

(1998) 07 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No. 21272 of 1998

Smt. Veerarajammanni and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10 (3), 20, 8, 9

Citation : (1999) 2 KarLJ 438

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M/s. Vagdevi Associates, for the Appellant; Sri M.H. Ibrahim, High Court Government Pleader, for the Respondent

Judgement

1. Heard the learned Counsel appearing for the petitioner Mr. K. Sridhar, assisted by Mr. N.S. Hiremath, Advocate and Mr. M.H. Ibrahim, learned HCGP appearing on behalf of the respondent.

2. The facts of the case in brief are that the petitioners who claimed to be the joint owners of property bearing No. 24 situated at Lalitha Mahal Road, Mysore City and popularly known as "Kismat Cottage". The properties bearing Nos. 14, 14/1 to 12 situated at Chandragupta Road, Mysore City, have been claimed by the petitioners as the joint owners thereof and the same belonged originally to the husband of the first petitioner and father of the second petitioner.

3. The petitioners' case is that acquisition proceedings in entirety, were against the provision of law as contained in Sections 8, 9 and 10 of the Act as well as were against the principle of natural justice. The petitioners on 24-9-1986 submitted representation u/s 20 of Urban Ceiling Act, 1976 seeking the exemption u/s 20 of the Act, being granted, from purview of operation of provision of Chapter III of and under Urban Ceiling Act, with reference to excess portion of entire land of S.N. 24, Kismat Cottage. The petitioners' case that even after 24-9-1986 she further made similar applications on 5-10-1986 and 13-12-1996 and 10-12-1996 even, copies thereof annexed as Annexure-C, D, J

and K to the petition. The earlier application referred to above came to be disposed of by the Government by order dated 10-8-1989.

4. The petitioners' case is that, he filed a writ petition in Writ Petition No. 6245 of 1989, which was finally heard and partly allowed on 8-8-1996. A perusal of Annexure-H reveals that in that writ petition the petitioner has challenged the order dated 10-1-1989 passed by the State Government on application u/s 20 of the Act. This Court held and observed that:-

"From a reading of the said order, it is clear that no opportunity was afforded to the petitioner before passing the said order. This Court in several cases has held that an application filed by the petitioner has to be considered by the State Government after affording an opportunity of being heard. In the instant case as there was no opportunity afforded to the petitioner the order Annexure-F is liable to be quashed as it is in violation of principles of natural justice".

After making these observations this Court quashed Annexure-F i.e., order of the State Government dated 10-1-1989, whereby the Government has rejected the application u/s 20 without hearing the parties. The matter was sent to the Government back with a direction to hear the petitioner and dispose of the application u/s 20 of the Act, after issue of notice to the petitioner. Thereafter the petitioner moved a representation on 18-12-1996 again. The notice was issued on 13-1-1997 as per Annexure-L, to which the petitioners gave reply as per Annexure-M to the writ petition. Vide Annexure-N, dated 6-4-1998 the State Government rejected the petitioners application u/s 20 of the Act, on the ground that notification u/s 10(3) of the Act had been issued on 24-9-1986 and the same has not been cancelled by the Hon'ble High Court and therefore it rejected the application. The petitioners have also sought for clarification of the order dated 8-8-1996 before this Hon'ble Court. However, the application came to be disposed of by an order dated 11-4-1997. This Court has pointed out that the order passed by the Government is without hearing or giving an opportunity of hearing to the parties, so it quashed the same and directed the State Government to hear and dispose of the application filed by the petitioner u/s 20 of the Act after due notice to the petitioners and there is no further need of clarification. The order is very clear on the point. Vide Annexure-P which is the notification dated 24-9-1986 and Annexure-Q is dated 21-11-1986. Petitioners submit that in view of the fact that the Government has refused to consider the application filed by them on the ground that notification u/s 10 has not been quashed and therefore it will not consider their application.

5. The petitioners' case is that, they have made an application u/s 20 of the Act for exemption a good long time ago. One such application was moved on 19-8-1986 that is before the concerned authority u/s 20 of the Act. They have also pointed out that again on 24-9-1986, the petitioners have made another application and copy of which is at Annexure-C to the writ petition, seeking exemption of the excess land in the entire land No. 24, Kismat Cottage, Lalitha Mahal Road, Mysore from the purview of the operation of the Urban Land Ceiling

Act and it further held that the entire area be permitted to be utilised by all of us for the purpose mentioned. Thereafter, the application u/s 20 of the Act, moved on 5-10-1986 as per Annexure-D to the writ petition on the ground of undue hardship. The petitioners further mentioned that they also made another application on 28-12-1986 seeking exemption.

