

(2009) 03 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16803 of 2008

Heritage Estate and Holdings and Another

APPELLANT

Vs

Special Officer and Competent Authority, Urban Land Ceiling
and Another

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(5), 10(6), 34, 6

Citation : (2009) 4 ALD 684 : (2009) 5 ALT 371

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; G.P. for Assignments for
Respondent No. 1 and G.P. for Revenue, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The 1st petitioner is a Private Limited Company. It purchased Ac.5.08 guntas of land in Sy. Nos. 574 and 575 of Alwal Village, Malkajgiri Mandal, Ranga Reddy District, through two sale deeds, dated 29-07-2006. The land was originally held by M/s Ghulam Ahmed and 10 others. A declaration u/s 6(1) of the Urban Land (Ceiling and Regulation) Act (for short "the Act") was filed by Ghulam Ahmed and others, in respect of various extents of land, held by them, including the one, mentioned above. After processing the declaration, the Special Officer and Competent Authority, Urban Land Ceiling, the 1st respondent, passed an order dated 30-01-1996, holding that the declarants do not have any land in excess of ceiling limits, under the Act.

2. Seven years thereafter, the 1st petitioner approached the Government, the 2nd respondent, stating that the land declared by Ghulam Ahmed and others was sold in favour of M/s. Nava Bharath Co-operative Housing Society Limited (for short "the Society"), for construction of houses, and sought permission of the 1st respondent to re-open the proceedings u/s 34 of the Act. Notices were issued to the Society, stating that the lands were covered by the new Master Plan, with

effect from 29-09-1980, and they were required to explain as to why the proceedings be not re-opened. Explanation was submitted, stating inter alia that the lands were being put to agricultural use only, and the provisions of the Act do not apply. Not being satisfied with that, the 2nd respondent issued G.O.Ms. No. 580, dated 04-05-2005, setting aside the order dated 30-01-1996, and permitting the 1st respondent to reopen the matter.

3. The 1st respondent passed fresh order u/s 8(4) of the Act, on 23-12-2005, holding that the entire land, in different survey numbers, held by Ghulam Ahmed and others, to an extent of 1,75,108.70 sq. metres; is in excess of ceiling limits. The land in Sy. Nos. 574 and 575 was also included therein. The petitioners feel aggrieved by the G.O., as well as the consequential order.

4. The 2nd respondent filed counter-affidavit. It is stated that the lands were originally covered by the provisions of the A.P. (Telangana Area) Abolition of Inams Act, and though in the year 1976 they were not part of the master plan, the subsequent master plan, which came into effect from 29-09-1980, applied to the lands. It is stated that the said fact was not taken into account, when the 1st respondent passed orders in the year 1996, holding that the declarants do not have any excess land. The counter-affidavit is silent as on the date of taking possession of the land.

5. Sri Section Niranjan Reddy, learned Counsel for the petitioners submits that the declarants sold different extents of land to various individuals, after the orders dated 30-01-1996 were passed by the 1st respondent, u/s 8(4) of the Act, and the proceedings initiated by the respondents to reopen the matter, without issuing notice to the transferees or the persons holding the land, as on the date of re-opening the proceedings; are illegal and unconstitutional. He contends that the powers u/s 34 of the Act are purely suo motu in nature, and the 1st respondent does not have the jurisdiction to seek reopening of his own proceedings. He submits that the petitioners were not issued any notices, and the possession of the land was not taken at any point of time, much less before the Act was repealed. Certain other contentions are also urged.

6. Learned Government Pleader for Assignments, on the other hand, submits that the 2nd respondent exercised power u/s 34 of the Act, since it was noticed that the impact of the master plan published on 27-03-2008 has not been taken into account earlier. He contends that the transfer in favour of the petitioners is not valid in law, and that possession thereof was taken, after it was held to be in excess of ceiling limits.

7. Fairly large extent of land was declared by Ghulam Ahmed and 19 others, u/s 6 of the Act. The 1st respondent has undertaken extensive discussion of the matter in his order dated 30-01-1996, passed u/s 8(4) of the Act. The concluding paragraph of the order reads as under:

As per judgment of the Supreme Court of India, in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], , all the lands which are covered by

agriculture during crucial period at the time of commencement of the Act, for which Master Plan was not existing at that time. Therefore applicability (on application of) judgment of Honourable Supreme Court of India referred to above, all the above lands are treated as agriculture lands. Therefore, it is held that the declarant did not hold any vacant land, and the lands are exempted from the provisions of Chapter-III of the Act.

8. After this order, the declarants sold the land in favour of various individuals and companies. The purchasers in turn, have transferred the same in favour of others. After two or three series of transactions, part of the land in Sy. Nos. 574 and 575 accrued to the petitioners, through transfer from certain individuals.

9. It is no doubt true that Section 34 of the Act confers suo motu powers of review upon the 2nd respondent over the orders passed under the Act against which, no appeals have been preferred. This is not a case where the 2nd respondent wanted to exercise suo motu powers. On the other hand, the 1st respondent himself wanted the proceedings to be re-opened. This is evident from para 2 of the G.O.Ms. No. 580, dated 04-05-2005. It reads as under:

Whereas, in the letter 2nd read above, the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad has reported that M/s. Nava Bharath Co-operative Housing Society has entered upon the above lands for the purpose of construction of houses, land use was changed from agricultural to non-agricultural purpose (for house plots) and therefore requested to permit him u/s 34 to re-open the matter and take action under the provisions of Urban Land Ceiling Act.

