

(2000) 06 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11676 of 1992

Anne Ramachandra Rao

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Constitution of India, 1950 — Article 162

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 11, 2, 20(1), 21

Citation : (2000) 4 ALD 377 : (2000) 4 ALT 179 : (2000) 2 APLJ 360

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. T.S. Anand, for the Appellant; Government Pleader, for Revenue Department and Mr. P.M. Gopal Rao, for the Respondent

Judgement

1. The petitioner herein seeks invalidation of the proceedings of the State Government in memo No.103636/UC.I(1)/ 90-91, dated 11-8-1992 and a consequential declaration that the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (Act 33 of 1976) (for short "the Act") are not applicable to the land of the petitioner situate in RS No.507/2 of Gollapudi village, Krishna District, in view of the provisions of the GO. Ms. No.733 Revenue (UC.II) Department, dated 31-10-1988 and that the petitioner is entitled to exemption u/s 20(1)(a) of the Act.

Chronology of facts:

(A) One Ch. G. Krishna Murthy, (the declarant) who was holding considerable extent of vacant land filed a statement under Section. 6(1) of the Act declaring before the Competent Authority, a holding of 4,451 Sq.Mt.. of vacant land. The declaration was numbered as CC No.2565 of 1976. On 23-6-1980 a Draft Statement u/s 8(4) of the Act declaring an excess of 2951 Sq.Mt, was issued. Prior thereto the declarant on 27-11-1979 entered into an agreement of sale with the petitioner and others in respect of Ac.O.94 cts., of the land in question in RS No.507/2.

(B) The petitioner and others in whose favour the agreement of sale dated 27-11-1979 was made, filed OS No.319 of 1981 on the file of the Principal Subordinate Judge, Vijayawada, seeking specific performance of the said agreement. The petitioner and other agreement holders also filed an appeal before the appellate authority under the Act assailing the order dated 23-6-1980 passed u/s 8(4) of the Act. The appeal was allowed by the order dated 25-1-1982 directing the Special Officer and Competent Authority not to proceed further under the Act until the rights of the appellants are settled in the civil dispute in OS 319/81.

(C) On 24-4-1986 pursuant to a compromise entered into between the parties in OS No.319 of 1981, a compromise decree was passed and consequently a sale deed was executed in favour of the petitioners.

(D) Thereafter the petitioner filed an application u/s 20(1)(a) of the Act seeking exemption in respect of the land purchased by him. By the order of the State Government dated 12-6-1986 the petitioner was directed to file a declaration u/s 6 of the Act before the competent Authority and to approach the Government after an order is passed by the Competent Authority u/s 8(4) of the Act. In compliance with the order, the petitioner filed a declaration numbered as CC No.2938 of 1986, duly enclosing certified copies of the decree in OS No.319 of 1981.

(E) The Competent Authority passed orders dated 20-10-1986 in CC No.2565 of 1976 (filed by the original owner) u/s 10(5) of the Act. Aggrieved thereby, the petitioner filed WP No.1934 of 1987 assailing the orders dated 23-10-86 (Section 8(4) proceedings)

(F) By the judgment dated 19-12-1989 Writ Petition No.1934 of 1987 instituted by the petitioner, was dismissed. This Court held as under:

(i) that the declaration u/s 8(4) of the Act was made by the competent authority determining the excess land to be 2951 Sq.Mt., which order had become final;

(ii) that thereafter Section 10(3) notification was issued on 1-5-1981 and published in the Gazette on 5-3-1981 as a consequence of which the excess land vested in the State u/s 10(3) of the Act;

(iii) that the compromise decree in OS No.319 of 1981 relied upon, to assert the title of the petitioner was passed on 24-4-1986 and the consequent sale deed executed in favour of the petitioner on 20-8-1986. Thus, long prior to the decree and execution of the sale deed the land already vested in the State. Consequently the petitioner gets no right, interest or title to the land declared excess on 23-6-1980;

