

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.22116 of 2008

ORDER:

This Writ Petition is filed with the following prayer:

“.... declaring the entire proceedings in C.C.No.J/7560/76 on the file of the third respondent under Sections 8 (1), (4), 9 and 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (since repealed) issued in the name of dead person, late Sama Laxma Reddy and computing the Petitioners' land in Survey Nos.2, 3, 4, 5, 6, 17 and 121 admeasuring 12,151.88 Square Meters, of Badangpet village, Sarroornagar Mandal, Ranga Reddy District, in the holding of late Laxma Reddy and the action of the respondents in threatening to dispossess the petitioners, displaying banner notice with respect to the petitioners' lands in Survey Nos.2, 3, 4, 5, 6, 17, 20, 20/1 and 121 of Badangpet village, Sarroornagar Mandal, Ranga Reddy District as illegal, fraudulent, without jurisdiction and vitiated by violation of the principles of natural justice and malafides and also as contrary to the Section 4 of Urban Land (Ceiling and Regulation) Repeal Act, 1999 and violative of Articles 14, 31-A and 300-A of the Constitution of India and ...”

2) The brief facts of the case are that one Sama Laxma Reddy was the pattadar and possessor of the land admeasuring Acs.7.21 guntas consisting of Ac.0.20 guntas, Ac.0.22 guntas, Ac.0.30 guntas, Ac.0.08 guntas, Ac.0.17 guntas, Ac.0.15 guntas, Ac.1.00 guntas, Ac.0.32 guntas, and Acs.3.07 guntas in survey Nos.2, 3, 4, 5, 6, 17, 20, 20/1 and 121 of Badangpet Village respectively. The petitioners Nos.1 to 3 are the sons of late Sama Laxma Reddy, petitioner Nos.4 and 5 are the sons of late Krishna Reddy, who is the other son of late Laxma Reddy. The petitioner No.6 was brought on record as the legal representative of petitioner No.1, who died after filing of this case. So also petitioners Nos.7 to 9 were brought on record as the legal representatives of petitioner No.2. It is not disputed that Sama Laxma Reddy died on

28.10.2000. During the life time of Sama Laxma Reddy, he filed declaration as envisaged under the provisions of The Urban Land (Ceilings and Regulation) Act, 1976 (for short 'the Act'). By proceedings UL No.J/7560/1976, Sama Laxma Reddy was declared as a surplus land holder. The petitioners were not aware of the filing of the declaration by their father and it was only in the year 2006, that they came to know about passing of the impugned orders under Sections 8 (1), 8 (4), 9 and 10 of the Act by the authorities. The petitioners allege that these proceedings were behind their back and same were passed without issuing any notice to them or bringing them on record. It is the contention of the petitioners that the impugned proceedings were passed after the death of the original declarant Sri Late Laxma Reddy, who died on 28.10.2000, and therefore all these proceedings issued by the competent authority against a dead person are void *ab initio*, *non est* in the eye of law and are liable to be set aside.

3) Heard Sri S.A. Razak, the learned counsel for the petitioners, and the learned Government Pleader for Revenue and Assignment, for respondents.

4) The learned counsel for the petitioners has contended that any proceedings issued after the death of the declarant without bringing the legal representatives on record or without putting them on notice, are void and *non est* in the eye of law, therefore, the proceedings are liable to be set aside. Learned counsel has relied on the unreported judgment of this Court in **Gurram Rami Reddy and another vs. The Government of Andhra Pradesh** [W.P.No.20925 of 2008, dated 18.03.2009] and the judgment of the

Hon'ble Supreme Court in ***State of Uttar Pradesh vs. Hari Ram***¹.

5) Per contra, the learned Government Pleader for Revenue and Assignment has vehemently argued that all the proceedings were issued strictly in accordance with the law and possession was also taken under the cover of panchanama.

6) A perusal of the record reveals that the notice under Section 8 (4) along with the final statement under Section 9 of the Act was issued on 11.06.2004. The subsequent notices under Sections 10 (3) and 10 (5) were issued in the month of November and December, 2005 respectively. The original record reveals that none of the legal representatives of the original declarant were neither made parties to the proceedings nor they were put on notice nor there is any endorsement by any of the family members of the declarant to show that they were served any of the notices under Sections 8 (4), 10 (3) or 10 (5) of the Act. Admittedly, in this case, the original declarant died on 28.10.2000, none of the legal representatives of the original declarant were brought on record nor they were issued any notice. It is the well established principle of law that any proceedings issued against the dead persons are void *ab initio* and *non est* in the eye of law.

7) A Division Bench of this Court in ***State of A.P. vs. A.Bharathi***² while dealing with a case where orders were passed against a dead person, has held as under:

¹ 2013 (4) SCC 280

² (2002) 4 ALT 334 (DB)

“ ... it was brought to our notice that the statutory notices issued under the Act were issued in the name of dead person which is non est in the eye of law.”

8) This Court in **Gurram Rami Reddy (supra)** while deciding the case which is similar to the facts of this case, has held as under:

“The only question that arises for consideration in this writ petition is as to whether the order passed under Section 8 (4) of the Act and subsequent notices, issued in the name of a dead person, have any force in law. It is not in dispute that the declaration in respect of the lands held by Narayan Reddy was filed within the stipulated time. The 2nd respondent slept over the matter for 18 years, and woke up after Narayan Reddy died. Not only the draft statement under Section 8 (1), but also notice under Section 8 (3) were issued, after the declarant died. In a catena of decisions, this Court held that the orders under Section 8 (4) of the Act passed in the name of a dead person, do not have any legal force.

9) Admittedly, the proceedings issued under Section 8 (4) and other provisions of the Act are against a dead person. Therefore, they are void *ab initio* and *non est* in the eye of law. Hence, all the subsequent proceedings issued by the authority are also liable to be set aside. Though the learned Government Pleader has strenuously contended that the possession has been taken under the cover of panchanama, the same has been disputed by the learned counsel for the petitioners, who has brought to the notice of this Court the latest pattadar passbooks and title deeds issued to the petitioners and the amounts deposited under the ‘Rythu Bandhu’ scheme. These documents, which are not disputed by the learned Government Pleader, abundantly, makes clear that physical possession, as alleged by the respondents, has

not taken place and it is only on paper that the panchanama is drawn.

10) The Urban Land (Ceiling and Regulation) Act has been repealed in the year 1999 and subsequently, the State of Andhra Pradesh has also adopted the same. The Hon'ble Supreme Court in ***Hari Ram (1 supra)*** while dealing with the effect of the Repealing of Act, has held as under:

“34. Requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word ‘may’ has been used therein, the word ‘may, in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word ‘may’ has to be read as ‘shall’.

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owners or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.”

11) In view of the above mentioned facts and circumstances, the Writ Petition is allowed and the impugned proceedings are set aside.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 12-12-2019.
smr/sur

