

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.4684 of 2008

ORDER:

Heard Sri G.Rama Gopal, learned counsel for the petitioners, learned Government Pleader for Assignment and the learned Government Pleader for Revenue, appearing for the respondent Nos.1 and 2.

2. Petitioners have filed this Writ Petition questioning Memo No.1755/UC.I (2)/83-6 dt.27-09-1996 of 1st respondent as communicated vide C.C.No.3936(A)/76/B2 dt.01-02-2008 by 2nd respondent and consequently to allow the application dt.18-07-1978 filed by the petitioner under Section 20 (1) (b) of the Urban Land (Ceiling and Regulation) Act, 1976.

3. The 1st petitioner and the 2nd petitioner are children of one R.Surya Rao who died in 1965. After the advent of the above Act, 2nd petitioner filed a statement under Section 6 (1) of the Act which was numbered as C.C.No.3936 of 1976 and draft statement under Section 8 (1) together with Notice under Section 8 (3) of the Act was issued by 2nd respondent on 25-06-1978 provisionally declaring him as surplus land holder for an extent of 0.0979 square meters in T.S.No.1048 Part of Waltair Ward. No objections were received and ultimately final statement under Section 9 of the Act was issued on 05-11-1981 confirming the 8 (1) statement. Notification under

Section 10 (1) of the Act was issued on 09-11-1981, declaration under Section 10 (3) of the Act was issued on 29-12-1981 and the same were published in the AP Gazette on 14-12-1981 and 22-07-1982 respectively. Thereafter notice under Section 10 (5) and 11 (8) of the Act was issued on 18-10-1983.

Even subsequent thereto, the 2nd petitioner filed application under Section 20 (1) (b) of the Act seeking exemption. Since no action was taken on the said application, 2nd petitioner filed W.P.No.8823 of 1983. It was allowed on

14-11-1987 and the 1st respondent was directed to dispose of the application under Section 20 of the Act and till then, it was directed that he shall not be dispossessed from the surplus land. The 2nd petitioner was also directed not to change the character and nature of the land.

4. Under the impugned order dt.01-02-2008, the 2nd respondent communicated to the 2nd petitioner rejection of the application for grant of exemption by the 1st respondent vide Government Memo No.1755/UC.I(2)/83-6 dt.27-09-1996.

5. Assailing the same, this Writ Petition is filed.

6. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 was adopted by the State of Andhra

Pradesh by passing a resolution in the AP Legislature on 27-03-2008 and a Notification in G.O.Ms.No.603 Revenue (UCI) Department dt.22-04-2008 was published stating that the Repeal Act would come into force in the State of Andhra Pradesh with effect from 27-03-2008.

7. Section 3 of the Repeal Act states that the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 shall not affect vesting of any vacant land under sub Section (3) of Section 10, possession of which has been taken over by the State or any person duly authorized by the State Government in his behalf or the competent authority.

8. Section 4 of the Repeal Act states that all proceedings relating to any order made or purported to be made under the principal act pending immediately before the commencement of the Act, before any Court, Tribunal or other authority shall abate.

9. These provisions have been interpreted by the Supreme Court in the State of **Utter Pradesh Vs. Hari Ram**^[1]. It held that mere vesting of land under Section 10 (3) would not confer any right on State Government to have *de facto* possession of the vacant land unless there has been a voluntary surrender of vacant land before the Repeal. It held that State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub section (5)

of Section 10 or forceful dispossession was done by the State under sub Section (6) of Section 10 before the Repeal Act was applied/enforced. It held that on failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. It held that if no documents are produced by the State to show that the declarants have been dispossessed before coming into force of the Repeal Act, the declarants would be entitled to get the benefit of Section 3 of the Repeal Act.

10. In their counter affidavit, the respondents stated that Order under Section 10 (6) of the Act was issued on 07-05-1997 and surplus land was handed over to Visakhapatnam Urban Development Authority on 05-03-2001. It is also stated that part of the land measuring Ac.0.0461 square meters in Sy. No.1048/3D of Waltair Ward was also handed over to the A.C.B. Department. Nowhere in the counter affidavit it is stated that possession of the surplus land was taken from the petitioners after the orders under Section 10 (6) of the Act were issued on 07-05-1997.

11. The learned Government Pleader for Assignment has also produced the record relating to the case which also does not contain any *panchanama* conducted by the respondent evidencing taking of possession of the surplus land of the declarant 2nd petitioner.

12. The counter affidavit also contains vague statement that the possession of the land was taken prior to filing of the Writ Petition and that the petitioners are not in possession of the land. No specific date is indicated and no document is filed evidencing such taking of possession. Without taking any possession from the petitioners, the respondents could not have delivered possession of any portion of surplus land to either VUDA or to the ACB.

13. Therefore having regard to the provisions of the Urban Land (Ceiling and Regulation) Act, 1999, and its adoption by the State of Andhra Pradesh with effect from 27-03-2008, since there is no evidence of taking possession of the surplus land from the 2nd petitioner prior to the adoption of the Repeal Act by the State of Andhra Pradesh, the entire proceedings under the said Act abate. Consequently, the petitioners are entitled to retain even the land declared to be surplus by the 2nd respondent and respondents cannot interfere with their possession and enjoyment of the same.

14. Accordingly, the Writ Petition is allowed and Memo 7755-UC.I (2)83-6 dt..27-09-1996 of the 1st respondent as well as C.C.No.3936 (A)76/B2 dt.01-02-2008 of the 2nd respondent are both quashed and the respondents are directed not to interfere with the

possession and enjoyment of the land of the declarant including the land determined as surplus land by the 2nd respondent in the final statement under Section 9 of the Act issued on 05-11-1981. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-07-2016

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