive or dead.

16. In any event, in the case on hand, the Award itself was passed on 19.12.1991 and as per the counter-affidavit filed by the respondents in the writ petition, the possession was also taken on 13.8.1992. The appellants 1 to 3 herein purchased the plots much after the Award enquiry under the sale deeds dated 26.10.1994, 28.9.1992 and 24.2.1993 respectively. Therefore, the appellants, who are subsequent purchasers, are not entitled to maintain a challenge to the acquisition proceedings in view of the law laid down by the Supreme Court in U.P. JAL NIGAM vs. KALRA PROPERTIES (P) LTD (1996 (3) SCC 124)

17. Therefore in our considered opinion, the normal principle that proceedings against a dead person are a nullity, cannot be imported to proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death was brought to the notice of the acquiring authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the writ appeal



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is dismissed without any order as to costs. Consequently, connected WAMP is also dismissed."

14. Therefore, applying the above said judgement to the facts of the present case, it is clear from the records that when 5-A enquiry notice was served on the sister of the petitioner, viz., Kuttiammal on 14.05.1997, an endorsement was made to the effect that Karamadai Naicker died and thereafter, notice served on his daughter, being his legal heir. Therefore, it can be clearly inferred that at the time when the 5-A enquiry was about to start and when notice for 5-A enquiry was served, the authorities were informed about the death of the original owner and similar notices have been served on the petitioner and also on the other daughter of the original owner and having known about the factum of death of the owner, the respondents ought to have taken steps to either rectify 4(1) notification or issued fresh 4(1) notification. Even though the subsequent 6 declaration has been issued in the name of the petitioner, inasmuch as 4(1) notification has been allowed to continue in the name of dead person in spite of the information given to the respondents about the death of the original owner, the 4(1) notification having become non est in law, the subsequent proceedings cannot be validated.

6. In view of the above said decision, the land acquisition proceedings which are raised against the death person is null and void. Hence, there is no hesitation to allow the present writ petition and therefore, this writ petition is allowed and the impugned notification is set aside. Consequently, connected miscellaneous petitions are closed.

kmm

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To  
1. The District Collector,  
Vellore District  
Vellore.



2. The Special Tashildar,  
(ADW), Walajapet,  
Vellore District.

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+1cc to Mr.D.Rajagopal, Advocate, SR.No.48422

+1cc to the Govt.Pleader, Vide Sr.No.49140

W.P.No. 17317 of 2008

Kak(20/08/2019)