(iv) that the petitioner and others having entered into an agreement of sale dated 27-11-1979 before the declaration of excess is of no consequence in view of the provisions of Section 5 of the Act, which render the transfer of land in favour of the petitioner null and void;

(v) that the impugned notice u/s 10(5) of the Act was issued after the land vested in the State on 1-5-1981 and thus does not suffer from any error of law notwithstanding that no order has been passed on the declaration filed by the petitioner u/s 6 of the Act claiming acquisition of title to the land already declared excess by the competent authority and

(vi) that the authority is not barred from taking further steps u/s 10(5) after publication of the notification in the Gazette u/s 10(3).

However, in view of the contention advanced on behalf of the petitioner that the land in question would fall within the exempted limit in view of G.O. Ms. No.733 and on that basis seeking a direction to the Government to exempt the land in favour of the petitioner, this Court holding that it cannot issue such a direction, accorded liberty to the petitioner to file an application u/s 20(1)(a) of the Act seeking exemption.

(G) Apropos the above observations of this Court in WP No.1931 of 1987, the petitioner filed an application on 20-11-90 u/s 20(1)(a) of the Act seeking exemption in view of G.O. Ms. No.733 dated 31-10-1988. The petitioner in the said application stated the chronology of facts.

(H) Aggrieved by the action of the Competent Authority in taking steps to allot the surplus land to the Vijayawada Urban Development Authority (VUDA), the petitioner filed WPNo.6968 of 1991 seeking a declaration that the provisions of the Act are not applicable to his land in Sy.No.507/2 in view of G.O. Ms. No.733. The petitioner pleaded that he is entitled to exemption u/s 20(1)(a) of the Act. The said writ petition was disposed of by this Court by the judgment dated 14-5-1991 directing the Government to dispose of the petitioner's application u/s 20(1)(a), within a period of 3 months from the date of receipt of a copy of the order and directing the respondents therein not to dispossess the petitioner meanwhile.

(I) The State Government issued Memo No.103636/UC.I(1)/90-91, dated 11-8-1992 (order impugned herein) rejecting the application filed by the petitioner u/s 20(1)(a) of the Act. The present writ petition thus came to be filed seeking the reliefs already adverted to.

It is contended by Sri T.S. Anand, learned Counsel appearing for the petitioner, as under:

(a) The order impugned is contrary to the general exemption granted u/s 20(1)(a) of the Act by G.O. Ms. No.733, dated 31-10-1988. As the land in question, purchased by the petitioner from the original declarant, falls within the peripheral area and is covered by the provisions of the GO above, the application for exemption ought to have been allowed.

(b) Inasmuch as the application u/s 20(1)(a) of the Act has been made in view of the observations of this Court in WP No.1934 of 1987 and in the light of the G.O. Ms. No.733, the State Government was legally obligated to grant exemption.

(c) The State Government has taken into account irrelevant considerations in issuing the orders impugned. The State Government ought to have taken into consideration only the fact whether the land in question falls within the ambit of the orders in G.O. Ms. No.733 and no other factors.

The Special Officer and Competent Authority has filed a counter affidavit. The reliefs sought by the petitioner are resisted on the following grounds:

(1) Pursuant to the declaration filed by Ch. Gopal Krishna Mwthy in CC No.256S of 1976 orders were passed . u/s 8(4) of the Act declaring an excess holding of 2951 Sq. Mt. and that prior to the said order the declarant never informed the Competent Authority that he entered into an agreement of sale dated 27-11-1979 with the petitioner and others.

(2) The declarant on 30-5-1980 filed an objection petition to the draft statement u/s 8(1) and notice u/s 8(3) of the Act stating that the land admeasuring Ac.0.95 cts., in RS No.507/2 of Gollapudi village is covered by poultry sheds and appurtenant land and sought exemption of the land from his holding. Again at the time of enquiry u/s 8(4) the declarant on 19-6-1980 made a statement before the competent authority reiterating the same objections. These objections were discussed in the order dated 23-6-1980 and the said land was included in the declarant's holding finding that the poultry sheds were erected after the appointed date.

