**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.4785 of 2006**

**ORDER:**

This Writ Petition has been filed by petitioners seeking a Writ of Certiorari to call for records in connection with the order dt.27-06-2002 of the Commissioner, Urban land ceilings, o/o Chief Commissioner of Land Administration (1st respondent) in proceedings No.HYD/1028/89 and to quash the same and to declare that the land in question is not 'vacant land' within the meaning of the said term under Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act").

2. The petitioner Nos.1 and 2 and K.Satyanarayan Singh, (the husband of 3rd petitioner), are brothers and sons of late Rajaram Singh. They are owners and possessors of agricultural land admeasuring Ac.12.31 gts in Sy.Nos.75 to 78 of Ibrahim Bagh Village, Golconda Mandal, Hyderabad District.

3. The 1st petitioner filed declaration under Section 6(1) of the Act before the Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad (the 2nd respondent) declaring that Ac.2.23 gts of land in Sy.No.76 is his property. But K.Satyanaryan Singh and Smt. K.Rukma Bai filed individual statements declaring the same land claiming 1/3 share each in it. These were numbered as CC.No.9185/76 to 9187/76.

4. Petitioners contend that filing of S.6(1)statement by 1st petitioner was a mistake because (i) the land was an agricultural land utilized for agriculture and so the provisions of the Act do not apply to it; and (ii) that it is in fact joint property, and because it stood in the name of the 1st petitioner, the declaration came to be filed by 1st petitioner by mistake thinking that it was his separate property.

5. Since the document of title to the above property stood in the name of the 1st petitioner, the 2nd respondent formed the opinion that he is the sole owner, ignored the contentions of other declarants, and treated them as not holding property under S.2(l) of the Act.

6. On that basis he issued draft statement under S.8(1) of the Act on 21.3.1978 provisionally declaring him as excess holder to extent of 9191.53 sq.m. The 1st petitioner filed objection statement on 4.5.1978 that land is agricultural property and he had only 1/3 share therein.

7. Orders under Section 8(4) of the Act were passed on 07-06-1978 in C.C.No.9185 to 9187 and 9190 of 1976 by the 2nd respondent declaring that an extent of 9191.55 sq. m is the excess holding of the 1st petitioner. Final statement under Section 9 of the Act was also issued on 14-11-1979. Thereafter Sec.10(1) notification was published in the A.P.Gazette on 27.11.1982 , declaration under sec.10(30 was published in the A.P.Gazette on 19-11-1983 and consequently notice under Section 10(5) of the Act was issued on 21-01-1984.

8. The 1st petitioner and 2 others then preferred an appeal on 28.2.1984 before the Commissioner, Urban Land Ceilings, Office of the Chief Commissioner of Land Administration, A.P., Hyderabad on 28-02-1984. The same was rejected on 19-04-1984 without any consideration holding that it is not maintainable.

9. When an attempt was made to dispossess the petitioners from the said land in Sy.No.76, the 2nd petitioner and another filed W.P.No.13359 of 1989 before this Court contending that copy of the Final statement under Section 9 of the Act was not communicated to them in order to enable them to prefer an appeal under Section 33 of the Act. It was contended that since statutory appeal lies to 1st respondent, it was incumbent on the part of 2nd respondent to supply copies of the Final statement to the petitioners to enable them to prefer an appeal.

10. On 22-09-1989, the said Writ Petition was allowed and direction was given to 1st respondent to give copy of Final statement under Section 9 of the Act to the petitioners as soon as they approach him; petitioners were directed to prefer appeal within 10 days after the supply of Final Statement by 1st respondent; and pending further orders of the competent authority and filing of the appeal before the 1st respondent, the Court directed stay of all further proceedings including proceedings for determination of compensation and for their dispossession.

11. Thereafter the 2nd respondent herein and the other petitioner in W.P.No.13859 of 1989 filed an appeal before the 1st respondent challenging the order passed by the 2nd respondent under Section 33 of the Act after receiving copies of the Final statement under Section 9 of the Act.

