

(1992) 10 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1395 of 1989

Birguban Singh and Others

APPELLANT

Vs

Land Acquisition Officer, R.D.O. and Another

RESPONDENT

Date of Decision : 27-10-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 31

Urban Land (Ceiling and Regulation) Act, 1976 — Section 42

Citation : (1993) 2 ALT 173 : (1993) 1 APLJ 235

Hon'ble Judges : M.N. Rao, J;D. Reddeppa Reddy, J

Bench : Division Bench

Advocate : P. Ramchandra Reddy and K.R. Raman, for the Appellant; A.A.G. and Govt. Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the unsuccessful petitioners is from the judgment of a learned single judge, Rama Swamy, J. (as he then was) in W.P.No. 11058/87 dismissing the writ petition challenging the validity of a reference u/s 30 of the Land Acquisition Act (for short L.A.Act). An extent of Ac.29-18 guntas of land covered by S.Nos. 52/2, 56/2, 57 and 58 at Peerzadiguda, Uppal Mandal in Rangareddy District belonging to the petitioners was acquired for construction of a bus stand by the Andhra Pradesh State Road Transport Corporation. The notification u/s 4(1) of the L.A.Act was issued on 29-3-79. The enquiry u/s 5A was completed on 26-6-79: as possession was not taken within three months from Section 4(1) notification, Section 5A enquiry had to be resorted to u/s 17(5)(b). The declaration u/s 6 was published on 21-1-82 but possession was taken on 4-7-79 pursuant to a letter of consent issued by appellants 1 and 2 agreeing for the acquisition provided the compensation is paid as per the market value. The Land Acquisition Officer passed the award on 23-9-86. The Government issued G.O.Ms.No. 2554, Revenue dated 22-9-86 directing the Land Acquisition Officer to deposit the entire amount of compensation into court pending finalisation of the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (for

short the Ceiling Act). In compliance with the aforesaid order of the Government, the Land Acquisition Officer made a reference to Civil Court u/s 30 of the L.A. Act and deposited into court the entire amount to Rs. 13, 18, 717-49 determined as compensation. Challenging the same the owners of the land filed the writ petition from out of which the present appeal arises.

2. The land in question is situated in Hyderabad Urban Agglomeration and is included in the Master plan with the specification that it is intended for a purpose other than agriculture.

3. Before the learned single judge it was contended that as there is no dispute either in regard to the title or entitlement to receive compensation the reference to civil court u/s 30 was illegal. The consequence of possession being taken on 4-7-79 is that the land was vested absolutely in the Government free from all encumbrances u/s 17(1) of the L.A. Act.

4. Both the contentions were negated by the learned single Judge taking the view that although statutorily the land was vested free from all encumbrances in the Government by virtue of Section 16 read with Section 17(5) of the L.A. Act, the entitlement to compensation must be adjudicated only after the determination of the excess land u/s 9 and notification in that regard issued u/s 10(3) of the Ceiling Act. As the provisions of the Ceiling Act prevail over the provisions of the L.A. Act by virtue of Section 42 of the former Act, the State has a right to receive compensation under the Ceiling Act to the extent of the excess vacant land to be determined ultimately by the competent authority under the Ceiling Act.

5. Shri. P. Ramchandra Reddy, learned counsel for the appellants has urged that when once possession was taken either u/s 16 or 17 of the L.A. Act, the land would be vested in the Government free from all encumbrances and so it cannot be said that any land is available for determination of the ceiling limits under the provisions of the Ceiling Act. Whatever power the Government has, is traceable only to a situation obtaining prior to taking over of possession, but not thereafter. Unless the excess land is determined and compensation paid u/s 10(3) of the Ceiling Act, the State Government will have no right either to retain the compensation amount awarded to the appellants or to claim any share out of it as representing the value of the excess land under the Ceiling Act.

6. In opposition to this the learned Government Pleader has contended that by virtue of Section 42 of the Ceiling Act, the appellants have no right to withdraw the compensation awarded by the Land Acquisition Officer until the entire proceedings under the Ceiling Act are completed in which event their claim for compensation at the market value would be confined only to that part of the land falling within the ceiling limit and in regard to the excess, the compensation would be at the rate of Rs. 9/- per square metre and the balance amount should go to the State Government. Thus, there is a clear dispute between the Government and the appellants with regard to the apportionment of the

compensation awarded under the L.A. Act justifying reference to the Civil Court.

