

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15268 OF 2003

ORDER :

Initially this writ petition is filed seeking writ of *mandamus* declaring the action of the respondents in trying to take possession of petitioner's land as illegal, arbitrary and contrary to the Urban Land Ceiling Act, 1976 (for short 'the Act') and the orders issued by the Government of Andhra Pradesh as per G.O.Ms.No.456 dated 29.07.2002 and to further direct the respondents to cancel the orders passed on 27.04.2000 declaring the land of the petitioner in R.s.No.9/1A/B of Vidhyadharapuram Village admeasuring 657 sq.mts as surplus land. Subsequently, the said prayer was amended vide orders in WPMP No.23457 of 2013 dated 16.12.2014, which reads as follows:

“For the reasons stated in the accompanying affidavit, the Hon'ble Court may be pleased to issue an appropriate Writ, order or direction, particularly in the nature of a Writ of Mandamus, by declaring the orders passed u/s 8(4) of U.L.C Act, 1976 dt.24-7-1979 in CC.No.2297/76, declaring petitioners land to an extent of 657 sq.mtrs, as excess land in R.S.No.9/1A & 1B in Vidyadharapuram village, the consequential orders passed u/s 10(1) dt.17-9-1979, declaration order u/s.10(3) dt.12-3-1980 as published in Gazette No.14, dt.3-4-1980, the order passed u/s.10(5) dt.31-12-1980 in C.C.No.2297/76, the order passed rejecting exemption dt.25-3-1998, No.67742/U.C.I(1)/91-II and consequential order u/s.10(6) dt.27-4-2000, No.Rc.CC.B4.2297/76 and taking possession of land in R.S.No.91A&1B to an extent of 657 sq.mtrs, as illegal and arbitrary as violative of provisions of U.L.C.Act, 1976 and quash all the proceedings and consequently direct the respondents to pay compensation for the subject land to the petitioner as possession of land was already handed over to 3rd parties, and pass such other and further orders to meet the ends of justice.”

2. It is the case of the petitioner her mother late Khasim Bi, wife of late Saik Silar Saheb through a registered Dhakal Deed dated 20.10.1964 gifted to her sisters Vaheedunnisa, Khurshid

Begum and Kulsum Bi and herself, a total area admeasuring Ac.2.00 of land out of Ac.5.20 cents in R.S.No.9/1 situated in Vidhyadharapuram village, Vijayawada, Krishna District, now forming part of Vijayawada. That all the four sisters including the petitioner had divided the said land among themselves in an oral partition affected between them in the year 1965 and since then, the petitioner is in continuous enjoyment and possession of the land admeasuring Ac.0.50 cents fell to her share. While so, the 1st respondent passed order in R.C.No.2297/76, dated 31.12.1980 directing the petitioner to surrender an extent of 657 sq.mts of surplus land under the provisions of the Act of 1976. The petitioner filed explanation stating that 134 sq.mts of the land in Bhawanipuram is covered by a residential house and that the Ac.0.50 cents of land in Vidhyadharapuram is agricultural land and therefore, both the lands cannot be treated as vacant lands. It is also stated when no orders are passed on the application of the petitioner seeking exemption under the provisions of the Act, the petitioner filed WP No.581/81 for disposing of the said application under Section 20(1)(a) of the Act along with WPMP No.864 of 1981 for interim stay of the surrender of the possession of 657 sq.mts in Sy.No.9/1 of Vidyadharapuram Village in pursuance to the notice in RC No.2297/76 dated 31.12.1980. It is stated that the petitioner received copy of notice dated 27.04.2000 under Section 10(6) of the Act directing the 2nd respondent to take possession of the land. Subsequently, petitioner had also applied for exemption under G.O.Ms.No.456, dated 29.07.2002.

3. Counter affidavit is filed by the 1st respondent stating that the petitioner filed declaration under Section 6(1) of the Act declaring the properties of her family to an extent of Ac.0.50 cents in R.S.No.9/1 of Vidyadharapuram Village, which was acquired by her under registered document No.3341/64, dt.20.09.1964 and also an extent of 140.5 sq.mtrs in D.No.94 of Bhavanipuram Village, which was devolved on her through a registered Gift Deed dated 22.10.1964. After due verification of the properties held by the declarant, a draft statement u/s.8(1) and Notice U/s.8(3) of the Act were issued to the declarant on 10.01.1977, calling upon to file objections, if any, to the draft statement within 30 days from the date of receipt of the notice. But the declarant did not choose to file her objections to the draft statement. Several notices U/s. 8(4) of the Act were also issued to her to attend for enquiry and she did not choose to attend the same. It is stated that the land to an extent of Ac.0.50 cents or 2023 sq.mtrs in R.s.No.9/1 of Vidyadharapuram village was earmarked for non-agricultural purpose in the master plan and hence it was treated as vacant land and computed in the holding of the declarant. Site measuring 134 sq.mtrs in R.S.No.94/4 of Bhavanipuram village was also treated as vacant land and computed to the holding of the declarant. Finally, the declarant holds total extent of 2157 sq.mtrs and after allowing statutory ceiling limit of 1500 sq.mtrs, she was declared as surplus land holder to an extent of 657 sq.mtrs in the orders under Section 8(4) of the Act passed on 24.07.1979 and final statement under Section 9 of the Act was also issued on 20.08.1979. Notifications

