

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.19677 of 2011

ORDER:

Challenging the order passed by the Special Officer and Competent Authority, Urban Land Ceilings, Visakahaptanm in C.C. No.575/76 dated 10.06.1982, the present Writ Petition came to be filed seeking issuance of a writ of mandamus to declare the same as illegal and improper.

The factual matrix of the case is as under :

One Sanapala Ramulamma (4th respondent herein) w/o. late Ramadasu of Madhavadara village, Visakhapatnam urban, is said to have made a statement under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act"), which came to be numbered as C.C.6(1) 575/76. After due enquiry, a draft statement under Section 8(1) of the Act came to be issued determining an extent of 0.523 sq. meters as excess land. The said declaration was in respect of land admeasuring 0.2023 sq. meters situated in Sy.No.25/3(P) and 41/P of Madhavadhara village. As per the declaration, excess land to an extent of 523 sq.mts was found in Sy.No.25/3(P). The said draft statement was said to have been served on the declarant on 12.09.1979. Objections to the said statement were said to

have been filed stating that the properties of co-sharers were wrongly included in the holding of the declarant and the extents were mentioned without conducting any enquiry. It was further stated that the land is exempted from the purview of the Act. It is alleged that inspite of giving notice, the declarant failed to furnish any documentary evidence and as such a final statement under Section 9 of the Act came to be issued declaring the declarant as surplus holder to the extent of 523 sq. meters. Accordingly, it has been said that the draft statement under Section 8(1) of the Act issued earlier stands confirmed. The said Sanapala Ramulamma who is shown as 4th respondent, is none other than the maternal aunt of the writ petitioners. In the year 1976, the father of the petitioners by name Peddada Suryanarayana S/o. late Chilakaiah filed a statement under Section 6(1) of the Act in Form-I declaring that he owned an extent of Ac.0.37 cents (1497 sq. meters) of vacant land in Sy.No.25/3 of Madhavadhara village and a residential house with appurtenant site to an extent of 940 sq. meters in the said village. The said declaration was numbered as C.C. No.2264 of 1976. In column 14 of the said declaration the father of the petitioners noted the names of the petitioners along with their ages. In the absence of any enquiry being held under Section 8(1) of the Act and without any notice to the declarant at any stage of the proceedings, final draft

statement under Section 9 of the Act and proceedings under Section 10(1) and 10(2) of the Act were abruptly issued holding that the declarant Peddada Suryanarayana possessed 4620 sq. meters of vacant land in Sy.No.25/3 of Madhavadhara village in excess of the ceiling limit and that the said land is deemed to have been acquired by the Government with effect from 19.03.1980. On 21.04.1980 the declarant in C.C. No.2264/76 was directed to handover possession of the said surplus land under Section 19(5) of the Act. At that stage, the declarant filed W.P. No.10545/84 against the order of the competent authority declaring him as surplus holder. By an order dated 29.06.1988, this Court while setting aside the order of the competent authority remitted the matter back to the competent authority directing him to give notice to the petitioner therein enabling him to place all the material in support of his claim and then the competent authority was directed to dispose of the same in accordance with law. Pursuant thereto, the competent authority after considering the case of the petitioner therein and also the documents filed by him, held as under :

“A perusal of the records and record of enquiry conducted at the time of preliminary enquiry, it is found that the land in S.No.41 is occupied by residential house of the declarant, his brother and his sister Ramayamma (declarant in C.C.No.575/76). Being a residential area as per the extract of the Urban Land Ceiling Register, the land under the occupation of the declarant and his major son is 465 sq. mtrs including built up area. This extent is excluded from the computed area

as it is attracted by Section 4(11) of the Act.

The vacant land held by the declarant and his major son is Ac.0.73 cents or 2,954 sq. meters. The claim that the major son of the declarant Sri Peddada Venkata Rao is also entitled and for one holding is accepted as it is the ancestral property. Of the total extent of 2,954 sq. mtrs Sri Venkata Rao is entitled to $\frac{1}{2}$ share i.e., 1,477 sq. mtrs. The declarant died in 1984 intestate. Hence, his share of the property i.e., 1,477 sq. mtrs, shall devolve on the surviving members under section 8 of Hindu Succession Act, 1956. Hence, the share of the declarant shall be shared by his other three sons (viz) P.Ramu, P.Satyanarayana and P.Govinda Raju.”

Accordingly, the Special Officer has declared the declarant P.Suryanarayana and his eldest son who was a major as on the date of commencement of the Act as non-surplus land holders. Very recently the petitioners came to know that the lands which were declared to be non-surplus find place in the list of surplus lands vested with the Government. Therefore, they requested the Special Officer to verify the truth of the matter and to give a clearance certificate in that regard. While saying that the Special Officer has no jurisdiction to review or examine the legal validity of the impugned order dated 10.06.1982, which was made pursuant to a declaration said to have been made by 4th respondent herein, erected a notice board in the land of the petitioners claiming it to be a Government land on an assumption that it was a Government land. This action of the authorities lead to filing of the present Writ Petition before this Court.