7. The Ceiling Act came into force with effect from 17-2-76. In the statement filed u/s 6 of the Ceiling Act the appellants did not include the land in question. The reason according to their learned counsel is that although situate within the urban agglomeration and shown in the master plan, it need not be included in the statement since it is an agricultural land. We do not agree. u/s 3 of the Ceiling Act no one is entitled to hold any vacant land in excess of the Ceiling limit. Vacant land is defined by Clause (q) of Section 2 as land mainly used for purpose of agriculture in an urban agglomeration. u/s 6 every person holding vacant land in excess of the ceiling limit is required to file a statement within the prescribed period before the competent authority. After the statement is filed the competent authority after making enquiry u/s 8 prepares a draft statement containing the particulars specified in Sub-section (2). The draft statement shall be served on the concerned person with a notice calling for objections and after considering the objections the competent authority shall prepare a final statement u/s 9. That statement is published in the Gazette under Sub-section (1) of Section 10 for the information of the general public. After considering the claims of the persons interested in the vacant land the competent authority by Sub-section (2) shall determine the nature and extent of the claims put forward before him and pass appropriate orders. Thereafter the excess vacant land determined shall be published in the Gazette under Sub-section (3) of Section 10. There is little doubt that the land in question is urban land within the meaning of explanation (c) to Clause (o) of Section 2 and thus being vacant land under Clause (q) of Section 2 it ought to have been included in the Section 6 statement.

8. No satisfactory explanation is forthcoming on this aspect from the appellants. Their intention is clearly transparent; they wanted to extricate themselves from the provisions of the Ceiling Act by suppressing the necessary information as to the extent of the vacant land held by them for purpose of determination of the ceiling limit. The notification u/s 4(1) issued on 29-3-79 seeking to acquire the land under the provisions of the L.A. Act more than three years after the Ceiling Act came into force cannot be the foundation of any valid claim as to non-application of the Ceiling Act. The appellants cannot take advantage of the wrong committed by them, namely, suppression of the material facts as to the actual extent of vacant land held by them. Misrepresentation and fraud vitiate all claims. The extent of the excess land over and above the ceiling limit in regard to the appellants must, therefore, be decided in accordance with the provisions of the Ceiling Act and until such a determination is made it could not be said that the appellants had a valid claim to receive the compensation determined under the provisions of the L.A. Act.

9. The L.A. Act and the Ceiling Act came to be enacted during different periods for different purposes. The British Government in the year 1894 brought on the statute book and Land Acquisition Act for acquisition of private land for public

purposes and the compensation on account of such acquisition has to be determined on the basis of the prevailing market value. As the acquisition is compulsory in nature the owner is further compensated by payment of solatium. The Urban Ceiling Act was enacted for giving effect to the directives contained in Clauses (b) and (c) of Article 39- the obligation of the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

10. The Ceiling Act provides for an imposition of ceiling on vacant land in urban agglomerations, for acquisition of land in excess of the ceiling limit and regulation of construction of buildings on such lands. It seeks to prevent concentration of urban land in the hands of a few persons with a view to bringing about an equitable distribution of land in urban agglomeration to subserve the common good. The Act prescribes the ceiling limit and also the compensation payable. So far as Hyderabad Urban Agglomeration is concerned the ceiling limit is 1000 square metres and the compensation payable for the land in excess of the ceiling limit shall not exceed Rs. 10/- per square metre. The total amount of compensation payable under the Ceiling Act whatever be the extent of excess land acquired, shall not exceed Rs. 2 lakhs. In *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, the constitutionality of the Ceiling Act was upheld by the majority. The maximum amount of Rs. 2 lakhs payable as compensation u/s 11 (6) of the Ceiling Act in respect of the excess land vested in the State Government was held to be:

"not illusory and the provision is not confiscatory. Rupees two lakhs is not like a farthing even if the excess land may be a fortune."

The protective umbrella of Article 31C completely insulates the Ceiling Act from any attacks based upon Articles 14 and 19 since the Act was brought on the statute book for the purpose of giving effect to the directives contained in Clauses (b) and (c) of Article 39 of the Constitution. It is, therefore, not open to adjudicate upon the question as to whether because of the low compensation awardable under the Ceiling Act, the legislation would be hit by Article 14 on the ground of arbitrariness nor can we entertain any plea that as two different procedures are contemplated by two different enactments for purpose of acquisition of land, the one that is more beneficial to the citizens should receive judicial assent.