(3) The declarant filed an application u/s 20(1)(a) of the Act seeking exemption in respect of the land in an extent of Ac.0.95 cts., in the year 1977. At the time of the enquiry into the exemption application the declarant stated that the land was leased out to one Tammina Krishna of Gollapudi village for 5 years and that the lessee himself erected 5 sheds containing poultry farm and an office room in a plinth area of 764 Sq. Mt. and that the remaining 3075 Sq.Mt. is vacant for utilisation as appurtenant land. Consequently a report was submitted by the Commissioner, Land Reforms on 9-7-1990 to the District Collector, Krishna. It is stated that the Government passed orders in memo dated 22-11-1983 rejecting the declarant's request for exemption u/s 20(1)(a) of the Act.

(4) The declarant Krishna Murthy did not prefer any appeal. Only Sarvasri Krishnarao, Sambasivarao and Subbarao, who are alleged to have been in no way concerned with the case, have preferred an appeal before the Commissioner on 30-8-1991 after the publication of the notification u/s 10(3) of the Act. The Commissioner by his order dated 25-1-1982 issued instructions not to proceed further under the Act till the rights of the present landholder and the appellants are settled by the civil Court.

(5) The sale agreement dated 27-11-1979 is invalid since the land is vacant land and situate in Vijayawada Urban Agglomeration and no transfer of land could have to be made without clearance by the Special Officer. Any transfer without such valid permission from the Special Officer is invalid. The petitioner neither filed any claim before the Special Officer before the orders had been passed u/s

8(4) of the Act nor was he even the appellant in appeal preferred before the appellate authority against the order u/s 8(4) of the Act, dated 23-6-1980.

(6) The Government in memo dated 12-6-1986 informed the petitioner, pursuant to his application u/s 20(1)(a) seeking exemption, that an exemption application if so advised may be filed when he becomes the holder of the land and after filing of the declaration u/s 6(1) of the Act before the competent authority.

(7) The purchase of the surplus land by the petitioner after the notified date is invalid in view of the Act and that in view of the overriding effect conferred on the provisions of the Act by Section 42 thereof, the judgments of the civil Court are of no legal effect and the petitioner derives no title over the land.

(8) The orders of the Government granting exemption in G.O. Ms. No.733, dated 31-10-1988, are subsequent to orders u/s 8(4) of the Act dated 23-6-1980 passed in respect of the land in question. The provisions of the said G.O. thus have no application to the land in question. The date of the G.O. is subsequent to the orders passed u/s 8(4) of the Act and the vestiture of the land in the State is w.e.f. 5-3-1981.

2. The other facts narrated by the petitioner and adverted to above have been admitted.

3. Sri T.S. Anand, learned Counsel for the petitioner sought invalidation of the order impugned, contending that the rejection of the petitioner's application for grant of exemption u/s 20(1)(a) of the Act is invalid as the competent authority has held that since the purchase of the land by the petitioner is only after the introduction of the Act and in view of Section 42 of the Act a decree of Sub-Court has no validity over the provisions of the Act, the petitioner has no title over the surplus land and thus his application is not entitled to consideration. Reliance is placed to substantiate this contention on *Anurag Virmani v. State of M.P.* and another. In the said decision a draft statement u/s 8 was served on the owner on 10-12-1985 whereafter his property was transferred by registered conveyance on 21-2-1986 and the name of the purchaser was also mutated in the revenue records on 14-3-1986. Final statement u/s 9 was prepared on 17-3-86 and a notification u/s 10(1) was published on 22-5-1987. The purchaser filed an appeal u/s 33 of the Act on 18-1-90 which was rejected holding that the transfer having been effectuated after the issuance of order u/s 9 the purchaser has no right to institute an appeal primarily since the purchaser is not a party to the original case and that the original owner after presenting the returns has no right to transfer the land without notice u/s 26(1) of the Act. The Supreme Court in the above decision held the said view as based on a misconception and remanded the matter to the appellate authority for consideration of the purchaser's appeal on issues on merits and in accordance with law. The Supreme Court has come to the said conclusion in view of the fact that the transfer of property was on 21-2-1986 prior to the issuance of final statement u/s 9 dated 17-9-1986 and also in view of the fact that the purchaser was contending that the entire land

