

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.20113 of 2010

ORDER:

The present Writ Petition is filed assailing the proceedings issued under Sections 8 (4), 10 (3), 10 (5) and 10 (6) of the Urban Land (Ceiling & Regulation) Act, 1976 (for short 'ULC Act'), by the 2nd respondent herein i.e. the Special Officer & Competent Authority under the ULC Act, without serving any notice, as contemplated under the ULC Act, in respect of the land to an extent of Acs.3-13 guntas in survey No.142 of Kismathpur (Village), Rajendra Nagar (M), Ranga Reddy District (hereinafter referred to as 'subject land'), as illegal, arbitrary and unconstitutional and also to declare the orders passed under Section 8 (4) of the ULC Act as having abated.

2) The brief facts of the case are that the petitioner claims to be the owner of the land admeasuring Acs.3.13 gts., in Sy.No.142 of Kismathpur (Village), Rajendra Nagar (M), Ranga Reddy District, by virtue of a registered sale deed bearing document No.7107 of 1988, dated 21.09.1988, executed in his favour by his vendor Jamal Baig S/o.Late Ahmed Baig, who was the original pattadar of the lands and the declarant in C.C.No.D1/8350/76. The vendor of the petitioner had obtained permission before alienating the land in favour of the petitioner vide Memo No.D1/2869/2(o)/88, dated 30.07.1988. Thereafter, on 01.07.2010 when some officials of the office of the Urban Land Ceiling came to measure the land, the petitioner came to know that the subject land was included in the declaration made by one Mirza Gazanfarali Baig in CC No.D1/8650/76. It is the contention of the writpetitioner that

the officials have wrongly clubbed the land belonging to the vendor of the petitioner with that of the Mirza Gazanfarali Baig and declared it as a surplus holding. That Mirza Gazanfarali Baig died on 01.07.1991 and all the proceedings under Section 8(1), 8 (4), 10 (1), 10 (3) and 10 (5) were subsequent to the death of said Mirza Gazanfarali Baig and therefore, the said proceedings are *non est* and void *ab initio*. The panchanama under 10 (6) of the ULC Act is not only a nominal one, but a paper panchanama, done without putting the petitioner on notice or taking over the physical possession of the land. That the petitioner is in physical possession as on this date and he was not dispossessed at any point of time. That admittedly Mirza Gazanfarali Baig died in the year 1991 and all the proceedings by the authorities are subsequent to the date of his death. Therefore, all the proceedings subsequent to the death of Mirza Gazanfarali are deemed to be *non est* and void in the eye of law. The possession of the petitioner is also saved by virtue of the repeal of the ULC Act itself.

3) The 2nd respondent filed counter stating that the original pattadar Sri Mirza Gazanfarali Baig was in fact the actual owner of the land admeasuring Acs.20.01 guntas in survey No.142 along with other lands and the Certificate issued by the ULC authorities prior to the purchase by the petitioner is only for agricultural purpose and as the land was being put to use for non-agricultural purpose, the land was computed in the holdings of the original declarant, and the physical possession of the land was also taken under a cover of panchanama and therefore, the writ petition is to be dismissed.

4) Heard Sri Raja Gopallavan Tayi, the learned counsel for the petitioner, and the learned Government Pleader for Revenue for the respondents.

5) The learned counsel for the petitioner has vehemently contended that having issued a certificate for sale of the land vide Memo No.D1/2869/2(o)/88, dated 30.07.1988, the respondents cannot turn around and say that the same is not valid at this point of time, more particularly, without putting the petitioner or his vendor on notice. The further contention of the learned Counsel is that the draft statement under Section 8 (1) was issued on 01.07.1991; final orders under Section 8 (4) were issued on 15.11.1994; consequential notifications under Sections 10 (1), 10 (3) and 10 (5) were issued on 08.03.1995, 03.02.1997 and 15.09.1998 respectively. That the above proceedings were issued against a dead person, who died on 01.07.1991, stood abated and hence they are not only void but *non est* in the eye of law. The learned counsel has also contended that these proceedings which are issued after the death of the original declarant are void and *non est* in the eye of law, and hence, the impugned proceedings are liable to be set aside. To buttress his contention, the 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 reported judgment of the Hon'ble Supreme Court in **State of Uttar Pradesh vs. Hari Ram**¹ and the reported judgments of this Court in **Bollaboni Lakshmi vs. Commissioner of Appeals, Office of the Chief Commissioner of Land Administration,**

¹ 2013 (4) SCC 280

A.P., Hyderabad², Kothuru Babu Surendra Kumar vs. Special Officer and Competent Authority, ULC, Vijayawada³, and State of A.P. vs. S.B.Komaraiah⁴.

