
(2002) 08 AP CK 0085
In the Andhra Pradesh High Court
Case No : W.A. No. 1252 of 2002

Smt. Zarina and Others

APPELLANT

Vs

Special Officer and C.A., Land Ceiling and Others

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 10(4), 10(5), 15

Citation : (2003) 2 ALT 82

Hon'ble Judges : Ar. Lakshmanan, C.J;V. Eswaraiah, J

Bench : Division Bench

Advocate : V. Venkataramana, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—The unsuccessful 96 Writ Petitioners filed this Writ Appeal in dismissing W.P.No.19190/2001 by the learned Single Judge on 08/04/2002. The appellants filed Writ Petition to issue a writ of mandamus to declare the action of the Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada in issuing the proceedings in Rc.No.A2/309/1996 dated 30/10/1996 by ordering the operation of No Objection Certificates issued in different files in the months of November and December 1995 u/s 26(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the Act") in respect of the several extents of the lands in Sy.No.20/P of Vidhyadhara Puram, Vijayawada, in abeyance and further directing the Sub Registrar, Gandhi Nagar, Vijayawada and the District Registrar, Vijayawada not to entertain any sale deed for registration in respect of the said land, is arbitrary, illegal and to direct the Sub Registrar and the District Registrar of Vijayawada to entertain the registration of sale documents which may be presented by them in respect of the said land without reference to the proceedings of the 1st respondent dated 30/10/1996.

2. Brief facts of the case are that one M. Krishna Rao, M. Srinivasa Rao and M. Narasimha Rao filed declarations u/s 6(1) of the Act declaring the lands held by

them in Sy.No.20, Vidhyadhara Puram, Vijayawada Urban Agglomeration and same were numbered as CC Nos. 291, 292 and 293 of 1976 respectively. The Special Officer and Competent Authority, after conducting an enquiry, declared M. Krishna Rao as surplus land holder to an extent of 16,530 Sq. Mtrs, M. Srinivasa Rao as surplus land holder to an extent of 15,888 Sq. Mtrs and M. Narasimha Rao as surplus land holder to an extent of 16,348 Sq. Mtrs respectively vide his proceedings dated 18/09/1978 u/s 8(4) of the Act. Thereafter, Section 10(1) notification was published on 20/11/1980. Section 10(3) notification was published on 07/05/1985 and Section 10(5) proceedings were issued on 24/09/1985. Thus, the declarations filed by the aforesaid three declarants have become final and no one questioned the same.

3. Suppressing the said facts, the said declarants allowed to pass an award dated 27/04/1995 by the arbitrators pursuant to the agreement dated 19/03/1995 entered into between the said declarants and 17 others and filed O.S.No.211/1995 for making the award as rule of Court. Accordingly, the Principal Subordinate Judge, Vijayawada, in O.S.No.211/1995 made the award dated 27/04/1995 as rule of Court and made the decree in terms of the award by passing the decree stating that the agreement of sale dated 19/04/1973 and endorsement dated 01/10/1973 is true and genuine and 17 individuals are found in adverse possession and enjoyment of 0-50 cents of the land each and the said declarants are entitled to certain interest on the balance sale consideration payable by the said 17 individuals and the declarants were directed to deliver the vacant possession of 0-50 cents each in favour of 17 individuals in respect of the same property in Sy.No.20 Vidhyadhara Puram, Vijayawada Urban Land Agglomeration. Pursuant to the order and decree of the civil court dated 27/04/1995 made in O.S.No.211/1995, 17 persons issued notices u/s 26(1) of the Act for the transfer of the vacant land and the said applications were enquired into and No Objection Certificates were issued permitting them to sell the land in the months of November/December, 1995. Accordingly, the sale deeds were registered in favour of the appellants herein. The appellants herein, in turn, wanted to sell the lands in question but respondents 2 and 3 have not entertained any document for registration in respect of the land in Sy.No.20/P, Vidhyadhara Puram, Vijayawada and on enquiry, they came to know that the 1st respondent passed the impugned orders dated 30/10/1996 suspending the order of the No Objection Certificates which were issued in the months of November and December, 1995. Questioning the said proceedings of the 1st respondent dated 30/10/1996, the petitioners filed the Writ Petition contending that the 1st respondent has no power of review or revision under the Act to review the proceedings u/s 26 of the Act.

