(2007) 04 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31628 of 1997

Annapurna Co-operative Housing Society — APPELLANT

Vs

Special Officer and Competent Authority, Urban Land Ceiling and Another — RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 74

Urban Land (Ceiling and Regulation) Act, 1976 — Section 19, 19(1), 2(1), 20, 26

Citation : (2007) 4 ALD 440 : (2007) 4 ALT 459

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N. Subba Reddy, for the Appellant; G.P. for Revenue and G.P. for Assignment for Respondent No. 1 and P. Radha Krishna, S.C. for Malkajgiri Municipality, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The Urban Land (Ceiling and Regulation) Act 1976 (for short "the Act"), was brought into existence, with a noble object of ensuring proper distribution of urban land and prevention of concentration thereof, in few hands. The validity of the Act was also upheld by the Supreme Court. No one can expect the implementation of such an Act to be a smooth affair. However, experience for the past three decades has only shown that the accomplishments under it are far from satisfactory. Apart from not being able to be a device to control the prices of urban land, it has only indirectly helped in steep rise thereof. Though the Act was repealed in the year 1999, it still haunts many citizens in the State of A.P.

2. The petitioner is a cooperative housing society. Sri Jayagiri Lakshmi Narasimha Swamy Devasthanam Temple, North Lalaguda, Secunderabad, held an extent of Acs.17-19 gts, within the urban agglomeration of Hyderabad. It was exempted from the purview of the Act, in view of Section 19(1)(v) thereof.

3. The temple faced acute problem of encroachment by antisocial elements, over the land. Therefore, it proposed to alienate an extent of Acs.8-00 of land held by it, so that it can at least have the benefit of the sale consideration of that land. It approached the Government to grant exemption u/s 74 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (for short "the Endowments Act"). Permission was accorded through G.O.Ms.No. 44, Revenue (Endowments. II) Department, dated 15-1-1982. The land was purchased by the petitioner society, through a sale deed dated 6-3-1984.

4. The petitioner obtained necessary permission from the Hyderabad Urban Development Authority, divided the land into plots and allotted the same to its members. In some cases, permission u/s 26 of the Act, for transferring the plots by the members, was accorded by the 1st respondent. However, while considering one such application, the 1st respondent passed an order dated 22-5-1977, holding that the very transfer of Acs.8-00 of land by the Devasthanam in favour of the petitioner society is void, since necessary permission under the Act was not obtained. The petitioner states that it has pursued the remedy with the Appellate Authority. The grievance urged in this writ petition is that when the members of the society approached the 2nd respondent, seeking permission to construct houses, they are insisting on clearance from the 1st respondent, and the latter in turn is refusing to give the clearance.

5. Petitioner contends that the land held by the Devasthanam is exempted from the purview of the Act, and once it was purchased after obtaining the permission from the Endowments Department, there is no basis for insisting on a clearance from the 1st respondent, or for the latter, in rejecting the same.

6. On behalf of the 1st respondent, a counter affidavit is filed. It is stated that the exemption under the provisions of the Act vis-a-vis the land held by the Devasthanam was in force, only when the ownership remained with it. It is their case that once the land was transferred by the Devasthanam, the exemption u/s 19, ceased to be operative, and it became liable to be dealt with, under the other provisions of the Act. It was suggested that the permission u/s 20 of the Act must have been obtained by the Devasthanam, before the land was alienated.

7. Sri N. Subba Reddy, learned Senior Counsel appearing for the petitioner, submits that the matter was dealt with, under the Endowments Act as well as Urban Land Ceiling Act, and when permission was accorded by the Revenue Department, for alienation of the land by the Devasthanam, in favour of the society, the view taken by the 1st respondent cannot be sustained in law. He submits that it is the policy of the Government to ensure that needy persons are provided with house plots and allotment of plot of 200 yards each, to the members of the petitioner society cannot be said to be opposed to the purpose underlying the Act. It is his case that the exemption granted u/s 74 of Endowments Act, can for all practical purposes, be treated as the one under the Act also. Another contention of the learned Senior Counsel is that the statutory

exemption granted u/s 19 of the Act for the land, does not get disturbed, on account of the transfer, inasmuch as the transferee i.e. the petitioner is also entitled for similar exemption.

8. Learned Government Pleader for Assignments, on the other hand, submits that once the land is alienated by the Devasthanam, the exemption granted u/s 19 of the Act, ceases to be operative, and the very alienation, in favour of the petitioner society, without obtaining exemption u/s 20, is illegal. It is contended that once the land was transferred in favour of the petitioner, the exemption u/s 19 stands withdrawn, and the petitioner is under obligation, to obtain exemption, independently.

9. The petitioner society assails the action of the 2nd respondent, in insisting on no objection certificate, from the 1st respondent, for according permission to its members, for starting construction in the plots allotted to them. The circumstances, and the manner, in which the petitioner purchased the land of Acs.8-00 from the Devasthanam, have already been stated in the preceding paragraphs.

10. Necessary permission was obtained under the Endowments Act from the Government, and the sale was registered in favour of the petitioner. At the stage o according permission for construction, o alienation of plots, the 1st respondent raised an objection, as to the very transfer of the entire land in favour of the petitioner. The same is evident from the proceedings, dated 22-5-1997, issued by the 1st respondent. After referring to the permission accorded to the petitioner under the Endowments Act, through G.O.Ms.No. 44, dated 15-1-1982, the 1st respondent took the view that the petitioner ought to have obtained permission under the Act, particularly in the context of making plots and selling the same to individuals. On this premise, he took the view that the transfer in favour of the petitioner is void u/s 5(3) of the Act. This is the root cause for the grievance of the petitioner and its members.

11. A perusal of Sub-section (3) of Section 5 of the Act, makes it clear that the prohibition contained in it, is only in respect of vacant land, in excess of ceiling limit, held by an individual or entity, until the statement u/s 6 of the Act is filed. Such a contingency did not arise, in the instant case, in view of Section 19 of the Act, which exempted the vacant land held by various agencies, including Religious Institutions, Cooperative Societies. Educational Institutions, etc. The transfer was made after obtaining permission from the Government, under the Act. It is relevant to note that Endowments, and Urban land ceilings, form part of the Revenue Department of the Government. Further, the transfer was made, from one exempted category, to another. It is not open to the 1st respondent, to declare the sale in favour of the petitioner as void, after 11/2 decades after the transfer took place, when no grounds of fraud or misrepresentation are pleaded.

12. The matter needs to be examined from another angle. The petitioner purchased the land, after obtaining necessary permission under the Endowments

Act. The exemption provided for u/s 19 is not limited to the lands held by the authorities, institutions, or organizations, with reference to any particular date. The word "to hold" with grammatical variations, is defined u/s 2(1) of the Act. No reference is made to any specified date, in this regard. Whenever it became necessary to stipulate any dates for the purpose of computation of holdings, the Parliament made it clear. For instance, Sub-section (4) of Section 4 of the Act indicates that the holding of an individual must be assessed, with reference to a notified date. Such is not the case with the exemption u/s 19. Therefore, there is no reason to deny the benefit of Section 19, to the petitioner, which is also entitled to the benefit of that provision. Therefore, there does not exist any justification for the 2nd respondent, in insisting on the production of no objection certificate from the 1st respondent.

13. Therefore, the writ petition is allowed, as prayed for. There shall be no order as to costs.