6. Applications dated 5-10-1986 and 28-12-1986 may be said to have been made after notification u/s 10(1) of the Act and dated 28-12-1986 application after enquiry and notification u/s 10(3), which notification was published in the Government Gazette dated 11-12-1987, though notification is dated 28-11-1986, and the same came to be disposed on 10-1-1989.

7. The learned Counsel for the petitioner contended that application for seeking an exemption has really been moved earlier to notification u/s 10(1) of the Act, as application had been moved on 19-8-1986 and thereafter series of applications were moved. The learned Counsel for the petitioner further contended that the application u/s 20 of the Act is not subject to 10(3) notification. The application u/s 20 is an independent one. Accordingly, the learned Counsel for the petitioner contended that correct interpretation of law is given in the case of T.R. Thandur Vs. Union of India (UOI) and Others, , and it is that Section 20 has got a overriding effect over the provisions of Chapter III, that is Sections 3 to 19 of the Act. The learned Counsel for the petitioner further contended that u/s 20 which is having an overriding effect on account of non obstante clause, the Government erred in opining that as the notification u/s 10(3) has been published, the Government cannot exercise that power. The learned Counsel for the petitioner further and in alternative contended that if the powers u/s 20 is subject to Section 10(3) of the Act, then it means that power cannot be exercised until the property is vested with the Government. Then the application u/s 20 would lie and power to grant exemption will arise if and when the power u/s 20 stood vested in Government and became exercisable on the vesting of property in the Government as such also the order impugned rejecting the application is illegal and amounts to illegal refusal to consider the application u/s 20 of the Act so is liable to be quashed. The learned Counsel for the petitioner fairly submitted that the position of law is just otherwise and clear on the above aspect. In earlier case of S. Vasudeva Vs. State of Karnataka and others, , it was held that the provisions of Section 20(1)(b) of the Act do not permit the State Government to give exemption to the vacant land in excess of the ceiling limit for the purpose of transferring the same unless land vested in Government u/s 10(3) of the Act. Whereas view expressed in T.R. Thandur's case, the Government has power to consider the application even before vesting of land in the Government and power u/s 20 is not subject to Sections 3 to 19. If the power u/s 20 is subject to tinder Section 10, then the question of exercise of power u/s 20 arises when only the land stands vested in the Government. If three-Judges Bench is not followed, then also the Government had to consider the application on merits after publication of notification u/s 10(3) of U.L.C. Act.

8. The learned Government Counsel pointed out that this Court in earlier writ petition has considered these aspects and opined that following the Supreme Court decision in the case of T.R. Thandur, *supra*, that the provisions of Sections 3 to 19 are subject to and are overridden by the provisions of Section 20. Therefore, issuance of notification u/s 10(3) will not affect the power u/s 20, which power is vested in the Government to grant exemption and when the exemption is granted u/s 20 the land shall stand exempted from the operation of Sections 3 to 24 including Section 10. Therefore, the Government has power to dispose of that application.

9. The learned Government Counsel further contended that there was a delay in making the application. The application was made on 28-12-1986 after publication of notification u/s 10(3) of the Act.

10. I have applied my mind to the contention raised by the learned Counsel for the parties at Bar. As regards to Section 20 that there was a burden on the part of the petitioner to approach the Government as early as possible, but the petitioner had not approached the Government well within time. No doubt the application was made by the petitioner on 28-2-1986. But the records reveal that the petitioner had moved an application for grant of exemption in the month of August 1986 in every case i.e., on 19-8-1986 or even earlier. The learned Counsel for the petitioner has not pointed out that no doubt so far the application is made on 19-8-1986. Thereafter, the application Annexure-C and D also discloses that the petitioner had moved an application to that effect on 24/28-9-1986 and also on 5-10-1986. So it cannot be said that there was much delay, since they made application after notification. The Government has rejected the application, when it was required to consider the same under order dated 8-8-1996 passed by this Court at Annexure-H to the writ petition. The same was rejected on the ground that in view of the Section 10(3) notification, it has no power to grant exemption. The Government and Government Authorities have been mistaken on this aspect of the matter.