was outside the ambit of the Act as it was being used for agricultural purposes and a contention based on reliance on revenue records pertaining to the use of the land. Thus, the applicability of the Act to the lands in question was seriously in issue.

4. In the case on hand no such issue is in contention. The lands demonstrably fall to be considered within the provisions of the Act. In view of Section 5, the transfer of the land in favour of the petitioner is void, such a determination, of the invalidity of the transfer in favour of the petitioner, having already been made by the order of this Court dated 19-12-1989, while dismissing WP No.1934 of 1987 filed by the petitioner. In the circumstances the petitioner derives no title to the land and as such possess no locus standi to claim exemption in respect of the said lands.

5. Sri Anand, learned Counsel for the petitioner placing reliance on the decision of the Court in P.S. Rao Vs. Special Officer and Competent Authority, Urban Land Ceiling, Hyd. and Another, a decision confirmed in WA No.1696 of 1998 dated 8-6-1999 by a Division Bench of this Court and further in Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad a.d another v. P.S. Rao 2000 (2) ALD 48 (SC) contended that in view of G.O. Ms. No.733, dated 31-12-1988 no application seeking exemption by specific individual is contemplated exemption provided by the G.O. being automatic, provided the two conditions are satisfied viz., that the land is in the peripheral area and the maximum extent is Ac.5 excluding the land set apart for roads, open spaces, schools and hospitals. It is also contended that in view of the decision of another learned single Judge in P.S. Rao case (supra), the exemption granted in G.O. Ms. No.733 relates back to the date of the Act itself and as such the land in question being within the contours of the exemptions enumerated in the G.O., falls beyond the regulatory provisions of the statute. On these contentions the impugned order is urged to be invalid.

6. The Supreme Court in Smt. Darothi Clare Parreira and others Vs. State of Maharashtra and others, , clearly held on an analysis of the Legislative phraseology employed in Sections 20 and 21 of the Act that-

"The exercise of the power thereunder would arise only when the land stands vested in the Government, The power of examination and exemption would arise only when the Government becomes the owner and the erstwhile owner seeks to obviate the hardships u/s 20 or to subserve the housing scheme for weaker sections u/s 21 as envisaged thereunder. Thereat, the Government is required to consider whether the proposals made by the erstwhile owner for undertaking the scheme as envisaged u/s 21 or hardships as envisaged u/s 20 for exemption would merit consideration."

This view of the Supreme Court has been reaffirmed in the subsequent decision of the Supreme Court in P.S. Rao's case (supra).

7. In view of the aforesaid clear declaration of law, the process of consideration

whether to grant exemption u/s 20, would arise only after determination of the excess land and vesting of the same in the State u/s 10. In this legal environment, any construction that exemption granted in G.O. Ms, No.733 dated 31-10-1988, relates back to the date of the Act coming into force or that the exemption is automatic without any application having to be made so however that the condition of the said G.O. are satisfied in a given case, would be inconsistent with the scheme of the Act as enunciated by the decisions of the Supreme Court in 2000 (2) ALD 48 (SC) and Smt. Darothi Clare Parreira and others Vs. State of Maharashtra and others, .

