

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.830 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned Government Pleader (Assignment) for appellants and Mr.E.Madan Mohan Rao appearing for respondents.

2. Respondents 1 and 2 in W.P.No.17498 of 2008 are the appellants. Respondents 1 to 7 filed W.P.No.17498 of 2008 praying for a writ of Certiorari calling for the records in proceedings G1/1215/2002 dated 08.07.2005 under Sections 8(4), 10(1) and 10(3) dated 20.01.2006 read with Gazette No.202 dated 13.09.2005 and Section 10(5) dated 06.11.2006 issued by 2nd respondent as illegal, without jurisdiction and quash the impugned proceedings to the extent of Acs.12-14 Gts in Sy.Nos. 286, 287 & 288 of Thumukunta Village, Shamirpet Mandal, Ranga Reddy District.

3. The issue arises under the Urban Land Ceiling Act, 1976 (for short, 'the Act'). The subject matter of the writ petition is an extent of Acs.12-14 Gts in Sy.Nos.286, 287 & 288 of Thumukunta Village, Shamirpet Mandal, Ranga Reddy District.

4. Parties are referred to as appellants and respondents 1 to 7. The case of respondents 1 to 7 is that they are the absolute owners and possessors of subject matter of writ petition. Respondents 1 to 7 claim right and title through the following registered documents:

Sl. No.	Sy.No.	Executed in favour of	Extent
1.	286 Part	T.Prabhakar Rao Ch.Kista Reddy S.Panduranga Rao	Ac.0-06 Gts or 0.06 hectares

2.	287, 288	T.Prabhakar Rao Ch.Kista Reddy S.Panduranga Rao	Ac.0-39 Gts in Sy.No.287 Ac.1-07 Gts in Sy.No.288
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5. The names of respondents 1 to 7 are both mutated in revenue record in terms of the registered sale deeds and resulted in issuing pattadar passbooks and title deeds in their favour. There was no let or hindrance to the enjoyment of respondents 1 to 7 till the first week of August, 2008, when the subordinate officers of 2nd appellant tried to interfere with the enjoyment of respondents 1 to 7. It is further averred that the officers at the time of inspection of subject matter have informed that the subject matter of writ petition has been declared as ceiling surplus land under the Act and stood vested in Government under Sections 10(3) to (6) of the Act. Respondents 1 to 7 on further enquiries have come to know that one D.L.Narasimha Rao, representing H.B.I Nife Power Systems, applied for no objection certificate for agricultural land in Sy.No.351 admeasuring Acs.11-23 Gts under the Act. H.B.I Nife Power Systems claimed right and title through registered sale deed dated 04.05.1991 from the original owner/pattadar Sri Sudershan Rao. On the notice issued under Section 6(2) by 2nd appellant, the said D.L.Narasimha Rao, it is alleged, filed declaration for and behalf of H.B.I Nife Power Systems. The declaration filed by D.L.Narasimha Rao refers to or is confined to Sy.No.351. Now, the complaint of respondents 1 to 7 is that the 2nd appellant declared that Sudershan Rao is ceiling surplus land holder and further determined the ceiling surplus urban land allegedly held by Sudershan Rao under the Act. By referring to the case taken on file in the declaration filed by D.L.Narasimha Rao (file No.G1/1215/2002), the

2nd appellant claims that the land claimed by respondents 1 to 7 also stood vested in the Government.

6. Therefore, briefly stated, the challenge of respondents 1 to 7 is that they or their predecessor-in-interest was not a party before 2nd appellant in any case and by referring to declaration filed by D.L.Narasimha Rao for Sy.No.351, taken on file in Case No.G1/1215/2002, respondents 1 to 7 cannot be dispossessed of the propriety right enjoyed by them in subject matter. The action of appellants, hence, is illegal, arbitrary and unconstitutional.

7. The appellants filed counter affidavit and the counter-affidavit does not dispute the principal grievance of respondents 1 to 7 that by referring to proceedings taken on file on the declaration filed by D.L.Narasimha Rao, the subject land claimed by respondents 1 to 7 is claimed as vesting in Government. The learned Single Judge in the order impugned has in great detail considered each one of the stages on the declaration filed by D.L.Narasimha Rao for Sy.No.351 in Case No.G1/1215/2002 and rejected the case of appellants. For brevity, we do not propose to reiterate the case of both the parties more than what is required.

