

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
WRIT PETITION NOS.19890 OF 2014 AND 26861 OF 2016

COMMON ORDER

The petitioner being the same and the issues being interconnected, these two cases are amenable to disposal by way of this common order.

Dr.Uma Eachempati, the petitioner, is the owner of an extent of over 1,300 square metres of land in Survey No.403/1 (old Survey No.120), Shaikpet Mandal, Hyderabad District, having purchased the same under the registered sale deed bearing Document No.1799 of 1975 dated 25.06.1975. This land constitutes Plot No.1300 in the layout formed by the Jubilee Hills Co-operative House Building Society Limited and was declared to be excess landholding in the hands of the petitioner under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (*for brevity*, 'the Act of 1976'), *vide* declaration dated 28.12.1987. Notice under Section 10(5) of the Act of 1976 was issued by the Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad, on 17.02.1988 calling upon the petitioner to surrender/deliver possession of the said land. The authorities claim to have taken over possession of this excess land under Section 10(6) of the Act of 1976 under Panchanama dated 10.05.1989, but it is the case of the petitioner that a house was constructed in the said land and she continued to remain in possession thereof even thereafter. Significantly, the Panchanama dated 10.05.1989 also records that there was construction in the land.

While so, the erstwhile Government of Andhra Pradesh issued G.O.Ms.No.456, Revenue (UC.1) Department, dated 29.07.2002, deciding in public interest and as a matter of policy that excess land equal to 300% of the ceiling limit should be exempted under Section 20(1)(a) of the Act of 1976 as per the principles adumbrated therein. Pertinently, one of the

principles stipulated in the G.O. is that the exemption should be considered only when the land is in possession of the excess landholder or successor(s)-in-interest, with or without structures. The petitioner made an application under the provisions of this G.O. seeking exemption of her plot of land which was held to be excess landholding. In December, 2005, she paid a sum of Rs.12,50,992/- towards fee for exemption and a sum of Rs.1,87,650/- towards interest on the delayed payment. The acknowledgment dated 06.02.2006 bears out these payments made by the petitioner.

By his letter dated 14.11.2006 addressed to the Principal Secretary to Government, Revenue (UC) Department, Andhra Pradesh, the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, stated that exemption had been applied for in relation to the extent of 1306.87 square metres in Plot No.1300 in Survey No.120 of Shaikpet and 102/1 of Hakeempet, Shaikpet Mandal, Hyderabad District and that the petitioner was in possession of the surplus land. He further stated that the request of the petitioner could be considered on payment as specified in G.O.Ms.No.456 dated 29.07.2002. It appears that no action was taken upon the petitioner's application thereafter.

While so, the Act of 1976 came to be repealed in the erstwhile State of Andhra Pradesh, which comprises the present States of Telangana and Andhra Pradesh, with effect from 27.03.2008, *vide* G.O.Ms.No.603, Revenue (UC.1) Department, dated 22.04.2008. In terms of Circular Memo No.17377/UC.I(1)/2008-1 dated 24.04.2008 issued by the erstwhile Government of Andhra Pradesh, through its Revenue Department, cases in which possession of surplus lands were taken by the Government under the Act of 1976 were saved. As the authorities claimed that such a measure had already been taken by them in relation to the petitioner's excess land, her

case also stood covered by these circular instructions. She herself understood it to be so as she filed W.P.No.3459 of 2012 before the erstwhile High Court of Andhra Pradesh at Hyderabad assailing the action of the revenue authorities in not regularising her rights over the subject land pursuant to her application filed under G.O.Ms.No.456 dated 29.07.2002. She also sought a consequential direction to the authorities to complete the regularisation as all necessary formalities had already been complied with. Taking note of the statement made by the learned Government Pleader for Revenue, State of Andhra Pradesh, basing on instructions, that the petitioner had filed an application seeking regularisation of her surplus land in terms of G.O.Ms.No.456 dated 29.07.2002 and that the Principal Secretary, Revenue Department, Government of Andhra Pradesh, had called for a report from the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad, under Memo dated 08.02.2007 in that regard whereupon a detailed report was submitted on 02.05.2007, the said writ petition was disposed of, by order dated 10.04.2012, directing the authorities to consider the petitioner's application for regularisation under G.O.Ms.No.456 dated 29.07.2002 in terms of the report already submitted by the Special Officer and to pass appropriate orders thereon within a time frame. Despite the above order, it appears that the authorities did not choose to further process the petitioner's application under G.O.Ms.No.456 dated 29.07.2002.

It is at this stage that the petitioner filed W.P.No.19890 of 2014 asserting that in the light of the repeal of the Act of 1976 and as she continued to be in physical possession of the subject land, she was not required to get the same regularised and that she was entitled to refund of the sum of Rs.14,38,642/- paid by her in December, 2005, in connection with her regularisation application filed under G.O.Ms.No.456 dated

29.07.2002. This writ petition was admitted on 16.07.2014 and while it was pending consideration, the Government of Telangana issued G.O.Ms.No.92, Revenue (ULC) Department, dated 26.05.2016, providing for regularisation/ allotment of surplus land under the Act of 1976 to those who were claiming occupation under a registered document, upon filing of an application through Mee-seva on or before 25.06.2016 and on payment of the basic value as prescribed therein. The petitioner was thereupon issued notice dated 20.06.2016 by the Tahsildar, Shaikpet Mandal, Hyderabad District, calling upon her to file an application along with required documentary evidence as mentioned in G.O.Ms.No.92 dated 26.05.2016 before the cut-off date, 25.06.2016, failing which she was cautioned that action as deemed fit would be taken to earmark her surplus land for a public purpose.

