

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WP.No.19897 OF 2012

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the respondents in trying to dispossess the petitioners even after the case filed by the original pattedar is closed by the Director of Appeals on 28.04.2008 in respect of the land in Sy.No.25/Part of Thattikana Village, Hayathnagar Mandal, R.R.District, as illegal and arbitrary and for a consequential direction to the respondents not to interfere or claim the land of the petitioners.

The case of the petitioners is that they have purchased various extent of lands in Sy.No.25, 25/P, 33/1 and 33/2 of Thattikhana Village, Hayathnagar Mandal, R.R.District under different registered sale deeds from their vendors who have purchased the said land from M.Narasimha Reddy and others who are the original owners and pattedars of the land; that ever since, from the date of purchase they are in peaceful possession and enjoyment of the same and that the subject land is situated in peripheral area and does not fall under urban agglomeration and thereby did not hit the provisions of ULC Act. While so, the 2nd respondent passed orders in proceedings dated 08.08.1986 under Section 8(4) of the ULC Act determining an extent of 1,57,134.86 sq.mtrs., as surplus land. Aggrieved by the said order, Narasimha Reddy filed an appeal under Section 33 of the ULC before the Commissioner, Land Reforms and Urban Land Ceiling and the same was partly allowed on 28.05.1991 and the matter was remitted to the 2nd respondent for fresh computation. Thereafter, the 2nd respondent vide proceedings dated 19.07.1993 passed a fresh order under Section 8(4) of the Act determining an extent of 1,57,108.44 Sq.Mtrs as surplus. Aggrieved

by the same the said Narasimha Reddy and others filed WP.No.13035/1993 and this Court granted interim stay of all further proceedings on 07.09.1993. At that stage, the original pattedar M.Narasimha Reddy died and his legal representatives came on record by filing WP.MP.No.4784 of 2002 which was allowed on 05.03.2002. Subsequently, the said writ petition was allowed on 01.02.2005 setting aside the order of the appellate authority and the matter was remanded to the 2nd respondent for disposal of the appeal afresh on merits and in accordance with law along with the other appeals filed by the petitioner as against the orders of the 2nd respondent after giving notice and opportunity to both sides. Then the appellate authority pursuant to the orders of this Court reopened the appeal and heard the matter at length and reserved the same for orders on 25.03.2008. While so, the 1st respondent adopted the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and thereby repealed the Urban Land Ceiling Act in the state of A.P. with effect from 27.03.2008. Subsequently, the 1st respondent also issued a circular vide Memo dated 24.04.2008 to close all pending appeals and cases as abated if they have not reached 10(6) stage. Since the petitioners' case did not reach the stage of 10(6) as the appeal was reserved for orders on 25.03.2008, the respondents have no manner of right to treat the land in question as surplus. Further the appellate authority himself passed an order dated 28.04.2008 closing the case of the original pattedars M.Narasimha Reddy and others, as the Act itself is repealed. But, however, when the respondents are illegally claiming the land as surplus, the legal heirs of the original pattedars filed WP.No.3982 of 2010 questioning the action of the respondents and this Court on 23.02.2010 granted interim stay in WP.No.5174 of 2010. Even though, this Court granted stay on 23.02.2010, the respondents tried to dispossess the petitioners on 29.06.2012 stating

that they are not parties to the writ petition and that unless the petitioners get the similar order they will take possession of the land. Aggrieved by the same present writ petition is filed.

The 2nd respondent filed counter stating that the declarant filed WP.No.13035 of 1993 and obtained stay orders and this court allowed the writ petition on 01.02.2005 and set aside the orders of the appellate authority and the matter was remitted to the appellate authority for fresh disposal on merits and in accordance with law along with other appeals filed by the petitioner against the orders under Section 8(4) of the Act after giving notice and opportunity to both sides. While the matter was pending before the appellate authority and as no stay orders granted, the declaration under Section 10(3) of the Act was issued and got published in Gazette No.52, dated 24.02.2007 vesting the land with the government free from all encumbrances w.e.f.28.02.2007. Thereafter, notice under Section 10(5) of the Act was issued on 23.05.2007 and that since the declarant failed to surrender the land within the stipulated period, order under Section 10(6) of the Act were issued on 04.02.2008 and possession of the surplus land was taken over on 13.03.2008. It is also stated that as per Section 3(1)(a) of the Act, the repeal of the principal Act shall not affect the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State government or any person duly authorized by the State Government in this behalf or by the Competent Authority. It is further submitted that the suit land was published in the Gazette on 24.02.2007 vesting the land with the Government free from all encumbrances w.e.f.28.02.2007 and possession of surplus land was taken over on 13.03.2008. It is stated that as per Section 4 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 all legal proceedings relating to any order made or purported to be made

under the principle act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate. Therefore, the appeal pending before the appellate authority abates and not the ceiling case which reached to Section 10(6) stage. It is further stated that the writ petitioners are neither declarants nor filed any appeals assailing the proceedings initiated under the Act, hence, have no locus standi to question the action taken under the Act. The proceedings concluded in the year 2008 during the principal Act and the writ petitioners does not appear in the proceedings or filed objections/appeal when the Act provides for appeal, therefore, the proceedings became final and finally prayed to dismiss the writ petition.

Heard learned counsel for the petitioner who submits that the Urban Land Ceiling Act was repealed and in view of the same, the appellate authority issued proceedings dated 28.04.2008, basing on the circular Memo dated 24.04.2008, closing the case of the original pattedar M.Narasimha Reddy and others, as the Act itself is repealed. When the possession was taken from the original pattedar M.Narasimha reddy, the legal heirs of Narasimha reddy filed WP.No.3982 of 2010 taking the similar pleas saying that possession was taken on 13.03.2008 and this Court by relying on the Judgment in ***State of U.P. v. Hari Ram*** ^[1] allowed the writ petition stating that proceedings could not have been initiated against the dead person. It is also submitted that in view of the same, the action of respondents in trying to interfere with the possession of the petitioners is illegal.

On the other hand learned Assistant Government Pleader submits that possession was taken on 13.03.2008 i.e., before the repealment Act came into force, and as such, the same will not be effected by Urban Land (Ceiling & Regulation) Repeal Act, 1999.

Heard learned counsel for the 5th respondent who reiterated that possession was already handedover to the 5th respondent.

In this case, it is to be seen that the legal heirs of the original Pattedar filed WP.No.3982 of 2010 and the same was allowed holding that proceedings against the dead person are invalid. This Court also taken into account the claim made by the respondents that possession was taken on 13.03.2008, while allowing the said writ petition.

Allowing of the said writ petition filed by the legal heirs of the original pattedar, enures to the benefit of the purchasers. In view of the same and in view of the order dated 28.04.2008 passed by the appellate authority closing the case of the original pattedar and others basing on the circular memo dated 24.04.2008 issued by the 1st respondent, this writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

08.03.2016
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[\[1\]](#) 2013(4) SCC 28