

HON'BLE SRI JUSTICE P.NAVEEN RAO
W.P.Nos.23211/2003, 21313/2004 & 8852/2008

Date: 24.02.2015

W.P.No.23211 of 2003

Between:

Prof. K.Ramakrishna Rao, s/o.late K.Nagabushanam,
Aged 71 years, Occu:Retired Vice Chancellor of
Andhra University, R/o.35, Daspalla Hills,
Visakhapatnam

... Petitioner

AND

The Government of A.P., Revenue (UC.I) Department,
rep.by its Principal Secretary, Secretariat, Hyderabad
and others.

... Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION Nos.23211/2003, 21313/ 2004 &
8852/2008

COMMON ORDER:

Petitioner as well as contesting respondents is common in all three cases. The subject property in the three writ petitions is same. On the one hand petitioner is claiming to exercise power under Section 20(1) of Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act, 1976') in his favour and on the other hand respondent Society claimed to grant allotment of same property in its favour in exercise of power under Section 23 of the Act, 1976. In these three writ petitions petitioner assails the orders of government refusing its application under Section 20(1) and passing orders in favour of respondent society. In view of the same, all the writ petitions are heard and disposed of by common order.

2. The facts giving rise to the institution of these writ petitions are as under:

Petitioner claims to have purchased the land admeasuring 3000 square yards in Sy.No.47/20(P) of Shivajipalem Waltair Ward, Visakhapatnam, by way of registered sale deed dated 18.11.1970. After coming into force of the Act, 1976, petitioner filed statement in Form-I under Section 6(1) of the Act, 1976. On 29.09.1980, Special Officer passed orders under Section 8(4) of the Act, 1976 confirming the vacant land to an extent of 2580 square meters as surplus in the above survey number. On 21.05.1996, exercising the power vested under Section 10(6) of the Act, 1976, the Mandal Revenue Officer was authorized to take forcible possession of the surplus land since the petitioner did not comply with the notice issued under Section 10(5) of the Act, 1976. Accordingly, possession was taken by the Mandal Revenue Officer.

3. In the mean time, father of the petitioner as General Power of Attorney holder of the petitioner entered into an agreement of sale with Srinivasa Cooperative House Building Society Limited, party respondent, in these three petitions on 29.11.1981. It is averred that it is an agreement of sale with a condition that respondent society has to obtain exemption from the provisions of the Act, 1976 on the subject land. It was also stipulated in the agreement that if necessary exemptions were not obtained, the agreement would become null and void.

4. Petitioner has applied for exemption in accordance with Section 20(1) of the Act, 1976. The said application of the petitioner was rejected by the Government in Memo No.107779/ UC.1(2)/91-4, dated 30.11.1995. Aggrieved thereby, petitioner as well as respondent society instituted W.P.No.25291 of 1996. This Court disposed of the Writ Petition directing the respondent to reconsider the request for exemption under Section 20(1) of the Act. In pursuant to the orders passed by this Court in W.P.No.25291 of 1996, the Government passed orders in Memo No.77866/UC.I.(2)/96-1, dated 25.03.1997 rejecting the request of petitioner for relaxation under Section 20(1) of the Act, 1976. Aggrieved by the same, petitioner as well as respondent society filed W.P.No.9651 of 1997. This writ petition was subsequently withdrawn on 21.03.2003.

5. On 29.07.2002 government took policy decision to grant exemption of the provisions of the Act, 1976 for allotment of excess land under the occupation of third parties and formulated guidelines for grant of such exemption of vacant land. Government notified G.O.Ms.Nos.455 and 456.

6. On 11.02.2003, the members of the respondent society submitted representation for allotment of subject land by providing relaxation of the orders in G.O.Ms.No.455, dated 27.09.2002. On 05.03.2003, Government issued orders in G.O.Ms.No.329 Revenue (UC.I) Department, proposing to grant regularisation of the subject land in favour of the respondent society by relaxing relevant provisions of G.O.Ms.No. 455. Aggrieved thereby, W.P.No.23211 of 2003 was instituted.

7. During the pendency of the above writ petition, petitioner filed further representation dated 26.11.2003 seeking general exemption of surplus land and regularization in terms of G.O.Ms.No.456 dated 29.07.2002. By proceeding dated 09.01.2004, said request of the petitioner was rejected on the ground that application of the respondent society was already considered and orders were passed in G.O.Ms.No.329. Challenging the said decision, petitioner instituted W.P.No.21313 of 2004.