4. The impugned proceedings were issued to 17 persons who have obtained No Objection Certificates. None of the persons against whom the proceedings were issued are the parties to the Writ Petition. The so-called vendees of 17 persons who have obtained No Objection Certificate u/s 26(1) of the Act and sold the said lands in favour of the petitioners alone filed the Writ Petition. Neither the original

declarants nor their alleged agreement holders i.e., the parties to the arbitration proceedings in O.S.No.211/1995 are the parties to the Writ Petition.

5. Admittedly, the said land was originally owned by the said declarants namely, M. Krishna Rao, M. Srinivasa Rao and M. Narasimha Rao and the declarations filed by them u/s 6(1) of the Act have been enquired into and they were declared as surplus land holders in C.C. Nos.291, 292 and 293 of 1976 to an extent of 16,530 Sq. Mtrs, 15,888 Sq. Mtrs and 16,348 Sq. Mtrs respectively.

6. The Urban Land Ceiling Act was enacted with a view to preventing the concentration of the urban land in the hands of few persons and speculation of profiteering thereon and with a view to bringing about an equitable distribution of the land in Urban Agglomeration to subserve the common good. u/s 5(1) of the Act wherein a person who had held vacant land in excess of ceiling limit at a time during the period commencing on the appointed day transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person. u/s 5(3) of the Act, no person holding vacant land in excess of the ceiling limit immediately before the commencement of the Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement u/s 6 and a notification regarding the excess vacant land held by him has been published under Sub Section (1) of Section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void. Every person holding vacant land in excess of ceiling limit at the commencement of the Act shall file a statement u/s 6. Statements filed u/s 6(1) by the said declarants have been enquired into and a draft statement was made u/s 8(3) of the Act and after considering the objections u/s 9, final statement was also published u/s 8(4) determining the excess vacant land held by the said declarants u/s 10(1) notification was also issued giving particulars of the vacant land held by the said declarants and the same was published in the Official Gazette on 20/11/1980. Notification u/s 10(3) was also published on 07/05/1985. Once notification u/s 10(3) is published declaring the excess land, such land shall be deemed to have been acquired by the State Government and such land deemed to have been vested absolutely in the State Government free from all encumbrances. u/s 10(4) of the Act, no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land specified in the notification and any such transfer made shall be deemed to be null and void. u/s 10(5) of the Act, 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 State Government or to any person duly authorized by the State Government within 30 days from the date of service of the notice. Notices u/s 10(5) of the Act, were also issued on 24/09/1985. u/s 18 of the Act, if any person has concealed the particulars of any vacant land, held by him or furnished inaccurate particulars of such land or of user thereof, the competent authority after giving such person an opportunity of being heard

without prejudice to any other penalty to which he may be liable under the Act may be liable under the Act and may impose penalty on such person which shall not be less than but which shall not exceed twice the amount representing the value of the vacant land. u/s 38(3) of the Act, if any person files a statement under the Act which he knows or has reasonable belief to be false, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. u/s 38(4) of the Act, if any person contravenes any of the provisions of the Act for which no penalty has been expressly provided for, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. u/s 42 of the Act, the provisions of the Urban Land Ceiling Act shall have overriding effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority.

7. Aforesaid provisions make it abundantly clear that as per Sections 5(3), 10(4) read with Section 42 of the Act, the sale in respect of the excess declared vacant land which was determined and finally vested in the Government is null and void.

8. u/s 26 of the Act, no person holding the vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority. Section 26 itself makes it clear that the person holding the land within the ceiling limit alone is entitled to transfer. The aforesaid declarants are admittedly having excess land and they are the surplus land holders. The aforesaid three original land owners who have been declared as surplus land holders without disclosing anything about the proceedings under the Act suffered an award before the arbitrators and obtained a collusive decree. The said three persons (declarants) are the A-party individuals and the 17 persons are the B-party individuals in O.S.No.211/1995. B-party individuals have no right, title or in possession of the said land and the said land was owned by A-party individuals who filed the declarations. Under 26 of the Act, the persons, who were holding the land within the ceiling limit after giving such notice in writing of the intending to transfer of such land to the competent authority are alone entitled to sell the land within the ceiling limit. In the instant case, neither the original land owners (A-party individuals) have issued notices u/s 26 nor B-party (17 individuals) of the said suit have filed any declaration under the Act, and, therefore, they are not entitled to issue any notice u/s 26 intending to transfer the said land. Without disclosing the earlier proceedings under the Act, B-party 17 individuals alone have issued notices stating that the land held by them is within the ceiling limit as per the decree passed by the civil court in the arbitration proceedings and the authorities without any justification whatsoever and without any proper verification of the records relating to the said survey number declarations filed u/s 6 of the Act etc., issued No Objection Certificates and, therefore, the said notice issued by the 17 individuals and transfer made by them is null and void and non est in law.

