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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION NOs.788 of 2009 and 28618 of 2008

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Date: 08.04.2015

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W.P.No.788 of 2009

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Between :

Amudha Kishan s/o.late A.Chandraiah,
Aged 54 years, r/o.H.No.3-12-15/A/1 to 4,
Ganesh Nagar, Ramanthapur, Uppal
Mandal, Ranga Reddy District and others.

.... Petitioners

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and

Government of Andhra Pradesh,
Rep.by its Principal Secretary to
Government, Revenue (UC.I) Dept.,
Hyderabad and others

.... Respondents

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W.P.No.28618 of 2008

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Between :

Talapalli Narayan s/o. Narsaiah Goud,
Aged about 58 years, r/o.Plot No.39,
H.No.3-12-12/1, Ramanthapur Village,
Uppal Mandal, Ranga Reddy District.

.... Petitioner

And

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Government of Andhra Pradesh,
Rep.by its Principal Secretary to
Government, Revenue (UC.I) Dept.,
Hyderabad and others

.... Respondents

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This Court made the following :

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WRIT PETITION NOs.788 of 2009 and 28618 of 2008

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COMMON ORDER :

In both writ petitions the issue for consideration is whether the direction issued by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad in his notice dated 25.09.2008 directing the petitioners to file application for regularization of possession of the petitioners over the land holding that they are in unauthorized occupation of the land belonging to the State is valid. Having regard to the same, these writ petitions are disposed of by common order.

2. The land in Sy.No.10 of Ramanthapur Village to an extent of Ac.7.33 guntas was owned by Pasham Rameshwar Rao. In part of the above extent of land, the original owner formed lay out for residential house plots. Petitioners purchased the above plots in the said layout.

3. In W.P.No.788 of 2009 petitioners claim to have purchased the plot No.28 admeasuring 333 square yards in Sy.No.10 of Ramanthapur, Uppal Mandal, Ranga Reddy District, vide registered sale deed, dated 24.10.1980 from the original owner of the land. After purchase of the above plot, four portions were made and houses were constructed between 1983 and 1986. Those houses were assigned municipal numbers bearing House No.3-12-15/A/1-4. Thereafter petitioners are in possession and enjoyment of the said property. Petitioners have been paying municipal taxes and water bills.

4. In W.P.No.28618 of 2008, petitioner contends that vendor of the petitioner by name K.Kista Reddy has purchased the plot bearing No.39, admeasuring 267 Square yards vide registered sale deed dated 28.03.1980 and constructed a house bearing No.12-12/1. Petitioner purchased ready built house and the petitioner is living in the said house.

5. On 25.09.2008, notices were drawn by the Office of Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad and pasted on the doors of the houses in

the colony without mentioning the names of persons on whom the notice was sought to be served. The notices allege that the land to an extent of 41,518.93 Square metres in Sy.Nos.9/1 and 10/P of Ramanthapur Village, was declared as surplus land and possession was taken by the State; major portion of the land was under illegal occupation of third parties who have also constructed houses unauthorisedly over the said surplus land. The Government issued orders in G.O.Ms.No.747 Revenue (UC.I) Department, dated 18.06.2008 for regularisation of such surplus land to the occupiers on filing of applications. Alleging that the petitioners have not utilized the said opportunity afforded to them, petitioners were directed to file application for regularisation of possession over the land on or before 30.09.2008. Challenging the said notices, these writ petitions are instituted.

6. Heard learned counsel for the petitioners and learned Assistant Government Pleader for the respondents.

7. Learned counsel for the petitioners contends that the Ramanthapur village was not shown in the master plan of Hyderabad city. It was treated as peripheral area of Hyderabad Urban Agglomeration. Only in the year 1980 Ramanthapur village is shown in the master plan and from the said year the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), have come into force to Ramanathpur village also. Whereas the lay out was formed by obtaining Gram Panchayat approval in the year 1980 and plots were sold. In the said manner, the vendor of the petitioner in W.P.No.28618 of 2008 purchased the plot in the year 1980 and constructed house. Petitioners in W.P.No.788 of 2009 purchased from the original owner in the year 1980. Similarly other persons also constructed houses in the house plots purchased by them. Thus, till 1980 the provisions of the Act were not applicable and therefore, the question of declaring the original landlord in possession of excess land than the ceiling limit prescribed under the Act prior to 1980 would not arise.

