

(1995) 08 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2613 of 1992

M/s. L.S. and Co.

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 18-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 1(1), 10(1), 10(3), 10(6), 2

Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 5

Citation : AIR 1996 AP 157 : (1996) 1 ALT 28

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : M/s. V. Vankataramanaiah, I.V. Narasimha Rao and V.V. Prabhakara Rao, for the Appellant;

Judgement

B. Sudershan Reddy, J.

1. The petitioner prays for an appropriate writ, order or direction particularly one in the nature of a writ of certiorari by calling for the records of the 2nd respondent pertaining to Proceedings No. 9(1)/6(1)/ 6331/76 dated 16-11-1981 and quash the said proceedings and for consequential directions-.

2. The facts necessary leading to the filing of this writ petition may be briefly summarised:

One A. Venkateswara Rao on his behalf and on behalf of his son A. Koteswara Rao, filed a statement in Form-I u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"). The complete details of the lands held by Sri V. Venatas-wara Rao and his son A. Koteswara Rao were furnished in the said statement. The total extent of the land involved in the said statement is 6272 sq. mtrs., and according to the petitioner the entire land is occupied by the buildings which have been constructed much before the commencement of the Act i.e. 17-2-1976. The petitioner claims that it is not a vacant land. As an abundant caution only, a statement u/s 6(1) of the Act, was filed before the 2nd

respondent. After an elaborate enquiry, final orders u/s 9 of the Act were passed on 14-5-1982 in C.C. No. 8(4)/6(I)/6332/6330/76 and C.C. No. 9/6(1)6238/6332/6330/76 dated 2-6-1982. The 2nd respondent herein declared that the said A. Venkatateshwara Rao does not hold any vacant land in excess of the ceiling limit. It was categorically held that extent of 6272 sq. metres with the buildings thereon is not a vacant land as defined u/s 2(q)(ii) of the Act and is protected by the provisions of the Act. It is further stated that since the said land and other properties were the properties of joint Hindu family consisting of A. Venkateswara Rao and his son A. Koteswara Rao, there was a memorandum of partition between Venkateswara Rao and his son Koteswara Rao and the entire urban property of 6272 sq. meters with building thereon in Sy. No.26/2(P) of Venkojipalem village was allotted to the share of Sri A. Rao. The said Koteswara Rao entered into a partnership deed executed on 25-10-1986 to carry on business as real estate dealers and construction contractors under the name and style "M/s. L.S. and Company". The details of other partners are not relevant for the purpose of this case.

3. However the said A. Venktateswara Rao retired from the partnership with effect from 1-4-1987, the remaining partners continued the said business in the same name of "L.S. and Company" under the fresh deed of partnership dated 5-5-1987. The said land admeasuring 6272 sq. metres remained with the partnership firm of M/s. L.S. Company. With a view to utilise the land by building residential and commercial complex in accordance with the master plan, the petitioner herein applied for permission u/s 22 of the Act on 26-12-1991.

4. While matter stood thus, the petitioner came to know about the order passed by the 2nd respondent herein 16-11-1981 declaring the very same land of an extent of 4773 sq. metres as an excess vacant land. The said order is passed in Proceedings No. 9(1)/6(1)/ 6331/76 on the basis of the statement purported to have been filed by the 4th respondent herein, the Petitioner submits that he came to know that a statement was filed by the 4th respondent on 15-9-1976 claiming himself to be the tenant of the entire extent of 6272 sq. metres of very same land. However, in the very same statement, the 4th respondent admitted that A. Koteswara Rao S/o A. Venkateswara Rao to be the owner of the land. The petitioner states that the 4th respondent was permitted to occupy an extent of 284 sq. metres only as a licensee on a nominal payment of Rs. 150/-per month. It is asserted that no lease as such as granted by the owner A. Koteswara Rao or his father A. Venkateswara Rao to the 4th respondent. There is no agreement or any lease deed as such. The amount of Rs. 150/- per month payable by the 4th respondent was extremely nominal and was meant to accommodate the 4th respondent to utilise the bank loan in connection with his taking up the poultry farm under the self-employment scheme. It is alleged that the 4th respondent filed the statement without any right or title or interest in respect of the said land. It is alleged that the statement was filed by the 4th respondent as a design to garb the land. It is also categorically asserted that the 4th respondent did not produce any evidence whatsoever before the 2nd respondent in support of his