Aggrieved by the issuance of this notice, the petitioner filed W.P.No.26861 of 2016. Therein, she sought a declaration that the notice dated 20.06.2016 issued by the Tahsildar, Shaikpet Mandal, Hyderabad District, was illegal and contrary to the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, whereby the Act of 1976 stood repealed upon its adoption by the erstwhile Government of Andhra Pradesh in March, 2008. By order dated 12.08.2016 passed in W.P.M.P.No.33245 of 2016 in W.P.No.26861 of 2016, the erstwhile common High Court directed *status quo* obtaining as on that date to be maintained with regard to the possession of the subject property pursuant to the impugned notice dated 20.06.2016.

This being the history of the case, Sri Prasad Rao Vemulapalli, learned counsel for the petitioner, would contend that the petitioner is entitled to refund of the amounts paid by her prior to the repeal of the Act of 1976 under G.O.Ms.No.603 dated 22.04.2008 issued by the erstwhile State of Andhra Pradesh. He would further contend that as the proceedings under

the Act of 1976 stood abated, the question of regularising the possession of the petitioner under G.O.Ms.No.92 dated 26.05.2016 does not arise.

Per contra, the learned Government Pleader for Revenue, State of Telangana, would point out that the petitioner herself sought regularisation in relation to the subject land under G.O.Ms.No.456 dated 29.07.2002 and then sought relief from the erstwhile Andhra Pradesh High Court in connection with the said regularisation application, in the year 2012. He would therefore assert that abatement of the proceedings under the Act of 1976 in so far as the petitioner's land is concerned does not arise. He would further state that as the petitioner's regularisation application under G.O.Ms.No.456 dated 29.07.2002 was not considered, she necessarily has to apply for regularisation afresh under G.O.Ms.No.92 dated 26.05.2016.

Having considered these rival submissions, this Court cannot lose sight of the fact that the petitioner herself made an application out of her own volition for regularisation of her excess landholding under G.O.Ms.No.456 dated 29.07.2002. The record bears out that the authorities thereupon enquired into the matter and found her to be eligible to seek such regularisation. It may also be noted that the Act of 1976 stood repealed in so far as the erstwhile State of Andhra Pradesh was concerned in March, 2008 itself, but the petitioner chose to file W.P.No.3459 of 2012 long thereafter before the erstwhile High Court of Andhra Pradesh, Hyderabad, seeking a direction to the authorities to regularise her rights over the subject land in terms of G.O.Ms.No.456 dated 29.07.2002. Having taken such a step, it is not open to the petitioner to now claim that the proceedings under the Act of 1976 stood abated in so far as her land was concerned in the year 2008 itself. If that was her stand, she ought not to have filed W.P.No.3459 of 2012 seeking a direction to the authorities to consider her regularisation

application under G.O.Ms.No.456 dated 29.07.2002. Be it noted that the said G.O. had application only to cases which stood saved because the proceedings under the Act of 1976 culminated in the Government taking possession of the excess land. It is a settled proposition of law that a litigant cannot approbate and reprobate. Therefore, the contention of the petitioner that she is entitled to refund of the amounts paid by her at the time of seeking regularisation under G.O.Ms.No.456 dated 29.07.2002, on the ground that the proceedings under the Act of 1976 stood abated after its repeal in the erstwhile State of Andhra Pradesh, is without merit.

That being said, it may be noted that the authorities have no explanation for their inaction upon the regularisation application filed by the petitioner under G.O.Ms.No.456 dated 29.07.2002. Having processed the application to some extent, the authorities then suffered the order dated 10.04.2012 in W.P.No.3459 of 2012, whereby they were directed to pass appropriate orders on the petitioner's regularisation application in accordance with law within four weeks from the date of receipt of the said order. The learned Government Pleader for Revenue, State of Telangana, is not in a position to explain as to why the authorities failed to abide by the mandate of the order passed in W.P.No.3459 of 2012 as long back as on 10.04.2012. In such circumstances, it is not open to the authorities to claim that G.O.Ms.No.456 dated 29.07.2002 is no longer holding the field and that the petitioner would have to take recourse to the new regularisation policy prescribed in G.O.Ms.No.92 dated 26.05.2016. As the order passed in W.P.No.3459 of 2012 still remains unimplemented, the regularisation application filed by the petitioner under G.O.Ms.No.456 dated 29.07.2002 remains frozen and cannot be said to have expired or outlasted its validity.

The authorities are bound to take action upon the said application in terms of the order passed in W.P.No.3459 of 2012.

When this Court expressed its views on the Bench on the above lines, Sri Prasad Rao Vemulapalli, learned counsel, stated that in the event the action of the authorities in seeking to press upon the petitioner the new regularisation policy floated under G.O.Ms.No.92 dated 26.05.2016 is held to be unsustainable, the petitioner would not press W.P.No.19890 of 2014, whereby she sought refund of the amounts paid by her in relation to her regularisation application under G.O.Ms.No.456 dated 29.07.2002.

In that view of the matter, W.P.No.19890 of 2014 is dismissed as not pressed and W.P.No.26861 of 2016 is allowed, setting aside the notice dated 20.06.2016 issued by the Tahsildar, Shaikpet Mandal, Hyderabad. It is for the authorities to take necessary action in the matter as per the mandate of the order dated 10.04.2012 passed in W.P.No.3459 of 2012.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

31st JANUARY, 2019

PGS