

(1987) 03 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6379 of 1981

S.V.K.B.A. Lakshma Rao and Another

APPELLANT

Vs

Competent Authority, ULC cum Military Estates Officer,
Secunderabad and Another

RESPONDENT

Date of Decision : 20-03-1987

Acts Referred:

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

Citation : AIR 1988 AP 254

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : V. Radhakrishna, for the Appellant; K.V. Subba Rao and Addl. Standing Counsel for C.G., for the Respondent

Judgement

K. Ramaswamy, J.—The petitioner is admittedly now found to be holding vacant land in excess of the prescribed limit under the Urban lands (Ceiling and Regulation) Act (33 of 1976), for short, "the Act", but he claims that as it is situated in Secunderabad Cantonment Area, it stands vested in the Military administration and therefore by operation of S. 19(1)(ii) of the Act, the land shall stand excluded from the purview of the Act. Therefore, the declaration that it is excess land is (not) valid in law. In support of the contention, Sri Radhakrishna, learned Counsel for the petitioner seeks to contend that the word "to hold" as defined under S. 2(1) of the Act 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. In this case, the lease is granted by the Cantonment authorities for the petitioner to construct a house and to be in possession for thirty years. Therefore, the land continues to be the Government land and the petitioner cannot be declared to be in excess of the land. I am unable to agree. Section 2(1) of the Act defines "dwelling Unit" in relation to a building or a portion of a building, means a unit of accommodation in such building or portion, used solely for the purpose, of residence. "Family" in

relation to a person is defined under Cl. (p) to mean the individual, the wife or husband, as the case may be, of such individual and their unmarried children. "Land appurtenant" in relation to any building has been defined under S. 2(1). "Person" is defined under Cl. (i) of S. 2, to include an individual, a family, a firm, a company or an association or body of individuals, whether incorporated or not. Section 3 declares that except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land, in excess of the ceding limit, in the territories to which this Act applies under sub-sec. (2) of S. 1. Ceiling limit under S. 4, in relation to the Hyderabad agglomeration is 1,000 sq. meters. Secunderabad would come within the Hyderabad agglomeration. Therefore, if a person is in occupation in excess of 1,000 sq. meters, the vacant land is liable to be Surrendered on computation under S. 6 of the Act. It is now found that the petitioner is in excess of the vacant land in the Cantonment area. Section 19 excludes certain lands from the purview of the Act, which reads thus:

"19. Chapter not to apply to certain vacant lands :

(1) subject to the provisions of sub-sec. (2), nothing in this chapter shall apply to any vacant land held by -

(ii) any military, naval or air force institution""

(Other Clauses and Explanation are not relevant. Hence omitted).

2. A reading of this provision would clearly show that the land is exempted from the purview of the provisions of the Act if the land is held by any military, naval or air force institutions. Therefore, any property held by those institutions as such, gets exempted. But if there is any vacant land in the Cantonment area, subject to its control the entire land does not stand vested under the provisions of this Act. If it were the intention of the legislature that the entire land stands excluded, certainly we would find an express mention in that regard in the Statute, but no such declaration was made. The legislature is aware of the existence of the Cantonment areas throughout the country in the respective agglomerations and the lands held the various persons subject to the leases granted by the Cantonment authorities and buildings constructed thereon subject to the terms and conditions mentioned in the lease deeds. When the definition "to hold" has been engrafted in a wider sense that a person in possession in his capacity as a tenant would be an owner for the purpose of the Act, it would mean that though the person in possession has no legal or absolute title as such but possessory title has also been recognised as owner so as to compute a holding for the purpose of this Act. Obviously when it is said that "in any capacity", it would mean that any one of the capacities would be sufficient to bring within the purview of the Act. When so construed, the necessary intendment would be, the vacant lands within the cantonment area leased out to private individuals would also come within the purview of the Act and if any person is found to be in excess of the ceiling limit, then necessarily the vacant land is to be surrendered

for distribution of public - the purpose mentioned in the Act. No doubt, the contention of Sri Radha Krishna, that when the Government has got title to the property it cannot be divested under the provisions of the Act and revested and there arises incongruity, though prima facie appears to be plausible, but on a deeper probe, I find it difficult to accept the contention. The exclusionary S. 19(1) (ii) expressly mentions the land held by the military institutions. That means, all the vacant lands held by such institutions for the purpose of military operation alone stood excluded from the purview of the Act. If any other land intended to be excluded, then it would have been mentioned therein. There appears to be distinction between vesting and control over the land in the Cantonment arm. In the case of the former the exclusionary operation of S. 19 is attracted and in the latter classes, the Act applies and the excess vacant land is to be surrendered to the competent authority for distribution. Of course, the allottee is also bound by the regulation under the Cantonment Act, Rules and Regulations, applicable to all. Considered from this perspective, I am of the view that the vacant land held by the private individual under the lease granted by the Cantonment authorities is governed by the Act.

3. The Writ Petition is accordingly dismissed, but in the circumstances, without costs.

4. Petition dismissed.