

(1988) 11 KAR CK 0042
In the Karnataka High Court
Case No : W.P. No. 16772 of 1987

Shantabai Ramachandra Dhanai

APPELLANT

Vs

The Divisional Commissioner, Belgaum and Another

RESPONDENT

Date of Decision : 16-11-1988

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 19(1)

Citation : (1989) 2 KarLJ 10

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 12.11.1986 in NO.ULC D.S.R.429(Annexure-C) passed by the Deputy Commissioner and the Competent Authority, Belgaum under Sec. 8(iv) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) and also the order dated 13.7.87 in No. RB ULC.AP. 102/86-87 passed by the Divisional Commissioner, Belgaum (Annexure-D) confirming the order dated 12.11.1986 (Annexure-C) passed by the Deputy Commissioner and Competent Authority, Belgaum.

2. The petitioner filed a declaration as per the provisions of the Act. According to the declaration the petitioner as the owner held Sy. No. 66/9B measuring 4046.80 sq. mts. situated at Kanabargi village, Belgaum Taluk on the date the Act came into force. As the land in question is situated within the Master Plan Area of the Belgaum City and came under the provisions of the Act the petitioner filed a declaration under Sec. 6 of the Act. The Deputy Commissioner and the Competent Authority held that the vacant land held by the petitioner exceeded the ceiling limit by 2026.80 sq.mts. The Appellate Authority has confirmed the same. Consequently the petitioner has to surrender the said extent of the land.

3. The case of the petitioner in this regard was that the land in question was held by the Public Trust known as Janatha Vidhyalaya, Samba, therefore the provisions of Chapter III of the Act did not apply to the vacant land in question. However, the evidence before the authorities did not disclose that the Public Trust

known as Janatha Vidhyalaya, Sambra was the owner of the vacant land in question.

4. It was found by the Divisional Commissioner that as per the resolution dated 5-2-1978 passed by the Janatha Vidhyalaya, Sambra, the petitioner was allowed to receive the building rent as per the Rules of Education Department. Therefore, it was clear that the petitioner continued to be the owner of the land and whereas the Public Trust i.e., Janatha Vidhyalaya, Sambra, continued to be in possession as a tenant.

5. In this petition, it is specifically stated that the Janatha Vidhyalaya, Sambra, has been registered as a Public Trust under the Bombay Public Trusts Act, 1950 on 27-3-1957. Thus for the purpose of this proceeding, we can proceed on the basis that the Janatha Vidhyalaya, Sambra is a Public Trust. The contention of the petitioner before this Court is that having regard to the provisions contained in Clause (iv) of sub-section (1) of Section 19 of the Act, read with the definition of the expression "to hold" occurring in Clause (1) of Section 2 of the Act, the provisions of Chapter HI do not apply to the land in question. Therefore, the Competent Authority ought to have held that as long as the vacant land in question is held by the Public Trust the provisions of Chapter III of the Act do not apply to it. Of course there is one difficulty to consider this contention as it is not clear from both the impugned orders nor any material is placed in this writ petition to show that on the date the Act came into force, the vacant land in question was held by the Public Trust in question as a tenant. Unless that is proved, the benefit of Section 19 of the Act is not available. However, the basis for this petition is that the Public Trust in question was in possession on the date the Act came into force, because the land in question had been converted for non-agricultural purpose namely, for the purpose of School building of the Public rust in question under Section 95 of the Karnataka Land Revenue Act, 1964 by the order dated 19-11-1972 passed by the Deputy Commissioner, Belgaum in No. RB.LNA. SR.I 2974 (Annexure-A). But it is only a permission and it cannot be taken as a proof of the fact that on the date the Act came into force, the land was in possession of the Public Trust as a lessee. Even assuming, as stated earlier, that the Public Trust was in possession as a lessee of the vacant land in question on the date the Act came into force, it is not open to the petitioner to seek exemption from the purview of Chapter III of the Act. Sub Section (1) of Section 19 of the Act is subject to the provisions contained in sub-section(2) of that Section. No doubt the expression "to hold" as defined in Section 2(1) of the Act, with its grammatical variations, in relation to any vacant land means to own such land, or to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities. The explanation thereof further provides that if the same land is held by one person in one capacity and by another person in another capacity, then for the purposes of the Act, such land shall be deemed to be held by both such persons. Therefore, it is clear that possession of the land on the date the Act

came into force, even if it is assumed, was with the Public Trust as a lessee, the petitioner was also in possession of the land as owner through her lessee and as per the aforesaid explanation also, it shall be deemed to be held by the petitioner.