8. On 24.03.2008, Government issued orders in G.O.Ms.No.380 Revenue (UC.I), regularizing the subject land in favour of the members of the respondent society in exercise of power under Section 23(4) of the Act, 1976. Challenging the said G.O.Ms.No.380, petitioner instituted W.P.No.8852 of 2008. By order dated 28.04.2008, this Court granted order of *status quo* which is made absolute on 22.07.2009.

9. These writ petitions are opposed by the learned Assistant Government Pleader as well as the learned senior counsel Sri M.S.Prasad appearing on behalf of the respondent society.

10. Heard Sri. P.Srinivas appearing for Sri K.R.Prabhakar and Sri K.Pavan Kumar, counsels for the petitioner, Sri M.S.Prasad, senior counsel for respondent society and learned Assistant Government Pleader for revenue.

11. Learned counsel Sri Srinivas appearing for Sri K.R.Prabhakar and Sri K.Pavan Kumar contended as under:

12. The Government illegally granted relaxation of the relevant provisions by relying on provision contained in Section 23(4) of the Act, 1976. The said provision is not applicable to the respondent society as exercise of such power under sub-section (4) of Section 23 is contingent upon the fulfilment of the provisions contained in sub-sections

(1) to (3) and in terms thereof an exemption can be granted as ancillary to industrial purpose, whereas by invoking the said provision exemption was granted to the respondent society, which is for the purpose of formulation of housing colony and respondent society is not an industry. Therefore, the entire exercise is vitiated on the ground of lack of power and jurisdiction.

13. It is further contended that the very preamble of G.O.Ms.No.455 would show that allotment of excess land under Section 23 of the Act, 1976 would arise only in case the person claiming such allotment is in occupation. In other words occupation is mandatory to apply the provisions of Government policy as well as relevant provisions of the Act, 1976. In the instant case, the record would disclose that the members of the respondent society were never in possession. Since the primary condition to attract the G.O.Ms.No.455 is not fulfilled the entire exercise is vitiated.

14. Learned counsels contended that no power is vested in the Government to relax the relevant provisions of G.O.Ms.No.455. G.O.Ms.No.455 itself is an exemption to the mandate of Act, 1976 and there cannot be further relaxation. The relevant clauses mentioned in G.O.Ms.No.455 have to be fulfilled and such clauses are mandatory. Thus, to exercise power under Section 23 of the Act, 1976, unless those essential requirements are fulfilled, the question of regularizing unauthorized occupation does not arise and, therefore, the relaxing relevant provisions of G.O.Ms.No.455 was *ex facie* illegal. It is further contended that rejection of application of petitioner for grant of relaxation of Section 20(1) of the Act, 1976 on the ground that the respondent application was pending was held illegal. The claim made by the petitioner is independent of the claim made by the respondent society and merely because application on behalf of the respondent society is pending, the claim of the petitioner cannot be thrown out on that ground.

15. Learned counsel Sri K.Pavan Kumar strenuously contended that petitioner has locus standi to challenge the various orders issued in favour of the respondent society.

Petitioner was the owner of the property and based on his declaration given under the Act, 1976, the extent of land in issue was declared as surplus land. Petitioner is entitled to contend that possession was never taken from him, that he is entitled to avail the benefit of provision contained in Section 20(1) of the Act, 1976, and not considering his application and granting benefit to the respondent society was illegal and, therefore, petitioner is entitled to challenge the said orders and the claim of the petitioner is maintainable and accordingly, the writ petitions are maintainable.

16. Learned counsels for the petitioner placed reliance on the following decisions:

- i) **M/s. India Cable Co.Ltd. v. The Government of A.P. and others** ^[1]
- ii) **Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad**

and another v. P.S.Rao^[2]

iii) **Special Officer & Competent Authority, ULC and another v. P.S. Rao**^[3]

iv) **K.Anjana Devi and others v. Government of A.P. and others**^[4]

v) **Gajanan Kamliya Patil v. Addl. Collector & Comp. Auth. and others**^[5]

vi) **Raj Kumar Surana and another v. Government of Andhra Pradesh and others**^[6]

17. Learned senior counsel Sri M.S.Prasad appearing for the respondent society contended that father of the petitioner, who was GPA holder of the petitioner, entered into an agreement of sale. The total sale consideration was Rs.45,000/- and Rs.40,000/- was paid. One of the clauses in the agreement was that respondent society has to obtain relaxation of the provisions of the Act, 1976 and the continuation of the validity of the agreement of sale depends upon obtaining such exemption. However, no time limit was prescribed within which time application should be made and proper relaxation should be obtained. Be that as it may, along with the petitioner the society pursued the matter with authorities. When the application for exercise of power under Section 20(1) of the Act, 1976 was rejected, the petitioner and respondent society instituted W.P.No.25291 of 1996. The order of rejection dated 30.11.1995 was set aside and remitted the matter back to the competent authority for reconsideration of the claim. The matter was reconsidered and again rejected. Aggrieved thereby, petitioner and the respondent Society filed WP No 9651 of 1997.