8. There is yet another reason for the aforesaid view. If the grants in G.O. Ms. No.733, dated 31-10-1988 are to be construed as blanket and pre-ordained exemptions in respect of persons holding lands falling within the contours of the said G.O. and in compliance with the norms thereunder, then the orders of the State Government in the said G.O. would tantamount to carving out an amendment to the ceiling limit postulated u/s 4 of the Act read with Schedule I thereof. It would have the effect of redefining the ceiling limit and as such would be prohibited as an exercise of the State's Execution power under Article 162 of the Constitution (since it is a field clearly occupied by the Legislation) and also be in over reach and ultra vires the power of exemption u/s 20. This is a natural corollary of such a construction being given to G.O. Ms. No.733 particularly in view of the non obstinate provisions in Section 20 of the Act. The power to grant exemption vesting in the State Government u/s 20 is clearly a power coupled with a duty. The power is to be exercised in the overall public interest and on the application and satisfaction of the parameters and guidelines set out in the statutory provisions itself, it a specific case. In considering the grant of exemption the State Government would clearly have to satisfy itself as to compliance with the Legislative considerations set out in Sections 20 and 21 and in respect of specific cases, that grant of exemption is warranted. A decision to grant exemption has to be in conformity with the plurality of public purposes set out in the scheme of the Act. The power consecrated in the State Government u/s 20 of the Act is not eleemosynary.

9. Section 20 of the Act reads as follows:

"20 Power to Exempt:--(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter,--

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that having regard to the location of such land, the purpose for which land is being or is proposed to be used and such other relevant factor as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in the excess of the ceiling limit and the

State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order exempt subject to such conditions if any, as may be specified in the order, such vacant land from the provisions of this Chapter :

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If any time the State Government is satisfied that any of the conditions subject to which any exemption under clauses (a) and (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this chapter shall apply accordingly."

10. The provisions of Section 20(1)(b) of the Act fell for consideration by the Supreme Court in *S. Vasudeva Vs. State of Karnataka and others*, and it is held that the provisions of Section 20(1)(b) of the Act will not permit the State Government to grant exemption to vacant land in excess of the ceiling limit for the purpose of enabling such exempted owner from transferring the same.

11. The correctness of this view was again canvassed before the Supreme Court in *T.R. Thandur Vs. Union of India (UOI) and Others*, . The decision of the Supreme Court in Thandur's case, to the extent relevant and material for the purpose of the case on hand, is extracted below:

"11. Clause (a) of sub-section (1) of Section 20 empowers the State Government to grant the exemption if it is satisfied having regard to the relevant factors specified in the clause that it is necessary or expedient to grant the exemption in the "public interest" subject to the conditions specified in the order. Clause (a) specifies certain relevant factors for the purpose of grant of exemption, namely "location of such land", "the purpose for which such land is being or is proposed to be used" and such other relevant factors as the circumstances of the case may require. Apart from the location of the excess vacant land and the purpose of its use, regard must be had to the other relevant factors, which is a question of fact in each case. However, these factors must indicate that the grant of exemption under Clause (a) is necessary or expedient in the "public interest". The expression "public interest" has a legal connotation. The broad guidelines for grant of exemption under Clause (a) are enacted in the provision. A safeguard is provided by requiring conditions to be specified in the order to which the exemption is granted under Clause (a). Even though there is no proviso in Clause (a) of the kind enacted thereafter in Clause (b), yet the absence of such a proviso is inconsequential since the requirement of the expressly enacted proviso in Clause (b) is implicit in the manner of exercise of the power under Clause (a). The requirement in Clause (a) of making an order having regard to the specified relevant circumstances and specifying the conditions attached to the exemption,

ensures that the decision is reached for cogent reasons which are placed on record in writing culminating in the making of the written order. There is no scope for the view that exemption can be granted under Clause (a) by an order specifying the conditions having regard to the specified relevant factors without recording the reasons for doing so in writing. Every State action must satisfy the rule of non-arbitrariness and, therefore, recording of reasons in writing for granting the exemption under Clause (a) indicating that it is necessary or expedient in the public interest so to do, is an essential requirement of valid exercise of power under Clause (a). This is how Clause (a) must be construed and understood.

