

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.14053 OF 2017

ORDER:

This Court has granted interim order on 19-04-2017 and the same is extended until further orders on 02-01-2018 as no counter affidavit is filed. Later counter affidavit and vacate stay petition is filed by respondents and both counsel argued writ petition itself. As such, writ petition is being taken-up.

The case of the petitioners is that the land in Sy.No.162/A of Ankireddipalem is an agricultural land and has been in the ownership, possession and enjoyment of their family since time immemorial and cultivation of the said land was the main livelihood and their family members are residing in the house situated in Ramachandrapuram Agraharam. That father of the petitioners by name Jagu Koteswara Rao filed a declaration in U.L.C.No.397 of 1979 declaring the agricultural land in Ankireddypalem village and the dwelling house in Ramachandrapuram Agraharam. Thereafter, the then Special Officer issued a draft settlement u/s. 8(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULC Act") on 04.11.1980 computing the agricultural land and the land covered by the dwelling house as vacant land. That on 09.12.1980, father of the petitioners filed exemption application under section 20 of the ULC Act seeking exemption of the agricultural land in terms of

G.O.Ms.No.1797/Rev/U.C-I, dated 24.10.1978. While the above application was pending, the then Special Officer, ULC Guntur, issued final statement under section 9 of the ULC Act, declaring that the declarant held 7748.25 sq. mts in D.No.162/A Part and thereafter issued the final statement u/s 9 of the ULC Act without passing the statutory order u/s 8(4) of the ULC Act. That on 26.12.1980 the Special Officer without waiting for the orders of the Government on the exemption application filed by the declarant i.e. father of the petitioners issued final statement under section 9 of the ULC Act declaring that the declarant held 7748.25 Square meters in D.No.162/A Part without passing the statutory Order as is required under law under Section 8(4) of the ULC Act.

It is also the case of the petitioners that even though the final statement was not served on the father of the petitioners and was returned as undelivered, the Special Officer proceeded further and issued a notification under Section 10(1) of the ULC Act and got it published in the Official Gazette on 05.03.1981. On 21.04.1981 the Government published a declaration under section 10(3) of the Act in Gazette without waiting for objections of the Declarant or any other interested person. It is further submitted that on 17.02.1991, the Government in their Memo No.106060/U.C-I directed the Special Officer, Guntur to send his report on the exemption application. However, the Special Officer, without

sending the report to the Government, completed the process under Section 10(4) of the Act and issued notice under Section 10(5) of the ULC Act on 18.11.1991 directing father of the petitioners to surrender the surplus land within one month from the date of receipt of the notice. Further on the same day, the Special Officer in his letter dated 18.11.1991 directed the Mandal Revenue Officer Guntur to take possession of the alleged surplus land immediately. Challenging the same, the father of the petitioners filed appeal No.GNT No.105/91 before the Commissioner-cum-Appellate Authority and the same was dismissed on 09-07-2001. On that the Special Officer on 04-08-2001 directed the Mandal Revenue Officer, Guntur to handover the surplus land to VGMT UDA. On 25-08-2001, the petitioners filed a petition to reopen the case and pass orders under Section 8 (4) of the ULC Act and said petition was rejected. Aggrieved by the same, the petitioners filed WP.No.23220 of 2001 and the same was disposed of on 09-11-2001 directing the Special Officer, Guntur to consider and dispose of the representation dated 04-01-2001 within a period of six weeks and directed to maintain status-quo till the disposal of said representation. As the Special Officer did not act as directed by this Court, the present petitioners filed Contempt Case No.1504 of 2003 on 07.11.2003 seeking a direction from this Court to direct the Special Officer to implement the order of this Court in WP.No.23220 of 2001 dated 09.11.2001.

In pursuance to the said orders, the Special officer passed revised orders on 26-05-2004 under Section 8 (4) of the ULC Act and also directed for issuance of final statement accordingly. The father of the petitioners who is the declarant died on 26-03-2007. Thereafter one Mandapaka Suryanarayana and three others filed claim petition before the Special officer, Guntur to revise the orders considering their objections and claims. The Special Officer passed revised orders on 06-12-2007 declaring that the petitioners are entitled to hold 1937 square meters each and that there is no surplus land to be surrendered by the declarant to the Government. Thereafter, on 27.03.2008, the ULC Act itself was repealed. That on 07.07.2008 NOC was issued by the 2nd respondent and was also served on the vice chairman, VGMT UDA requesting the UDA to exclude the land in D.No.162/A2 of Ankireddypalem (V) from the list of surplus land.