18. He further contended that after issuing of G.O.Ms.Nos.455, the society applied for grant of allotment of subject land. The request of the society was favourably considered and appropriate relaxations were granted. Learned senior counsel, therefore, contends that there was no illegality or irregularity in the relaxations granted in favour of the respondent society. The petitioner having sold the property to the respondent society and not in possession of the property, he has no legal validity to contest against the regularization granted in favour of the respondent society.

19. The grant of regularization in exercise of power under Section 23 of the Act, 1976 is between the society and the Government and petitioner is a busy body as petitioner himself gave declaration that he was in possession of excess urban Land and excess land was taken over by the State. The record would disclose that possession was taken as early as in the year 1996 and by the time petitioner has applied for regularization in the year 2003 he was not in possession. The respondent society is in possession and the possession with the respondent society is admitted by the respondent authorities.

After verifying the fact of possession only recommendations were made to allot the land to the respondent society. Thus, on one hand, the possession of the petitioner is clearly denied and on the other hand, as admitted by the authorities concerned, the respondent society was in possession by the time an application for exercise of power under Section 23 of the Act, 1976 was made.

20. Learned senior counsel further contended that petitioner was cooperating with the respondent society all along, never challenged the possession claimed by the petitioner. Petitioner was fully aware of the developments. As stated supra, along with the petitioner, respondent society instituted W.P.No.25291 of 1996 and WP No 9651 of 1997.

21. Earlier the petitioner made an attempt to claim that he is in possession and that the respondent society was trying to disturb the possession, he has instituted O.S.No.3494 of 2003 claiming permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaint schedule property. On an application filed by the petitioner, after elaborately recording the claim of rival parties orders were passed dismissing the suit as withdrawn. The order passed by the First Additional Junior Civil Judge, Visakhapatnam on 27.12.2006 in I.A.No.2156/2006 in O.S.No.3494 of 2003, would disclose that petitioner was not in possession. Petitioner sought withdrawal of the said suit with liberty to present better suit as certain pleadings were not made and prayer was not properly sought. Though, such liberty was granted to the petitioner, no further efforts were made by the petitioner to institute further civil litigation and the issue attained finality at that stage.

22. Learned senior counsel further contended that as petitioner was not in possession, he is not entitled to seek regularization in accordance with the provisions contained in Section 20(1) of the Act, 1976 and once petitioner was declared as surplus land holder, vesting of possession and his claim for relaxation having been rejected long ago, the consideration of the application of the respondent society for grant of assignment of land in exercise of power under Section 23 of the Act, 1976 cannot be the concern of the petitioner and, petitioner, therefore, cannot assail those orders. Learned senior counsel further contended that G.O.Ms.No.329 was validly issued.

23. Learned Government Pleader concentrated primarily on the issue of taking possession of the property by the State while relying on the notices issued and panchanama conducted, which are filed as additional papers on 30.01.2015. On 21.05.1996 the order under Section 10(6) of the Act, 1976 was issued authorizing the Mandal Revenue Inspector (Urban), Visakhapatnam to take possession of the surplus land. Accordingly, on 24.07.1996, panchanama was recorded evidencing taking possession of the surplus land and clearly demarking the boundaries of the land

evidencing taking possession. Learned Government Pleader referred extensively to the averments in the counter affidavit filed in W.P.No.9651 of 1997 to contend that it was categorical stand of the respondent State as early as in the year 1997 that the possession of surplus land was taken and it was handed over to the Mandal Revenue Inspector (Urban) on 05.07.1996 for safe custody. Learned Government Pleader justifies various orders passed by the competent authority and the Government which are assailed in the writ petition.

