IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY, THE SIXTEENTH DAY OF APRIL TWO THOUSAND AND FIFTEEN

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.8033 of 2002

Between:

Mrs. Santhosh Verma, W/o. R.K. Verma,

Aged about: 70 years, Occ: House wife,

R/o. Plot No.50, 'F' Block,

Rajouri Gardens,

New Delhi & 7 others

.. Petitioners

AND

The Joint Collector,

R.R. District, at Lakdi-ka-pool,

Hyderabad & 11 others

.. Respondents

The Court made the following:

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ORDER:

The first petitioner purchased land to an extent of 4153 square yards in Survey No.20 of Habsiguda Village, Ranga Reddy District, from one Smt. T. Bhagirathi Devi vide registered Sale Deed No.208 of 1963, dated 12.06.1963. While she was in possession and enjoyment of the said property, the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act, 1976') has come into force. In terms of the provisions contained therein, the first petitioner filed declaration of the extent of land owned by her. In the said declaration, the first petitioner described the status of the property as land with small building with dwelling unit against Column 5, which has three entries. Entry (i) only a vacant land, (ii) land with a building, or (iii) land with a building with a dwelling unit therein. In the Annexure 'A' proforma against Column 12, it was declared that it is a residential property having 100 square feet of single storied construction made. The proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, have become final and land to an extent of 2598 square meters was declared as excess land.

2. While this being so, claiming that petitioners 2 and 3 entered into an agreement of sale in the year 1980 with the first petitioner for purchase of the total extent of 4153 square yards, they have presented the said Sale Deed before the Mandal Revenue Officer, Uppal Mandal, for validation of the said agreement of sale in accordance with Section 5-A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act 1971'). The Mandal Revenue Officer, Uppal Mandal, passed orders validating the said agreement of sale. Aggrieved thereby, the subsequent purchasers of the house plots in the same land went in appeal before the Joint Collector, Ranga Reddy District, challenging the said order of the Mandal Revenue Officer, Uppal Mandal. The Joint Collector by the orders, dated 18.02.2002, held that land is falling in Urban Agglomeration and land is not an agricultural land and, therefore, the Mandal Revenue Officer has no jurisdiction and competence to issue such validation certificate and the provisions of the Act, 1971, are not attracted. Aggrieved thereby, this writ petition is instituted.

3. Heard Sri T.Venkat Raju Goud, learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue for the first respondent and counsel for the party respondents.

4. Learned counsel for the petitioners submits that the land in issue is an agricultural land as per the revenue records and continued to be classified as agricultural land. As long as land is classified as agricultural land, the provisions of the Act 1971 are attracted and, therefore, the Mandal Revenue Officer has validly exercised power vested under Section 5-A of the Act 1971 to validate the agreement of sale, dated 25.07.1980. Learned counsel for the petitioners further contends that unless the competent authority passes orders converting the agricultural land to non-agricultural purposes, the status of the land continues to be an agricultural land. Therefore, the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, were not attracted and merely because the provisions in the Urban Land (Ceiling and Regulation) Act, 1976, were initiated, it cannot be said that the Mandal Revenue Officer is denuded of the power vested in him by the Act 1971 for validating the agreement of sale. Learned counsel for the petitioners further contends that as agreement of sale was prior to amendment of Section 9 of the Act 1971, the Joint Collector was not competent to deal with the issue and on that ground alone, the order of the Joint Collector is liable to be set aside.

5. Learned Assistant Government Pleader submits that the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, have become final and the property vested in the State. The property in issue is an urban property. It was converted into non-agricultural purposes. Residential colony has come up. Individual house plots were sold. In the said manner, the party respondents have purchased house plots. The original owner filed declaration under the Urban Land (Ceiling and Regulation) Act, 1976, and in the said declaration, the original owner has described the land as non-agricultural land. This declaration having become final. It is not open to any other person to question the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. Once the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, have become final, the validation of agreement of sale alleged to have been entered into on 25.07.1980 among the petitioners, by the Mandal Revenue Officer does not arise. Learned Assistant Government Pleader contends that the decision of the Joint Collector is legal.

6. Learned counsel representing the party respondents adopts the submissions made by the learned Assistant Government Pleader for Revenue representing the 1st respondent.

7. The learned Government Pleader also produced records which would disclose that the acquisition has become final. Possession was also vested in the State in accordance with Section 10(6) of the Act, 1976.

8. The issue that arises for consideration in this writ petition is whether the Joint Collector erred in holding the Mandal Revenue Officer as not competent to validate an agreement of sale in exercise of powers vested in the Mandal Revenue Officer under Section 5-A of the Act, 1977 ?