claim of himself being the lessee for the entire extent of the land. It is the case of the petitioner that no enquiry was conducted by the 2nd respondent. It is averred that even the statement prepared under sub-section (1) of Section 8 along with the notice under sub-section (3) of Section 8 dated 5-6-1980 was served upon the 4th respondent alone. No Notice what solver was served upon the owners, A. Venkateswara Rao and his son A. Koteswara Rao.

5. It is specifically pleaded that the procedure adopted by the 2nd respondent in disposing of the statement filed by the 4th respondent and declaring him to be surplus vacant land holder is totally illegal and void and it is submitted that the procedure is ultra vires the mandatory provisions of the Act and the rules framed thereunder. The order passed by the 2nd respondent u/s 9 of the Act on 16-11-1981 is impugned in this writ petition.

6. Notices are served on the 4th respondent none appears on behalf of the 4th respondent and no counter is also filed on his behalf.

7. The 2nd respondent filed counter-affidavit practically admitting all the material allegations made in the affidavit filed by the petitioner in support of his writ petition. It is admitted that the statement filed by A. Venkateswara Rao and his son A. Koteswara Rao and the declaration filed on behalf of M/s. A.V. Rao and Company were enquired together. It is admitted that after due enquiry, the final statement was issued on 2-6-1982 holding that the owners of the land, A. Venkateswara Rao and A. Koteswara Rao are non-surplus holders. It is also admitted that the 4th respondent filed a statement with regard to the same land ad measuring 6272 sq. metres. It is specifically admitted that the draft statement prepared u/s 8(1) of the Act together with the notice u/s 8(3) of the Act was issued on 5-6-1980 and was served on the 4th respondent on 13-10-1980 directing him to appear the 2nd respondent and file objections, if any. In the draft statement, it was declared that the 4th respondent as holder of 4773 sq. metres in excess of the ceiling area. It is stated in the counter-affidavit that the 4th respondent had chosen not to appear and no objections were received in the matter. A final statement u/s 9 of the Act was issued on 16-11-1981. It is also stated that a notification u/s 10(1) and a declaration u/s 10(3) of the Act, were issued on 19-11-1981 and 23-4-1984 and published in the A.P. Gazette on 24-12-1981 and 7-5-1984 respectively. It is also stated that the orders were passed u/s 10(6) of the Act on 27-2-1991 directing the Mandal Revenue Officer, Visakhapatnam to take possession of the surplus land.

8. It is categorically admitted in the counter-affidavit that the 2nd respondent herein had passed different and contradictory orders in his proceedings dated 16-11-1981 on the statement filed by the 4th respondent and latter proceedings dated 14-5-1982 and 2-6-1982 in the declarations filed by A. Venkateswara Rao and his son Koteswara Rao. All that is stated in the counter-affidavit is that no objections whatsoever were filed by the said Sri Venkateswara Rao and Koteswara Rao to the statement filed by the 4th respondent. The counter is silent on the crucial aspect as to whether any notice was issued and served on the

admitted owners of the land viz., A. Venkateswara Rao and A. Koteswara Rao.

9. For the proper appreciation of the respective contention, it would be useful to extract Sections 8 and 9 of the Act and Rule 5 of the Urban Land (Ceiling and Regulation) Rules, 1976 (for short the Rules) which read as follows:--

"8. Preparation of draft statement as regards vacant land held in excess of ceiling limit:-- (1) On the basis of the statement filed u/s 6 and after such inquiry as the competent authority may deem fit to make, the competent authority shall prepare a draft statement in respect of the person who has filed the statement u/s 6.

