

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11767 of 2005

and

W.P.M.P.No.259 of 2007

Sp.Meenakshi Achi

...Petitioner

Vs.

1.The State of Tamil Nadu rep.
by its Special Secretary to Government
Land Reforms
Fort St. George
Chennai-9

2.The Assistant Commissioner
(Land Reforms)
Tiruchirapalli

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records relating to the notification of the first respondent in G.O.Ms.No.503, Revenue LR1(2) dated 10.11.2004 published in Tamil Nadu Government Gazette No.48 dated 15.12.2004 and quash the same.

For Petitioner : M/s.A.L.Ganthimathi

For Respondents: Mr.J.Ramesh, AGP

O R D E R

The petitioner filed this Writ Petition, to issue a writ of Certiorari, to call for the records relating to the notification of the first respondent in G.O.Ms.No.503, Revenue LR1(2) dated 10.11.2004 published in Tamil Nadu Government Gazette No.48 dated 15.12.2004 and quash the same.

2.The case of the petitioner is that the petitioner's family consists of her late husband, his brothers and their sons owned an extent of about 163.07 ordinary acres in Neyveli Village Tirumayam Taluk, Pudukottai. The said Village was taken over

under Inam Settlement Act 1955, and ryotwari patta was granted to the occupants of the lands in accordance with their possession and enjoyment of the cultivable lands. Accordingly, enquiries were conducted by Tahsildar, Land Revenue and the persons in possession of the lands were granted patta. Under such process all the lands belonging to the petitioner's husband Late Subbiah Chettiar were also notified and enquiry was conducted and patta was granted in favour of the persons cultivating the said lands in the year 1989. From the said date the respective persons are in occupation and enjoyment of the said lands and the petitioner's family is in possession and enjoyment of only 30,000 standard acres of lands in the said village. When that being so, the second respondent by its proceedings dated 22.08.2003 served a memorandum in the name of the petitioner's husband alleging that the lands notified in the Government Gazette dated 16.07.2003 enclosed therein are proposed to be declared as surplus and the land owners can submit their objections within 30 days from the said date. On receipt of the said letter as the lands notified therein does not belong to the petitioner's family and are not connected with them they remained silent without knowing the consequences. Thereafter, the first respondent notified the lands of an extent of 57.35 ordinary acres equivalent to 33.800 standard acres as surplus and are required for public purpose under G.O.Ms.No.503 Revenue LRI(2) dated 10.11.2004 published in Government Gazette dated 15.12.2004. The said notification was also made in the name of the petitioner's Late Husband Subbiah Chettiar. Challenging the said proceedings, the petitioner is before this Court.

3.The learned counsel 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 her 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.

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 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 landholders 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.

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.

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. On a perusal of the files, it is clear that the proceedings under notification have been initiated only as against the dead person and the notification also published in the name of 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 G.O.Ms.No.503, Revenue LRI(2) dated 10.11.2004 published in Tamil Nadu Government Gazette No.48 dated 15.12.2004 is quashed. The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

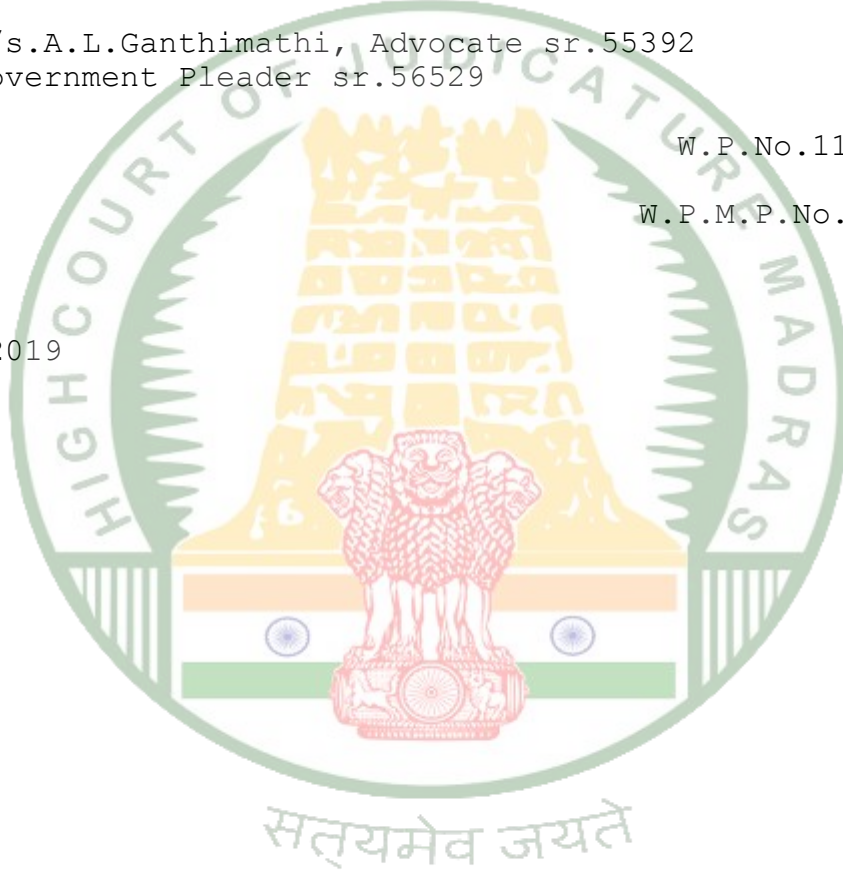
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+1cc to M/s.A.L.Ganthimathi, Advocate sr.55392
+1cc to Government Pleader sr.56529

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