

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**TUESDAY, THE TWENTY FIRST DAY OF APRIL TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.16715 & 17160 of 2009

-

-

WRIT PETITION No.16715 of 2009

Between:

Sri A.S.R. Prasad,
S/o. Sri A.S.N. Murthy,
Plot No.43K, Road No.71,
Jubilee Hills, Hyderabad – 500 096.

.. Petitioner

AND

State of Andhra Pradesh,
Rep. by the Principal Secretary,
Revenue Department, Secretariat,
Hyderabad & another

.. Respondents

AND

WRIT PETITION No.17160 of 2009

Between:

Smt. G. Neeraja,

W/o. G.B. Prasad,

Aged 40 years, Occ: House Wife,

R/o.10-3-311/13D, Road No.2,

Castle Hills, Masabtank,

Hyderabad – 500 057.

.. Petitioner

AND

State of Andhra Pradesh,

Rep. by the Principal Secretary,

Revenue Department, Secretariat,

Hyderabad & another

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.16715 & 17160 of 2009

–

COMMON ORDER:

In both the writ petitions, the petitioners challenge the proceedings issued

under Sections 8(1), 8(4), 9, 10(1) to 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act 1976).

2. Land to an extent of Ac. 50.30 guntas in Survey Nos.477, 478, 483/B to E, 484 A, B and E, 487, 491/A, B and C and 492, situated at Manchirevula Village, Rajendranagar Mandal, Ranga Reddy, was owned by Sri Hyder Ali Mirza. From out of this extent of land, Hyder Ali Mirza sold land to an extent of Ac. 4.00 guntas in Survey No.491 part to Swastik Co-operative House Building Society Limited under registered Sale Deed, dated 13.05.1983. It appears that the society sold the land to other persons. From them, the petitioners in both the writ petitions purchased Ac. 1.03 guntas each from the said society. The petitioner in W.P.No.16715 of 2009 purchased the land on 26.03.2004 and the petitioner in W.P.No.17160 of 2009 purchased in the year 2002.

3. According to competent Authority, under the authority under the Urban Land (Ceiling and Regulation) Act, 1976, proceedings under the Act 1976 were initiated holding that the original owner though initially claimed the land as being utilized for agricultural purposes, sold it to housing societies and illegally converted the use of the land from agriculture to non-agriculture purpose and, therefore, the provisions of the Act 1976 are attracted. Proceedings commenced by issuing draft statement under Section 8(1) of the Act 1976 and notice under Section 8(3) of the Act 1976 were issued on 23.01.2007. Final statement was also issued on 16.03.2007 declaring that Hyder Ali Mirza was holding land in excess of the ceiling limit. Thereafter, declaration under Section 10(3) of the Act 1976 was issued on 24.07.2007 vesting the land in Government. Notice under Section 10(5) of the Act 1976 was issued on 01.09.2007 asking the land owner to surrender the excess land. Since there was no response and the land was not surrendered, proceedings under Section 10(6) of the Act 1976 were issued on 02.02.2008 and, accordingly, possession of surplus land was taken on 11.02.2008.

4. Referring to the above dates, the learned counsel for the petitioners submits that the original owner obtained certificate under Section 2(4) of the Act 1976 on 06.08.1982 which certified that the entire extent of land was treated

as agricultural land; It is not within the municipal limits, but within the peripheral limits of the urban agglomeration and since it is not an urban land as defined under Section 2(o) of the Act 1976, the Act 1976 is not attracted. Based on the said certificate, the original owner sold the land to society in the year 1982. Thus, by virtue of the said sale, the original owner ceased to be the owner and the society became the new owner. By the time the proceedings were initiated under the Act 1976 in the year 2006, Hyder Ali Mirza died i.e., on 08.06.1983. Neither the successor to Hyder Ali Mirza nor persons in possession were put on notice.

5. Learned counsel for the petitioners further submits that as per the report of the enquiry officer, dated 02.09.2006, names of petitioners reflected in the revenue records against Survey No.491 part with sub-division numbers. The enquiry officer stated in his report that though certificate was issued to the original owner under Section 2 of the Act 1976, in violation of the said certificate, the land use was converted into non-agricultural purpose and, therefore, proceedings had to be taken out under the Act 1976. Learned counsel for the petitioners, therefore, contends that the respondent authorities were aware of the possession and enjoyment of the petitioners to the extent of land indicated therein. Thus, the petitioners ought to have been put on notice before initiating action and finalizing the proceedings under the Act 1976.

6. Learned counsel for the petitioners, therefore, submits that the proceedings are liable to be set aside on the sole ground that no proceedings can be initiated against a dead person. She further submits that even otherwise, as the revenue records already disclose the names of the petitioners as owners of the property and the factum was known to the competent authority, the petitioners sought to have been put on notice. Petitioners were not aware of the initiation and completion of proceedings. All the proceedings are liable to be set aside on this ground alone. Learned counsel for the petitioners further contends that the petitioners are in physical possession and enjoyment. Physical possession never vested in the State before the Repealing Act came into force. Unless physical possession vested in the State prior to Repealing Act came into force,

all the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, abate and the land becomes freehold land. Learned counsel for the petitioners further submits that even before taking compulsory possession for non-compliance of notice issued under Section 10(5) of the Act 1976, dated 01.09.2007, the person in possession is entitled to a notice and opportunity. At that stage also, no notice was issued and on that ground also, the proceedings vitiate.

