IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28980 of 2008

1.Vaidyalingam
2.Christidas @ Ramdas
3.Venkatesan

Rep. by their Power of Attorney Agent
Mr.Moorthy

...Petitioners

Vs.

1.The Assistant Commissioner
Urban Land Tax
No.153, Karuneegar Street
Adambakkam
Chennai 600 088

2.The Principal Commissioner
and Commissioner of Land Tax
Chepauk, Chennai 600 005

3.The Secretary
Government of Tamilnadu
Revenue Department
St. George Fort
Chennai 600 009

4.The Tasildhar
Sriperumbudur Taluk
Kancheepuram District

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records in Rc.No.591/89-A, dated 26.11.1999 on the file of the 1st respondent and quash the same and issue a consequential direction, directing the respondents not to interfere with the petitioner's possession of the property in an extent of 0.25.o acres (1 acre 12 cents) comprised in Survey No.524/3A (Old No.524/3), situated at No.74, Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District.

For Petitioner : Mr.V.Chandrakanthan
For Respondents : Mr.J.Ramesh, AGP

ORDER

The petitioner filed this Writ Petition, to issue a writ of Certiorarified Mandamus, to call for the records in Rc.No.591/89-A, dated 26.11.1999 on the file of the 1st respondent and quash the same and issue a consequential direction, directing the respondents not to interfere with the petitioner's possession of the property in an extent of 0.25.o ares (1 acre 12 cents) comprised in Survey No.524/3A (Old No.524/3), situated at No.74, Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District.

2.The case of the petitioner is that the petitioners are the absolute owners of the property in an extent of 0.25.0 ares (1 acre 12 cents) comprised in Survey No.524/3A (Old No.524/3), situate at No.74, Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District. The petitioners' father Munusamy died on 10.09.1984 leaving behind the petitioners as his legal heirs. His wife also died. After his death, the petitioners are in possession and enjoyment of the property as absolute owners. When that being so, the first respondent passed an order on 31.07.1990, issued a notice under Section 9(5) of Tamil Nadu Urban Land (Ceiling & Regulation Act) 1978 (hereinafter referred to as the Act) in the name of Munusamy, dead person, stating that he had failed to file the return Under Section 7(1) of the Act. The said notice was served on 02.11.1988 to the grandson of Late Munusamy. The first respondent again issued a notice under Section 11 (5) of the Act to Late Munusamy, requesting him to surrender the excess land. The said notification was also made in the name of the petitioners' Late Father Munusamy. The petitioners have informed the first respondent that Munusamy died in the year 1984 itself and no notice was served on the land owners i.e. the petitioners herein. Challenging the said proceedings, the petitioners are before this Court.

3.The learned counsel appearing for the petitioner would submit that the entire proceedings have been initiated only as against the dead person. The notification was also published in the name of the dead person. The above action is nullity and the learned counsel in support of his contentions relied upon the decision of (2008) 15 SCC 105 in Kamal Krishan Rastogi and others V. State of Bihar and another in Civil Appeals

Nos.5771-72 of 2002. The relevant portion reads as follows:

> 11.Whether or not the landholder'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 30-4-1984 and prayed for time for filing objections. He then never appeared and a few months later died on 27-1-1985. 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.
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> 12.Admittedly, after the death of Sarju Madhav Rastogi his heirs were neither substituted nor were they 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 sustainable. 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 landholders to question the validity of the reopening order since they had participated in the proceeding after its reopening.
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> 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.
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> 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.

And (2006)3 M.L.J.389 in W.A.No.2105 of 2004 and W.A.M.P.No.3865 of 2004 in Savithiriammal V. State of Tamil Nadu, represented by Secretary to Government, Housing and Urban Development Department, Chennai-9 and Another. The relevant portion reads as follows:

> 4.We verified the Section 4(1) Notification, Section 5-A enquiry proceedings and Section 6 Declaration. As rightly pointed out, in the Notification and Declaration, it is stated that Thiruvenkatasamy is the owner of the lands in S. Nos.267/5 and 268/3. We have already referred to the written objection filed by the petitioner, who is none else than the daughter of the said Thiruvenkatasamy, to the effect that her father died on 6.3.1987. In such circumstances, it is but proper on the part of the Land Acquisition Officer to rectify the mistake in all the proceedings including Section 4(1) Notification. The Notification issued in the name of dead person is a nullity and the proceedings cannot be continued based on the said Notification.
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> 5.This Court, in Muthusamy v. State of Tamil Nadu 1993 (1) MLJ 217; Devaraj v. State of Tamil Nadu 2003 (4) CTC 134; Asiya Mariyan v. Secretary to Government of Tamil Nadu 2000 (4) CTC 125; and in series of other decisions, held that Notice/Notification issued in the name of dead person and the proceedings with respect to the said lands cannot be 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. Consequently, Writ Appeal is allowed. No costs. Connected Miscellaneous Petition stands closed. It is made clear that the respondents are free to proceed with the acquisition, if they so desire, by initiating fresh proceedings in accordance with law.

4.The learned Additional Government Pleader produced the related files before this Court and would submit that the entire proceedings have been initiated against the dead person.

5.Considering the facts and circumstances of the case and also observing the decision cited supra, this court has no hesitation to arrive at a conclusion that the notification and the proceedings have been initiated only in the name of the dead person. Hence, the same is invalid.

6.In view of the above, the notification of the 1st respondent in R.C.No.591/89-A dated 26.11.1999 is quashed. The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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4.The Tasildhar
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+1 cc to Government Pleader Sr.No. 56471

W.P.No.28980 of 2008

A.SK(07/08/2019)