8. Learned counsel for the petitioners placing reliance on the decision of the Hon'ble Supreme Court in the ***State of A.P., Vs Audiksava Reddy and others***, and the decision of the Division Bench of this Court in ***State of A.P. and another Vs***

S.B.Komaraiah, contends that unless the area is included in the master plan, the provisions of the Act are not attracted and, therefore, the question of declaring the original owner as excess land holder and declaring the transactions made before the area was declared as forming part of master plan as illegal is not valid. Purchases made prior to Ramanthapur village made part of master plan i.e., 29.09.1980 were valid and legal. Therefore, the question of petitioners applying for regularisation in accordance with G.O.Ms.No. 747 dated 18.06.2008 do not arise.

9. Learned counsel further submits that even assuming that declaration was given by the original owner under the Act and the declaration has become final, such declaration has no legal validity and *non est* in the eye of law in as much as when the provisions of the Act were not attracted to Ramanthapur village prior to 29.09.1980, the question of applying the provisions of the Act and inviting declaration does not arise. Thus, even assuming that such a declaration was given by the original owner, it is not valid and does not affect the purchase made by the petitioner or his vendor if otherwise valid and, therefore, the question of petitioners applying for regularisation at this stage does not arise.

10. Learned counsel further contends that even assuming that the provisions of the Act are attracted, the notice under Section 10 (5) of the Act was not communicated to the petitioners nor forcible physical possession was taken in accordance with Section 10 (6) of the Act. Learned counsel further submits that the proceedings were not concluded and no possession was taken prior to the purchase made by the petitioners and since the year 1980 the petitioners are in possession and enjoyment of the property, the petitioners are entitled to be heard before finalising the proceedings under the Act. Not serving the notice under Section 10(5) of the Act vitiates the entire proceedings. Similarly since building is also constructed and as the petitioners are already living, taking physical possession would only mean to dispossess the petitioners from the properties, but no such steps were taken. Learned counsel submits that as admitted by the respondents in the counter affidavit, taking physical possession was not complete prior to coming into force of repeal Act.

11. Learned Assistant Government Pleader submits that the petitioners have no *locus standi* to challenge the said notices; that the Urban Land Ceiling Act proceedings were concluded much earlier to purchase made by petitioners; that the original owner has consented for application of the provisions of the Act, declaring the land in possession more than retainable by a person in the urban agglomeration i.e., 1000 square metres as excess land and such declaration has become final. Though possession was taken earlier, since on appeal the matter was remitted for *denovo* exercise, fresh proceedings were taken up and prior to the coming into force of the Repealed Act, the process of taking physical possession was completed and therefore, the proceedings have been concluded and thus, the petitioners became illegal occupants of the land vested in the Government and therefore, the notices were validly issued. When once the land is vested in the State, no person has right to occupy the land of the State and any such occupation becomes illegal and unauthorised. However, more as a compassion and in recognition of such illegal occupation for long time, the Government formulated a scheme of regularisation of such unauthorised occupations and if the petitioners do not intend to avail the said benefit, the petitioners have to suffer the consequences.

12. As seen from the record, W.P.No.788 of 2009 was allowed by this Court by judgment dated 14.11.2013 setting aside the notice dated 25.09.2008 issued by the Special Officer and Competent Authority, Urban Land Ceiling, demanding application for regularization. On consideration of the official records this Court recorded the finding that the notice under Section 10(5) of the Act, 1976 was not served on the petitioners and similarly no possession was taken in accordance with Section 10(6) of the Act. Thus, the vesting of possession in the State was not finalized before the Repealing Act has come into force. Therefore, this Court held that the petitioners are not required to apply for regularization in accordance with G.O.Ms.No.747 dated 18.06.2008. Aggrieved by the same, State of Telangana preferred Writ Appeal No.1615 of 2014. The said writ appeal was allowed on the ground that in the array of parties, the State of Telangana was not impleaded as respondents, whereas Government was impleaded. Granting liberty to file appropriate petition for correcting the cause title the writ petition was remanded for consideration afresh.

13. The issue for consideration in these two writ petitions is whether prior to the notification issued treating Ramanthapur village as forming part of master plan of the city of Hyderabad, the Urban Land Ceiling Act 1976 would apply ? Incidental question that arise for consideration is whether possession vested in the State prior to coming into force of Repealing Act ?

14. It is not in dispute that the master plan was extended to Ramanthapur village by an order issued by the Government on 29.09.1980. Thus, prior to this date, Ramanthapur village was not part of master plan. However, as Ramanthapur village was coming within the periphery of Hyderabad Urban Agglomeration area certain restrictions of ownership was enforced. However, in accordance with the provisions of the Act, 1976, the compulsion of surrender of excess land by the land owner if he is in possession of the land more than 1000 square yards was not applicable till 29.09.1980.

