

(1996) 04 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 10103 of 1995

S. Sulakshna Bai

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

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

Citation : (1996) 2 ALT 557

Hon'ble Judges : V. Rajagopala Reddy, J; M.N. Rao, J

Bench : Division Bench

Advocate : K. Mahipathi Rao and A. Gopal Reddy, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Rao, J.—The question for consideration in this writ petition is whether the land certified to be agricultural land on the date of commencement of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act"), would continue to retain its character as agricultural land even after it was divided into house sites and sold? The petitioner was the pattadar in respect of agricultural lands covered by Sy.Nos. 63, 71 and 72 of Karmanghat village within the urban agglomeration of Hyderabad. On the coming into force the Act, she and her four daughters and one son filed separate declarations u/s 6(1) of the Act in respect of the lands, before the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, (for short, "the Special Officer"). As the petitioner had a doubt regarding the nature of the land, she obtained a certificate from the Special Officer u/s 2(o) of the Act read with the clarification issued by the Government in their memo No. 6922/UC.1/76.4 dated 31-1-1977. to the effect that the provisions of the Act are not attracted in respect of the above land. The Special officer declared this land as agricultural land by his order dated 27-9-1978.

2. By the end of 1978 all the lands were sold away by the petitioner in favour of several persons as house sites. By a G.O.Ms.No. 391 dated 23-6-1980 the Master

Plan in respect of Hyderabad was issued and it came in to operation with effect from 23-9-1980. The area covered by the land in question was shown as residential zone in the Master Plan.

3. The Special officer, in 1981, issued notice to re-open the question of determination of excess land. The petitioner objected to the re-opening of the question, on the ground of earlier orders declaring the lands outside the scope of the Act. Over-looking the objections, the Special Officer determined the excess land at 1,62,625-00 Sq.Mts., by an order dated. 24-11-1984, which was confirmed by the appellate authority on 27-6-1985. Challenging the same, the present writ petition was filed.

4. Sri Gopal Reddy, learned counsel for the petitioner, relying upon the decision of the Supreme Court in Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], , contends that the character of the land cannot be changed on the basis of the coming into force of the Master Plan subsequent to the date of the enactment. We do not agree.

4-A. The Act came into force from 17-2-1976. The definition of "urban land" u/s 2(o) of the Act, no doubt excludes lands which are mainly used for the purpose of agriculture. A "vacant land" is defined by Section 2(q) of the Act as land not being land mainly used for purpose of agriculture, in an urban agglomeration. Section 3 of the Act enjoins that with effect from the date of the commencement of the Act, no person shall be entitled to hold vacant land in excess of the ceiling limit. In respect of city of Hyderabad the ceiling limit fixed is 1000 Sq.Mts. The land which was certified to be an agricultural land, when the Act came into force, could not continue to retain its identity as agricultural land even after its user was changed. It would not be treated as urban land so long as it was mainly used for the purpose of agriculture. When once the user was changed, it would become automatically vacant land within the meaning of Section 2(q) of the Act. u/s 6 of the Act every person holding land in excess of the ceiling limit at the commencement of the Act, is obliged to file a statement giving particulars of all vacant lands held by him. Clause (ii) of the Explanation to Section 6 of the Act says that the "commencement of the Act" means,-

"where any land, not being vacant land situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;"

5. By virtue of the above Explanation, when the land in question ceased to be an agricultural land it assumed the character of vacant land and therefore the owner was under a legal obligation to make a declaration u/s 6 of the Act. There is no dispute regarding the fact that the entire land was divided into small plots of 300 Sq.Mts. each and sold to several persons. From the nature of the use to which the land was put, there can be no doubt that it ceased to be an agricultural land.

6. The decision in Smt. Atin Mohammadi Begum's case (1 Supra), relied upon by the Counsel for the petitioner is not in point. In that case the agricultural land

continued to retain its character as agricultural land before and subsequent to the coming into force of the Master Plan. There was no change of user after the Master Plan came into force. It was continued to be used for the purpose of agriculture. Therefore it was held by the Supreme Court that

"... determination of the area of vacant land in excess of the ceiling limit under the Act is to be made with reference to the date of commencement of the Act and the right and liability of the holder "of the land for this purpose under the Act crystallises on the date of commencement of the Act unaffected by any subsequent events. The scheme of the Act supports the construction that the aforesaid Explanation (C) means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a master plan prepared after the commencement of the Act...."

The aforesaid observations are of no assistance to the petitioner herein. Neither the question of change of user nor Clause (2) of the Explanation to Section 6 of the Act fell for consideration in the above case before the Supreme Court.

7. An attempt was made by the learned counsel for the petitioner to press into service Section 15 of the Act, which speaks about ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decree etc., contending that the petitioner did not fall within the ambit of Section 15 of the Act and therefore there could be no determination of ceiling limit with respect to the petitioner's land. The contention is untenable. The authorities have reopened the matter not u/s 15 of the Act, but due to the change of user, which inevitably attracts Explanation (ii) to Section 6 read with Sections 2(q) and 2(o) of the Act. We therefore reject the contention.

8. For the aforesaid reasons the writ petition fails and accordingly it is dismissed. No costs.