(2) Every statement prepared under sub-section(I) shall contain the following particulars, namely:--

(i) the name and address of the person;

(ii) the particulars of vacant land and of any other land on which there is a building, whether or not with a dwelling unit thereon, held by such person;

(iii) the particulars of the vacant lands, which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection on the draft statement shall be preferred within thirty days of the service thereof.

(4)-The competent authority shall duly consider any objection received within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under the subsection and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

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9. Final Statement: After the disposal of the objections, if any, received under subsection (4) of Section 8 the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of Section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage or a hire- purchase agreement or an irrevocable power-of-attorney, also on the power of such vacant land."

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Rule 5. Particulars to be contained in draft statement regarding vacant lands and manner of-service of the same:--

(1) Every draft statement prepared under sub-section (1) of Section 1 shall contain the particulars specified in Form III.

(2) (a) The draft statement shall be served together with the notice referred to in subsection (3) of Section 8 on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far as may be known, who have, or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of Section 6, and

(ii) in the case of other persons at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and notice, on the holder of the vacant lands, or as the case may be, any other person referred to in clause (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in clause (b), the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or as the case may be, the other person is known to have last resided or carried on business or personally worked for gain."

10. Shri V. Venkata Ramanaiah, the learned Senior counsel appearing for the petitioner with his usual clarity and precision, submits that the impugned order passed by the 2nd respondent herein is wholly illegal and ultra vires the mandatory provisions of the Act and the rules framed thereunder. The learned counsel also submits that the impugned order is to be declared as void as it is passed in contravention of the principles of natural justice. I do not find any difficulty whatsoever in upholding and agreeing with the submissions made by the learned Senior Counsel. The record reveals that even the 4th respondent, in his statement filed u/s 6(1) of the Act, had categorically admitted about the ownership of the land in question. In the said statement, the 4th respondent admitted the ownership of Sri A. Kotcswara Rao son of A. Venkateswara Rao. The 4th respondent also admitted that he is only the tenant of the land though false as it, is accordingly to the petitioner. The 2nd respondent should have realised that even according to the statement furnished by the 4th respondent, A.

Kotcswara Rao, S/o A: Venkataswara Rao is definitely an interested person within the meaning of Section 8 of the Act and Rule 5 of the Rules framed thereunder. Section 8 of the Act imposes a mandatory duty upon the Special Officer and Competent authority to issued and serve notice upon the owners of the land, on the person who furnished the statement and also other interested persons. A. Koteswara Rao S/o Venkateswara Rao is not only the admitted owner of the land in question but also he is definitely an interested person within the meaning of Section 8 of the Act. It is not as if the 2nd respondent was not aware of A. Koteswara Rao S/o Venkateswara Rao being the owner of the land. Admittedly, no notice whatsoever is issued and served upon the said Koteswara Rao calling upon him to file his objections if any, with regard to the draft statement prepared u/s 8(1) of the said Act. Undoubtedly, the predeces-sors-in-title of the writ petitioner A. Koteswara Rao and A. Venkateswara Rao are the persons interested and they are entitled to file their objections to the statement filed by the 4th respondent and the preliminary statement prepared by the 2nd respondent u/s 8(1) of the Act. The 2nd respondent, on the other hand, prepared the preliminary statement holding the 4th respondent to be excess land holder and served a notice on 4ih respondent for which no objections were preferred. The conduct of the 4th respondent would speak volumes. Had he been the person really interested in the land and had he been the tenant of the whole land as asserted by him, he would have definitely preferred objections in the matter. There is some thing more than the eye-meets in this case. The very same 2nd respondent, having declared the 4th respondent to be excess land holder, accepted the statement filed by A. Koteswara Rao and A. Venkataswara Rao and declared them to be non-surplus holders. The order declaring Venkateswara Rao and Koteswara Rao to be non-surplus land holders was passed on 15-5-1982.

