
(2003) 12 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9678 of 2002

M.V.S. Satyanarayana and Another	Vs	APPELLANT
Government of A.P. and Others		RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(2), 10(3), 10(5)

Citation : (2004) 1 ALD 256 : (2004) 2 ALT 326

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Madan Mohan Rao, for the Appellant; Government Pleader for Assignments for Respondent Nos. 1, 2 and 4 and B. Thimma Reddy, SC Kapra Municipality, for the Respondent

Judgement

L. Narsimha Reddy, J.—The petitioners challenge the proceedings initiated u/s 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act") in respect of two plots each of 576 sq. yards in Sy.Nos.495, 498 and 499 of Khapra Village, Vallabhnagar Mandal, Ranga Reddy District.

2. The lands in those survey numbers were initially held by one Smt. Erram Laxmamma. The total extent of the lands was about 15 acres. She transferred the said lands in favour of one v. Narayandas through sale deed dated 4-4-1964. When the lands were held by Narayandas and his family members, the Act came to be extended to the State of Andhra Pradesh. Since the lands were within the Hyderabad Urban Agglomeration, Narayandas and his three brothers filed declarations u/s 6 of the Act before the 2nd respondent. On a consideration of the same, the 2nd respondent passed individual orders dated 12-11-1982 u/s 8(4) of the Act, taking the view that each of the said declarants holds an extent of 3035 sq.mts, of land in excess of ceiling limit.

3. Narayandas transferred an extent of 1152 sq.yards of land in favour of Kanaka Durga and another and after changing some hands; the same extent of 1152 sq.yards came to be transferred to the petitioners on 6-3-1993 in two separate

plots of 576 sq.yards each.

4. In the meanwhile, notification u/s 10(1) of the Act was published on 15-6-1983 in respect of the lands held in excess of the ceiling limits by Narayandas. After a lapse of 15 years, a notification u/s 10(3) of the Act was issued on 9-3-1998, which resulted in vesting of the land in the Government. The 2nd respondent issued notice u/s 10(5) of the Act on 8-7-1998 in respect of lands held by them. Petitioners challenge the same on several grounds.

5. According to the petitioners, the Government issued G.O. Ms. No. 733 dated 30-10-1988 granting general exemptions to the extent of Ac.5-00 in favour of each declarant as regards the lands situated in the peripheral area. According to them, the lands in their possession are within the peripheral area and thereby it stood exempted. They contend that the notification u/s 10(3) dated 9-3-1998 and the consequential proceedings issued u/s 10(5) dated 8-7-1998 cannot be sustained, once the lands stood exempted from the purview of Chapter III of the Act.

6. In the counter-affidavit filed by the respondents, it is stated that on the declaration filed by Narayandas u/s 6 of the Act, an order dated 12-11-1982 was passed by the 2nd respondent declaring that he holds 3035 sq.mts. of land in excess of ceiling limit and the same became final, since no appeal was filed against it. It is also the contention of the respondents that the petitioners have purchased the land, which was declared as excess and it is not open to them to challenge any proceedings, which have already become final. It is stated that the exemption under G.O. Ms. No. 733 dated 31-10-1988 is not automatic. They allege that the declarant himself did not approach the respondents seeking exemption under the said G.O., and, as such, the question of petitioners claiming any exemption does not arise.

7. Sri E. Madan Mohan Rao, learned Counsel for the petitioners, submits that there did not exist any necessity for the declarant to file any appeal, because the exemption granted under G.O. No. 733 dated 31-10-1988 was general in nature. He contends that in view of exemption of such lands from the purview of Chapter III as a whole, the question of vesting of such land u/s 10(3) or initiation of further proceedings u/s 10(5), etc., does not arise. He relies upon several judgments of this Court and that of Supreme Court.