The learned counsel for the petitioners submits that having declared that the land in Survey No.25/3 as non-

surplus land and when the 4th respondent has disowned having any connection with the land in Sy.No.25/3, the order passed by the 1st respondent showing the land in Sy.No.25/3 as a surplus land is illegal and improper. He further submits that the impugned order came to be passed on 10.06.1982 obviously under Section 8 of the Act only, but the same showed taking possession in the year 1980 itself, which according to him could not have happened.

On the other hand, the learned Government Pleader would submit that since possession was already taken in the year 1980 the Writ Petition itself is not maintainable.

From a perusal of the material on record and also the documents filed by both the parties, it is clear that subject matter of dispute is with regard to the land in Sy.No.25/3. The record also shows that part of land in Survey No.25/3 was sub-divided as Sy.No.25/3a admeasuring 0.14 cents or 560 sq. meters and also into 25(3b). The 4th respondent who filed her counter stated that her land admeasuring 36 ½ cents is located in Sy.No.25(3b) and that she has nothing to do with the land which is the subject matter of dispute in the impugned proceedings. A perusal of the impugned proceedings show that the said order came to be passed in declaring the land to an extent of 523 sq. meters in Sy.No.25/3(p) as

surplus land. Further, the said order which is dated 10.06.1982 does not anywhere indicate it being passed under Section 10(5) of the Act, but on the other hand it shows that it was passed only under Section 8(4) of the Act. No orders under Section 10(5) or 10(6) of the Act are placed on record.

Infact the proceedings, dated 17.01.1980, passed under Section 10(3) of the Act in C.C. No.2264/76 shows that declarant therein by name P.Suryanarayana was allowed to retain land covered in Sy.No.25/3 admeasuring 0.0560 sq. meters to himself, while an extent of 0.4620 sq. meters was ordered to be surrendered to the Government. The said order came to be challenged before this Court in W.P.No.10545 of 1984. One of the arguments that was advanced before this Court was that an extent of 0.36 ½ cents in Sy.No.25/3 and 0.06 cents in Sy.No.41 which was given to the 4th respondent by the declarant's wife during his lifetime by virtue of a registered deed of 1946 is wrongly computed against the holding of the declarant and that the said Ramayamma filed a separate declaration in C.C.No.575/76. The 4th respondent in C.C.No.575/76 filed a declaration to the extent of 1821 sq.meters of land in Sy.No.25/3 and 202 sq. meters in S.No.41 of Madhavadhara village which she got by way of a registered deed No.108/46 executed by her mother as per the statement of the declarant in

C.C.No.2264/76. Her claim for the same was accepted and she was allotted 1500 sq. meters while the remaining extent of 523 sq. meters was determined as surplus and notice under Section 10(5) of the Act was issued on 23.09.1992.

Since the land which is the subject matter of dispute in the Writ Petition relate to the land in Sy.No.25/3, it would be appropriate to refer to the earlier proceedings which took place in respect of the very same land. As stated earlier, the father of the petitioners filed a declaration under Section 6(1) of the Act in respect of the land in same survey number which was numbered as C.C. 2264/76. He was declared as surplus holder to an extent of 4620 sq. meters and draft final statement under Section 9 of the Act was issued on 17.08.1977. Notifications under Sections 10(1) and 10(3) of the Act were issued, published and thereafter notice under Section 10(5) of the Act was issued on 21.04.1980 directing the declarant therein to handover possession to the Revenue Inspector, Visakhapatnam. Challenging the same, the Writ Petition No.10545 of 1984 came to be filed before the Hon'ble High Court. After hearing the arguments of both sides and after considering the material on record, this Court by an order, dated 29.06.1988, remanded the matter back to the competent authority. The Special Officer and competent authority vide its order, dated 06.01.1993, categorically held that the successors

of the declarant and his major son P.Venkata Rao are determined as non-surplus land holders. From the above, it is clear that in the earlier round of litigation, the land in Survey No.25/3 was held to be a non-surplus land and the order of the competent authority has become final. In spite of the same, the authorities appear to have shown the land in Survey No.25/3 as surplus land in their records. Apart from that, the impugned order came to be passed on 10.06.1982 but very strangely in the counter filed by the official respondents shows as if they took possession of the land in the year 1980 itself. Therefore, even assuming for the sake of argument that the land in Sy.No.25/3 fell to the share of the petitioners, the respondent/authorities could not have taken possession of the land even before passing the order under Section 8(4) of the Act. The said averment in the counter appears to be palpably incorrect. In fact the original record which has been placed before this Court does not anywhere indicate that subsequent to the order dated 10.06.1982, further proceedings under Sections 9 and 10 of the Act were taken up by the respondents.

Even assuming that the land which is the subject matter of dispute in the present case belongs to the petitioners, the said order appears to be illegal for the reason that possession is said to have been taken in the year 1980 itself when the impugned order under Section

8(4) of the Act came to be passed in the year 1982. Further, as held above the lands held by the petitioners herein were declared to be non-surplus in the year 1983 itself. Therefore, the question of vesting of alleged surplus land in the Government appears to be incorrect. Hence, the case on hand does not get any protection under Section 3(1) of the Repeal Act.

For the aforesaid reasons, the Writ Petition is allowed by setting aside the impugned order passed by the Special Officer and Competent Authority under Section 8(4) of the Urban Land Ceiling Act in C.C. No.575/76 dated 10.06.1982. No costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date:21.12.2015

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