6) Per contra, the learned Government Pleader for Revenue and Assignments has vehemently argued that all the proceedings were issued strictly in accordance under the provisions of the ULC Act duly following the procedure and the possession was also taken under the cover of panchanama. Even though, the sale certificate vide memo No.D1/2869/2(o)/88, dated 30.07.1988, was issued prior to the purchase by the petitioner, the same is valid as long as the lands are used for agricultural purpose, but, not for non-agricultural purpose and hence prayed for the dismissal of the Writ Petition.

7) Having heard the arguments of both the counsels for petitioner and respondents and having perused the record, it is seen that in the notices issued under Sections 8 (4), 10 (1), 10 (3) and 10 (5) the name of Gazanfarali Baig is shown, admittedly, neither the legal representatives of the original declarant nor the petitioner were made parties to the said proceedings nor they were put on notice nor there is any endorsement by the petitioner or his vendor to the effect that the notices under Sections 8 (4), 10 (1), 10 (3) and 10 (5) were served on them. Even if the contention of the learned Government Pleader that Gazanfarali Baig was the actual owner is taken to be true, admittedly the original declarant died on 01.07.1991, and hence, the entire proceedings stood abated by

² 2009 (2) ALD 495

³ 2000 (4) ALD 596

⁴ (2002) 2 ALD 253 (DB)

the death of the declarant and therefore, the proceedings issued after the death of Gazanfarali Baig are void and *non est* in the eye of law. It is well established principal of law that any proceedings issued against a dead person are not only void *ab initio* but *non est* in the eye of law. The proceedings will automatically abate after the death of the declarant unless the legal representatives are brought on record and notices served on them. The petitioner, who is admittedly an affected party, was also not given any notice before the above impugned proceedings were issued.

8) A Division Bench of this Court in **State of A.P. vs. A.Bharathi**⁵ while dealing with a case where orders were passed against a dead person, has held as under:

“... 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.”

9) 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

⁵ (2002) 4 ALT 334 (DB)

under Section 8 (4) of the Act passed in the name of a dead person, do not have any legal force.

10) In **Bollaboni Lakshmi (supra)**, this Court has held as under:

“17. The question as to whether it is proper and legal, for an authority to pass an order, determining the holdings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, without bringing the legal representatives of the deceased-declarant on record, was dealt with the Hon’ble Supreme Court in Ebrahim Aboobaker vs. Tek Chand Dolwani, AIR 1953 SC 298, which arose under the Evacuee Property Act. It was held that an order passed after the death of an evacuee without bringing his legal representatives on record is a nullity.

18. Neither the second respondent has taken any steps to bring the legal representatives on record nor did he require the second petitioner and others to come on record. The legal representatives of a deceased person derive their own respective rights vis-à-vis the estate of the deceased. Such rights cannot be trampled on the basis of imperfect and half-hearted steps. Therefore, the order, dated 25.2.1994, passed by the second respondent is a nullity in law.

20. It is not in dispute that the various steps under Sections 9 and 10 of the Act were taken on the basis of the order, dated 25.2.1994. Any steps taken on the basis of the order, which is a nullity, do not give rise to any legal consequences. It is not competent for the second respondent, to resume the proceedings from any stage, in view of the fact that the Act has since been repealed.”

