

K. Raghavachar Vs. the Chairman, Karnataka Appellate Tribunal and Appellate Authority, Urban Land Ceiling, Bangalore Agglomeration, Bangalore and Others

K. Raghavachar Vs. the Chairman, Karnataka Appellate Tribunal and Appellate Authority, Urban Land Ceiling, Bangalore Agglomeration, Bangalore and Others

SooperKanoon Citation : sooperkanoon.com/371825

Court : Karnataka

Decided On : Jul-08-1998

Reported in : 1999(1)KarLJ276

Judge : Hari Nath Tilhari, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 1, 5(3), 6, 8(3), 9 and 10(1)

Appeal No. : Writ Petition No. 24928 of 1992

Appellant : K. Raghavachar

Respondent : The Chairman, Karnataka Appellate Tribunal and Appellate Authority, Urban Land Ceiling, Bangalore Ag

Advocate for Def. : Sri M.H. Ibrahim, Government Pleader

Advocate for Pet/Ap. : Sri M. Raghavendra Achar, Adv.

Judgement :

ORDER

1. This petition arises from the order of the Karnataka Appellate Tribunal, Urban Land Ceiling, Bangalore Agglomeration, Bangalore. The petitioner in this petition has sought the setting aside of Annexure-A and B, namely, orders dated 18-1-1985 passed in case No. U.L.C. (1) 56/83-84; and also quashing of order dated 13-5-1992 in Appeal No. 41 of 1986, passed by the Karnataka Appellate Tribunal/Appellate Authority, Urban Land Ceiling, Bangalore Agglomeration, Bangalore, under the Urban Land Ceiling Act.

2. The facts of the case in brief are that in proceedings of U.L.C. (1) 56/83-84, an order was passed by the Special Deputy Commissioner, Urban Land Ceiling, Bangalore, (vide, its order dated 18-1-1985) declaring the extent of 27,108.59 sq.metres of land in Survey No. 6 of Uttarahalli Village, Uttarahalli Hobli, Bangalore South Taluk, to be held in excess of the ceiling limits by the declarant and the authority directed the publication of notification under Section 10(1) of the Land Acquisition Act. Section 10(1) of the Act provides that after the service of the statement under Section 9, notification under Section 10(1) is to be published, giving the particulars of the vacant land held by such person in excess of the ceiling limits and that such vacant land is to be acquired by the State Government. It shall also state that the claims of all persons interested in the vacant land may be, made by them personally or through their agents, giving the nature of their interest in such land, within the prescribed period. No doubt Section 10(2) of the Act also requires that when claims have been made before the competent authority by persons interested in the vacant land, the authority shall determine, the nature, extent of interest and claim and pass such order as it thinks fit and thereafter notification under Section 10(3) is to be published. The notification under Section 10(1) has been directed to be published. If it had been published and when it had been published, it is thereafter it may be said that the petitioner could have filed objection in pursuance of that notification. He had not filed any objection, instead he had filed an appeal from the order under Section 8(4) of the Act and after dismissal of the appeal he has sought the quashing of the order dated 18-1-1985 and that of the appellate order dated 13th May, 1992 by this petition.