15. The principle of law concerning this issue is no more *res integra*. On consideration of the judgment of the Supreme Court in **Audiksava Reddy** (supra 1), Division Bench of this Court in **State of A.P., v. S.B.Komaraiah** (supra 2) held that unless area within an Urban Agglomeration is included in the master plan of that Urban Agglomeration, provisions of the Act, 1976 are not attracted. The Division Bench of this Court considered various provisions of the Act, 1976. It read as under:

“16. Reverting to the facts of the present case, it is to be noted that admittedly as on the relevant date, the master plan of Hyderabad city did not include the land in question. It is only under the Master Plan issued under G.O.Ms.No.391 which was published in the Gazette on 29.9.1980 that the land in question came to be included in the master plan. In view of the judgment of the Hon'ble Supreme Court in *Audikesava Reddy's* case, it cannot be said that the land of the respondents cannot be treated as vacant land at all and that it was not covered by the provisions of the Act.”

16. Thus, in view of the principles of law laid down by this Court in **S.B.Komaraiah**, prior to 29.09.1980, land owner forming of lay out after obtaining due approvals and

earmarking house plots and selling the house plots was not illegal. The Gram Panchayat, Ramanthapur granted layout on 14.05.1980. Thus, by 14.05.1980, the concerned land was put in use by formation of residential colony and house plots were earmarked and sold. In fact on the original owner's application before the Special Officer and Competent Authority, certificate was issued on 08.05.1978 informing the petitioners that the extent of lands referred to in Sy.No.10 are agricultural lands and are situated outside the master plan limits and, therefore, the above said lands are not attracted by the provisions of the Act, 1976. Similarly, Hyderabad Urban Development Authority also informed by letter dated 15.05.1978 that the Sy.No.10 of Ramanthapur village was falling outside the Municipal Corporation limits and is not covered by notified master plan. However, the vendor of the petitioner was directed to leave 75" from the centre of the existing Warangal main road before entering into any kind of transaction. These two letters of the competent authorities would justify obtaining of layout from the Grampanchayat, which was sanctioned on 19.09.1980. Thus, the layout was validly made. Many plots were sold much prior to 19.09.1980. When Act, 1976 is not applicable, merely because a declaration was made by the original owner under the Act, 1976 do not vitiate the purchases made by petitioners otherwise valid.

17. Further, as already recorded by this Court in W.P.No.788 of 2009 while orders were passed on 14.11.2013, no notice was issued to the petitioners therein under Section 10(5) of the Act, 1976 and possession was not taken under Section 10(6) of the Act, 1976. The Court noticed that no reference was made to the houses existing in the locality and, therefore held that notices under Sections 10(5) and 10(6) are illegal and cannot be operative against the petitioners.

18. As seen from the averments in the counter-affidavit, though earlier possession proceedings were issued, but on an appeal by the original owner of the land, the appellate authority sets aside the earlier proceedings and remanded the matter for reconsideration. On remand, the orders under Section 8(4) and final statement under Section 9 of the Act, 1976 were issued on 25.05.2007. Notification under Section 10(1) was issued on 13.06.2007. Section 10(3) notification was published in the gazette No.230, dated 28.07.2007. After dismissal of the appeal, notice under Section 10(5) was issued on 07.01.2008. It was averred in para-3 of the counter-affidavit that orders under Section 10(6) were issued and possession of surplus land

was taken over by the Government on 11.03.2008. The above dates would clearly indicate that prior to formation of layout and prior to purchase made by the petitioners and construction of houses, possession was not taken. No notice was issued to the petitioners. On perusal of the notice dated 25.09.2008 filed along with W.P.No.788 of 2009, it shows that it was not addressed to the individuals who are in possession and enjoyment, but was issued without specifying the name. Thus, taking of possession in accordance with law and vesting of property in Government insofar as the plots of the petitioners in these writ petitions are concerned did not happen before the Repealed Act came into force. When petitioners constructed houses and are living in their houses, physical possession cannot happen unless they are forcibly evicted. Records were called and verified. No material is brought on record to show that proper procedure was followed and property vested in the State by compulsorily dispossessing petitioners before repealing Act came into force.

19. After the Repeal Act came into force, the question of continuation of proceedings under the Act, 1976 would not arise.

20. Thus, looking from any angle, the notice impugned in these writ petitions is not sustainable. The plots purchased by the petitioners never vested in the State in accordance with the law. Therefore, petitioners cannot be described as persons in unauthorised occupation of the Government land and there can be no compulsion on the petitioners to apply for regularization under G.O.Ms.No.744 dated 18.06.2008. The notices under challenge are without jurisdiction and competence and are liable to be set aside as such. They are accordingly set aside.

21. Both the writ petitions are allowed accordingly. There shall be no order as to costs. Miscellaneous petitions if any pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 08.04.2015

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