9. Section 26(1) of the Act cannot be read in isolation but it has to be read with Section 5(3), 10(3) and 42 of the Act. The learned Judge after considering the contention of the petitioner extensively held as follows:

"The petitioners, in this writ petition, question the action of the respondents in keeping the no objection certificates in abeyance. The petitioners herein are the intending purchasers of the land. I am afraid, in view of the element of fraud played by the original owners in suppressing the material facts, which culminated into a decree dated 27/04/1995 from Civil Court in O.S.No.211/1995 and the award of the Arbitrator which was made rule of the Court, the transactions entered into by the petitioners cannot be termed as bona fide transactions. Evidently, the original declarants have played fraud against the Government and the Competent Authority. When the land was vesting with the Government by virtue of Section 10(3) notification, after lapse of ten years, the Court was allowed to pass a judgment and decree suppressing that material fact. Therefore, when the purchasers cannot get a perfect title over the said property, they are equally incompetent to issue notice u/s 26(1) to the Competent Authority either to exercise its option under 26 (1) or to allow them to proceed u/s 26(2) of the Act."

10. The original declarants and the so-called agreement holders who purchased the surplus land have suppressed the proceedings under the Urban Land Ceiling Act, which have become final and the land was vested with the Government. Thereafter the original declarants i.e., A-party 3 individuals and 17 persons as B-party individuals based on the alleged agreement of sale dated 19/04/1973 referred the matter to the arbitration and to make the award of the arbitrator they have filed O.S.No.211/1995 and obtained decree. Based on the said judgment of the Subordinate Judge, B-party 17 individuals issued notices u/s 26 of the Act claiming that each of them is the owner of 0-50 cents of land in Sy.No.20 of Vidhyadhara Puram, Vijayawada and on the said notices, an enquiry has been conducted by the officials of the 1st respondent. It is stated that they have verified the Surplus Cases Register and also the other relevant records in the office and there are no Urban Land Ceiling cases pending relating to the said land and based on the civil court order alone it was recommended to grant No Objection Certificates u/s 26(1) of the Act. Accordingly, different orders were issued in the months of November and December, 1995 which are all similar and it is specifically mentioned in the said order that the notice giver is informed that the sale of the land proposed by him is subject to the provisions of Sections 5(3) and 15 of the Act. Section 5(3) specifically provides that any transfer of such excess vacant land shall be deemed to be null and void.

11. It is stated in the counter that when the fraud was brought to the notice of the 1st respondent, about the granting of No Objection Certificates u/s 26, the same have been kept in abeyance by the impugned proceedings dated 30/10/1996 and also informed to the C.B.C.I.D. officials regarding the issue of illegal/bogus No Objection Certificates and the registration of the land covered by

the said Sy.No.20 of Vidhyadhara Puram, Vijayawada. It is, thus, clear that it is a clear case of fraud with the connivance of the officials of the 1st respondent and the vendors of the petitioners herein. Therefore, it is a fit case to launch prosecution and take appropriate action against all the concerned persons who have made enquiries on the notices issued by the vendors of the petitioners for grant of No Objection Certificates and whoever have dealt with the proceedings for grant of No Objection Certificate. Here is a case where the unscrupulous elements with the connivance of the officials have played fraud defeating the object of the Urban Land Ceiling Act. It is also open for the first respondent to take action against the said declarants (A-Party individuals) and the vendors of the Writ Petitioners i.e., 17 (B-Party individuals) for violation of the provisions under Urban Land Ceiling Act in accordance with law. Therefore, we are of the view that severe action needs to be taken against all the persons concerned.

12. The learned counsel appearing for the appellants submits that recently government issued orders regularizing the illegal sales and the cases of the appellants may be directed to be considered. The said request is beyond the scope of the Writ Appeal and we are not inclined to express any opinion and it is left for them to work out the remedy elsewhere. But we do not wish to make any observation in this regard.

13. The learned Single Judge rightly repelled all the contentions of the writ petitioners and dismissed the Writ Petition.

14. We do not see any merit in the Writ Appeal and the Writ Appeal is accordingly dismissed with costs.