11. Evidently, the whole proceedings were conducted by the 2nd respondent in a very casual manner. It appears that the 2nd respondent never applied his mind to the contents of the statements submitted by the predecessors-in-title of the petitioner on one hand and the 4th respondent on the other. The 2nd respondent should have realised that he is discharging quasi-judicial functions in making an enquiry into the details of the land held by the persons furnishing the statements u/s 6(1) of the Act. Intricate questions are to be resolved by the 2nd respondent in exercise of the powers conferred upon him under Sections 8 and 9 of the Act. The scheme of the Act contemplates issuance of notice and hearing of objections of the persons furnishing the statements and all other interested persons. The Act gives such a protection to all the concerned at every stage of the proceedings. After all any decision of the Special Officer and Competent Authority under the provisions of the said Act are fraught with serious consequences in respect of the urban property. Rights in immovable properties cannot be allowed to be adjudicated by the quasi-judicial authorities like the Special Officer and Competent Authority in a casual and perfunctory manner. The scheme of the Act and particularly Sections 8 and 9 of the Act and the rules framed thereunder would show that the procedure to be adopted by the Special Officer and

Competent Authority is to be reasonable and fair. The scheme of the Act ensures an elaborate hearing by the Special Officer and Competent authority in adjudication of the statements filed by the persons holding the vacant land. Any deviation in this regard would have to be viewed very seriously.

12. There is absolutely no doubt whatsoever that the whole decision making process in the instant case is totally vitiated. The 2nd respondent was under the statutory obligation to issue and serve notices upon the predecessor-in-title of the petitioner herein before disposing of the statements filed by the 4th respondent. Non-issuance of notice and its service upon interested persons is fatal.

13. However, the learned Government Pleader contended that the petitioner has no locus to question the impugned order passed by the 2nd respondent. The learned Government Pleader submits that the petitioner herein is neither the owner nor he filed any statement u/s 6(1) of the Act before the 2nd respondent. There is no merit in the submission made by the learned Government Pleader. Sri A. Venkateswara Rao and A. Koteswara Rao are definitely the predecessors-in-title of the petitioner herein. The land in question was thrown into the partnership firm under a deed of partnership executed on 25th Oct. 1986 by A. Koteswara Rao. This land in question was invested into the partnership by A. Koteswara Rao. The learned Government Pleader does not seriously dispute the fact that A. Koteswara Rao and Vekateswara Rao were the real owner. Obviously this fact cannot be disputed by the learned Government Pleader as the 4th respondent himself admitted the ownership of A. Koleswara "Rao and had furnished this information even in his statement filed before the 2nd respondent. The petitioner came to known about the impugned order only at the time when it approached the 2nd respondent in connection with its application filed u/s 22 of the Act on 26-12-1991. This plea of the learned Government Pleader deserve to be mentioned only to be rejected. With regard to the infraction of the mandatory provisions of the Act and the rules framed thereunder, there is no answer from the learned Government Pleader.

14. For the aforesaid reasons, I hold that the impugned order suffer from incurable infirmity as violative of Section 8 of the Act and the rules framed thereunder. It is ex facie illegal resulting in serious injustice. The order deserves to be quashed and accordingly the same is quashed.

15. It is needless to observe that all consequential proceedings including the oriel issued under Sections 10(1) and 10(3) of the Act dated 19-11-1981 and 23-4-1984 are of no consequence and consequently, they are declared as non-est.

16. The 2nd respondent shall issue a notice in the petitioner as we)] as the 4th respondent as the predecessor-in-title and all, other interested and affected persons before. passing orders with regard to the statement furnished by the 4th respondent u/s 6(1) of the Act and pass appropriate orders in accordance with

law.

17. With the above directions, the writ petition is allowed with costs. .

18. Petition allowed.