12. We now come to Clause (b) of sub-section (1) of Section 20 to which the decision in *S. Vasudeva*, 1994 AIR SCW 344, directly relates. The State Government's power to grant exemption under Clause (b) depends on its satisfaction "that the application of the provisions of this Chapter would cause undue hardship to such person". The manner of making the order specifying conditions to which it is subject, is the same as in Clause (a). In Clause (b), a proviso is also enacted as under :

"Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing."

13. The requirement of this proviso in Clause (b) is implicit in Clause (a), as earlier indicated. Since the expression used in the proviso is "that clause", the express application of the proviso has to be confined only to Clause (b). However, this difference in the two clauses is merely of form and not of substances, as already indicated.

14. The question is whether the expression "undue hardship" to such person, that is, the person who holds vacant land in excess of the ceiling limit is a nebulous phrase which permits an uncharted course for the exercise of the power under Clause (b), or it requires invariably the imposition of restriction on transfer of the exempted land in spite of the clear meaning of Section 20? In *S. Vasudeva* AIR (1994) SCW 344 in substance, it has been held that economic hardship of the owner cannot fall within Clause (b) to permit grant of exemption thereunder to relieve the owner from that hardship by granting exemption and permitting transfer of the exempted land in any case. The question is whether such a construction of the provision is warranted.

15. In Clause (b), the power of the State Government to grant the exemption depends on its satisfaction "that the application of the provisions of this Chapter would cause undue hardship to such person." It is obvious that the undue hardship must be a direct consequence of the application of the provisions in Chapter III which provides for the restriction on the entitlement to hold any vacant land in excess of the ceiling limit prescribed and further prohibits the transfer of the excess vacant land which vests in the State Government in the manner provided in Section 10 and the owner is entitled only to the amount

specified in Section 11 of the Act. It is clear that the "undue hardship" caused to the owner must be the direct consequence of the provisions contained in Chapter III of the Act which disentitles the owner to hold any vacant land in excess of the prescribed ceiling limit and entitles him only to the amount payable u/s 11 of the Act. It is also clear that the expression "undue hardship" indicates that the extent of hardship must be "undue" and not merely and hardship which is bound to result from the application of the provisions of Chapter III of the Act. The direct consequence of the application of the provisions of Chapter III is economic in nature because of the compulsory acquisition of the excess vacant land in lieu of the amount payable u/s 11, apart from deprivation of the benefit of the use of the acquired land. In such a situation, even though mere economic loss could not be intended to fall within the expression "undue hardship", yet the expression cannot be construed to exclude every adverse economic impact even if it be so great on that person as to amount to "undue hardship" to him. This would, however, be a question of fact in each case and unless the impact of economic hardship caused to the owner is so great as to amount to "undue hardship" resulting from the application of the provisions of Chapter III of the Act, it would not fall within the ambit of Clause (b). It appears that the enactment of the proviso in Clause (b) is to emphasise the requirement that there must be strong reasons recorded in writing to justify the satisfaction of the State Government that the hardship caused by the application of the provisions of Chapter III to such person amounts to "undue hardship" so that the grant of exemption is judicious, and in case of a challenge can be judicially tested. Suppose the owner has to repay bonafide outstanding dues under earlier decrees of competent Courts and admittedly he has no other means of satisfying those decrees out of the amount payable u/s 11. It may be possible to grant exemption under Clause (b) on the ground of undue hardship to enable him to satisfy the decrees. This is only illustrative. In cases of exemption granted under Clause (b), the possible misuse of the exemption can be checked by imposition of suitable conditions attached to the exemption and the State Government's power under sub-section (2) to withdraw the exemption in case of breach of any condition is a further safeguard in this behalf.

