

(2008) 10 KAR CK 0018
In the Karnataka High Court
Case No : Writ Appeal No. 1099 of 2007

The Tahsildar (ULC) Section, Special Deputy Commissioner
and Competent Authority, The Special Deputy Commissioner
and State of Karnataka

APPELLANT

Vs

Abay Joseph

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10 (2), 10 (3), 10 (5), 10 (6)

Citation : (2009) 1 KarLJ 382 : (2009) 2 KCCR 49 SN

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Veerappa, for the Appellant; G. Balakrishna Shastry, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal by the respondents in W.P. No. 49442/2004 is filed being aggrieved by the order dated 15.12.2006 wherein the learned Single Judge of this Court has allowed the writ petition and set aside the endorsement bearing No. ULC/SR/11/1976-77 issued by the Deputy Commissioner, Dakshina Kannada District, Mangalore.

2. The essential facts of the case leading upto this appeal with reference to the rank of the parties in the writ petition are as follows:

The writ petitioner claimed interest in the Urban land measuring to an extent of 37 cents in Sy. No. 98-2/C of Alape Village, Mangalore Taluk having purchased the same under a registered sale deed dated 13.2.2004 executed by the erstwhile owner of the land Mrs. Alice D'souza and Mrs. Francis Lobo. The petitioner wanted to put up a construction in the said property and during the course of taking licence from the competent authority, petitioner came to now about the pendency of Urban Land Ceiling proceedings and on further verification he came to know that the vendor of the petitioner has filed a declaration u/s 6(1)

of the Urban Land (Ceiling Regulation) Act, 1976 (for short "the Act") claiming exemption in respect of the property on the grounds set out in the declaration filed by them before the competent authority. The declaration filed u/s 6 of the Act by the vendor of the petitioner was rejected by the Deputy Commissioner and he held that there was excess land and they were bound to surrender the same to the Government and accordingly passed the order on 23.9.1985 holding that the petitioner's vendor has had excess of land to the extent of 1,493.42 sq.mtrs. and accordingly passed the order as per Annexure-A to the writ petition. Being aggrieved by the order passed by the Deputy Commissioner vendor of the petitioner filed W.P. No. 9596/1993 and the said writ petition was disposed of with liberty to file appeal within three weeks and accordingly appeal was preferred before the Divisional Commissioner in RA.ULC. No. 4/93-94 challenging the notification issued by the Deputy Commissioner. The Divisional Commissioner set aside the order passed by the Deputy Commissioner by his order dated 26.5.1999 holding that the computation made by the Deputy Commissioner was not in accordance with law and accordingly, remanded the matter to the Deputy Commissioner-the competent authority for recalculation and disposal as per law. Thereafter, the matter was pending before the Deputy Commissioner. When the matter was so pending before the Deputy Commissioner, Urban Land (Ceiling and Regulation) Repeal Act came into force and the petitioner gave representation on 31.7.2004 to the Deputy Commissioner, Mangalore, after coming to know about the Urban Land Ceiling proceedings requesting the Deputy Commissioner, Dakshina Kannada District, Mangalore to release the said property from acquisition. Since the Urban Land Ceiling Act had been repealed, the representation given by the petitioner on 23.8.2004 by endorsement as per Annexure-J to the writ petition and the said endorsement was challenged in the W.P. No. 49442/2004 contending that in view of the order passed by the Divisional Commissioner dated 25.6.1996 order passed by the Deputy Commissioner was set aside and remitted and wherefore, the matter was pending before the Deputy Commissioner. In view of the repealed Act, all the proceedings abated and therefore, no further proceedings could be taken by the Deputy Commissioner and the endorsement impugned in the writ petition is liable to be set aside.

3. The writ petition was resisted by the respondent contending that possession of excess land has been taken on 13.1.1993 and therefore, the endorsement issued by the Deputy Commissioner was justified and it was further contended that an application was filed for review of the order passed by the Deputy Commissioner and therefore, the endorsement issued as per Annexure-J is justified and necessary entries and changes have also been incorporated in the revenue records and therefore, the writ petition is liable to be dismissed.