11) Further, in **Surendra Kumar (supra)**, this Court has held as under:

“28. the competent authority who has finalised the statement under Section 8 (4) of the Act and final statement under Section 9 and notification issued under

Section 10 (1), 10 (3) and Section 10 (5) of the Act failed to follow the mandatory provisions by issuing notice to the persons likely to be affected viz., the petitioners,”

12) In ***M/s.L.S. & Co. vs. State of A.P.***⁶, this Court has considered the issue of draft statement and final statement under Section 8 (4) and Section 9 of the Act and the effect of Rule 5 of the Rules and while considering the same, this Court has held as under:

“ The scheme of the Act contemplates issuance of notice and hearing of objections of the persons furnishing the statements and all other interested persons. The Act gives such protection to all the concerned at every stage of the proceedings. After all any decision of the Special Officer and Competent Authority under the provisions of the said Act are fraught with serious consequences in respect of the urban property. Rights in immovable properties cannot be allowed to be adjudicated by the quasi-judicial authorities like the Special Officer and Competent Authority in a casual and perfunctory manner. The scheme of the Act and particularly Sections 8 and 9 of the Act and the rules framed thereunder would show that the procedure to be adopted by the Special Officer and competent authority is to be reasonable and fair. The scheme of the Act ensures an elaborate hearing by the Special Officer and competent authority in adjudication of the statements filed by the persons holding the vacant land. Any deviation in this regard would have to be viewed very seriously.”

13) In ***S.B.Komaraiah (supra)***, a Division Bench of this Court has held as under:

“40. Therefore, the only conclusion that can be arrived is that as and when any land, which was not vacant at the time of commencement of the Act becomes vacant on a subsequent date, the holdings of the persons have to be decided with reference to the subsequent date

⁶ 1995 (2) APLJ 325

on which the land becomes vacant. Any adjudication in respect of such lands with reference to the date of commencement of the Act cannot be sustained.”

14) Admittedly, in the present case, the proceedings under Section 8 (4) and the consequential orders issued under Section 10 (1), 10 (3) and 10 (5) are against a dead person and no notice was served on the petitioner herein, who is in fact an affected party/interested party. Hence, the proceedings issued after the death of the declarant are void *ab initio* and *non est* in the eye of the law.

15) 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. In ***Hari Ram (supra)***, the Hon’ble Supreme Court 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.”

16) To establish the fact that physical possession was not taken as contended by the respondents, the petitioner has produced a copy of the letter No.D1/8333 to 8337, 8350, dated 01.02.2011, addressed by the Special Officer & Competent Authority (FAC), Urban Land Ceiling, Hyderabad, to the Chief Commissioner of Land Administration and Special Chief Secretary, Andhra Pradesh, Hyderabad, wherein it is stated as under:-

“I invite kind attention to the references cited and submit that Sri Mirza Gazanfar Ali Baig and (9) others filed a declaration which was processed up to 10(6) stage. At the time of taking over possession, Enquiry Officer reported that the declarant produced a copy of stay order issued by the C.C.L.A. vide reference No.Hyd/255/1995, dated 30.11.1995. Hence, he was not able to take over possession.

In this regard, it is submitted that the 10(6) were issued on 10.05.1999 but stay was issued w.e.f., 30.11.1995. Since stay copy was not available, 10(6) proceedings were issued. Further it is informed that (8) W.Ps., that is 15097/2010, 15115/2010, 20704/2010, 27948/2010, 27958/2010, 27957/2010, 27954/2010, 20113/2010 have been filed by different persons and P.W.Rs. have been sent to G.P. Due to stay orders of CCLA, Hyderabad, possession could not be taken.”

The said letter is not disputed by the Government Pleader and hence the so called pancahnama is of no avail to the respondents and cannot be relied to show that physical possession was actually taken from the declarant or the petitioner.

17) For the afore-stated reasons and in view of the ratio laid by the Hon'ble Supreme Court as well as this Hon'ble High Court, referred above, the impugned proceedings are liable to be set aside and the Writ Petition allowed, setting aside the notices under Section 8 (4), dated 15.11.1994; consequential notifications under Sections 10 (1), 10 (3), 10 (5) and 10 (6) which were issued on 08.03.1995, 03.02.1997, 15.09.1998 and 10.05.1999 respectively

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

Date : 10-01-2020.
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A.ABHISHEK REDDY, J