16. Cases falling under Clause (b) for grant of exemption may be rare, but it cannot be said that the enactment of Clause (b) is an exercise in futility which does not permit grant of exemption in any case of undue hardship with permissions also to transfer. Whether there is undue hardship of the kind envisaged therein, is a question of fact in each case. The entire provision in Clause (b) has to be given full effect and in a case falling within the ambit of Clause (b), the effect of the order of exemption is to exempt such vacant land from the provisions of Chapter III and, therefore, also from the restriction on transfer of such land. To hold that any land exempted under Clause (b) cannot be transferred irrespective of the conditions of the exemption is to rewrite the provision which enacts that, subject to the conditions specified in the order of exemption, such vacant land would be exempt from the provisions of Chapter III,

which means the exemption is also from provisions prohibiting transfer enacted in Chapter III. It is clear that any case which can legitimately fall within Clause (b) would be outside the ambit of Clause (a) and Clause (b) is restricted in its application. Whether a case falls within the ambit of Clause (b) is again a question of fact and if any dispute arises it will have to be tested judicially on the facts of that case. Similarly, the validity of the exercise of power of exemption under Clause (b) would also depend on the facts of each case as it would in respect of Clause (a). But that is different from saying that a case of undue economic hardship to the owner resulting from the application of the provisions of Chapter III can in no case fall under Clause (b) to empower the State Government to grant exemption thereunder subject to appropriate conditions attached to the order of exemption."

12. As is apparent from the interpretation placed on provisions of Section 20 of the Act by the Supreme Court in Thandur's case (supra) the consideration, whether the exercise of the power of exemption is either under Clause (a) or (b) of Section 20, has to be with reference to the specific facts of each case in respect of which exemption is sought. The logical corollary of the above specific holding of the Supreme Court obligates an interpretation that the blanket exemption of the nature incorporated in G.O. Ms No.733, dated 31-10-1988, is beyond the grant of power u/s 20. The relevant conditions precedent set out in Section 20 of the Act in Clause (a) or (b) thereof need to be applied by the State Government in respect of specific cases urging grant of exemption and reasons would have to be recorded in each case where exemption is granted. The satisfaction of the State Government is susceptible to judicial review and any decision of the Government in this behalf is liable to be invalidated if the exemption granted falls foul of the public purpose underlying the grant of power in Section 20. In each case, therefore, the Government needs to balance the plurality of Legislative purposes underlying Section 20 viz., the location of such land, the purpose for which the land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require in a case of exemption urged under subsection (a) or the undue hardship caused to such person falling in a case falling under sub-section (b). In either case the legislative purpose underlying the enactment of the statute viz., to eliminate unduly large urban holdings and concentration of urban wealth and distribution of such excess land acquired by the State to deserving persons who are the targeted beneficiaries of the ameliorative Legislation, shall have to be kept in mind, while considering exemption.

13. In this legislative environment as interpreted by the Supreme Court in Tharidur's case (supra), it must necessarily be held that the blanket exemption unrelated to specific cases urging grant of exemption, is beyond pale of Section 20 of the Act.

14. True it is that the validity of the order of State Government in G.O. Ms. No.733 has not been put in issue in this case by either the petitioner or the

respondent State Government. However, this Court exercising constitutional jurisdiction cannot be constrained to effectuate an order of the Government (G.O. Ms. No.733) which is clearly, in its considered view, beyond the scope of the grant of power under which it is purportedly issued. The position is altogether distinct when the question is one of validity of a statutory provision. Such a question ought to be considered only in the context of specific pleadings urging its validity. An executive order of the State presumptively in purported exercise of statutory provisions, however, cannot be given effect to where such effectuation would clearly subvert the limits ordained in Section 20 of the Act.

15. It is trite that the exercise of power to exempt available under sub-clauses (a) and (b) of Section 21 of the Act must confirm to the purposes underlying grant of the power. This is a necessary concomitant of the principle that an exercise of the statutory power should confirm to the limits of the grant.