It is also the case of the petitioners that on 24.01.2017 the petitioners made a representation to the respondents (Joint Collector and Special Officer under ULC) wherein they requested the Joint Collector to direct the VGTM UDA which is now APCRDA, to recover the land admeasuring 7748.25 sq. yards in D.No.162/A Part of Ankireddypalem (V) which is covered by Eucalyptus trees existing in the land even before the date of commencement of the ULC Act, and hand it over to the petitioners. Since there is no response whatsoever on

the said representation, aggrieved by the same, the present writ petition is filed.

This Court has granted interim order on 19-04-2017. Counter affidavit and vacate stay petition has been filed by the respondents admitting some of the averments made in the writ affidavit and disputed the other averments, which are required to be referred here. The petitioners are not entitled for exemption as claimed and it is stated that possession of subject land was already taken on 10-10-1995 and the same was handed over to VGT UDA vide proceedings No.398/79/D, dated 12-12-2002. The provisions of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the Repeal Act") has no application, since possession of the subject land has already been taken and father of the petitioners was aware of the same, as such he filed for exemption application to the Government. Issuance of final statement after revised order passed by the Special Officer is also disputed. It is stated that final statement under Section 9 of the ULC Act was sent to the declarant on 27-12-1980. It is also stated that necessary report was submitted to the Government in respect of exemption application filed by the declarant. It is also stated that without any direction from the Court or Government or CCLA, the case will not be reopened, as in this case statutory action is reached up to 10(6) of the ULC Act and possession of the land was taken by Mandal Revenue

Officer, Guntur on 10-10-1995 and sought for vacating the interim order and dismissal of the writ petition.

Heard learned counsel for the petitioners, who submits that after passing of revised order by the Special Officer under Section 8 (4) of the ULC Act, no final statement was issued under section 9 of the ULC Act. But in the counter affidavit, it is stated that final statement was issued on 27-12-1980 i.e. before passing the revised order under Section 8(4) of the ULC Act i.e. on 26-05-2004 and he also submits that respondents are not disputing about the orders of the claim petition filed by one Mandapaka Suryanarayana and passing of revised orders on 06-12-2007. Meanwhile, the proceedings were at the stage of Section 8(4) of the ULC Act and no further proceedings were continued after that stage. Hence, all the proceedings under the Act get elapsed by virtue of Section 4 of the Repeal Act. Even if any possession is taken that becomes illegal, since the proceedings are at the stage of 8(4) of the ULC Act by the time of passing of Repeal Act which came into force on 27-03-2008.

Heard learned Assistant Government Pleader for Revenue, who submits that the proceedings of the Repeal Act has no application, since possession of subject land was already taken and handed over to VGMT UDA by the time the Repeal Act came into force.

In this case, in the writ affidavit, there is a specific averment that the Special Officer passed revised orders under

Section 8(4) of the ULC Act on 26-05-2004 directing for issuance of final statement. In the counter affidavit, there is no averment as to issuance of final statement under Section 9 of the ULC Act after revised order under Section 8(4) of the ULC Act passed on 26-05-2004 except mentioning that final statement was sent to the declarant on 27-12-1980, which is before passing the revised orders on 26-05-2004. Meanwhile, the declarant died on 26-03-2007 and the proceedings are at the stage of 8(4) of ULC Act only when the Repeal Act came into force on 27-03-2008. More so, it is stated in the writ affidavit that claim petition filed by Mandapaka Suryanarayana and others before the Special Officer, Guntur and revised orders were passed on 06-12-2007 declaring that the petitioners are entitled to hold 1937 square meters each and there is no surplus land to be surrendered by the declarant to the Government. The same is also not disputed in the counter affidavit. By the time Repeal Act came into force, the proceedings under the ULC Act have not been concluded and as contended by learned counsel for the petitioners, the proceedings get elapsed.

In Section 4 of the Repeal Act, it is stated as under:

Abatement of Legal Proceedings:

“ All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 of the principal Act in so far as such proceedings are relatable to the land, 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.”

Proviso to Section 4 of the Repeal Act has no application as contended by Government Pleader, since the proceedings under the ULC Act are only at the stage of issuance of final statement under Section 9 of the ULC Act.

In view of the same, the writ petition is allowed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

31-12-2018.
Nvl

