

(2004) 04 AP CK 0040
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5456 of 1994

Dinkar Bhole

APPELLANT

Vs

Commissioner of Land Reforms and Urban Land Ceilings and
Another

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 21, 6
Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 11

Citation : (2004) 3 ALD 805 : (2004) 4 ALT 326

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Keshav Hulsurkar, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is the owner of urban vacant land in S.Nos. 30, 31, 33, 39, 40 and 41 situated at Yousufguda of Golconda Mandal in Hyderabad District. After coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act), petitioner filed a declaration u/s 6 of the Act before second respondent. His mother and brothers also filed separate declarations. It is the case of the petitioner that along with the declarations, his family members also express that they would like to utilise the vacant land for the purpose of construction of dwelling units for accommodation of persons belonging to weaker sections of society in accordance with the scheme to be approved by the authority. To do so, they were required to approach the authority u/s 21 of the Act seeking permission to use the excess vacant land for the purpose of community, but they could not do so. The petitioner alleges that the land in question was subject-matter of litigation between petitioner and protected tenant in O.S. No. 2124 of 1978 on the file of the Court of II Assistant Judge, City Civil Court, Hyderabad. The said suit was for perpetual injunction and in I.A. No. 773 of 1978 said Court granted ad interim injunction against the petitioner. The

petitioner alleges that for that reason he and his brothers could not apply for exemption u/s 21 of the Act.

2. Second respondent passed orders u/s 9 of the Act on 23.6.1982 determining the petitioner to be surplus landholder of about 6,885 Sq.mts. In the said order, rejecting the claim of the petitioner for exemption u/s 21 of the Act, second respondent observed that the time prescribed for applying u/s 21 of the Act expired on 31.3.1979 and therefore petitioner cannot be permitted to take up the scheme. Aggrieved by the said order, petitioner, his two brothers and mother filed writ petitions being W.P. Nos. 6616, 6612, 6633 and 6641 of 1982 before this Court. The writ petitions were disposed of giving liberty to aggrieved persons to file appeals before the appellate authority. Accordingly, they filed the appeals being Appeal Nos. UC1/8774, 8775, 8776 and 8769 of 1982. These appeals were rejected by first respondent by order dated 6.7.1991. The petitioner herein thereafter filed a petition styling it as review petition praying first respondent to set aside the order dated 6.7.1991, which is passed for default. By proceedings dated 19.5.1992 first respondent rejected the said application holding that when the earlier order was passed on merits, no application would be maintainable. Aggrieved by the same, present writ petition is filed.

3. Learned Counsel for the petitioner, Sri Keshav Hulsurkar, does not dispute that first respondent has no power of review under the provisions of the Act. A reading of the order passed by first respondent on 6.7.1991 does not lend any support to the submission that the same is an order for default. Said order was passed on merits and therefore no exception can be taken to the order passed by first respondent on 19.5.1992.

4. Originally when the appeal was heard petitioner raised two contentions, namely, that Special Officer is not duly constituted under the provisions of the Act and that the order of the Special Officer holding that the application u/s 21 of the Act cannot be made beyond 31.3.1979 is incorrect. On the first question first respondent relied on Notification No. 17 published in A.P. Gazette, Part-I (Extraordinary) vide G.O. Ms. No. 254, dated 3.3.1976 and held that the Special Officer and Competent Authority for Hyderabad Urban Agglomeration has been legally and duly constituted. On the second question, the appellate authority rejected the contention of the petitioner that he and others could not file application u/s 21 of the Act in view of pending litigation in Civil Court.

5. In this writ petition, learned Counsel for the petitioner does not seriously challenge the finding of the appellate authority that the Special Officer was duly and legally constituted. He submits that as the civil litigation was pending the petitioner and others could not have filed an application u/s 21 of the Act till the litigation comes to an end and therefore, the application beyond 31.3.1979 is not barred.

6. Learned Government Pleader for Revenue (Assignment) placed reliance on Rule 11 of Urban Land (Ceiling and Regulation) Rules, 1976 (for short, the Rules)

and submits that even if there is litigation, nothing prevented the petitioner to make an application before the due date all along and that petitioner could not have waited for the litigation between him and tenant to come to an end.

7. The only point that arises for consideration is that when the urban land is held by two persons simultaneously in two different capacities whether one of them can file an application seeking exemption u/s 21 of the Act within the time stipulated by the Government?