12. In the said appeal, a specific contention was raised by the appellants that as per the Master Plan prepared under the A.P. Urban Areas (Development) Act, 1975, the land in question was earmarked for recreational use i.e. meant for parks and play grounds; there is a condition prohibiting construction of any building on the land in question; therefore the lands cannot be treated as 'vacant' lands covered by the provisions of the Act; so the land is exempted from the provisions of the Act. Judgments in **Government of A.P. Vs. J.Raghothama Reddy**[1], **the Commissioner of Land Revenue and Urban Land Ceilings, Government of A.P. and Anr. Vs. Mrs. Shaheen Begum and Others**[2] and **M/s. Agra Concrete Pipe Co Vs. Competent Authority, Agra and Another**[3] were cited.

13. In the said appeal, the 1st petitioner and the 3rd petitioner filed applications for impleadment. These were ordered.

14. On 27-06-2002, the 1st respondent passed orders in Commr. Appeals Prog.No.HYD/1028/89 dismissing the appeal.

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[1] 1991 Andhra Weekly Reporter 599
[2] AIR 1991 A.P. 84
[3] AIR 1987 Allahabad 232 (FB)

15. In the said order, he took a view that the land is the exclusive property of the 1st petitioner and not joint family property of petitioner Nos.1 and 2 and K. Satyanarayan Singh. He recorded that the appellants had raised contention that the land in question was agricultural land and was specified in the master plan as recreational zone with parks and play grounds and therefore would not be vacant land within the purview of Section 2(q)(1) of the Act. But he did not deal with the said issue.

16. He instead he wrote in the order that the subject land held by declarant was situated within the municipal limits and specified for the purpose "other than agriculture" and so the 2nd respondent had rightly treated it as vacant land and computed it to the holding of the declarant.

17. He also recorded that possession of the land was already taken over on 02-05-1985. But this statement is obviously incorrect in view of the order dt.22-09-1989 in W.P.No.13359 of 1989 wherein this Court specifically directed the respondents not to dispossess the petitioners.

18. Assailing the same, the present Writ Petition is filed.

**CONTENTIONS OF COUNSEL FOR PETITIONERS**

19. Learned counsel for petitioners contended that as per the Court Certificate in Lr.No.1053/P5/HUDA/2001 dt.07-02-2001 issued by the Hyderabad Urban Development Authority, the land in Sy.No.76 of

Ibrahim Bagh village is covered by the statutory Master Plan/Zonal Development plan, that it falls in Zone-VI for municipal area of the Hyderabad Development Area and *it is earmarked for recreational use zone (parks and play grounds)*. He also furnished a copy of the Master Plan to the Court as well as to the Government Pleader (Revenue) in support of his plea that the land in question falls within the 'recreational zone' and is exempted from the operation of the provisions of the Act.

20. Learned counsel for petitioners contended specifically that when there was a contention raised before the 1st respondent that the land in question fell within the 'recreational zone' as per the Master Plan prepared under the A.P. Urban Areas (Development) Act, 1975 and would not fall within the purview of Sec. 2(q) of the Act, it was incumbent on the part of the 1st respondent to decide the said issue; and his failure to do so constitutes an error of law apparent on the face of record warranting interference with the said order. He further contended that it was the mandatory duty of the competent authority under the Act to conduct an enquiry into the facts stated by the declarant and in the present case no such enquiry has been done. He also relied upon the decision in **Govt. of A.P. and others Vs. M.Krishnaveni and others**[4].

[4] (2006) 7 SCC 365

**CONTENTIONS OF GOVERNMENT PLEADER (REVENUE)**

21. Though an elaborate counter-affidavit is filed by 2nd respondent, he admitted in the counter-affidavit that even by the date of proceedings under Section 8(4) of the Act, the land of 2.23 gts in Sy.No.76 shown in the declaration of the 1st petitioner fall within the Municipal limits and was shown as falling under 'recreational zone' as per the sketch submitted by petitioners.

