

(1994) 11 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 684 of 1994

George Jacob Kuruvilla and Others

APPELLANT

Vs

Special Officer and Competent Authority, Urban Land Ceiling
and Others

RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 26

Citation : (1996) 1 ALT 783

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : C. Hanumantha Rao, for the Appellant; Govt. Pleader for Revenue,
for the Respondent

Final Decision : Allowed

Judgement

T.N.C. Rangarajan, J.—This writ petition seeks a direction to the first respondent to grant approval u/s 26 of the Urban Land (Ceiling and Regulation) Act, 1976 and a further direction to the fourth respondent to register the sale deeds executed by the petitioners.

2. The petitioners are the children of Jacob Kuruvilla, who died in 1965. He had Act. 3-23 guntas of land in Road No. 12, Banjarahills, Hyderabad. Under the Christian Law applicable to them, 1/3 rd of the property devolved on his widow Mary and 2/9th each on his two sons and one daughter. The extent of land given to Mary's share was 4,721 Sq.Mts. and the extent of land given to the children was 3,147.54 Sq.Mts., each. Under the provisions of the Act, which came into force on 17-2-1976, which was promulgated on 17-2-1976 with retrospective effect from 17-2-1975, every person is entitled to retain 1000 Sq. Mts. and surrender the rest to the Government. In respect of such retained land also, the approval of the competent authority was required u/s 20 and only after such approval is given it can be sold. This provision is only to enable the authority concerned to acquire the land in case it is needed for any public purpose, but it

does not in any way affect the right of the owner of the retained land to deal with the property. The petitioners had submitted the returns, and the draft declaration u/s 8(4) was made on 27-3-1980 which was confirmed u/s 9, on 18-4-1990. Mary applied for exemption which was granted on 12-9-1980. The application of the three children for exemption is stated to be still pending. A notification was made u/s 10(3) in respect of the excess which had to be surrendered by the three children. The petitioners made a claim on 11-5-1992 in respect of the area that was to be retained by them along with a plan,, which Is at page 195 of the I volume of the file. A survey had been conducted on 17-6-1992 delineating that area also. On 6-4-1993, they applied for permission to sell the land. On 21-4-1993, by the impugned order, the respondent refused the permission. He stated that after excluding the surplus area of 6,442 Sq. Mts., the land available on the ground is only 490-38 Sq. Mts., and therefore the petitioners were advised to restrict their alienation only to that extent. The petitioners then appealed to the appellate authority, who dismissed the appeal by stating that the notification u/s 10(3) had been published and as long as that notification stands, the area to be surrendered by the appellant had vested in the Government and the area said to be transferred can only be the balance. The petitioners have, therefore, filed this writ petition contending that under the provisions of the Act, they are entitled to retain 1000 Sq. Mts., and the authority cannot refuse permission to alienate the land which they are entitled to hold.

3. In the counter-affidavit filed by the respondents, it was claimed that the surplus land had vested in the Government and since the petitioners had laid internal roads and some of the land has also been encroached, such land has to be taken as encumbered land which cannot be chosen by the Government as surplus land and it must be chosen by the petitioners within their retainable area. It is stated that since the vacant land available on the ground was less than that declared as excess, the land available for the petitioners should be restricted to 490 38 Sq. Mts.

4. In the course of the preliminary hearing, I directed the respondents to file a statement showing how the excess land is arrived at. But, in the additional counter affidavit all that is stated is that out of the total 9,442 Sq. Mts. retaining 3000 Sq Mts., an extent of 6,442 Sq. Mts., had to be surrendered and the land available on the ground is only 6,993 Sq. Mts., and the extent which can be retained by the petitioners had to be proportionally reduced.

5. Learned counsel for the petitioners submitted that the respondent had initially accepted the plan given along with the application on 11-5-1992 showing the land to be retained by the petitioners, who could not go back on it. It was also submitted that it was the petitioners who have to choose the exact portion of the land that was to be retained, and reliance was placed on the decisions in State of A.P. v. L.J. Johnson AIR 1988 SC 1303. Beni Prasad Vs. The District Judge, Allahabad and Others, , and Kashi Ram Vs. District Judge, Dehradun and another, . It was also argued that the portion of the land where road had been

laid or buildings have been constructed cannot be treated as urban vacant land for the purposes of the Act and if this is to be also included by the Government as urban land then they must also be bound to take it as a part of the excess land. On the other hand, the learned Government Pleader contended that the land on which construction commenced after the appointed date is covered by the expression "any other land" as held by the Supreme Court in *Smt. Meera Gupta Vs. State of West Bengal and others*, , and since it appeared that the encroachment and other utilisation of the land was subsequent to the declaration, the Government cannot be compelled to take that land as excess land. However, it transpired on verification that there was no construction by the petitioner after the relevant date. The learned Government Pleader supported the orders of the authorities concerned contending that the land surrendered must be taken to have vested and permission u/s 26 can be confined only to the balance of the land.