7. Learned Government Pleader for Revenue submits that though the land is declared as agricultural land and not falling within the municipal limits, it was coming within the urban agglomeration. The land stood excluded from application of the provisions of the Act 1976 as long as the same was utilized for agricultural purpose. The very fact that the land was sold to a house building society in the year 1982 would show that the purpose was not for agriculture, but for development of a residential colony. In case of development of land into residential colony, the provisions of the Act 1976 are attracted. Since according to the revenue records, the name of Hyder Ali Mirza reflected originally and as on the date of initiation of proceedings, notices were taken out against Hyder Ali Mirza and the family members of Hyder Ali Mirza never informed the death of Hyder Ali Mirza nor they have appeared before them. The notices were also published in the Gazette as mandated by the Act 1976, but there was no response. Learned Government Pleader further submits that under Section 5(3) of the Act 1976 after coming into effect of the Act 1976, any transactions made on the land which attracts the provisions of the Act 1976, such purchase is null and void and, therefore, no right vests in the petitioners. He, therefore, submits that the petitioners cannot contest the proceedings taken out by the respondent authorities and in the hands of the petitioners whose transaction was null and void, no declaration can be given as sought by the petitioners.

8. As seen from the brief narration of facts above, by the time original owner sold the land in the year 1982 or by the time the petitioners purchased the land and according to the learned counsel for the petitioners, even by now the status of the land is treated as agricultural purpose. By the time the purchase was made by the petitioners, proceedings under the Act 1976 did not commence.

Therefore, the purchase made by the society in the year 1982 and consequential purchase made by the petitioners did not attract provision in Section 5(3) of the Act 1976. Such purchase was validly made. As seen from the certificate dated 06.08.1982 issued under Section 2(o) of the Act 1976, the status of various extents of land owned by the original owner i.e., Late Hyder Ali Mirza was shown as agricultural land. Provisions of the Act 1976 are not attracted if the status of the land is agriculture. Thus, until the commencement of proceedings in the year 2006, the provisions of the Act 1976 were not attracted.

9. It is not clear from the averments made in the counter affidavit as to when for the first time the respondent authorities have recognized that the land is no more used for agricultural purpose and converted to non-agricultural purpose. There is no clarity on this issue. By the time the proceedings under the Act 1976 were commenced, Hyder Ali Mirza expired. The report of enquiry officer, dated 02.09.2006, discloses that names of the petitioners were reflected in the revenue records from the year 2002-03 onwards as pattadar. Thus, by the time proceedings under Section 8(3) of the Act 1976 commenced, the respondent authority was aware that the petitioners in possession and enjoyment and are treated as pattadars. Therefore, they were entitled to notice and opportunity before issuing final statement and before taking proceedings under Section 10 of the Act 1976. All these proceedings are liable to be set aside on the sole ground that the petitioners were not put on notice and no opportunity of hearing was given to them before the finalization of proceedings under the Act 1976.

10. On account of the sale made by the original owner in the year 1982 and consequential sale by the society to other persons from whom petitioners purchased, it was required to be seen whether still provisions of the Act 1976 would attract. Thus, if only an opportunity was given to the petitioners, they would have satisfied the applicability or otherwise of the Act 1976 on the ground of the status of the land as agricultural land as well as the holding capacity vis-à-vis, the provisions of the Act 1976. Thus, it cannot be said that not giving

notice is empty formality, more particularly, when it affects the right to own the property which is a substantive right and such a right cannot be taken away without following due process of law. The Act 1976 mandates issue of notice and affording of opportunity as mandatory before passing orders.

11. To take compulsory possession under Section 10(6) of the Act 1976, the persons who are in possession must be put on notice. Admittedly, by the time Section 10(6) of the Act 1976 proceedings commenced, the petitioners were in possession and they are treated as pattadars as per the revenue records, but the petitioners were not put on notice. The proceedings under various provisions of the Act 1976 were taken out treating Hyder Ali Mirza as owner, whereas by 1982 itself he sold several extents of land originally owned by him and ceased to be owner to the extent of land sold by him. Thus, by the time the Repealing Act came into force, the property has not vested in the State and, therefore, all the proceedings under the Act 1976 abate.

12. Thus, looking from any angle, the proceedings taken out by the respondent authorities under the Act 1976 are not sustainable and are, accordingly, set aside.

13. The Writ Petitions are allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

P.NAVEEN RAO, J

Date: 21st April, 2015

KL

HON'BLE SRI JUSTICE P.NAVEEN RAO

-

WRIT PETITION Nos.16715 & 17160 of 2009

-

Date: 21st April, 2015

KL