

**Narayanappa Vs. State of Karnataka and Another**

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**Court :** Karnataka

**Decided On :** Oct-28-1998

**Reported in :** ILR1999KAR582; 1999(1)KarLJ595

**Judge :** Kumar Rajaratnam, J.

**Acts :** Urban Land (Ceiling and Regulation) Act, 1976 - Sections 2 and 6; City Improvement Trust Board Act - Sections 1(2) and 4(1)

**Appeal No. :** Writ Petition No. 37967 of 1997

**Appellant :** Narayanappa

**Respondent :** State of Karnataka and Another

**Advocate for Def. :** Sri P.G.C. Changappa, Government Adv.

**Advocate for Pet/Ap. :** Sri B.V. Acharya, Senior Advocate ;Sri H. Srinivasa Rao, Adv.

**Judgement :**

ORDER

1. This is a second round litigation.

2. The facts very briefly are: The lands bearing Sy. Nos. 66 to 72 of Ananthapura Village, Yelahanka Hobli, measuring about 2 acres 5 guntas are owned by the petitioner and his family.

3. The Deputy Commissioner, Urban Land Ceiling issued a notice dated 8-11-1996 requiring the petitioner to file a declaration under subsection (1) of Section 6 of the Urban Land Ceiling and Regulation Act, 1976 (hereinafter referred to as 'the Act').

4. The petitioner had preferred a writ petition questioning the notice in W.P. No. 2484 of 1997 and this Court by its order dated 20-6-1997 disposed of the writ petition reserving liberty to the petitioner to file his objections to the impugned notice and the second respondent was directed to consider the objections and pass appropriate orders in the light of certain factual and legal observations.

5. Paragraphs 6 and 7 of the order in the above writ petition are extracted below:

'(6) The lands are admittedly situated in Ananthapura village, Yelahanka Hobli and according to ODP prepared in 1972, these lands are situated outside the Planning Area. The Planning Areas are not material in order to decide whether the lands are situated within the urban agglomeration as the urban agglomeration is defined and explained in the schedule. It is admitted that the lands are not situated within the Corporation limits or the Bangalore Development Authority limits as on the appointed date. The only point to be determined by the competent authority is whether these lands are situated within the peripheral area as mentioned in the Schedule as on 17-2-1976 the appointed date. Unless the said question is determined by the competent authority, no proceedings could be initiated under the provisions of the Act.

(7) In those circumstances I am of the view that instead of quashing Annexure-B, it is just and appropriate to allow the petitioner to file his objections both in respect of the application of the Act and also as to the application of the provisions of the Act and direct the competent authority to decide this question first before requiring the petitioner to file a declaration under sub-section (1) of Section 6 of the Act'.

(emphasis supplied)

6. As directed by this Court, the petitioner filed his objections before the second respondent on 15-7-1997 raising the question of jurisdiction of the authority in

view of the lands being situate beyond 5 kms. from the then existing City Corporation and City Improvement Trust Board area (Schedule I of the Act).

7. The second respondent by his order dated 15-10-1997 rejected the contentions of the petitioner.

8. Learned Counsel for the petitioner submitted that the second respondent misdirected himself on the relevant question. He failed to decide the only question whether the lands are situated within 5 kms. from the Bangalore Corporation and Trust Board limits as on the relevant date. It was submitted that there was no dispute regarding the boundary of the Bangalore Corporation limits in 1976. It was also submitted that the reference in the Schedule to the Trust Board extended to the Corporation limits of Bangalore.

9. Section 1(2) of the CITB Act reads as follows:

'(2) Except as is hereinafter otherwise provided, it extends to the City of Bangalore and to such other areas adjoining the City as the Government may from time to time specify by notification in the (Mysore Gazette) in this behalf'.

It was submitted that there has been no notification issued by the Government extending the area. Therefore, according to the petitioner it was submitted that the lands do not fall within the area specified in the Schedule.

10. It was contended by the respondents that the lands are situated within 5 kms. from the outer boundary of the master plan. It was further contended that there is no warrant for computing the distance from the boundary of the master plan. This is plainly opposed by the provisions of the Act.

