(1996) 06 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 147 of 1996

Khemdas Mutt, rep. by Mahant Sri Bansidas, (died) per his L.R., Mahant Purushothamdas	APPELLANT
Vs	
Government of A.P., Revenue (UC.II) Department and Others	RESPONDENT

Date of Decision : 17-06-1996

Acts Referred:
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : (1996) 2 ALT 1036

Hon'ble Judges : P.S. Mishra, C.J;Syed Saadatulla Hussaini, J

Bench : Division Bench

Advocate : K. Subrahmanya Reddy, for Vijayanandan Reddy, for the Appellant; Advocate-General for Respondent Nos. 1 and 2 and G.P. for Endowments, for the Respondent

Judgement

Syed Saadatulla Hussaini, J.—Heard the Senior Counsel Sri Subramanya Reddy for the Appellant-petitioner and the learned Advocate General.

2. The Appellant-petitioner, Khemdas Mutt, Chudi Bazar, Hyderabad represented by Mahant Purushottamdas challenges the validity of the Memo No. 52867/ UC.II(2) /91-11 dated 27-12-1993 of the first respondent rejecting the request of the Appellant-petitioner for grant of exemption under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called as ''the Act'') for the sale of its land measuring 14,775.00 square metres in premises No. 14-7-579-58 of Chudi Bazar, Hyderabad.

3. The Appellant-petitioner has sought exemption for sale of the land on the ground that there is threat to the possession of the land by anti-social elements and land grabbers and that the sale is beneficial to the Religious institution and it will promote its objects. The Commissioner of Endowments, on the representation of the Appellant-petitioner, sought for exemption for alienation of the land u/s 19 read with Section 20 of the Act.

4. The learned single Judge considering the scope of Section 19(1)(iv) of the Act held that if the Charitable or Regligious Trust does not require the land, or seek to change the use of the land for the purposes other than Charitable or Religious, or when the land is not used for Charitable or Religious purposes by such Trust, then the benefit of exemption conferred under Clause (iv) of Section 19(1) of the Act ceases to apply. The learned Judge also held following the Judgment of the Apex Court in S. Vasudeva Vs. State of Karnataka and others,), the Government has rightly rejected the application of the Appellant-petitioner u/s 20(1)(b) of the Act to grant exemption for the sale of the excess land as the Government has no power.

5. The Judgment in S. Vasudeva v. State of Karanataka was rendered by two Judges of the Apex Court which considered the scope of Section 20(1)(b) of the Act and held that the vacant land in excess of ceiling limit, exemption from the Provision of Chapter III cannot be granted for the purpose of transferring the land for whatever reasons including undue hardship to the holder. In para 21 of the said Judgment it is held as under:-

"For the reasons given by us, we are of the view that the provisions of Section 20(1)(b) of the Act do not permit the State Government to give exemption to the vacant land in excess of the ceiling limit for the purpose of transferring the same."

6. The Senior Counsel Sri Subramanya Reddy now submits before us that the Apex Court by a Division Bench consisting of three Judges has reconsidered the view taken in S. Vasudeva v. State of Karnataka in T.R. Thandur Vs. Union of India (UOI) and Others, and after reconsideration of S. Vasudeva case and after analysing the provisions of the Act. Their Lordships have held that the conclusions reached in S. Vasudeva case which relates to Section 20(1)(b) of the Act was not based on correct construction of Section 20 of the Act. In the light of the said Judgment, he submits that the Appellant-Mutt would be entitled for the exemption as the larger Bench of the Apex Court has taken a contra view.

7. The larger Bench of the Apex Court after analysing the scope of Section 20 of the Act, in para 18 of the said Judgment their Lordships have held that the conclusions reached in S. Vasudeva case which directly relates to Section 20(1)(b) of the Act was not based on correct construction of Section 20 of the Act. The provisions of Section 20 of the Act and the effect of exemption granted under Clause (a) or Clause (b) of Sub-section (1) of Section 20, including the incidence of transfer, have to be understood in the manner indicated by us herein. For the reasons given by us we regret our inability to concur with the contrary conclusions reached by the two learned Judges in S. Vasudeva. The impugned order to the extent it is contrary to the view taken by us in this decision cannot be upheld.

8. The learned Advocate General contended that in the present case, the Appellant-Mutt which is a Religious Institution and it would not be possible to say

that if exemption is rejected it would cause undue hardship to the Institution.

9. We are not impressed with the submission of the learned Advocate General and in our considered opinion we see no force in his contention when the plea of the Appellant-Mutt is that it is facing difficulty for maintaining its possession from illegal encroachments by anti-social elements and land grabbers and that the sale of the land is beneficial and in the interest of the Religious Institution. The application of the Appellant-Mutt was rejected solely on the ground that the Government has no power to grant exemption for the sale of the land placing reliance on S. Vasudeva case.

10. Now, in view of the contra view taken by the recent larger Bench of the Apex Court holding that the Government has power to grant exemption for the sale of the vacant land u/s 20(1)(b) of the Act, we set aside the impugned Memo No. 52867/UC.II(2)/21-11, dated 27-12-1993 issued by the Government. Accordingly, the first respondent is directed to consider the application of the Appellant-Mutt to grant exemption for sale of land as recommended by the third respondent, the Commissioner of Endowments.

11. With the above direction, the writ appeal is disposed of. No costs.