8. Section 2(i) defines term "to hold". As per this "to hold" with its grammatical variations in relation to vacant land means to own the land or to possess such land as owner or as tenant or as mortgagee or partly in one capacity and partly in another capacity. Section 6(1) of the Act requires every person to hold vacant land in excess of the ceiling limit to file a statement before the competent authority. Therefore, if a particular piece of vacant land is held by, a person as owner and another person as tenant having possession, both of them are required to file separate declarations showing the said piece of vacant land. While determining the ceiling vacant land held by a person u/s 8 of the Act the competent authority has to take into consideration the aspect that the land is held by two persons in two different capacities and pass appropriate orders in accordance with law. In *India Cable Co. Ltd. Vs. The Government of Andhra Pradesh and Others*, a Division Bench of this Court considered this aspect of the matter and it was held:

Even assuming that it is a tenant for the whole land, then as per the provisions of the Act, it also should have filed a declaration..... Therefore, the contention that the Act does not apply to a land on which there is a building and a vacant site in the possession of a tenant, is untenable. While calculating the ceiling limit, the entire land has to be taken into account and then work out the excess. Since there will be excess in the instant case, the tenant has to declare the same if really he was in possession and the same as a tenant. The non-mention of the same in the declaration also goes to show that the petitioner did not claim this land as being included in the tenancy.

9. Section 21 of the Act contains a special provision wherein excess vacant land need not be treated as excess in certain cases. The same reads as under:

21. Excess vacant land not to be treated as excess in certain cases :--(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units, (each such dwelling unit having a plinth area not exceeding eighty square meters) for the accommodation of the weaker sections of the society in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may, after making such

inquiry as it deems fit, declare such land not to be excess land for the purposes of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including conditions as to the time within which such buildings are to be constructed.

(2) Where any person contravenes any of the conditions subject to which the permission has been granted under Sub-section (1), the competent authority shall, by order, and after giving such person an opportunity of being heard declare such land to be excess land and thereupon all the provisions of this Chapter shall apply accordingly.

10. A plain reading of the same would show that where a person holds any vacant land and such person declares that vacant land is to be utilized for construction of dwelling units for accommodation of the weaker sections in accordance with the scheme approved by the authority, then, the competent authority may permit said person to hold such land for the aforesaid purpose subject to conditions. Therefore, whether a person holds the land as owner or as tenant, either of them can make an application u/s 21 of the Act. It does not require the tenant to be joint applicant to the owner of the property. It may be true that suit for injunction was pending against the petitioner and others at the instance of the person, who is alleged to be a protected tenant. It does not, however, prevent the petitioner to make an application u/s 21 of the Act. Indeed, as admitted by the petitioner he himself made such a request in the declaration filed u/s 6 of the Act. Therefore, the submission made is devoid of any merit. Rule 11 of the Rules reads as under:

11. The time within which and form in which, declaration under Sub-section (1) of Section 21 shall be made :--Every declaration under Sub-section (1) of Section 21 by a person holding vacant land shall be made within one thousand one hundred and thirty nine days from the commencement of the Act and shall be in Form V:

Provided that--

(a) where, on or after the commencement of the Act, any person acquires any vacant land in the manner provided in Sub-section (1) of Section 15, and on such acquisition, the extent of the land so acquired together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then, the time within which such person may file the declaration referred to under Sub-section (1) of Section 21 shall be one thousand one hundred and thirty nine days from the date on which he acquires such vacant land in the matter aforesaid;

(b) where any vacant land held by any person and exempted by Clause (iv) of Sub-section (1) of Section 19 or Sub-section (1) of Section 20 ceases to be so exempted and as a consequence thereof the extent of such land together with the extent of the vacant land, if any, already held by him, exceeds in the

aggregate the ceiling limit, then the time within which such person may file the declaration referred to under Sub-section (1) of Section 21 shall be one thousand one hundred and thirty nine days from the date on which such vacant land ceases to be so exempted.

11. Under Rule 11 of the Rules, in case a person wants to hold the land for the purpose of providing housing for weaker sections such a person has to make an application u/s 21 of the Act within one thousand one hundred and thirty nine days. It is not denied before this Court that the said period expired on 31-3-1979 by which date the petitioner admittedly did not file application u/s 21 of the Act. The respondents, therefore, were justified in determining the excess vacant land held by petitioner.

12. The writ petition is devoid of merits and is accordingly dismissed.