under Sections 10(1) and 10(3) of the Act were also published in the A.P. Gazette on 11.10.1979 and 03.04.1980 respectively for surplus land measuring 657 sq.mtrs in R.S.No.9/1A & 1B of Vidyadharapuram Village. The notice under Section 10(5) of the Act was also issued to the declarant on 31.12.1980, which was received by the petitioner on 06.01.1981. The Government in their Memo No.67742/UC-I(1)/91-11, dt.25.03.1998 passed orders rejecting the exemption application under Section 20(1)(b) of the Act and also under Section 34 of the Act filed by the declarant, as it deserve no consideration. It is stated that the Mandal Revenue Officer, Vijayawada Urban, has taken possession of the subject property on 12.06.2000. The Government vide G.O.Ms.No.166, Revenue UC-I Department, dated 03.03.2001, passed orders for disposal of surplus lands under Section 23 of the Act by public auction for sub-serving common good to the weaker sections housing or infrastructure. As per the said G.O, the MRO, Vijayawada Urban handed over possession of the surplus land to the V.G.T.M.U.D.A, Vijayawada on 01.03.2001. The Chairman, V.G.T.M.U.D.A, Vijayawada conducted auction of the said surplus land and handed over to highest bidder by name A.Srinivasa Rao and also issued confirmation orders vide proceedings No.A1/257/2001, dated 25.02.2002 confirming the auction in favour of the highest bidder and registered in favour of D.K.Madhusudhana Rao vide registered document No.1625/2003, dated 04.03.2003. It is stated that the said proceedings had already been intimated to the 1st respondent vide Rc.B4/CC No.2297/76, dated

01.08.2005. It is stated that G.O.Ms.No.733, dated 31.10.1988 is not applicable to the core area, as the said GO relates to peripheral area.

4. Learned counsel for the petitioner submits that the petitioner is not aware of the proceedings passed under the provisions of the Act of 1976 and that only after filing of the counter affidavit, the petitioner came to know about the passing of the orders under the Act of 1976, as such, the prayer in the writ petition is amended questioning the proceedings issued under the Act of 1976 including the rejection of exemption application vide proceedings dated 25.03.1998. He submits that no reasons are assigned in the rejection order. In support of his contention, he relied on the judgment reported in **M/s.Bio Chemicals and Synthetic Products Ltd., Kukatpally v. Govt of A.P, Revenue (UC.III) Department**¹. He submits that without following due process of law, possession has been taken.

5. On the other hand, learned Assistant Government Pleader for Revenue submits that after following due procedure under the Act of 1976, possession of the subject land was taken and same was handed over to VGTM, which conducted auction and possession was handed over to the highest bidder in the said auction.

6. In this case, it is to be seen that the petitioner is aware of the proceedings issued under the Act of 1976. It is pertinent to note that in para 5 of the affidavit filed by the petitioner, there is mention about the order passed by the 1st respondent in

¹ 2002 (4) ALT 446 (D.B)

R.C.No.2297/76, dated 31.12.1980. Thereafter, the petitioner filed application for exemption under Section 20(1)(b) of the Act. She also filed writ petition for disposal of the said application and same was rejected by the Government vide Memo No.67742/UC-I(1)/91-11, dated 25.03.1998. Though the possession of the subject land was taken on 12.06.2000, the present writ petition is filed in the year 2003. The petitioner also referred to proceedings dated 27.04.2000 issued under Section 10(6) of the Act. No doubt, no reasons are assigned in the rejection order dated 25.03.1998 in Memo No.67742/UC-I(1)/91-11, but now the fact remains that the provisions of the ULC Act of 1976 have been repealed by the Urban Land (Ceiling & Regulation) Act, 1999. Even if the impugned order is set aside, no further direction can be issued to the authority under the Act to consider the case of the petitioner, as the Act of 1979 itself is repealed. It is also relevant to note that the petitioner also filed writ petition after a period of five years from the date of rejection order i.e., 25.03.1998. Though the petitioner filed appeal and same was rejected, petitioner has not chosen to challenge the same in the first instance and subsequently, he filed amendment petition in the year 2014 for amending the prayer in the writ petition challenging the impugned proceedings. Petitioner has not stated in the affidavit that he is not aware of the orders passed by the 1st respondent. The petitioner herself having filed appeal against the orders of the primary authority, which was also rejected by proceedings No.UC2/647/81, dated 30.04.1984. Moreover, the subject property was handed over to the V.G.T.M.U.D.A, which in

turn conducted public auction of the subject property and highest bidder was allotted the same and he had been put in possession of the same.

In view of the above facts and circumstances, no relief can be granted to the petitioner.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand dismissed.

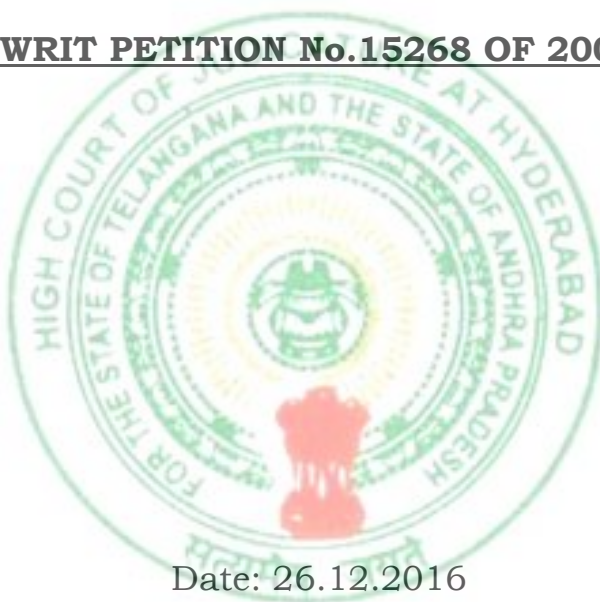
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A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 26.12.2016

kvs