8. Learned Government Pleader for assignment, on the other hand, submits that once the order dated 12-11-1982 passed u/s 8(4) of the Act has become final and the land stood in the Government, the petitioners cannot seek any relief. He also challenges the locus standi of the petitioners. Placing reliance on some of the decided cases, he submits that it is not competent for the purchasers of excess land to challenge the proceedings passed on the declaration filed by the original owner.

9. Under the scheme of the Act, any person holding vacant land in an urban agglomeration is required to submit a declaration u/s 6. The competent authority

shall process the same and issue a notice u/s 8(3), indicating the tentative conclusion as to the land held by the declarant in excess of ceiling limit. On consideration of reply to such notice, an order is required to be passed u/s 8(4) deciding as to whether the declarant holds any land in excess of ceiling limit and if so, the extent thereof. An order u/s 9(1) is required to be passed, and it is almost in the form of a decree vis-a-vis the order passed u/s 8(4). If no appeal is preferred by the declarant u/s 33 of the Act against the order u/s 8(4), the proceedings are to be initiated u/s 10. A notification is required to be issued u/s 10(1) inviting objections in the matter of taking possession of the excess land. An order is to be passed u/s 10(2), taking into account the claims of the interested persons. On publication of notification under subsection (3) of Section 10 of the Act, the land stands vested in the Government. The procedure for taking possession and payment of compensation is provided under subsections (5) and (6) of Section 10. The State Government is conferred with the power to grant exemption in respect of the excess land u/s 20. Section 21 stipulates the circumstances under which excess land cannot be treated as such. All these provisions occur in Chapter III of the Act.

10. So far as the Hyderabad Urban Agglomeration is concerned, ceiling limits are stipulated as 1000 sq.mts. The Urban Agglomeration is divided into core area, comprising the limits of Municipal Corporation of Hyderabad; and peripheral area comprising the remote parts of the agglomeration. The Government of A.P. issued G.O. Ms. No. 733 dated 30-10-1988 providing for general exemption to the extent of Ac,5-00 for each declarant, in respect of the lands, which are situated in peripheral areas.

11. A question arose as to whether separate applications are required to be made, seeking exemption under this G.O., and the stage at which the benefit can be availed. In *Nalla Yakoob Vs. The Govt. of A.P. Revenue (UC.II) Department and Others*, , this Court held that the exemption under G.O. Ms. No. 733, being general in nature, making of an application by an individual is not contemplated. As regards the stage at which the benefit can be availed, the Government issued G.O. Ms. No. 217 dated 18-4-2000, clarifying that since G.O. Ms. No. 733 exempts such lands from the purview of Chapter III, the benefit can be availed as long as the proceedings did not culminate in the steps under Sections 10(5) and 10(6) of the Act.

12. In *Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad and Another Vs. P.S. Rao*, , the Hon"ble Supreme Court repelled the contention of the State that the benefit of exemption can be availed only before the land is declared as excess. In an application for clarification of the said judgment in *Special Officer and Competent Authority, ULC and Another Vs. P.S. Rao*, , the Hon"ble Supreme Court endorsed the opinion expressed by the Division Bench of this Court that the benefit of exemption can be availed as long as the proceedings under Chapter III of the Act have not concluded in their entirety. It is in this legal background that the case needs to be examined.

13. However, the objection raised on behalf of the respondents that the petitioners, who are subsequent purchasers, cannot challenge the proceedings under the Act, needs to be considered. Reliance is placed upon an order passed by the Division Bench of this Court in W.A. No. 57 of 2002. That was a case where the declarant did not choose to challenge the order passed against him and where the objections and implications of G.O. Ms. No. 733 were not involved. In other words, the factual and legal state of affairs, which emerged on account of orders u/s 8(4), became final and conclusive. The Division Bench held that the appellants having purchased the land after it was declared as surplus have no locus standi to challenge the proceedings. That however is not a case here. The order u/s 8(4) was passed on 12-11-1982 and notification u/s 10(1) was issued on 15-6-1983. It is after that stage that the Government issued G.O. Ms. No. 733 dated 30-10-1988 providing for exemption in respect of lands in peripheral areas. The purchase made by the petitioners was subsequent to this G.O. As evident from the order passed by this Court and the Supreme Court, if the land is within the peripheral limits, to the extent of Ac.5-00, it stands automatically exempted from Chapter III, without there being any necessity to file an application. Therefore, if the declarant was entitled for the benefit under G.O. Ms. No. 733 and the land purchased by the petitioners ceased to be excess, the petitioners cannot be precluded from challenging the proceedings that are initiated in respect of the lands.

