

(2009) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17739 of 2008

T. Srinivasulu (Dr.)

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Urban Land (Ceiling and Regulation) Act, 1976 — Section 6, 6(1), 8(4)

Citation : (2009) 4 ALD 324 : (2009) 3 ALT 558

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant; G.P. for Respondent Nos. 1, 2 and 4 and D. Ranganath Kumar, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The facts of this case disclose that the office of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, the 2nd respondent herein, is functioning under the impression that there does not exist any Rule of Law.

2. The petitioner and his family members held various extents of land in different survey numbers of Tummarawoli and Gaddi Annaram Villages, Saroornagar Mandal, Ranga Reddy District. Since the villages are within the Hyderabad Urban Agglomeration, they filed declaration u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, (for short "the Act"). After verification of the entire matter, the 2nd respondent passed an order u/s 8(4) of the Act, on 21-07-1982, holding that the petitioner is not liable to surrender any excess land. The fact that the land held by the petitioner is put to agriculture use; was taken note of.

3. After about a quarter century, the incumbent in the office of the 2nd respondent thought of reopening the proceedings on the sole ground that the lands are put to a different use. He formed this opinion on the basis of the report of the Enquiry Officer on 21-01-2006. Immediately, he swung into action and

straightaway passed an order, on 30-01-2006, holding that the petitioner is liable to surrender an extent of 40,601.71 sq.metres. Neither any notice was issued, nor the proceedings are referable to any provision of the Act. The Government, in turn, issued G.O.Ms. No. 945, Revenue (UC.I) Department, dated 02-08-2008, allotting the land of the petitioner, as well as certain other extents of different individuals, to the A.P. Housing Board. The petitioner challenges the proceedings, referred to above.

4. Heard the learned Counsel for the petitioner, and learned Government Pleader for the respondents.

5. The Act was enacted by the Parliament as a measure to bring about a semblance of equality in the holding of urban properties. It is not out of place to mention that the Act was challenged before the Supreme Court in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, One of the arguments advanced by the petitioner was, on the strength of the principle laid down in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, namely, that the Act is opposed to basic structure of the Constitution. While repelling the contention, Justice V.R. Krishna Iyer, in his judgment, expressed his fury by calling the judgment in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, as "Bharati ghost". It was pointed out that the suffering of certain individuals in enforcing such laws cannot be helped, and the sufferers were given the status of martyrs. In the words of the learned Judge.

...Peripheral inequality is inevitable when large-scale equalization processes are put into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality, their genius will let them down if the essay is to avoid even peripheral inequalities. Every large cause claims some martyr, as sociologists well know. Therefore, what is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscionable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty. But to permit the Bharati ghost to haunt the corridors of the court brandishing fatal writs for every feature of inequality is judicial paralysation of parliamentary function. Nor can the constitutional fascination for the basic structure doctrine be made a Trojan horse to penetrate the entire legislative camp fighting for a new social order and to overpower the battle for abolition of basic poverty by the "basic structure" missile....

The Supreme Court branded a doctrine enunciated by itself, as a Trojan horse.

6. The experience has only shown that, apart from failing to serve the declared purpose, the Act has become counterproductive. The Parliament has soon resolved to give the Act itself martyrdom, and accordingly it was crucified or ghostified in the year 1999, through an Act of Parliament. The unfortunate part of the matter is that, hundreds and thousands of individuals were either deprived

of their property, or were subjected to prolonged litigation. Those who were persistent were lucky, and those who wanted to show respect to law, have attained the "propritariat martyrdom". The actual beneficiaries are the State and middlemen, who took it as a profession, to handle the matters under the various Acts, at various levels. Hardly any basic poverty was taken away. In the ultimate analysis, the great admiration shown by the Supreme Court for the Act did not last long.

7. The surprising part of the matter is that the Government of Andhra Pradesh became over-active in the implementation of the provisions of the Act, after it was repealed. Not only the matters, which were closed decades ago; were reopened, but even a provision was made, for regularization of the lands, which were already declared as excess. For all practical purposes, the Act, in its repealed or ghost form was utilized to serve two purposes, viz., (a) to earn as much revenue as possible, and (b) to take possession of the large extents of land, even at the cost of violating the settled principles of law.

8. It has already been mentioned that the petitioner did file a declaration, u/s 6 of the Act, and on processing the same, an order u/s 8(4) was passed, way back on 21-07-1982, holding that the petitioner is not liable to surrender any excess land. It is the Government, that could have reopened the matter, in exercise of suo motu powers of revision. That did not happen. The 2nd respondent himself has chosen to re-open the matter. On the face of it, such an exercise is illegal, highhanded and arbitrary.

9. Assuming that the proceedings, in relation to the lands of the petitioner, were re-opened in accordance with law, it was fundamental that a notice is issued to the petitioner, pointing out the basis for reopening the matter. This did not happen, and the 2nd respondent straightaway proceeded to declare that the petitioner is liable to surrender a large extent of 40,601.71 sq. metres. Except that a copy of the order dated 30-01-2006 is said to have been marked to the petitioner, at no other stage he was put on notice.

10. The Government has also changed the priorities of the A.P. Housing Board, which was constituted for the purpose of constructing houses and allot the same at affordable price to the needy, poor and middle class people. Of late, even the Housing Board was converted into a Real Estate Agency, and except that it has started selling the lands, which were already acquired by it, or those, which were allotted to it, hardly there exist any activities, undertaken by it. The land of the petitioner was also allotted to it. The whole episode is a sad reflection of the functioning of the two agencies, referred to above.

11. The writ petition is accordingly allowed, and the impugned proceedings are set aside. It is made clear that the petitioner shall be entitled to enjoy the lands covered by the proceedings, without any interruption from any quarter.

12. There shall be no order as to costs.