

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.17342 of 2003

Date: 24.03.2015

Between:

Kameswari Cine Enterprises, C/o. Kinnera Lodge,
D.No.31-32-40, opp: Jyoti Theatre, Ladies Gate
Daba Gardens, Visakhapatnam, rep.by its
Managing Partner, P.Sambamurthy s/o.Vasudeva Rao,
aged about 41 years, residing at Visakhapatnam.

.. Petitioner

AND

The Government of Andhra Pradesh, Home (General A)
Department, Secretariat, Hyderabad, rep.by its
Principal Secretary and others.

.. Respondents

The Court made the following:

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ORDER:

The land in Sy.No.55/1A.3A2 of Maddilapalem village, Visakhapatnam District

originally belongs to Smt. Gudla Rambai. In the year 1976, the original owner filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'Act, 1976'). The proceedings under the Act, 1976 were completed. In terms of the provisions of the Act, 1976, the original owner was entitled to retain approximately 1500 square yards. In the year 1995, southern portion of the land was sold to Bandi Veera Raghavulu. From him, petitioner purchased the land on 23.06.1999. Petitioner intended to construct Cinema Theatre. Accordingly, application was submitted to the licensing authority. The said application was processed and No Objection Certificate was issued to the petitioner vide proceedings of the Joint Collector and Licensing Authority, Visakhapatnam, dated 01.05.2003, with certain conditions. One of the conditions is that there was a possibility of revising the sub-division records with reference to the declaration given by the original land owner under the Act, 1976 and on such revision, 430 square yards from out of 1511.61 square yards purchased by the petitioner would become surplus land in possession of the petitioner and, therefore, petitioner had to apply for regularization in terms of the scheme formulated and notified vide G.O.Ms.No.455 Revenue (UC.I) Department, dated 29.07.2002. Petitioner was required to pay an amount of Rs.2,83,500/- to the Government for such regularization. It was therefore ordered that petitioner should undertake to pay the amount as fixed by the authority and if that amount is not paid as and when demand was made, No Objection Certificate issued would stand cancelled. Thereafter, further proceedings were issued by the Joint Collector and Licensing Authority, dated 24.07.2003, in terms of the Government scheme notified vide G.O.Ms.No.455 dated 29.07.2002 and G.O.Ms.No.418, dated 21.04.2003. Petitioner was directed to approach the Special Officer of Urban Land Ceiling, Visakhapatnam for allotment of surplus land in his possession in terms of the Government Orders within one month and directed to obtain No Objection Certificate from the Special Officer. As conditions were imposed to grant No Objection Certificate, petitioner was compelled to pay the amount quantified so that he can undertake construction of Cinema Theatre without any hurdle. Aggrieved thereby this writ petition is instituted.

2. Heard learned counsel for the petitioner Sri O.Manohar Reddy and learned Assistant Government Pleader for respondents.

3. Learned counsel for the petitioner contends that petitioner is a *bona fide* purchaser. Before purchasing the subject property, he issued notice under Section 26 of the Act to the Special Officer and since no Objection was raised against the purchase, he has purchased the property. Learned counsel further contends that as per the declaration finalized and the orders passed under the Act, 1976, the retainable portion is on the Southern side and the surplus land was on the Northern side. The purchase made by the petitioner was on the Southern side, which was within the retainable area and there was no encroachment by the petitioner more than the land retainable by the original declarant. Learned counsel further contends that there was no notice or opportunity before steps were taken to rectify the sub-division records changing the boundaries of the retainable area and surplus area from southern side to northern side and northern side to southern side, respectively. No notice/order was communicated to the petitioner and the original declarant when such decision was taken to change the boundaries.

4. Learned counsel further contends that it appears that revised decision to change boundaries was taken on 07.05.2003 in purported exercise of power under Section 45 of the Act, 1976. Section 45 of the Act is attracted only if there is a clerical or arithmetical error in the order passed by the competent authority. Even though original declaration given by the declarant was to surrender the excess land on southern side and agreed to retain the land on northern side, but she changed her decision and decided to retain southern portion and surrender the northern portion. This was accepted and consequential orders under the Act, 1976 were passed and finalized. In accordance with the provision contained in Section 10(5) of the Act, physical possession of the excess land on northern side of the property was taken, and boundaries were earmarked.

5. Learned Assistant Government Pleader submits that original declaration given by the land owner was to surrender southern portion and to retain the northern portion of the subject land. However, due to mistake, the division was wrongly described in the records. It was a clerical error and therefore, in exercise of power under Section 45 of the Act, the rectification of sub-division records was ordered and there is no illegality or irregularity in taking a decision under Section 45 of the Act. As a consequence to the decision to rectify clerical mistake in the original order, petitioner

was found to be in possession of the land already vested in the State and, therefore, in accordance with the scheme formulated in G.O.Ms.No.455, petitioner was directed to pay the amount as determined under the G.O., for the purpose of regularization of possession. Therefore, there is no irregularity and illegality in the decision demanding payment of amount for regularization. Learned Assistant Government Pleader further submits that since no time limit is prescribed in Section 45 of the Act, it is competent for the Special Officer to carry out the corrections necessary at any time and, therefore, it cannot be said that decision taken on 07.05.2003 is vitiated on that ground.