24. In reply, learned counsel Sri Pawan Kumar submits that the correspondence dated 25.03.1997 would show that possession as claimed by them was not taken. The Government directed the competent authority to immediately take steps to take possession. As a consequence to the orders of the Government dated 25.03.1997, the Mandal Revenue Officer addressed letter dated 24.07.1997 to the Deputy Mandal Revenue Officer to take possession and even this correspondence would disclose that physical possession was not taken. He, therefore, contends that physical possession not being taken, he is entitled to claim for regularization in accordance with the provision contained in Section 20(1) of the Act, 1976.

25. Learned counsel Sri K.Pavan Kumar vehemently contended that as physical possession is not vested in the State by the time the Act was repealed, the properties continues to vest in the petitioner and, therefore, the subsequent orders granting relaxation and granting regularization in favour of the respondent society are automatically become illegal. Learned counsel also submits that since no compensation was paid, assuming that possession was already taken and unless the compensation is paid, it cannot be said that property vested in the State. He further contends that there was no deliberate suppression of the fact of institution of civil litigation. By the time of filing of first writ petition in the year 2003 civil suit was not filed. Though by the time the 2nd writ petition was filed in November, 2004, the civil suit was already filed, only due to inadvertence the same was not mentioned in the affidavit, but it is not deliberate omission. The document enclosed to the material papers filed in support of the W.P.No.21313 of 2003 discloses institution of the suit. For valid reasons as recorded in the order by the lower Court suit was withdrawn, but in the mean time, subsequent developments compelled the petitioner to institute the writ petitions and, therefore, could not prosecute the civil litigation.

26. I have given my anxious consideration to the rival contentions. I have gone through the precedents cited at the bar.

27. The State in their counter filed in W.P.No.9651 of 1997 have categorically asserted that possession was already taken. The relevant documents evidencing taking possession by the State are on record. The material on record and categorical stand of

the State would clearly disclose that by 1996 itself even physical possession was vested with the State. As recorded by the I Additional Junior Civil Judge, Visakhapatnam, no material was brought on record even before that Court by the year 2006 to substantiate the claim that petitioner continued to be in possession. Here also no material is shown to prove that petitioner continues to be in possession except by relying on a correspondence emanating from the State Secretariat in the year 1997. Obviously this correspondence was in ignorance of the factum of taking possession already evidenced by the material brought on record. Therefore, petitioner cannot rely upon that correspondence to disprove the factum of possession being taken. The proceedings by which possession was taken and the notices issued under the Act are not under challenge. Therefore, it is not open to the petitioner to contend that he is in possession and that physical possession was never taken as required under Section 10(6) of the Act, 1976. As held by the Supreme Court in **State of Assam v. Bhaskar Jyoti Sarma and others**^[7], the Repeal Act would have no effect even assuming taking possession was without notice to the petitioner when the petitioner failed to question taking over possession at the appropriate stage in appropriate proceedings. Therefore, the Repealing Act also does not come to the aid of the petitioner. The decisions of the Supreme Court in **P.S.Rao, P.S.Rao, Gajanan Kamliya Patil** and the decision of this Court in **Raj Kumar Surana** do not come to the aid of the petitioner since in all the above cases, the issue was taking physical possession as the relevant criteria for vesting the land in the State. In the instant case, as already noticed, by 1996 physical possession was taken by the State.

28. Since petitioner was not in possession, the provisions of Section 20(1) were not attracted and petitioner cannot claim regularization. Therefore there is no illegality in rejecting the request of the petitioner to regularise alleged occupation of land declared as surplus under the Act, 1976. As noted above, on earlier two occasions, similar rejections were made. On second rejection, though challenge was made in W.P.No.9651 of 1997 filed by the petitioner along with party respondent, the said writ petition was withdrawn on 21.03.2003. Thus, the order of rejection made on 25.03.1997 has become final. Thus, insofar as the petitioner is concerned, the issue of granting exemption under Section 20(1) has become final long ago and what is now challenged is nothing but a reiteration of earlier decision.

29. There are illegal occupations of the lands vested in the Government even though the said land was declared as surplus under the Act, 1976 and Government intended to regularize such properties. To this extent policy was formulated in the year 2002. On 29.07.2002, Government issued two G.O.Ms.No.455 and 456. G.O.Ms.No.455 was issued enabling allotment of excess land in exercise of power under Section 23 of the Act, 1976 in favour of the third parties who are in occupation of urban land vested in Government. Para-4 of the G.O., prescribes the guidelines for exercise of such power.

G.O.Ms.No.456 addresses grant of general exemption of excess vacant land in possession by landlords.

Both, petitioner as well as 5th respondent simultaneously prosecuted their claims, independently, under these two G.Os, and ultimately the respondent society was successful.

