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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2019

Coram

The Honourable Mr. Justice M.DHANDAPANI
W.P.No.9768 of 2007
and M.P.Nos.1 of 2007 and 1 of 2011

- 1.G. Balachander
- 2.G. Vanjinathan
- 3.K. Sathyamoorthy
- 4.K. Vedamoorthy
- 5.K. Maheswaramoorthy
- 6.K. Datchanamooty
- 7.K. Natarajamoorthy
- 8.G. Rajeswari
- 9.D. Mythili
- 10.T. Padmavady
- 11.E. Gopal
- 12.E. Balasubramanian

... Petitioners

vs

1. The Competent Authority,
(Urban Land Ceiling) and
Assistant Commissioner,
(Urban Land Tax), Ambattur
248/409, Periyar E.V.R. High Road,
Aminjikarai, Chennai - 600 029.
2. The Tahsildar,
Perambur-Purasawakkam Taluk,
Perambur, Chennai.
3. The Collector,
City of Chennai, Rajaji Road,
Chennai - 1.

(R.2 and R.3 were impleaded as
per order of this Court dated 04.01.2008
in MP No.2 of 2007)

.... Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records pertaining to the Impugned proceeding vide SR.59/92-A3/4663/92 dated 12.09.1995 issued by the respondent under the Urban Land Ceiling Act and quash the same.

For Petitioner : V. Manohar

For Respondents: Mr.J. Ramesh
Addl.Govt.Pleader

ORDER

The Petitioners have filed the writ petition seeking to quash the proceeding of the first respondent vide SR.59/92-A3/4663/92 dated 12.09.1995 issued under the Urban Land Ceiling Act.

2. The petitioners are the legal heirs of late Smt.Dhanabahagiayammal., who possessed the land in subject matter and after her demise, the petitioners, in collective, succeeded to the same as per the family arrangements. The petitioners, joined together, filed this writ petition, questioning the Urban Land Proceedings initiated against the said Smt. Dhanabahagiayamal, who passed away in the year 1972.

3. The learned counsel for the petitioners submitted that though the original owner viz., Smt.Dhanabahagiayammal died in the year 1972, Notice under Section 7(2) of Tamil Nadu Urban Land (Ceiling and Regulation) Act was issued on 31.07.1991 and thereafter, other proceedings were initiated and the land acquisition authorities have taken all urban land proceedings only against the dead person. The learned counsel further submitted that the action initiated against the dead person is null and void in view of the decision reported in (2008) 15 SCC 105 (Kamal Krishan Rastogi and others vs State of Bihar and Another).

4. The learned Additional Government Pleader submitted that the legal heirs of the deceased Smt.Dhanabahagiayammal did not inform the Urban Land authorities about the death of Smt.Dhanabahagiayammal and



therefore the matter had been taken as per the records available with the Revenue Department and accordingly, the entire proceedings were initiated.

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5. Heard both sides and perused the materials available on record.

6. In short, the issue involves in the present case is that whether proceedings can be initiated against a dead person.

7. The very same issue arose before the Apex Court in Kamal Krishan Rastogi and others vs State of Bihar and another reported in (2008) 15 SCC 105, wherein, it is held as follows:

11. Whether or not the land holder's participation in the proceeding before the Additional Collector would cure the illegality of the reopening order passed by the Collector is a debatable issue but we see that on admitted facts that larger issue does not even arise in the case. It would be hardly fair and just to hold that the landholder took any part in the proceeding after it was reopened by the Collector's order. As seen above, on notice being issued by the Additional Collector, Sarju Madhav Rastogi appeared before him on 30 April, 1984 and prayed for time for filing objections. He then never appeared and a few months later died on 27 January, 1985. He did not file any objection before the Additional Collector. Had he filed one, he might have taken the precise objection that the proceeding was without jurisdiction because the reopening order was itself illegal and without jurisdiction.

12. Admittedly, after the death of Sarju Madhav Rastogi his heirs were



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neither substituted nor they were given any notice by the Additional Collector. They did not appear before the Additional Collector. What is significant here is to note that the order of the Additional Collector was made against a dead person and for that reason alone it was unsustainable. It was only after the order of the Additional Collector that the heirs of Sarju Madhav Rastogi came into picture when they tried to challenge the order on many grounds including the one that the order was passed in a proceeding that was held on the basis of the Collector's order that was illegal and without jurisdiction. It is, therefore, quite wrong to say that it was not open to the land holders to question the validity of the reopening order since they had participated in the proceeding after its reopening.

13. As noted above, the order of the Additional Collector was also unsustainable for the additional reason that it was passed against a dead person.

14. For all these reasons we are satisfied that the judgment and order passed by the High Court as well as the orders of the revenue authorities are unsustainable in law. The appeals are allowed and the orders of the High Court and the revenue authorities are set aside.

8. The above decision squarely applies to the present case and all the proceedings initiated against the dead person are legally untenable.



9. In view of the above the entire proceedings initiated above the dead person stands abated and the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

sr
To

1. The Competent Authority,
(Urban Land Ceiling) and
Assistant Commissioner,
(Urban Land Tax), Ambattur
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Perambur, Chennai.
3. The Collector,
City of Chennai, Rajaji Road,
Chennai - 1.

+1cc to Mr.V.Manohar , Advocate SR.No. 57734
+1 cc to Government Pleader Sr.No. 58030

W.P.No.9768 of 2007

ssp (CO)
A.SK(13/08/2019)