6. In the facts and circumstances of the case, the question that arises for consideration is as to who is entitled to claim exemption. As already pointed out, sub-section (1) of Section 19 of the Act is subject to the provisions of Sub-section (2) of that section. Sub-Section (2) of Section 19 reads thus:

"2) The provisions of sub-section(1) shall not be construed as granting any exemption in favour of any person, other than an authority , institution or organisation specified in sub-section(1), who possesses any vacant land which is owned by such authority, institution or organisation or who owns any vacant land which is in the possession of such authority , institution or organisation:

Provided that where any vacant land which is in the possession of such authority, institution or organisation, but owned by any other person, is declared as excess vacant land under this chapter, such authority, institution or organisation, shall, notwithstanding anything contained in any of the foregoing provisions of this Chapter, continue to possess such land under the State Government on the same terms and conditions subject to which it possessed such land immediately before such declaration.

Explanation.-For the purposes of this sub-section, the expression "to possess vacant land" means to possess such land either as tenant or as mortgagee or under a hire purchase agreement or under an irrevocable power of attorney or partly in one of the capacity and partly in any other capacity or capacities."

(emphasis supplied)

7. From the aforesaid sub section(2) of Section 19 of the Act. it is clear that if the vacant land is owned by a person other than a Public Trust or other institution, authority or organisation specified in sub-section(1), even if the possession of it was held by a Public Trust, institution or such other authority or organisation falling under subsection(1) of Section 19 of the Act. on the date Act came into force, the owner of the vacant land is not entitled to the benefit of Section. 19(1) of the Act and claim exemption from the purview of Chapter III of the Act on the ground that the vacant land was in possession of the Public Trust or any such authority or organisation specified in sub-section(1) of Section 19. as a lessee or in any other capacity. Even in such a case. the extent of the vacant land in excess of the ceiling area will have to be determined as per Chapter III of the Act and the excess vacant land is liable to be acquired under Section 10 of the Act. Such excess vacant land, after the notification is published in the official Gazette of the State concerned under sub-section (3) of Section 10 of the Act declaring that the excess vacant land referred to in the Notification published under sub section (1) of Section 10 of the Act, shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall

be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified. Sub-section(5) of Section 10 of the Act further provides that where any vacant land is vested in the State Government under sub-section (3), the Competent Authority may by notice in writing, order any person who may be in possession of it, to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within 30 days of the service of the notice. Sub section (6) of Section 10 of the Act empowers the Competent Authority to take possession if the person concerned refuses or fails to comply with an order made under Section 10(5) of the Act. The competent authority for this purpose is entitled to use such force as may be necessary.

8. The declaration referred to in the proviso to sub section (2) of Section 19 of the Act is the one which is made in the Notification published under sub section (3) of Section 10 of the Act by the Competent Authority. In the case of vacant land being in the possession of a Public Trust, Authority, institution or organisation falling under section 19(1) of the Act, on the date of coming into force of the Act, having regard to the provisions contained in the proviso to subsection (2) of Section 19 of the Act, is entitled to continue to possess such land under the State Government on the same terms and conditions subject to which it possessed such land immediately before such declaration.

9. Thus it emerges from the aforesaid discussion that on a reading of sub-section (1) and (2) of Sections 19 of the Act and the definition of the expression "to hold" in the light of the provisions contained in Section 10 of the Act, if the owner of the vacant land is some other person other than a public trust, or authority, institution or organisation falling under Section 19(1) of the Act, even though such vacant land has been in the possession of a public trust, or any one of those bodies, falling within the scope of sub-section (1) of Section (19) of the act the owner of such vacant land will not be entitled to take advantage of Section 19(1) of the Act and seek exemption of the vacant land from the purview of Chapter III of the Act. In such a case, the excess vacant land has to be determined and acquired and declared as vesting in the State Government under Section 10(3) of the Act. However, the Public Trust or other body falling under Section 19(1) of the Act in possession of such land, will continue to possess such land under the State Government on the same terms and conditions subject to which it possessed such land immediately before the declaration made under sub section (3) of Section 10 of the Act as provided in the proviso to sub-section (2) of Section 19 of the Act. This being the position of law, it is not possible to hold that the petitioner is entitled to seek exemption under Section 19(1) of the Act.

10. No other contention is advanced.

11. Accordingly, for the reasons stated above, the petition has to fail It is accordingly dismissed.

12. Sri Udaya-Shankar, H.C.G.P. is permitted to file his memo of apperance on

behalf of respondents in six weeks.

Writ petition dismissed