14. Reverting to the merits of the matter, it needs to be seen that by the time G.O. Ms. No. 733 dated 30-10-1988 was issued, the proceedings as regards the declaration filed by Narayandas were at the stage of a notification u/s 10(1), which was issued on 2-6-1983. The declaration u/s 10(3) and the notice u/s 10(5) are of the year 1998. If the land is within the peripheral limits and the declarant did not hold the land in excess of Ac.5-00, it stood exempted from the purview of Chapter III of the Act, as is evident from the judgments referred to above. The benefit under G.O. Ms. No. 733 was automatic and was available to the holders of the land; as long as the proceedings against them under Chapter III did not reach finality by the date of that G.O. It has come on record that the notification u/s 10(3) was issued 15 years after the notification u/s 10(1) was issued. Further proceedings u/s 10(5) were taken up much later. Therefore, it cannot be said that the declarant Narayandas or any individual claiming through him are not entitled for the benefit under the said G.O. Thereby it emerges that the land in question attracts G.O. Ms. No. 733.

15. It cannot be said that various proceedings issued in respect of such lands are of no consequence. If there is no dispute that the land is situated in the peripheral area and that the declarant did not avail the benefit for an area exceeding Ac.5-00, further proceedings, such as, notification under sub-sections (3) and (5) of Section 10 have to be ignored. On the other hand, if the benefit under the said G.O., is not available to them, be it on account of the fact that the land is not within the peripheral limits or the declarant had availed the benefit for an area in excess of Ac.5-00, no exception can be taken to such proceedings.

16. It is true that no separate application is required to be made to avail the benefit under the G.O. At the same time, an individual cannot be permitted to have a final word in such matters, galvanizing him from any verification by the authorities under the Act. As and when any claim is made by an individual that a particular piece of land is exempted under G.O. Ms. No. 733, the basic facts contemplated under G.O., as regards location and extent of the land, can be permitted to be verified by the competent authority. A harmonious construction and approach in this regard would be to enable the individuals to avail the benefit under G.O. Ms. No. 733, without the necessity of filing an application, but at the same time, keeping the power of the competent authority to verify as to whether the land is within the peripheral area at all and whether the individual had availed the benefit up to Ac.5-00 only or more; in tact. Such an approach would keep the rights of individuals in tact, and at the same time ensure proper compliance with the provisions of the Act.

17. Hence, the writ petition is disposed of, leaving it open to the petitioners to submit a representation to the 2nd respondent within four weeks from today, furnishing the details of the location of the area and extent held by the original declarant. On receiving such a representation, it shall be open to the 2nd respondent to verify the said facts. If it emerges that the land is within the peripheral limits and that the declarant had not availed the benefit under G.O. Ms. No. 733 dated 30-10-1988, for an extent exceeding Ac.5-00, no further steps need to be taken. The proceedings initiated in respect of the said land shall lapse. If the 2nd respondent records a finding that either the lands are not within the peripheral limits, or that the declarant had availed the benefit for an area in excess of Ac.5-00, it shall be open to him to pass an order supplementing the conclusion with reasons and communicate the same to the petitioners. If such an order is communicated to them, it shall be open to the petitioners to challenge it before the appellate authority u/s 33 of the Act. Pending such an exercise, the possession of the petitioners over the land in question shall not be disturbed. No costs.