30. Admittedly by the time fresh representation was submitted by the petitioner on 26.11.2003, the Government already issued orders in G.O.Ms.No.329 i.e., 05.03.2003, granting relaxation of certain conditions imposed in G.O.Ms.No.455 in favour of the respondent society. Having regard to the fact that G.O.Ms.No.329 was already issued setting in motion grant of appropriate orders under Section 23 of the Act in favour of the respondent society, the claim of the petitioner made under Section 20(1) and in accordance with the G.O.Ms.No.456 was rejected. Therefore, the rejection was validly made.

31. The averments and the material papers on record would clearly show that petitioner was conscious of the fact that land on which agreement was made was surplus urban land in accordance with the provisions of the Act, 1976 and that petitioner has no manner of right to deal with the said property. However, the agreement authorises respondent society to obtain orders for regularisation of the subject land. Initially petitioner along with the respondent society sought for granting relaxation in exercise of power under Section 20(1) of the Act, 1976. This was rejected on two occasions. Petitioner along with respondent society challenged the rejection of application for regularisation in W.P.Nos.25291 of 1996 and 9651 of 1997. Respondent society has *bonafidely* purchased and pursued the matter with the State for grant of relaxation of the relevant conditions so that by giving effect to sale consideration, the property can be enjoyed by them. Petitioner is no way concerned with the said property once the possession was validly vested in the State.

32. It is no doubt true that in G.O.Ms.No.329, requirements as prescribed in G.O.Ms.No.455 were relaxed. However, on close scrutiny of two G.O.s, it is seen that normally the conditions imposed in G.O.Ms.No.455 are required to be fulfilled before a person can apply for grant of exercise of power under Section 23 of the Act, 1976 by the State. Having realized that such conditions cannot be fulfilled, Government passed orders in G.O.Ms.No.329. Detailed reasons are recorded for exercising such power and granting relaxation of the conditions imposed in G.O.Ms.No.455. However, further conditions are imposed in order to restrict enjoyment of the benefit in favour of the persons who sought for such relaxation. Therefore, Government was conscious of the limitation and having found that the claim of the respondent society was genuine and the relevant clauses were coming in the way of the State exercising power under Section 23 of the Act, 1976, the power was exercised in relaxing the said conditions.

33. Notwithstanding the scheme formulated by the Government in G.O.Ms.No.455, Section 23 of the Act, 1976 vests power in the Government for disposal of the vacant land acquired under the Act. This is the urban vacant land vested in the State under the Act. Sub-Section 4 of Section 23 vests power in the State to dispose of the vacant lands to subserve common good on such terms and conditions as the State Government may deem it fit to impose. The factum of respondent society in possession is admitted by the authorities and on a consideration of ground realities, factual report was submitted to the Government evidencing possession vesting in the respondent society and on consideration of the factum that society was in possession, appropriate orders were passed. The decision of Division Bench of this Court in **K.Anjana Devi** also do not come to the rescue of the petitioner.

34. On a careful reading of the orders issued by the Government in G.O.Ms.No.329, the mandate of Section 23(4) of the Act, 1976 was duly complied with. Therefore, there is no illegality in the decision impugned in the writ petition. At any rate, said issue cannot be considered at the hands of the petitioner who was the person responsible for inducing respondent society into the same property by way of receiving almost full sale consideration on a land which was declared by him as surplus land under the Act, 1976. This Court in exercise of equity jurisdiction cannot come to the aid of the petitioner. Once G.O.Ms.No.329 is held valid, consequential G.O.Ms.No.380 holds good and, therefore, these writ petitions are liable to be dismissed.

35. I therefore see no merit in all the writ petitions and deserve to be dismissed and accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions if any pending in these writ petitions shall stand closed.

Date : 24.02.2015
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JUSTICE P.NAVEEN RAO

HON'BLE SRI JUSTICE P.NAVEEN RAO

W.P.Nos.23211/2003, 21313/2004 & 8852/2008

Date: 24.02.2015

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[\[1\]](#) AIR 1987 Andhra Pradesh 28
[\[2\]](#) (2000) 2 Supreme Court Cases 451
[\[3\]](#) (2000) 7 Supreme Court Cases 213
[\[4\]](#) 2007 (4) ALD 297 (DB)
[\[5\]](#) AIR 2014 Supreme Court 1843
[\[6\]](#) 2014 (2) ALD 125
[\[7\]](#) 2015 (1) Decisions Today (SC) 1