11. In the case of T.R. Thandur, *supra*, the three-Judges Bench of the Supreme Court considered Section 20 of the Act and interpreted the same. Justice J.S. Verma, observed that.-

"The non obstante clause clearly indicates that Section 20 overrides the foregoing provisions of Chapter III, that is, Sections 3 to 19 of the Act. This is re-affirmed in clauses (a) and (b) wherein the concluding part in each is: Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter. The effect of the non obstante clause at the beginning of sub-section (1) and the concluding words in clauses (a) and (b) undoubtedly is that on exemption being granted subject to the conditions specified in the order granting the exemption, such vacant land is exempted from the provisions of Chapter III which contains Sections 3 to 24, in spite of the provisions in Sections 3 to 19. There is no ambiguity in this behalf in sub-section (1). The plain language of the provision

leaves no room for any ambiguity".

Therefore refusal to consider the application u/s 20 either under clause (a) or (b) can be said to be misconceived and it cannot be said that the State Government has no power to consider it and to pass orders u/s 20. Really the power u/s 20 is a power overriding the provisions of Sections 3 to 24, so it cannot be said that power of the Government u/s 20 is subject to notification u/s 10 or that on the publication of notification u/s 10 the Government ceases to have power to grant the exemption u/s 20 of the Act.

12. Even if the view taken in the case of Smt. Darothi Clare Parreira and others Vs. State of Maharashtra and others, , as their Lordships at page 2555 at para 6 have observed that:--

"The previous owner stands divested of right, title and interest in the land subject to the right to make application provided under Sections 20 and 21. It is difficult to accept the contention that the competent authority has no power to have the notification u/s 10(3) published in the Gazette until the application either u/s 20 or 21 is disposed of. The very language of Sections 20 and 21 and the exercise of the power thereunder would arise only when the lands "stand vested in the Government. The power of examination and exemption would arise only when the Government becomes the owner and the erstwhile owner seeks to subserve the housing scheme for weaker sections u/s 21 as envisaged there under".

According to this view the power to grant did arise only after the publication of notification u/s 10(3), when the owner is divested of right, title and interest in the land and said land vested in Government and then he requests the Government for exemption being granted.

13. In this view of the matter, i.e., the opinion expressed in this case also the learned Counsel for the petitioner was justified in saying that the Government has the power to grant exemption. According to the Darothi's case, supra, power to grant exemption did arise only after vesting of the land in the Government. Whether power arises after vesting the land in the Government or it had really stood vested in Government earlier to that, in both the cases the power to grant exemption had been there and it had to be exercised by the Government even after publication of notification u/s 10(3) of the Act. Because Section 20 and order passed under that section, in every case has got an overriding effect even after the notification u/s 10 of the Act has been published.

14. It appears to be the view expressed by the Government that because of Section 10(3) notification exemption cannot be granted is wrong and erroneous and it has resulted in Government's failure to exercise the jurisdiction vested in it. The refusal or denial to exercise the power u/s 20 in spite of direction issued by this Court in Writ Petition No. 6245 of 1989 and refusal to decide the application on merit is nothing but clearly it is breach of the directions and writ issued by this Court. Such a breach is not tolerable. Orders of this Court are

meant to be followed and observed and not to be flouted in such a fashion. This Court may take serious view in future if the orders of the Court are flouted like this. Once the Court has directed the Government to hear the petitioner and to dispose of the application u/s 20 on merits, the authorities acted illegally when they refused the application and refused to consider and decide the same on merits.

15. Anyway, now a direction is specifically issued to the Government to consider the petitioners' application for seeking exemption u/s 20(b), which had been made earlier to notification dated 24-9-1986, i.e., on 19-8-1986 and on 24-9-1986 and thereafter the last application dated 28-12-1986, by passing suitable orders after applying their mind to the directions issued by this Court in the earlier writ petition as well as in this petition, after giving notice and opportunity of hearing to the parties within eight weeks from the service of copy of this order by petitioner or Court whichever is earlier.

16. The writ petition is as such allowed. In the present case, I am not imposing any costs, but if the authorities attitude is continued to be like that as revealed in the order impugned by refusing to consider the application in spite of directions of this Court, this Court may impose punitive costs, with a direction to Government to realise and pay the costs from the salary of the officer concerned. Anyway there is no such order for the present. Parties to bear their own costs.

17. Sri M.H. Ibrahim, learned Government Pleader is permitted to file his memo of appearance.