11. Learned Counsel for the petitioner relied on a judgment of the Supreme Court in Union of India and Others v Valluri Basavaiah Chowdhary and Others, wherein paragraphs 36 and 37 read as follows:

'36. Section 3 of the Act provides that except as otherwise provided in the Act, on and from the commencement thereof, no person shall be entitled to hold any 'vacant land' in excess of the ceiling limit in the territories to which this Act applies

under sub-section (2) of Section 1. By Section 4(1)(d), the ceiling limit placed on such land situate in an 'urban agglomeration' falling within category 'D' specified in Schedule I, is fixed at two thousand square metres. An urban agglomeration is made up of the main town together with the adjoining areas of urban growth and is treated as one urban spread. The expression 'Vacant land' is defined in Section 2(q) as meaning land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include certain categories thereof. The term 'urban land' is defined in Section 2(o) as meaning:

'(o) Urban land' means-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture'.

The expression 'urban agglomeration', as defined in Section 2(n) of the Act, so far as material, reads:

(a) 'urban agglomeration',--

(A) in relation to any State or Union Territory specified in column (1) of Schedule I, means:

(i) The urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and xx.

The urban agglomeration of Warangal is specified in Schedule I to the Act. The relevant entry reads :

State

Towns

Peripheral area

Category

(1)

(2)

(3)

(4)

1,Andhra Pradesh

5,Warrangal District

1km.

D

37. It is quite dear that under the scheme of the Act the imposition of a ceiling on vacant land in urban agglomeration does not depend on the existence of a master plan. The definition of 'urban land' as contained in Section 2(o) of the Act is in two parts, namely (1) in a case where there is a master plan prepared under the law for the time being in force, any land within the limits of an urban agglomeration and referred to as such in the master plan, is treated to be urban land, and (2) in a case where there is no master plan, or the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of municipality or other local authorities is regarded as such. The existence of a master plan within the meaning of Section 2(h) is, therefore, not a sine qua non for the applicability of the Act to an urban agglomeration. The only difference is that where there is a master plan, the Act extends to all lands situate within the local limits of a municipality or other local authority, and also covers the peripheral area thereof; but where there is no such

master plan, its applicability is confined to the municipal limits or the local area, as the case may be'.

(emphasis supplied)

12. The relevant provisions are extracted below:

(1) Urban Land Ceiling Act

The term 'urban land' is defined in Section 2(o) of the Act.-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits or a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture. The expression 'urban agglomeration' as defined in Section 2(n) of the Act so far as material reads:

2(n) 'urban agglomeration',--

(A) in relation to any State or Union Territory specified in column (1) of Schedule I, means:

(i) The urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof, and xx.'

The urban agglomeration of Bangalore is specified in Schedule I to the Act.

The relevant entry reads:

State

Towns

Peripheral area

Category

(1)

(2)

(3)

(4)

Karnataka

1. Bangalore

5kms.

B

U.A.

(a) Bangalore City Municipal Corporation and Trust Board area

(b) HAL Sanitary Board (excluding HAL Township)

S.B.

(c) Devarajeevanahalli

T.P.

(d) HAL Township

S.A.

(e) Jalahalli (excluding HMT Township)

P

(f)HMT Township

S.A.

(g)ITI Notified (Dooravaninagar)

N.A.C.

(h)BEL Township

S.A.

(i) Kadugondanahalli

P

By this it was submitted that on a reading of the judgment of the Supreme Court would clearly indicate that the peripheral area should be calculated from Bangalore City Corporation and Trust Board area ends. In other words, any area beyond 5 kms. of the Bangalore City Municipal Corporation and Trust Board area does not come within the purview with the Urban Ceiling Act.

13. The second respondent took the view that the area to be reckoned will be 5 kms. from where the master plan or the outer land development plan ends.

14. Learned High Court Government Advocate for the respondent, Mr. Chengappa submitted that even if this definition is taken into account, the lands of the petitioner is within 5 kms. from the Bangalore City Corporation and the Trust Board area.

15. Since there is no finding with regard to whether the lands of the petitioner is within 5 kms. within the Bangalore City Corporation and Trust Board area and

since the second respondent has only determined the lands of the petitioner with respect to the master plan, it would be appropriate that the second respondent determine the matter afresh again, after considering the judgment of the Supreme Court in Valluri Basavaiah Chowdhary's case, supra and dispose of the matter in accordance with law.

16. In that view of the matter the impugned order dated 15-10-1997 at Annexure-C is set aside. The matter is remitted back to the second respondent for fresh disposal in accordance with law, after determining whether the petitioner's lands come within the purview of the Urban Land Ceiling Act.

17. The writ petition is disposed of accordingly. No costs.

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