8. To appreciate the claim of appellants whether it can lawfully claim vesting of private land under Act in Government, the events are chronologically referred to:

14.03.2002 : D.L.Narasimha Rao for HBI Nife Power Systems filed declaration under the Act. The declaration is filed for an extent of Acs.11-23 Gts in Sy.No.351 of Thumukunta Village.

- 07.06.2005 The 2nd appellant through instant proceedings under Sections 8(1) & (3) holds that Sri Sudershan Rao (original owner) holds 1,73,723.33 sq. mts surplus ceiling land.
- 08.07.2005 : Order under Section 8(4) of the Act was passed in favour of D.L.Narasimha Rao.
- 12.09.2005 : Notice under Section 10(1) of the Act is addressed to D.L.Narasimha Rao.
- 20.01.2006 : Notice under Section 10(3) of the Act is issued in favour of D.L.Narasimha Rao but not to respondents 1 to 7 and their predecessor-in-interest.
- 06.11.2006 : Notice under Section 10(5) of the Act is issued in favour of D.L.Narasimha Rao.
- 12.03.2007 : Notice under Section 10(6) of the Act is issued in favour of D.L.Narasimha Rao and the appellants claim vesting of land in Government under the Act.

9. To illustrate and also appreciate the incurable defect in these orders, we excerpt the beginning and termination of proceedings under the Act hereunder:

“PROCEEDINGS OF THE SPECIAL OFFICER & COMPETENT
AUTHORITY: URBAN LAND CEILING::HYDERABAD

PRESENT: SRI P.BHANUMURTHY, I.A.S.,

Procs.No.G1/1215/2002

Dated 7.6.2005

Sub: UL (C&R) Act, 1976 – Hyderabad Urban Agglomeration – Statement in Form-I u/s 6(1) of the Act filed by Sri D.L.Narasimha Rao, Manager, H.B.L.Nife Power Systems Ltd., in respect of land situated in Sy.No.351, Tumukunta (vg.), Shamirpet (M), R.R.District – **Draft Statement u/s 8(1) and 8(3) of the Act** – Suo motu enquiry – Orders issued.

Ref:-1) A/o **Sri D.L.Narasimha Rao, Manager, H.B.L.Nife Power Systems Ltd.**, dt.14.3.2002.

2) Declaration in Form-I u/s 6(1) of the Act filed by Sri D.L.Narasimha Rao, dt.3.5.2002 bearing CC.No.G1/1215/2002.

3) E.O., Zone III report dt.23.4.2005.

4) G.O.Ms.No.199, dt.2.11.1983.

ORDER:

While enclosing a copy of registered sale deed document No.3041/91 dt.4.5.1991 one Sri D.L.Narasimha Rao, Manager, H.B.L.Nife Power Systems has requested this office to issue No Objection Certificate in respect of lands situated in Sy.No.351, admeasuring Ac.11.23 Gts at Tumukunta (vg.) Shamirpet (M), Ranga Reddy District for setting up of an Electronic Industry in the said land vide ref.1st cited.

Subsequently he filed declaration in Form-I u/s 6(1) of the Act for the said lands vide ref. 2nd cited on verification of village records i.e., pahanies for the year 1974-75 of Tumukunta (vg), Shamirpet (M):

The details of the pattedar in these survey numbers are as under:

Sl. No	Sy. No.	Extent in Ac.-Gts	Name of pattedar Col.No.11	Name of the pattedar Col.No.16
1	286	13.23	Sudershan Rao s/o Venkata Rama Rao	Guduri Venkaiah, s/o Iylaiah (sons) (1)Sathaiah (2) Yellaiah
2	287	3.37	-do-	Ram Reddy
3	288	4.28	-do-	(1)Iylaiah,(2) Sathaiah
4	35	2.01	-do-	--
5	351	11.23	-do-	M.Chandra Redy
6	352	2.27	-do-	-do-
7	354	9.28	-do-	-do-
1980-81				
	351	11.23	M.Chandra Reddy	--
	352	2.27	-do-	--
	354	9.28	-do-	--

On verification of this office records it is revealed that neither the original pattedar Sri Sudershan Rao nor subsequent pattedar and possessor Sri M.Chandra Reddy have filed any declaration as required under the provisions of 6(1) of the ULC Act. Hence, as per the instructions contained in G.IO.Ms.No.1499, dt.2.11.1983 suo motu enquiry is taken up.