3. I have heard Shri M. Raghavendra Achar, learned Counsel for the petitioner and Shri M.H. Ibrahim, learned Government Pleader for the respondents.
4. Learned Counsel for the petitioner contended that the petitioner before this Court has been the bona fide purchaser of the site in question, which he had purchased by virtue of sale deed in 1981 and therefore he was the interested party and should have been allowed to be heard before passing of the order under Section 8 of the Act. Learned Counsel contended that the appellate Court erred in law in not setting aside the order and permitting the petitioner to place his case and assuch both the orders deserve to be quashed. He submitted even if sale deed has been void, illegal, that could be decided only after hearing thepetitioner.
5. These contentions of the learned Counsel for the petitioner have hotly been contested by Shri M.H. Ibrahim, learned Government Pleader. He contended that under Section 8 of the Act, the draft statements have to be prepared, on the basis of statement filed under Section 6, in respect of the person who has filed the statement under Section 6 and under Section 8(3) no doubt draft statement has to be served on the person concerned, namely, the person who has filed the statement under Section 6 of the Act. Therefore, there was no question of its being served on the present petitioner. No doubt after draft statement could only be served by the concerned person, namely, the person filing the declaration and then he further contended that after the orders have been passed, after completing the proceedings under Sections 8 and 9, no doubt, the notification under Section 10(1) has to be published. Section 10 notification having been directed to be published, the petitioner could have availed that benefit and he should have approached the authority under Section 10(2) of the Act. He further contended that apart from that the petitioner claims to have purchased the site in 1981; that is after coming into force of the Urban Land Ceiling Act. He submitted that the sale deed itself has been barred and has been null and void, in view of the provisions of Section 5(3) as well as in view of Section 10(4) of the Act and that it has been null and void. The petitioner did not acquire any interest to the property, because no right could pass under the deed, which is deemed to be null and void. Learned Counsel contended that in this view of the matter, the order passed by the appellate authority dismissing the appeal cannot be said to be suffering from either

error of law apparent or from jurisdictional error.

6. I have applied my mind to the contentions made by the learned Counsel for the parties. The appointed day in this case is 28th of January, 1976. Sub-section (3) of Section 1 of the Urban Land (Ceiling and Regulation) Act, 1976, became operative at once on the date of its publication, namely, 17th of February, 1976. Section 8 of the Act reads as under:

'8. Preparation of draft statement as regards vacant land held in excess of ceiling limit.--(1) On the basis of the statement filed under Section 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement under Section 6.

2. Every statement prepared under sub-section (1) shall contain the following particulars, namely:--

(i) the name and address of the person;

(ii) the particulars of all vacant land and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;

(iii) the particulars of the vacant land which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person whom a copy of the draft statement has been served

under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit'.

7. A reading of the Section 8 of the Act per se reveals that draft statement prepared in respect of person who has filed the statement under Section 6 of the Act, has to be served on such person, means the person referred to in sub-section (1) of Section 8, namely the person who has filed the statement under Section 6 on the basis of which the draft statement of excess land have been prepared. It has to be served on him, with a notice stating that he may file objection against draft statement within 30 days. So there was no question of serving any such notice on any other person. No doubt under sub-section (4), the authority is required, after the draft statement has been served and after the objections have been filed by the person on whom the copy of the draft statement had been served, that person being given opportunity of hearing, the authority will pass order under Section 8, after disposal of the objection under Section 8(4) of the Act and if necessary, by making necessary alteration in the draft statement, if needed, - the notification under Section 10(1) has to be published.

8. Section 10(1) of the Act no doubt provides that the claims of all persons interested in such vacant land may be made by them personally or by their agents, giving particulars of the nature of their interests in the land and thereafter the authority will consider the claim of that person, determine the nature and extent of such claims and pass orders under Section 10(2). As regard the claim under sub-section (3) of Section 10, the competent authority after disposal of claim, is to declare excess land and is required to publish such declaration by notification in Official Gazette, declaring that such excess land shall be deemed to have vested absolutely in the State Government free from all encumbrances.

9. So far as the order dated 18-1-1985 is concerned, under no circumstances can it be said to be illegal or otherwise, because it has been passed after notice to the person on whom notice is required to be served under Section 8(1) and (2) of the Act, namely the person who had filed the declaration, there was no question of notice being served on any person who has taken land on transfer, giving such person an opportunity. The scheme of the provision is that all persons interested, -

in the land - to claim any right in such land may make their claim before the authority after Section 10(1) notification. It is not the case of the petitioner that notification under Section 10(1) was not published. It is not his case that he had filed the objection under Section 10(1) or in pursuance of publication under Section 10(1) and (2) of the Act and those objections have not been considered. If the petitioner did not care to file objection under Section 10(2), it is his fault.