6. Admittedly, the proceedings under the Act, 1976 were finalized by taking possession under Section 10(5) of the Act on 30.01.1982. Thereafter owner of the property sold the retainable portion to Veera Raghavulu in the year 1995 and from him petitioner purchased on 23.06.1999. No objection was raised at the time of purchase made by the petitioner in the year 1999 even though notice was given under Section 26 of the Act. Revenue records reflected correct description of property, petitioner intended to purchase. Such objection was raised for the first time only when the petitioner applied for grant of No Objection Certificate for establishing cinema theatre. At the stage of grant of No Objection Certificate for establishment of cinema theatre, alleged wrong description of boundaries cannot be the concern of the Licensing Authority. Moreover, by the time No Objection Certificate was processed, there was no proceedings issued by the authority under the Act, 1976 altering the boundaries whereby the retainable portion is changed from the southern portion to northern portion. Licensing Authority acted in excess of his powers imposing conditions of regularisation in the order granting No Objection Certificate. The Licensing Authority has also erred in issuing further notice on 24.07.2003 directing the petitioner to pay amount payable by applying for regularization in accordance with G.O.Ms.No.455. He was not the competent authority to mandate a person to apply for regularisation under the Act, 1976.

7. Respondents placed reliance on the decision taken on 07.05.2003 to revise the sub-division records to change the boundaries of the subject land, whereas case of petitioner is no such order was served on him. Smt. K.Jaya, Deputy Tahsildar in the office of the Special Officer and Competent Authority, Urban Land Ceiling,

Visakhapatnam (3rd respondent) is present with records. As per records, it is seen that proceedings were drawn and signed by the competent authority on 07.05.2003 to change the boundaries in the sub-divisional records in purported exercise of power under Section 45 of the Act. As informed by the Deputy Tahsildar present, no notice was issued to the original declarant or to the subsequent purchaser who is in possession before taking a decision under Section 45 nor proceedings were communicated to the declarant or the person in possession. The so-called decision under Section 45 of the Act remained in the records of the 3rd respondent. However, the Officers of the Special Office proceeded to rectify the sub-divisional records in terms of the said decision.

8. Unless a decision culminates in drawing proceedings and communicated to the party it does not become an order. Thus, reliance on the decision dated 07.05.2003 is illegal to demand the petitioner to apply for regularization and to pay regularization fee. It is not a decision in the eye of law.

9. A plain reading of Section 45 of the Act, 1976, it is clear that it deals with a situation when some clerical or arithmetical mistakes crept into an order passed by competent authority. Such a mistake can be rectified at any time. Case on hand is not one of rectification of clerical or arithmetic error in the order. Thus, Section 45 has no application to the facts of the case.

10. Even assuming that Section 45 of the Act has application and section has not prescribed time limit to exercise such power, such power has to be exercised within a reasonable time. What is reasonable time depends on the facts of given case. After the original declaration, various stages of Act, 1976 were observed. Section 10(3) was issued on 07.07.1981. Notice directing the original declarant to surrender the excess land was issued on 30.01.1982. Description of boundaries of property vested in the State was recorded. Therefore, even though the declarant originally wanted to surrender the southern portion and to retain northern side, probably on her request, southern portion was allowed to be retained by the original declarant and excess land on the northern side vested in the Government. Vesting of physical possession in the State was recorded and no further action was taken. There after

the property changed hands twice. In the year 1999, when the petitioner purchased the property, he gave notice under Section 26 of the Act, but no objection was raised. Only in the year 2003, such decision was taken, i.e., after (21) years. In the mean time rights have accrued to the petitioner. Petitioner is a *bona fide* purchaser. He has taken all the precautions required before purchase is made. Only after the revised un-communicated decision dated 07.05.2003, proceedings under Section 10(6) for compulsory forcible possession was issued. The justification to change the boundaries is on the grounds that on southern side, by the time proceedings under the Act, 1976, were finalized, there were encroachments. If that is so, no justification is shown as to why authorities were silent till the year 2003. Thus, it cannot be said that action was initiated within reasonable time

11. The petitioner is a *bona fide* purchaser. The purchase made by the petitioner was within the retainable land under the Act 1976 by the original owner. Even now, the petitioner is not in possession of excess land than retainable under Act, 1976. The assumption of the respondent authorities that the petitioner is in possession of excess land to an extent of 430 square yards than permissible under the Act 1976, is on the premise that southern portion of land vested in the State. Petitioner could not have been declared as in possession of excess land. Thus, even assuming that the declaration of the boundaries was not correctly done initially, the northern side of the land within 1511.61 square yards ought to have been earmarked to the petitioner and possession granted to the petitioner. As petitioner is not in possession of excess land, the provisions of G.O.Ms.No.455 are not attracted. Thus, viewed from any angle, the orders/notices impugned are not sustainable and they are accordingly set aside.

12. Accordingly, the writ petition is allowed. The Joint Collector and Licensing Authority, Visakhapatnam (2nd respondent) is directed to refund the amount collected from the petitioner within a period of two months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date : 24.03.2015

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