6. I have no doubt in my mind that this approach of the authorities as supported by the learned Government Pleader is contrary to the provisions of the Act. The Act prescribes that every owner shall be entitled to have 1000 Sq.Mts., of land and it is only the excess after assuring the owner of that 1000 Sq.Mts., that can be surrendered to the Government. The particular land to be specified in the total area is also within the choice of the owner as held in *Johnson's case* (1 supra) and such option can be exercised at any time and not necessarily in the initial declaration. The Allahabad High Court has also held in *Devi Prasad's case* (2 supra) that even a transferee for consideration is entitled to choose the land that should be retained by the owner as a matter of equity, and in *Kanshiram's case* that such choice can be made at the appellate stage also. In the present case, no doubt there was no delineation at the time of the declaration, but on 11-5-1992 the claim was made with regard to the land to be retained along with the plan. The survey was made on 17-6-1992 and I find from the file that on 13-4-1993, the plan given by the petitioner was accepted, which is referred to at page 223 of the II Volume. There seems to have been some misunderstanding with regard to the survey numbers and plot numbers. The entire land of 14,104 Sq. Mts. was part of two plot numbers but had been erroneously shown as part of plot number 55 only and it was later rectified to refer to both plot numbers 55 and 56. Mary Kuruvilla, who had 4,721 Sq. Mts, was able to sell away the entire area as she had been granted exemption. That seems to have been assumed to refer to plot No. 55 so that it is taken for granted that only plot No. 56 is available whereas the petitioners had the balance of 9,441 Sq. Mts. In this area it is stated that there is a public road which had been constructed and part of that area has also been encroached by third parties. The petitioners are entitled to 1000 Sq. Mts., each i.e., 3000 Sq. Mts., out of this total area of 9,441 Sq. Mts. The authorities seem to think that since 6,441 Sq. Mts., should be surrendered they could exclude the portion covered by the road and by the encroachment in calculating the excess of 6,441 Sq. Mts., that is to be surrendered thereby restricting the amount of land that could be retained by the petitioners. This

approach is clearly untenable and contrary to the provisions of the Act, which required the transfer of only the excess within the ceiling indicating that the land within the ceiling is assured to the owner. It is now also clear that neither the road nor any other encroachment were made by the petitioners after the notified date. Even if as claimed by the Government Pleader, these lands are to be taken as vacant lands, then the petitioner has the right to choose whether that land should be surrendered as part of the excess land. Section 10(3) which has been referred to by the appellate authority merely notifies the extent of the land which is liable to be treated as excess. In the present case, such a notification did not specify the exact location of the land but only stated that 6,441 Sq. Mts will be vested in the Government free of all encumbrances.

7. There is another aspect of the matter. That is, u/s 26 a person holding vacant land within the ceiling limit is required to give a notice before selling the land. This is only to give a pre-emption to State Government to acquire that land under the Land Acquisition Act and if that option is not exercised within a period of sixty days it is presumed that the State Government has no objection to the sale of the land. Therefore, the only action that can be taken on receipt of the notice is the initiation of the proceedings for acquiring the land and the State Government is bound to pay the market price for that land sought to be acquired. The section does not provide for any other objection to the proposed sale of the land within the prescribed ceiling. The authorities below have, therefore, misdirected themselves in applying the provisions of Section 26.

8. For both these reasons, therefore, I am convinced that the refusal to grant the approval is untenable. Both the orders are quashed, and since sixty days have elapsed after the issue of the notice and the Government has not given any intention to acquire the land, the petitioners are free to sell the land of 1000 Sq. Mts., each, which is within the ceiling prescribed. In view of this conclusion, there can be no valid objection under the provisions of the Urban Land (Ceiling and Regulation) Act for the registration of the sale relating to the retained land. Hence, let a mandamus issue to the fourth respondent to register the sale deeds, if the registration is admissible under all other applicable rules. Writ petition is allowed. No costs.