

(1998) 07 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20028 of 1993

P.S. Rao

APPELLANT

Vs

Special Officer and Competent Authority, Urban Land Ceiling,
Hyd. and Another

RESPONDENT

Date of Decision : 22-07-1998

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(5), 20(1), 33

Citation : (1998) 4 ALD 697 : (1998) 4 ALT 603 : (1999) 1 AnWR 129

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. C. Hanumantha Rao and D.R. Sharma, for the Appellant;
Government Pleader, for the Respondent

Judgement

1. The petitioner has assailed the Proceedings of the second respondent who is the appellate authority u/s 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act") bearing No.UCl/1249/88, dated 27-11-1993 affirming the notice issued by the first respondent dated 16-4-1988 u/s 10(5) of the Act directing the petitioner to deliver possession of the surplus extent of 1801 Sq. mtrs. in Plot Nos. 94 and 95 (Sy.No.31) and Plot Nos. 96 to 99 (Sy.Nos. 35 to 37) of Meerpet.

2. The petitioner holds a total extent of 2801 Sq. mtrs. of land governed by the Act. The first respondent - competent authority determined the extent of 1801 Sq. mtrs. as excess held by the petitioner. According to the petitioner, by virtue of the Government Order in G.O.Ms.No.733-Revcnue (UC.II) Department, dated 31-10-1938, 2801 Sq. mtrs. of land held by him is exempted from the operation of Chapter III of the Act and, therefore, the determination made by the Special Officer and competent authority is not in accordance with the Government Order. So claiming, the validity of the appellate order referred to above affirming the action taken by the second respondent in directing the petitioner u/s 10(5) of the Act to deliver possession of the surplus extent of 1801

Sq. mtrs. is assailed.

3. On service of notice, the respondents have filed counter contesting the claim of the petitioner. It is contended in the counter that before G.O.Ms.No.733, dated 31-10-1988 was issued the determination of the holding of the petitioner had taken place and the excess land stood vested in the Government and, therefore, the exemption made by the Government in G.O.Ms.No.733, dated 31-10-1988 cannot be applied retrospectively so as to save 1801 Sq. mtrs. excess land held by the petitioner and lie is liable to deliver the excess land to the State in pursuance of the notice issued u/s 10(5) of the Act. The contention taken in the counter was reiterated by the learned Government Pleader at the time of hearing.

4. Therefore, the only question which falls for consideration is whether the Government Order G.O.Ms.No.733, dated 31-10-1988 is made applicable only prospectively or with the issuance of the said G.O., the case of the petitioner is also covered. The operative portion of G.O.Ms.No.733, dated 31-10-1988 reads:

"6. Now, therefore, in exercise of the powers conferred u/s 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 and of all other powers hereunto enabling and in supersession of all other orders issued previously in this behalf from time to time, the Government of Andhra Pradesh hereby accord:

(a) exemption of the vacant land or the agricultural land which is likely to be used for non-agricultural purposes at the option of the holder thereof, or both, to a maximum extent of five acres situated within the peripheral area as specified in Column (3) of Schedule-I to the Urban Land (Ceiling and Regulation) Act, 1976 of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Vijayawada Urban Agglomeration, Guntur and Warangal Agglomerations in excess of the ceiling limit, from the provisions of Chapter-III of the said Act; and

(b) permission to transfer any such land or part thereof by a person by way of sale, mortgage, gift, lease or otherwise, to the extent of five acres of land in excess of ceiling limit, excluding the area required for roads, hospitals and for other public use."

The Government, by virtue of the delegated power conferred upon it u/s 20(1)(a) of the Act, has issued the G.O. The G.O. makes it very clear that the land situated in the peripheral area as specified in Column 3 of Schedule I to the Act of the Hyderabad Urban Agglomeration, Visakhapatnam Urban agglomeration, Guntur Urban Agglomeration, Warangal Urban agglomeration in excess of the ceiling limit is exempted from the provisions of Chapter III of the Act. At the threshold, it can be noted that what is assailed before the Court in the present Writ Petition is the validity of the appellate order arising out of the notice of the first respondent u/s 10(5) of the Act. Section 10 falls within Chapter III of the Act. On that count itself, even accepting the argument of the learned Government Pleader for Revenue that the G.O. is applicable prospectively and not retrospectively, even then the petitioner is entitled to exemption inasmuch as

he has assailed the validity of the action taken u/s 10(5) of the Act calling upon him to deliver the excess land determined by the second respondent. Added to this, it is well settled position in law that once a statutory authority by exercise of its delegated power frames rules or issues notifications exercising power of exemption, such exemption would form part of the statute itself and such exemption is required to be implemented and worked out with effect from the date of the statute itself. Therefore, the stand taken by the Government and reiterated by the learned Government Pleader for Revenue is not well-founded for the reasons stated supra. There is no controversy between the parties that if the Government Order - G.O.Ms.No.733, dated 31-10-1988 is applied, the petitioner is entitled to the exemption envisaged under clause (a) of para 6 of the Government Order -G.O.Ms.No.733, dated 31-10-1988. There is also no controversy between the parties that the petitioner is holding only 2801 Sq. mtrs. of land and exemption is made in the aforementioned Government Order to the extent of five acres and the land is situated in the peripheral area as specified in Column 3 of Schedule I to the Act of the Hyderabad urban agglomeration. Therefore, a case is made out for interference.

5. In the result, the writ petition is allowed and the impugned order passed by the second respondent-appellate authority affirming the validity of the notice dated 16-4-1988 issued by the first respondent u/s 10(5) of the Act, is quashed. No costs.