16. Section 20 of the Act in terms as well as fortified by the binding pronouncements of the Supreme Court, clearly requires that an application for grant of exemption should be considered by the State having regard to the factual circumstances of each case vis-a-vis the general purposes of the Act. A general exemption which has the clear effect of carving out a mass exception to the specific provisions of the Act in respect of a generality of urban lands is clearly outside the scope of the grant of power u/s 20. It is liable to be characterised as a colourable exercise of power.

17. The phenomenon of Executive disagreement with legislative policies is almost coeval with the origin of a form of Governance based on a tripartite separation of powers. This phenomenon often manifests itself in diverse hues including colourable exercise of executive power presumptively in exercise of statutory grant of power. The power to exempt granted by the Legislature to the Executive and the occasional manner in which such powers are exercised to subvert Legislative policy are too well chronicled. G.O. Ms. No.733 is an exemplification of this phenomenon. It is the constitutional duty of the Court to withhold its validating stamp to such Executive over-reach. This Court is resultantly of the view that the provisions of G.O. Ms.No.733 cannot avail the petitioner to seek relief under the rubric of its presents.

18. There is one more constraint in accepting the broad thrust of the petitioner's argument. If the exemptions vouchsafed by G.O. Ms. No.733 are to be automatic on the conditions therein being satisfied and even obviating the necessity of making an application therefore and if the exemptions are coeval with the Act, then such a land would (if falling within the contours of the provisions of the G.O.), be land within the ceiling limits, thus obviating the necessity for filing a statement (declaration) u/s 6 of the Act. The cumulative effect of any such construction would be to reckon G.O. Ms. No.733 as mending the definition of ceiling limit in Section 2(c) read with Section 4, subverting the regulation regarding holding of excess vacant land in Section 3 as well as subverting the prohibition against transfer of excess vacant land even without the necessity of a

person being required to have his case considered on individual merits by the authorities competent and vouchsafed the regulatory power under the provisions of the Act. As a consequence G.O. Ms No.733 would come to occupy a place immune and superior to the Legislation to which it traces its origin and existence.

19. In my considered view these are some of the considerations which might have animated the Division Bench of this Court (WA No. 1696/98 dated 8-6-99) to clarify the observations of the learned single Judge P.S. Rao Vs. Special Officer and Competent Authority, Urban Land Ceiling, Hyd. and Another, as under:

"The question of retrospectivity of the exemption does not really arise for the reason that the proceedings under Chapter 3 of the Act are still pending may be at the final stage. That is what the learned single Judge has in effect said."

20. In the aforesaid view of the matter this Court is of the considered view that the impugned order suffers from no infirmity warranting invalidation by this Court. In reaching the said conclusion this Court is persuaded by the following reasons:

(1) The transfer in favour of the petitioner effectuated by the agreement of sale dated 27-11-1979, by the compromise decree dated 24-4-1986 in OS No.319 of 1981 and the consequent sale deed executed in his favour on 20-10-1986 are invalid in view of the judgment of this Court dated 19-12-1989 dismissing the petitioner's Writ Petition No.1934 of 1987 and in view of Sections 5 and 42 of the Act.

(2) In view of the judgment of the Supreme Court in Darothi Clare Parreira case (supra) and in P.S. Rao case (supra) an application for exemption could be made only after determination of the excess land and vesting of the same in the State u/s 10. This determination was made by the notification u/s 10(3) of the Act dated 1-5-1981 which was published in the gazette on 5-3-1981. No application for exemption u/s 20 of the Act has been made by the owner after 1-5-1981 or 5-3-1981 as the case may be.

(3) The determination of the excess and vesting thereof in the State being in respect of the original owner, Sri Gopala Krishna Murtliy on an application of the provisions of the Act to his holding, an application u/s 20 for exemption could only be made by Sri Gopala Krishna Murthy and not by the petitioner, in particular in view of the transfer in his favour having been declared invalid by this Court by the judgment dated 19-12-1991 in WPNo.1934/87.

21. For the foregoing reasons there are no merits in this writ petition which is accordingly dismissed. No costs.