4. The learned Single Judge by order dated 15.12.2006 held that the order passed by the Deputy Commissioner dated 23.9.1986 was challenged in W.P. Nos. 8895-96/1993 and petitioner was relegated to the appellate authority and accordingly appeal was preferred before the Divisional Commissioner and

remanded the matter for fresh determination in accordance with law. In the meanwhile on an application for review, by order dated 30.6.1998 the Deputy Commissioner re-determines the proper excess vacant land to be at 1,266.89 sq.mtrs as against the earlier determination of 1,493.42 sq.mtrs. but nevertheless, ordered that the appellate authority has not set aside or withdrawn the notification issued u/s 10(3) of the Act on 23.9.1985 indicating the excess land to be 0.37 acres or 1,493.42 sq.mtrs. and the said order remains and the Divisional Commissioner set aside the order passed by the Deputy Commissioner and remitted the matter to the Deputy Commissioner for recalculation of the extent of land under Urban Land Ceiling Act and the petitioner was only agitating rights of his vendor and he was also acting as a Power of Attorney holder of the owner-declarant. The learned Single Judge has also observed that petitioner has asserted that he continued to remain in possession, in physical possession of the land and land has not been taken over by the authorities, notwithstanding the endorsement dated 13.1.1993 or the proceedings purported to be u/s 10(6) of the Act, the petitioner had the benefit of stay order even before the appellate authority during the pendency of the appeal safeguarding possession of the land and therefore, when the Act was repealed the proceeding which was pending before the Deputy Commissioner stood abated. In view of the order of the Divisional Commissioner dated 26.5.1996 remanding the matter for fresh disposal, earlier determination of excess land did not stand any more and all subsequent actions pursuant to the order also vanished as they cannot remain independently as was the understanding of the Deputy Commissioner in terms of the order dated 30.6.1998 and therefore, the respondent cannot rely upon the action under Sections 10(3), 10(5) and 10(6) of the Act and the order u/s 10(2) of the Act was set aside and after remand there was no proceeding, no further order passed by the Deputy Commissioner u/s 10(2) of the Act and therefore, application was pending consideration and in view of the repealing Act the said proceeding abated and therefore, the endorsement issued by the Deputy Commissioner dated 23.8.2004 could not be sustained and accordingly, the learned Single Judge quashed the said endorsement and directed respondents not to interfere or disturb possession of the petition land i.e. 37 cents or 1,493.42 sq.mtrs and further held that what is declared to have lapsed in terms of u/s 4 of the repealing Act is only a proceeding that had been taken place under the provisions of the repealed Act. Being aggrieved by the said order passed by the learned Single Judge dated 15.12.2006, the respondents have preferred this appeal.

5. We have heard the learned Government Advocate appearing for the appellants and the learned Counsel appearing for the respondent-writ petitioner.

6. The learned Government Advocate submitted that the possession of the land had been taken on 13.1.1993 and orders have already been passed u/s 10(3) of the Act. The proceedings did not abate and the endorsement issued by the Deputy Commissioner was justified and the order passed by the learned Single Judge is liable to be set aside.

7. The learned Counsel appearing for the respondent argued in support of the order passed by the learned Single Judge.

8. We have given anxious consideration to the contention of the learned Counsel appearing for the parties.

9. It is clear from the perusal of the material on record that though the Deputy Commissioner has passed an order u/s 10(2) and thereafter consequential orders have been passed, the same was challenged in W.P. No. 8895-96/1993 and the writ petition was disposed of on 30.3.1993 relegating the writ petitioners to the appellate authority-the Divisional Commissioner and appeal filed before the Divisional Commissioner in ULC. No. 4/93-94 was allowed by order dated 25.6.1996. The order passed by the Deputy Commissioner dated 29.2.1984 and 23.9.1985 were set aside and the matter was remitted to the competent authority for recalculation and disposal as per law. Admittedly, thereafter no order was passed by the Deputy Commissioner and when the Repealed Act came into force that proceeding u/s 10 was pending before the competent authority. The learned Single Judge has rightly held that in view of the order passed by the appellate authority-the Divisional Commissioner setting aside the order passed by the Deputy Commissioner u/s 10(2) of the Act, all consequential proceedings passed by the Deputy Commissioner on the basis of the order passed u/s 10(2) of the Act also abated in the wake of provision of Section 4 of the Repealing Act and if all the proceedings abate, there is no determination of excess land under the Act and no action under the Repealed Act remains and therefore, the petitioner is entitled to retain the land which he has purchased from the erstwhile owner and having regard to the above said material on record, it is clear that the order passed by the learned Single Judge allowing the writ petition is justified and does not suffer from any error or illegality as to call for interference in this intra-court appeal.

10. Accordingly, the appeal is dismissed.