The matter has been referred to Enquiry Officer for enquiry. The Enquiry Officer after inspection along with surveyor submitted her report along with location sketch vide ref. 3rd cited. **The Enquiry Officer reported that the lands held by H.B.I Nife Power Systems are situated in Sy.No.351 admeasuring Ac.11.23 Gts, Tumukunta village is left fallow covered by small bushes with compound wall with a set back of 0.24 gts.**

Further the Enquiry Officer reported that Tumukunta (vg) of Shamirpet (M), Ranga Reddy District falls in peripheral area of Hyderabad Urban Agglomeration in which G.O.Ms.No.733, dt.31.10.1988 is applicable, as such original pattedar Sri Sudershan Rao is eligible for exemption of Ac.5.00 and General Exemption of 1000.00 sq. mtrs u/s 4(1)(b) of the Act.

In view of the above, the provisional holdings of Sri Sudershan Rao, Pattedar of 1974-75 of above lands situated at Tumukunta village is as under:-

Sl. No	Sy. No.	Total Extent	Extent exempt- ed under G.O.733, dt.31.10.1988	Extent Exempt- ed u/s 4(1)(b)	Total extent exempt- ed	Surplus extent
1	286 to 288.35, 351,352 & 354	Ac.48.7 Gts or 1,94,957.48 sq. mtrs	Ac.5.00 or 20,234.15 sq. mtrs Sy.No.351	1000.00 Sq.mtrs	21234.15 in Sy.No. 351	1,73,723.33 sq.mtrs

These orders are issued subject to the provisions of sub-section (2) of section 6 and sections 15, 22 and 38 of the UL (C & R) Act, 1976.

Sd/-

Special Officer & Competent Authority,
Urban Land Ceiling, Hyderabad.”

10. The summary of above consideration is that D.L.Narasimha Rao filed declaration under the Act covering an extent of Acs.11-23 Gts in Sy.No.351. The 2nd appellant through order dated 08.07.2005 under Section 8(4) of the Act included the entire holding of the original owner or pattadar and held him as a surplus land holder of 1,73,723.33 sq. mts. Thereafter, the orders under Section 9 and notices under Section 10 have been taken out only on D.L.Narasimha Rao and finally the subject matter i.e., Sy.No.351 of Thumkunta Village is claimed as vested in the Government under the Act. The learned Single Judge in the above factual matrix has considered the effect of non-service of notice on persons interested or persons in possession while initiating and concluding the urban land ceiling proceedings and held that the proceedings to the extent of respondents 1 to 7 are illegal and that by referring to these proceedings, the right or possession of respondents 1 to 7 cannot be disturbed.

11. We have independently examined each one of the proceedings relied on by the appellants. We are in entire agreement with the findings recorded by the learned Single Judge in the order impugned in the writ petition. The case of appellants is that the subject matter stood vested in Government under the Act and, therefore, the appellants can interfere with the possession and enjoyment of respondents 1 to 7. The appellants recognize transfer in favour of respondents 1 to 7, issue pattadar passbook and title deed and enter their names in adangal etc. The appellants since could not

discharge the burden cast on them that they have followed the procedure under the Act and passed orders against respondents 1 to 7 or their predecessor-in-interest etc., cannot maintain the intra court appeal successfully. It is not in dispute that the declaration filed by D.L.Narasimha Rao was for Sy.No.351 and covers an extent of Acs.11-23 Gts and the draft declaration unilaterally enhances the extent to Acs.48.7 Gts and includes several survey numbers for which no declaration was filed. The appellants since have failed in establishing that the subject matter under lawful orders vested in the State under the Act, we do not see reason to interfere with the order under appeal.

12. The writ appeal fails and is, accordingly, dismissed.
No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.



THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

13th August, 2018

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