10. So far as regards the appellate order, it is that the petitioner preferred an appeal from the order dated 18-1-1985. The appellate Court dismissed the appeal taking the view that as the transfer has been made in favour of the petitioner during the course of the operation of the Act and the transfer was void under Sections 5(3) and 10(3) of the Act and so there is no question of appellant getting any right and dismissed the appeal.

11. The possession is not disputed, so far as this fact is concerned. The petitioner claims to have purchased the property or the site in question in 1981. Section 5 of the Urban Land (Ceiling and Regulation) Act, 1976, reads as under:

'5. Transfer of vacant land.--(1) In any State to which, this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess of the vacant land in relation to such person shall, for the purposes of this chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land cannot be so selected, the balance, or, where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee:

Provided that where such person has transferred his vacant land to more than one person, the balance, or, as the case may be, the entire excess vacant land aforesaid, shall be selected out of the vacant land held by each of the transferees in the same proportion as the area of the vacant land transferred to him bears to the total area of the land transferred to all the transferees.

(2) Where any excess vacant land is selected out of the vacant land transferred under sub-section (1), the transfer of the excess vacant land so selected shall be deemed to be null and void.

(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of Article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void'.

12. A perusal of Section 5 per se reveals that section bars the transfer of vacant land held in excess of the ceiling limits by the owner thereof, at any time during the period commencing from the appointed day and ending with the commencement of this Act. It provides if a transfer has been made after the land held in excess during this period by way of sale, mortgage, gift, lease or otherwise, then that transfer is not to be taken into account for calculating the excess vacant land held by such person, and excess vacant land in relation to such person, shall for this chapter, shall be vacant land held by him after such transfer. It also provides that if excess vacant land can be selected out of vacant land held by him, after such transfer, it shall be selected from the land held by the landholder excluding the transferred land, in case entire excess vacant land cannot be selected by the balance, or where no balance of land is there with holder of land, then entire excess vacant land shall be selected out of the vacant land held by the transferee. Sub-section (2) provides that the transfer of excess vacant land, where excess vacant land is selected out of the vacant land so transferred under sub-section (1), the transfer of such excess land so selected shall be void and shall be deemed to be void.

13. Section 5(3) prohibits transfer of excess vacant land during the period commencing from the date of publication of notification under Section 10(1) ending with the date specified under Section 10(3) and provides that no transfer of excess

land shall be made during the above period and any transfer made in contravention of this provision shall be deemed to be null and void.

14. Really the purchaser could have availed the opportunity under Section 10(2) stage to put his claim that excess land should be selected and taken out of the balance left with the owner after transfer. But he did not approach the authorities under Section 10(2) of the Act. In case he would have approached the authorities under Section 10(2), the authority could have entertained the objections and could have passed an order according to law. But order under Section 8(4) could not be set aside by the appellate authority, because no notice under Section 8(2) was required to be given to the petitioner. Whether petitioner had an interest in the property or not, he had no right to approach the authority under Section 8(2), when order under Section 8(4) was passed. In such circumstances, even if the petitioner might have been interested, in my opinion, no relief can be granted to the petitioner.

15. If no notification under Section 10(1) has been published so far, as contended by the petitioner's Counsel, then when it is published under Section 10(1), definitely in my opinion, he will be entitled to approach the authority, but if it has already been published and time has passed, petitioner has got no right.

16. The order under appeal does not appear to me to be suffering from error of law or jurisdiction, particularly when the appeal from order under Section 8(4) was really misconceived. If the petitioner has been defrauded by the owner of the land, he may have a case to claim damages or compensation against the owner of the land, against the transferor but writ petition could not be filed, keeping his remedy, if any, available under law open to him against the owner of the land, it is held that present petition has got no merits and is liable to be dismissed.

17. Subject to the these observations, the writ petition is hereby dismissed.