9. As facts on record would disclose the original owner, who happens to be the first petitioner herein filed declaration under the Act 1976 describing the subject land as land with small building with dwelling unit. The declarant has not stated that the concerned land is an agricultural land. If it was an agricultural land there was no need to file declaration under Section 6(1) of the Act 1976. Be that as it may, the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, have become final resulting in declaring that the declarant was holding land to an extent of 2598 square meters in excess than what is prescribed by the Act, 1976. Learned counsel for the petitioners also stated that in pursuant to an application filed under Section 21 of the Act 1976, the exemption was granted to the extent of land declared as surplus. These proceedings have become final. These proceedings also conclude that the land was no more classified as an agricultural land.

10. Section 2(4) of Act 1971 defines land. Land means, land which is ***used*** or is capable of being ***used*** for purposes of agriculture, including horticulture but does not include land used exclusively for non-agricultural purpose. Thus, the land should be used for agricultural purposes or is capable of being used for agricultural purposes. In the instant case, as seen from the order passed by the Joint Collector, dated 18.02.2002, the Vice-Chairman of the HUDA in his proceedings vide 4176/P5/HUDA/95, dated 08.06.1995, issued certificate

stating that the Survey No.20 of Habsiguda Village is covered by the statutory Master plan for the non-Municipal area of the HUDA, according to which the land is earmarked for residential use. In addition, as already noticed, the declarant has described the status of the land as land with a dwelling house unit. Thus, the subject land is not used for agricultural purpose and is not capable of being used for agricultural purposes. No contra material is filed to disprove this position.

11. Section 5-A(4) of the Act 1971 vests power in the Mandal Revenue Officer to issue a certificate to the alienee or transferee declaring the alienation or transfer as valid from the date of issue of such certificate. To enable the Mandal Revenue Officer to issue such certificate under the above provision, two conditions are required to be fulfilled - (i) that the person applying for issuance of certificate should be an occupant by virtue of an alienation or transfer made or affected other than by registered document; (ii) that such an alienation or transfer is not in contravention of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976.

12. In the case on hand, the document relied upon was an agreement of sale. Section 5-A(1) of the Act 1971 vests power in Mandal Revenue Officer to validate unregistered sale deed and grant of certificate under Sub-Section (4). Thus, the Mandal Revenue Officer has no power or competence to entertain a request under Section 5-A(1) to grant a certificate under
Sub-Section (4), if the document on which reliance placed is only an agreement of sale. The principle of law on this point is no more *res integra*. In the case of ***Konkana Ravinder Goud and others Vs. Bhavanarishi Co-operative House Building Society, Hyderabad and others***, the first question considered by the Division Bench of this Court was whether an agreement of sale can be treated as alienation or transfer within the scope of Section 5-A of the Act 1971. This Court held that even when entire sale consideration is paid and in pursuant to agreement of sale, the transferee takes possession of the land in part performance of the agreement of sale, also does not confer title in the land in favour of the transferee. The power vested in the Mandal Revenue Officer for grant of certificate under Section 5-A of the Act 1971 is limited. He cannot hold

enquiry on the intendment of parties and conclusion of sale and terms of agreement. It is further held that Mandal Revenue Officer can validate only an unregistered sale deed. The Division Bench further held that agreement of sale cannot be treated as an alienation or transfer within the scope of Section 5-A of the Act.

13. In view of the above principle, the very entertainment of the request of petitioners under Section 5-A (1) of the Act 1971 to validate agreement of sale and to grant certificate under Section 5-A (4) of the Act 1971 by the Mandal Revenue Officer was erroneous. The Mandal Revenue Officer has no competence or jurisdiction to entertain such a request.

14. The other purchasers of house plots seriously dispute possession or occupation of the entire extent of land by petitioners to attract the other conditions of Section 5-A of the Act 1971. If there are disputes on any aspect of land on which sale transaction was sought to be validated, Mandal Revenue Officer cannot go into such disputes.

15. Thus, I do not see any error much less patent error in the decision arrived at by the Joint Collector, Ranga Reddy District (1st respondent) in setting aside the certificate issued by the Mandal Revenue Officer. The writ petition fails and it is, accordingly, dismissed. However, it is made clear that the issue for consideration in the writ petition is only with reference to the validity of the order passed by the Joint Collector on the certificate issued by the Mandal Revenue Officer under Section 5-A (4) of the Act, 1971. All other issues raised by the petitioners vis-à-vis, the original vendor and others are preserved. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 16th April, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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Date: 16th April, 2015

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