22. It was further contended that the land in question is not the 'joint family property' of petitioner Nos.1 and 2 and the husband of 3rd petitioner and that the possession of the land was taken on 02-05-1984.

**THE CONSIDERATION BY THE COURT**

23. As stated above, it is admitted in the counter-affidavit filed by 2nd respondent that even by the date of proceedings under Section 8(4) of the Act, the land of 2.23 gts in Sy.No.76 shown in the declaration of the 1st petitioner fall within the Municipal limits and was shown as falling under 'recreational zone.'

24. In **J.Raghothama Reddy** (1 supra), a Division Bench of this Court considered the question as to the effect of inclusion of land of a declarant in the Master Plan as 'recreation zone'. The Division Bench held that recreation zone is a zone specifically set apart for all public and semi-public recreational uses; that permission for construction of any building in this area is prohibited; and that land on which

construction of a building is not permissible under the Building Regulations in force in the area in which such land is situated, shall not be treated as a 'vacant' land under S.2(q) of the Act. The Division Bench held that the Full Bench of Allahabad High Court in **State of Uttar Pradesh Vs. Radha Raman Agarwal**[5] had held that land will cease to be a 'vacant land' for purposes of the Act where the construction of a building on it is wholly impermissible; that this decision of the Allahabad High Court was confirmed by the Supreme Court in **State of Gujarat Vs. Parshottamdas**[6]; and therefore land shown in the master plan/ Zonal Application Plan under the provisions of the A.P. Urban Areas (Development) Act, 1975 as 'recreational zones' wherein construction of a building is prohibited would not a vacant land. It also noted that another Division Bench of this Court in its order dt.18-01-1991 in W.A.No.264 of 1990 also took the view that the land meant for green belt for recreational zone cannot be treated as 'vacant' land for the purpose computation under the Act.

25. This being the legal position, which is not disputed by the learned Government Pleader for Revenue, and since it is not disputed that in the present case, the subject land falls within the 'recreational zone' as per the Master plan framed under the A.P. Urban Areas (Development) Act, 1975, the conclusion of the 2nd respondent that the said land is vacant land under Section 2(q) of the Act is clearly erroneous.

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[5] AIR 1987 All 272 (FB)
[6] AIR 1988 SC 220

26. When a specific contention is raised in the appeal filed by 2nd petitioner and another before the 1st respondent on this issue, the 1st respondent should have dealt with it in accordance with law. His failure to do so is clearly an error apparent on the face of record warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

27. Had the respondents conducted an enquiry, which is held to be mandatory by the Supreme Court in **M.Krishnaveni** (4 supra) after the declaration under S.6(1) was filed by 1st petitioner, they would not have committed any error of the nature indicated above.

28. As regards the contention of respondents that the land in question is not the 'joint family property' of petitioner Nos.1 and 2 and the husband of 3rd petitioner, the said contention is not relevant in view of the non-denial by respondents that the land in question falls within the recreational zone as per the master plan and my finding that it does not fall within the purview of the Act.

29. The additional pleading of the respondents that the possession of the land was taken on 02-05-1984 is also not relevant in view of the order dt.22-09-1989 in W.P.No.13359 of 1989 wherein this Court specifically restrained the respondents from dispossessing the petitioners. Admittedly, the respondents have not questioned the order in W.P.13359 of 1989 by way of appeal and thus acquiesced in it. Thus the petitioners are deemed to be in possession of the subject

land admeasuring Ac.2.23 gts in Sy.No.76 of Ibrahim Bagh Village, Golconda Mandal, Hyderabad District.

**THE CONCLUSION**

30. For all the aforesaid reasons, the impugned order dt.27-06-2002 in proceedings No.HYD/1028/89 of the 1st respondent is set aside as being violative of the provisions of Article 14 and 300-A of the Constitution of India as well as provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and the respondents are directed not to interfere with the possession and enjoyment of the petitioners of the said land in any manner.

31. The Writ Petition is allowed as above. No costs.

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

**JUSTICE M.S.RAMACHANDRA RAO**

Date: 02-06-2017
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