

(2010) 04 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26688 of 2007

K. Satyananda Patnaik and Others

APPELLANT

Vs

Hyderabad Urban Development Authority and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 49

Citation : (2010) 5 ALT 453

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V. Durga Prasad, K. Durga Prasad, Posani Venkateswarlu, A. Sudershana Reddy, N. Naveen Kumar, P. Prabhakara Rao, Srinivas Velagapudi, Palivela Satyaraja Babu, P. Pandu Ranga Reddy, V.V. Anil Kumar, Deepak Bhattacharjee, G. Kalyan Chakravarthy, E. Ajay Reddy, B. Mahender Reddy, K.V.L. Narasimha Rao, B. Venkata Rama Rao, Peri Prabhakar, S. Lakshma Reddy, Maamu Vani, V.V.N. Narayana Rao, M. Papa Reddy, Harsha Reddy, K. Ranga Rao, Vedula Venkataramana, P.R. Prasad, K. Joseph, B. Adinarayana Rao, L. Prabhakar Reddy, G.L. Nageswara Rao, N. Prashanth, S. Niranjan Reddy, M.S. Ramachandra Rao, Ch. Ravinder and O. Manohar Reddy, for the Appellant; M. Surender Rao, G.P. for Revenue, G.P. for Municipal Administration, M. Dhananjay Reddy, Kalpana Ekbote, Suo Motu, R. Ramachandra Reddy, R. Radha Krishna Reddy, C.S. Kishore and K. Aruna, for the Respondent

Judgement

L. Narasimha Reddy, J.—In this batch of writ petitions, common questions arise for consideration. Hence, they are disposed of, through a common judgment.

2. Petitioners are, either corporate agencies, undertaking development of townships and residential areas in various places of the State, or individual owners of, plot of land. In the recent past, there was \\phenomenal increase in conversion of agricultural, or barren lands into " residential colonies, or house sites. In case the development takes place within the area i>f operation of an Urban Development Authority, constituted under the A.P. Urban Areas (Development) Act, 1975 (for short "the 1975 Act"), approval of lay-out, and in certain cases, permission for construction must be obtained from such authority

(for short "the UDA"). On the other hand, if the land is not within any UDA, but is situated within the area of operation of any Local Authorities, such as, Municipal Corporation, Municipality, or Grampanchayat, the layout must be obtained from them, which, in turn, would be subject to approval by the Director of Town Planning. Permission for construction must be obtained from the local authority itself.

3. The A.P. Non-agricultural Land Assessment Tax Act was in force, till recently. It provided for levy of non-agricultural land tax, whenever any agricultural land is put to non-agricultural use. The levy was irrespective of the nature of use, to which, the land is put, or the nature of the local authority, within whose jurisdiction it is situated.

4. The A.P. State Legislature enacted the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 (for short "the 2006 Act"), which prohibited conversion of agricultural lands into non-agricultural purposes, except with specific permission by the authority under the Act. The amount of fee to be paid for this purpose is also stipulated.

5. The petitioners submitted applications for grant of lay-out to the concerned authorities. Tentative lay-outs were sanctioned, by imposing certain conditions. One such condition is that, they must obtain clearance under the 2006 Act. The petitioners contend that such insistence is without any legal or factual basis.

6. According to the petitioners, the entire matter is covered and governed by the provisions of the 1975 Act, or the A.P. Municipalities Act, and A.P. Panchayat Raj Act, under which, the other local authorities function, and that the provisions of the 2006 Act do not apply to such cases. It is also submitted that the 2006 Act is general in its purport, whereas the 1975 Act and other related enactments are specific in nature, and that the latter will prevail over the former. Another contention of the petitioners is that even if they are under obligation to obtain clearance, or permission under the 2006 Act, it is for the Authority under that Act, to take necessary steps, and the UDA, or the local authorities cannot take upon themselves, the task of enforcing the provisions of the 2006 Act.

7. The Government filed a detailed counter-affidavit, narrating the circumstances, that led to the enactment of 2006 Act. It is stated that a land, which is earmarked for agricultural use, cannot be put to any other use, except by obtaining permission under the 2006 Act. According to them, the object underlying the 1975 Act, on the one hand, and the 2006 Act, on the other hand, are separate and different and hardly there is any overlapping as to their respective areas of operation. They contend that the 1975 Act is intended for a systematic and regulated development of urban areas, whereas the 2006 Act is aimed at preventing the agricultural lands, whether in rural or urban areas from being put to non-agricultural use, except with specific permission. The UDAs have also filed a counter-affidavit, almost on the same lines.

8. The arguments on behalf of the petitioners were advanced by Sri V. Venkata

Ramana, learned Senior Counsel, Sri M.V. Durga Prasad, Sri B. Adinarayana Rao, Sri S. Niranjan Reddy, and Sri O. Manohar Reddy, learned Counsel. Broadly stated their contentions are that, the 2006 Act does not apply to the lands unless they are put to agricultural use, and that there is no presumption that every piece of land is put to agricultural use. They submit that the use to which a land can be put, is squarely covered by the 1975 Act, and the master plan published thereunder defines and specifies such uses. It is also submitted that once the land use is stipulated, the authority under that enactment cannot insist on any further permissions, that too, under different enactment. It is also submitted that the 1975 Act is a complete Code, for sanction of lay-outs and to specify the land use, and there is absolutely no basis for UDAs or the local authorities to insist that, clearance under 2006 Act must be obtained, as a condition precedent for sanction of the lay-out, or for grant of permission to construct.

