
(2009) 03 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6485 and 10875 of 2006 and 20731 of 2008

Cat Educational Society

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 23, 6, 8(4)

Citation : (2009) 4 ALD 55 : (2009) 3 ALT 686 : (2009) 2 APLJ 117

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Damodar Mundra, in W.P. No. 6485 of 2006, J.V. Prasad, in W.P. No. 10875 of 2006 and K. Krishna, in W.P. No. 20731 of 2008, for the Appellant; Damodar Mundra, in W.P. No. 10875 of 2006, G.P., for Revenue for Respondents 1 and 2 in W.P. Nos. 6485 of 2006 and 20731 of 2008 and for Respondent No. 1 in W.P. No. 10875 of 2006, J.V. Prasad, for Respondents 3 to 7 in W.P. No. 6485 of 2006, G.P., for Assignment for Respondent No. 2 in W.P. No. 10875/2006 and A. Ramalingeswara Rao, in W.P. 10875/2006, for the Respondent

Judgement

L. Narasimha Reddy, J.—W.P. No. 6485 of 2006 is filed, challenging G.O.Ms. No. 1859 Revenue (UB.II) Department, dated 31.10.2005. W.P. No. 10875 of 2006 is filed challenging a notice, dated 17.05.2006, issued by the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad proposing to conduct survey of the land in Survey No. 23 of Gachibowli, Serilingampally Mandal, Ranga Reddy District. W.P.No.20731 of 2008 is filed assailing a Memo, dated 11.09.2008, through which, the Government required the petitioners to explain as to why G.O.Ms. No. 1859, dated 31.10.2005, be not cancelled.

2. Since the three writ petitions are connected with each other, they are disposed of through a common order. For the sake of convenience, the parties are referred to as arrayed in W.P. No. 6485 of 2006.

3. The land in Survey No. 23 of Gachibowli, Serilingampally Mandal, Ranga Reddy District fairly vast extent, held by one Sri Anil Kumar Kamdar. A woman, by name

Lingamma, also claimed that she purchased a part of that land. Since the land is within the Hyderabad Urban Agglomeration, a declaration u/s 6 of the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the Act") was filed. Fairly large extent thereof was declared as surplus in an order u/s 8(4) of the Act.

4. The petitioner purchased an extent of Ac.1.00 of land in Survey No. 23, through a sale deed, dated 02.05.2001. Sri Anil Kumar Kamdar has also sold part of the land in favour of Sri U. Sivarama Raju and B.Gopal Krishna in the year 1989. They, in turn, sold the same in favour of Dega Vishnuvardhan Reddy and family in the year 2001. Respondents 3 to 7 are said to have purchased part of the said property in the year 2002.

5. The Government of Andhra Pradesh issued G.O.Ms. No. 455 Revenue (U.C.I) Department, dated 29.07.2002, providing for regularization of excess urban land, subject to certain conditions. The petitioner on the one hand, and respondents 3 to 7 on the other, have submitted applications before the authorities concerned seeking regularization of the land said to be in their respective possession. Through G.O.Ms. No. 1859, dated 31.10.2005, the first respondent regularized/ allotted the excess land in favour of respondents 3 to 7.

6. The petitioner raised dispute before the first respondent. It was alleged that the sale in favour of respondents 3 to 7 is subsequent in point of time and there was no justification in regularizing the land in their favour. Some dispute arose as to the location of the land also. It was in this context that the Office of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, the third respondent herein, issued notice, dated 17.05.2006, proposing to conduct survey. Thereafter, the first respondent issued Memo, dated 11.09.2008, proposing to cancel G.O.Ms. No. 1859, dated 31.10.2005, on the ground that it was procured through misrepresentation and by playing fraud.

7. Sri D. Prakash Reddy, the learned Senior Counsel appearing for the petitioner, submits that the impugned G.O. is tainted with the factors, such as misrepresentation, fraud and even otherwise, the regularization, if at all, ought to have been made in favour of the petitioner, since the sale in its favour is earlier in point of time. The learned Senior Counsel further submits that the writ petition cannot be maintained against the show cause notice and no exception can be taken to an attempt to make survey of the land.

8. The learned Government Pleader for Assignments submits that the G.O. was issued after some verification and once it came to light that acts of misrepresentation existed, necessary steps were taken in accordance with law.

9. Sri S.R. Ashok, learned Senior Counsel appearing for respondents 3 to 7, submits that the Act itself was repealed and in that view of the matter, there is no basis for the issuance of show cause notice, much less, to cause survey. He contends that the G.O. does not suffer from any illegality or infirmity.

10. According to the scheme under the Act, any excess land would vest in the

Government on publication of notification u/s 10(3) of the Act. In the instant case, there is no dispute that the land which is claimed by the petitioner on the one hand, and respondents 3 to 7 on the other, was declared as excess. The Act was repealed in the year 1999. However, it did not become effective in the State of Andhra Pradesh, since the Legislature did not pass a resolution to that effect.

11. Obviously, to reduce the rigor being felt by the persons who are in possession of excess urban land, in one form or the other, the Government issued G.O.Ms. No. 455, dated 29.07.2002, providing for regularization, on payment of certain amount, which is stipulated in a schedule. The petitioner on the one hand, and respondents 3 to 7 on the other, approached the authorities concerned seeking benefit under that G.O. One of the conditions under G.O.Ms. No. 455, dated 29.07.2002, is that there must not be any litigation in respect of the land. Strictly speaking, no proceedings were pending as between the parties by the time the G.O. was issued. On being satisfied that the regularization needs to be effected in favour of respondents 3 to 7, the first respondent issued the impugned G.O. However, the petitioner raised objection on several grounds, such as, the point of time of the sale, the nature of claims, etc. On prima facie being satisfied that respondents 3 to 7 misrepresented before the first respondent, the notice, dated 11.09.2008, was issued, proposing to cancel the G.O. Almost, a subsidiary step was taken in the form of conducting survey of the land.

12. Though several contentions, touching on the questions of fact or law are urged, this Court is of the view that the entire dispute has assumed a different dimension in view of the repeal of the Act itself. It hardly needs any mention that the process of regularization, which is referable to Section 23 of the Act, does not, by itself, confer any title nor does it water down, an existing one. The sole basis for issuance of the orders regularizing the possession is ultimately the title pleaded by the parties. Howsoever strong the plea raised by an individual may be, ultimately what becomes relevant is the actual basis for title. The mere fact that the regularization was affected in terms of G.O.Ms. No. 455, dated 29.07.2002, does not, by itself, bring about any change in terms of law, vis-a-vis the title of an individual.

13. The G.O. did nothing more than taking away the rigor of the operation of the provisions of the Act vis-a-vis the land. Now that Act itself is repealed, even that becomes secondary. In the ultimate analysis, the relative strength or weakness of the title of the petitioner on the one hand, and respondents 3 to 7 on the other, over the land in question, has to be decided on the basis of the attendant facts and certainly not on the basis of G.O.Ms. No. 1859, dated 31.10.2005.

14. In that view of the matter, the writ petitions are disposed of directing that

(a) G.O.Ms. No. 1859, dated 31.10.2005, does not, by itself, confer any additional force or strength to the title of respondents 3 to 7;

(b) in view of the fact that the Act itself is repealed, it is no longer permissible or at any rate, necessary for the Government to proceed with the enquiry

contemplated through Memo, dated 11.09.2008;

(c) It shall be open to the parties to resolve their disputes by approaching proper forum including the one for survey of the land and accordingly, the survey proposed through notice, dated 17.05.2006, is held untenable. The parties shall be entitled to seek redressal from the concerned Courts of law.

15. There shall be no order as to costs.