10. Acting on this, the Government issued G.O.Ms. No. 580, dated 04-05-2005 setting aside the earlier order dated 30-01-1996, passed by the 1st respondent. After the matter was re-opened, the 2nd (sic. 1st) respondent passed fresh order dated 23-12-2005 u/s 8(4) of the Act.

11. Three questions arise for consideration in this writ petition, viz.,

(a) whether the exercise undertaken by the respondents 1 and 2 culminating in G.O.Ms. No. 580, dated 04-05-2005, fits into Section 34 of the Act,

(b) whether the impugned proceedings are binding on the petitioners, and

(c) whether it is competent for the respondents to proceed against the land in view of the repeal of the Act.

12. Several enactments provide for adjudication of rights by courts or quasi-judicial authorities. Aggrieved parties are conferred with the right to seek redressal before the prescribed forum. Wherever interests of the State are involved, suo motu powers are also conferred upon superior authority in the hierarchy. By their very nature, suo motu powers are extraordinary, and are required to be exercised with utmost circumspection, care and caution. Such powers cannot be exercised indiscriminately, to unsettle the rights, which have

accrued to parties. Further, with the passage of time, the rights pass on to various individuals, either by operation of law or through human conduct. Whatever may have been the right of the Government to initiate suo motu proceedings against the party, who instituted or faced the steps under an enactment, the rights of the transferees from such person, stand on a different footing. The reason is that they have purchased the property or have acquired rights, only after the determination under the enactment has taken place. Reversal of the earlier adjudication or determination, in exercise of suo motu powers, in matters of this nature, would lead to relatively severe consequences.

13. Secondly, the very expression "suo motu" discloses that the necessity to review the proceedings is felt by the authority, which is conferred with such powers. If the powers are exercised at the instance of third parties, not to speak of an authority, subordinate to the one, that is conferred with powers, they cease to be suo motu. Hardly one comes across an instance where the authority, who passes the order; moots the matter before a superior authority, conferred with the suo motu powers, to set aside its own (original authority's) orders. This would be possible only when an over-ambitious or excessively smart person holds a different view, than the one held by his predecessor, in a particular proceedings. Such a course is totally impermissible in Administrative Law.

14. For all practical purposes, the authority, who passes an order, in exercise of power conferred upon him, becomes *functus officio*, vis-a-vis the matter, and his successor would stand on the same footing. If any parties to the proceedings feel aggrieved by the orders passed by him, they have to avail the remedies provided for under the concerned Laws. On the other hand, if there exists a provision for suo motu revision, it is for the Government, and only the Government, to examine the matter, and decide whether or not, to exercise suo motu powers, that too in the prescribed manner.

15. In the instant case, it is the 1st respondent, who approached the 2nd respondent with a request to exercise suo motu powers, to set aside an order passed by his predecessor. The 2nd respondent did nothing more than take the material supplied by the 1st respondent and decided to exercise suo motu powers. The whole episode is in a bad taste. It reflects exhibition of over-ambition of excessive smartness on the part of the incumbent who held the office of the 1st respondent, at the relevant point of time, and the complete surrender of the exclusive powers of suo motu revision, by the 2nd respondent. The Act is expropriatory in nature, and every step under it, which had the effect of depriving a citizen of his right to property, is required to be strictly in accordance with law. Any deviation from the prescribed procedure cannot be countenanced. Therefore, the first question is answered in favour of the petitioners.

16. Assuming that the G.O.Ms. No. 580 and the consequential order dated 23-12-2005, passed by the 1st respondent, are valid and legal, it is evident that the petitioners or their vendors are not put on notice. The extent covered by the order dated 30-01-1996 was fairly large, and pieces of the same was transferred

in favour of considerable number of persons and agencies. The respondents did not choose to verify the persons who are in actual possession and enjoyment of the land. Even where a land within urban agglomeration is covered by a master plan, published subsequent to the Act came into force, the state of affairs that exist as on the date on which, the matter is examined afresh are to be taken into account. Though not, the petitioners, their vendors became owners, by the time the impugned G.O. and consequential proceedings are issued. Except one M/s. Nava Bharat Housing Society Limited, no one appears to have been put on notice. To that extent, the impugned proceedings cannot affect the rights of the petitioners.

17. The last question, in fact, assumes greater significance. The Act was repealed with effect from 27-03-2008, so far as the State of Andhra Pradesh is concerned. The repeal Act saves those lands, which are vested in the Government u/s 10 of the Act and possession of which was taken. The petitioners asserted that at no point of time they have been served with notices under different sub-sections of Section 10. Their specific assertion that possession of the land was not taken by the Government, remains unanswered. The only averment in the counter-affidavit in this regard reads as under:

The notice issued u/s 10(5) of the Act issued on 25-02-2006 asking for declarants to surrender the land within (30) days. The declarants failed to surrender the land within the stipulated period. Hence, u/s 10(6) of the Act issued on 28-03-2006 authorizing the E.O. of this office to take over the possession of the surplus land on 20-05-2006 and hand it over to the MRO concerned.

Nowhere it is mentioned that E.O., has taken possession, much less handed over the same to the Mandal Revenue Officer.

18. For the foregoing reasons, the writ petition is allowed, and the impugned G.O. issued by the 2nd respondent and the consequential order dated 23-12-2005, passed by the 1st respondent, in so far as the land in Sy. Nos. 574 and 575, admeasuring Ac.5.08 guntas, purchased by the petitioners, are set aside.

19. There shall be no order as to costs.