11. We are not inclined to accept the contention that as there is no dispute in regard to the compensation awarded, invocation of Section 30 and 31 of the L.A.Act was not warranted. The "dispute" is that because of the operation of the Ceiling Act which limits the quantum of compensation to the outer limit of two lakhs of rupees the claimants cannot receive the entire compensation awarded under the L.A.Act. What is the extent of land under the Ceiling Act the claimants would be lawfully entitled to retain and what would be the excess land could be

known only after the proceedings under the Ceiling Act were completed. When that stage has not been reached it would not be open to the appellants-claimants to contend that the entire compensation under the L.A.Act should be given to them. The proceedings under the Ceiling Act when finalised would determine the ceiling limit of the appellants and only in respect of that extent of land they would be entitled to the compensation under the provisions of the L.A.Act, and in regard to the rest of the acquired land the compensation is payable only in accordance with the proceedings of the Ceiling Act. This is the "dispute" regarding the apportionment and, therefore, reference to the civil court u/s 30 was made validly.

12. The provisions of the Ceiling Act by virtue of Section 42:

"shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court,. tribunal or other authority."

13. The effect of Section 42 is that any provision in any other law inconsistent with any of the provisions of the Ceiling Act has no effect. The overriding effect given to the Ceiling Act is a total bar to any plea based upon any provision in the L.A.Act for purpose of obtaining compensation in respect of a land to which the Ceiling Act applies at a rate higher than what the later enactment permits. The vesting of the acquired land in the Government under the provisions of the I.A. Act free from all encumbrances will not alter the legal position in regard to the applicability of the Ceiling Act for the purpose of payment of compensation.

14. The rulings relied upon by Shri Ramchandra Reddy, learned counsel for the appellants certainly would have been helpful to them had the Ceiling Act not been brought on the statute book. In the face of the legislative command in Section 42 of the Ceiling Act giving overriding effect to its provisions vis-a-vis any other law for the time being in force, the propositions of law laid down by the Supreme Court, *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, , *The State of Madras Vs. K.N. Shanmugha Mudaliar and Others*, , *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, , *Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce*, that when once possession was taken pursuant to a notification issued u/s 17(1) of the L.A.Act and the land was vested in the Government the State was denuded of the power to cancel the notification u/s 21 of the General Clauses Act, nor could the notification be withdrawn u/s 48 of the L.A.Act have no application. Vesting of possession in the Government under the provisions of L.A.Act cannot exclude the operation of the provisions of the Ceiling Act, which is a self contained code. Further, granting of compensation under the L.A.Act in respect of a land falling within the ambit of the Ceiling Act would entail loss of public revenue and it may even result in misuse of public funds as held by the Supreme Court in *Dattatrya Shankarbhat Ambalgi and Others Vs. State of Maharashtra and Others*, .

15. The Ceiling Act, by Section 19(1) excludes its application in respect of any

vacant land held by the Central Government or any State Government or any local authority or any Corporation and other authorities specified therein. The argument advanced is that after possession was taken by the State Government under the L.A.Act, the Ceiling Act has no application and, therefore, the reference u/s 30 was invalid. We do not agree. The "dispute" is not whether there is any vacant land available after possession was taken over by the Government under the L.A.Act, but the "dispute" relates to the right of the land owners to claim compensation under the Land Acquisition Act when the acquired land is in urban agglomeration. The observations of the Supreme Court in State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others, :

"When the lands in question or bulk of them are likely to be acquired under the ceiling law by paying compensation as provided therein it would not be proper to compel the Government to acquire them under the provisions of the Land Acquisition Act, 1894."

apply fully even to a situation where the proceedings under the LA..Act culminated in the passing of an award after possession was taken. Taking of possession under the L.A.Act cannot exclude the application of the Ceiling Act for the purpose of determining compensation under the later Act. The contention advanced for the appellants that the provisions of the Ceiling Act cannot be invoked when possession was taken under the L.A.Act does not merit acceptance.

16. For these reasons we affirm the view taken by the learned single Judge and dismiss the writ appeal. The enquiry under the Ceiling Act shall be completed as expeditiously as possible as directed by the learned single Judge and the authorities while determining the ceiling limit of the appellants shall also consider the applicability of the G.O.Ms.No. 733, Revenue, dated 31-10-88 and if they are of the view that the CO., applies, the benefits flowing therefrom should be extended to the appellants. No costs.