

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22691 OF 2012

ORDER:

This petition is filed for a writ of *Mandamus* declaring the proceedings dated 10.07.2012, issued by the 2nd respondent as without jurisdiction, illegal and contrary to the provisions of the A.P.Agricultural Land (conversion for Non-Agricultural Purposes) Act, 2006 and also the A.P.Urban Areas (Development) Act, 1975 and for a consequential direction to set aside the same.

The case of the petitioner is that he purchased an extent of Ac.0.27 cents from one of his brother Ch.Sambasiva Rao in the year 2002 and an extent of 459.5 square Yards on 05.01.2004, vide registered document No.32 of 2004. While so, by virtue of the A.P.Urban Areas (Development) Act, 1975, the State Government in exercise of the power conferred under Section 3 of the Act had constituted Vijayawada, Guntur, Tenali and Mangalagiri Urban Development Areas in the State of Andhra Pradesh and by notification declared such urban area or group of urban areas to be a development area for the purposes of this Act. The petitioner land came within the purview of urban area by virtue of notification issued by the Government in G.O.Ms.No.144 M.A., dated 03.03.1988 and the competent authority prepared zonal development plan by virtue of the provisions of A.P.Urban Areas (Development) Act, 1975, and accordingly, the petitioner's land comes within the purview of Kanuru Zonal Development Plan. While so, the 2nd respondent issued show cause notice dated 05.05.2012, to the petitioner, under Rule 8 of the A.P.Agricultural Land (Conversion for Non-Agricultural Purposes) Rules, 2006 for converting an extent of 1.47 cents in Survey No.201/A of Penamaluru Village, Krishna District, into non-agricultural purpose, without obtaining any permission as required under Section 3 of the

A.P.Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 and also stated that as per Section 6(1) of the said Act, it shall be deemed that the above said land has been converted into Non-Agricultural purposes and liable to be imposed a fine of 50% in addition to the regular conversion fee as well as penalty on the petitioner. After issuance of show cause notice dated 05.05.2012, the petitioner submitted explanation on 21.05.2012, but the respondents without taking the same into consideration issued impugned proceedings dated 10.07.2012, demanding conversion fee and penalty. The case of the petitioner is that the land owned by the him lost its agricultural character long ago and its usage has been changed to residential; and that the said land is treated as development area and it has also been covered under urban area and for all purposes it is under the direct control of the Urban Development Authority in view of notification issued by it and the Government. It is further stated that the A.P.Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 came into existence with effect from 02.01.2006 which has only prospective effect and that the said Act is not applicable to the present case by virtue of Section 7 of the A.P.Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006.

Learned counsel for the petitioner submits that the petitioner has purchased the lands as open sites on 05.01.2004 by way of registered sale deeds vide document No.32 of 2004, and as such, the lands were used for non-agricultural purpose even before the Act came into force. Hence, the impugned order is without jurisdiction. She relied on the Judgment rendered by the Division Bench of this Court in WA.Nos.702 of 2010 and batch and submits that when the land is put to non-agricultural use before 2006, Act came into force, such clearance or permission shall not be insisted.

Learned Assistant Government Pleader for Revenue has not disputed the same.

In this case, admittedly the petitioner purchased the land as open plots even before the Act came into force, i.e. on 05.01.2004. The issue before the Division Bench in WA.Nos.702 of 2010 and batch, which was relied on by the petitioner, was whether the clearance/permission can be insisted upon when the land is put to non-agricultural use even before the Act, 2006 came into force. The Division Bench, while dealing with other issues held as follows;

“As we have confirmed the common order dated 28.04.2010, we are inclined to dispose of writ petitions as follows;

- a) It shall be competent for the Urban Development Authorities or the Local Authorities, as the case may be, to insist on submission of clearance/permission under the 2006 Act as a condition precedent for releasing of layouts, and
- b) The land has been put to non-agricultural use before the 2006 Act came into force, such clearance/permission shall not be insisted.
- c) Conversion of land into Non-agricultural use under the provisions of Act 3 of 2006 is necessary even if the land is covered by Master Plan and sanction of layout by the Development Authority under the provisions of Act 1 of 1975.”

The facts mentioned in the writ petition goes to show that the petitioner has purchased the land which was put to non-agricultural use, even before the 2006 Act came into force. In view of the same and following the law laid down by the Division Bench of this Court in WA.No.702 of 2010 and batch, the impugned order dated 10.07.2012, issued by the 2nd respondent is set aside.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the contempt case, shall stand closed.

A.RAJASHEKER REDDY, J

19.02.2016

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