9. Learned Government Pleader for Revenue and learned Standing Counsel for the Urban Development Authority, on the other hand, submit that irrespective of the use to which the owner proposes to put his land and irrespective of the location of the land, the provisions of the 2006 Act get attracted, once agricultural land is put to a different use. They contend that the land use, which is regulated under the 1975 Act is totally different from the one, dealt with under the 2006 Act.

10. Learned Counsel appearing on both sides have relied upon precedents, in support of their respective contentions.

11. The petitioners intended to develop the lands, which are within the area of operation of the UDAs constituted under the 1975 Act, or the local authorities. The applications submitted by them were processed to a substantial extent. However, the concerned authorities insisted that the clearance/permission under the 2006 Act must be obtained, in respect of the lands. The petitioners contend that the action of the authorities amounts to enforcement of the provisions of the 2006 Act, under which they do not figure anywhere.

12. The two enactments referred to above, no doubt, control the use, to which a piece of land can be put. However, their respective purposes and objectives are totally different from each other. The 1975 Act is intended exclusively for the systematic development of urban areas. It has no application for the areas outside the defined jurisdiction of the particular UDA. One of the important steps under that Act is to prepare and publish master plan for the urban development area. The master plan in turn, would stipulate the use to which the respective areas shown in it can be put. These include commercial, residential, industrial, recreational uses, etc., and each of the areas are called zones. The types of construction that can be made in the respective zones are also enlisted. Once an area is shown in a particular zone in the master plan, it cannot be put to a different use (Section 15). For example, in the residential zone, establishment of an industry cannot be permitted. The power to convert land use in a particular zone to a different one, is vested in the Government. Section 49 of the 1975 Act

contains a provision, which directs that, if agriculture is being carried on any land, within the area covered by master plan, it can be continued without any inhibition, irrespective of the zone in which it is shown.

13. The 2006 Act, on the other hand, is intended to regulate the conversion of an agricultural land for non-agricultural purposes. That Act operates, vis-a-vis the lands situated in rural as well as urban areas. It is a different matter that the Act in its operation does not reflect the intended purposes. A perusal of the same discloses that, if a stipulated amount is paid, the concerned authority has no option, whatever, except to accord permission. In a way, the Act turned out to be a money generating device, than the one, to prevent or curb indiscriminate conversion of agricultural lands to other uses. Once the authority under that Act accords permission to convert an agricultural land, the matter ends there, and it would not at all be concerned, whether the land is put to industrial, residential, commercial, or any such other use.

14. One of the arguments advanced on behalf of the petitioners is that the 1975 Act is special in nature and the 2006 Act is general in its purport. On this basis it is pleaded that in the event of there being any conflict, the former will prevail upon the latter. Another facet of this contention is the purport of the non-obstante clauses contained in the said enactments. Reliance is placed upon the judgments of the Supreme Court in *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, The Supreme Court held that, where the same Legislation has enacted two Acts on the same subject, the one, which is special in nature would prevail upon the enactment, which is general in nature; in the event of there being any conflict. It was further held that, if both the enactments are special in nature, the one, which is later in point of time, would prevail upon the other. The principle that a special enactment would prevail over the general one was reiterated by the Supreme Court in *Suresh Nanda Vs. C.B.I.*,

15. The scope of the Recovery of Debts Due to Banks and Financial Institutions Act, on the one hand, and the Companies Act, on the other hand, in the context of the jurisdiction of the Tribunal constituted under the former was considered by the Supreme Court in *Allahabad Bank v. Canara Bank and Anr.* AIR 2000 SC 1535 : 2000 (2) ALT 101 (DNSC). It was held that the former Act being special in nature, would prevail upon the latter. Similarly, the scope of the Sick Industrial Companies (Special Provisions) Act, 1985 and the Recovery of Debts Due to Banks and Financial Institutions Act, was examined in *KSL and Industries Ltd. Vs. Arihant Threads Ltd. and Others*, and almost the same view was taken.

16. There is absolutely no quarrel with the principles enunciated and reiterated in the judgments, referred to above. The occasion to apply them would arise, if only there is any conflict between 1975 Act, on the one hand, and the 2006 Act, on the other hand. A close analysis of the objects underlying the said enactments would reveal that both of them operate in totally different areas altogether. As mentioned in the earlier paragraphs, while the former deals with the promotion and development of urban areas, the latter places restrictions on the use of the

land, irrespective of its location.

17. It is lastly urged by the petitioners that insistence on clearance under the 2006 Act, even where a land ceased to be agricultural, prior to the enactment of that legislation cannot be sustained in law. In this regard, it needs to be observed that there is no indication to the effect that the enactment is retrospective in operation. It is only from the date on which the Act came into force, that no piece of land which was earmarked for agriculture, and is shown as such in the revenue records, can be put to non-agricultural use. In case the land was already put to residential or other use, much before the said Act came into force, a permission under it cannot be insisted. This, however, is a matter, which needs to be verified by the concerned authority. If the petitioners are able to prove that the land has been put to non-agricultural use much before the Act came into force, they cannot be required to obtain the permission under that Act.

18. For the foregoing reasons, the writ petitions are disposed of, holding that,

(a) it shall be competent for the Urban Development Authorities, or the Local Authorities, as the case may be, to insist on submission of clearance/permission under the 2006 Act as a condition precedent for releasing of layouts; and

(b) the land has been put to non-agricultural use before the 2006 Act came into force, such clearance/permission shall not be insisted.