

Nagamma and Another Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-08-1998

Reported in : 1999(2)KarLJ389

Judge : Hari Nath Tilhari, J.

Acts : Urban Land (Ceiling And Regulation) Act, 1976 - Sections 20(2)

Appeal No. : Writ Petition No. 33977 of 1996

Appellant : Nagamma and Another

Respondent : State of Karnataka and Others

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

Advocate for Pet/Ap. : Sri Ajay for Sri L. Govindaraj, Adv.

Judgement :

ORDER

1. Heard the learned Counsel for the petitioner i.e., Sri Ajay holding brief from Sri L. Govindaraj, learned Counsel for the petitioners.
2. By this petition, the petitioners have sought the issuance of writ of certiorari for quashing the order bearing No. HUD 24 UEE 89, Bangalore, dated 24-4-1993 passed by 1st respondent (Annexure-E to the writ petition) as well as notice bearing No. ULC SR:53:93-94, dated 13-6-1996 issued by the 3rd respondent

(Annexure-D) and also notice bearing No. ULC:SR:53:76-77, dated 25-11-1996 issued by the 3rd respondent (Annexure-G to the writ petition).

3. The facts of the case in the nutshell are that the petitioners vide order dated 2-2-1985 issued by the Government of Karnataka, sought exemption of vacant land specified in the schedule to Annexure-A. This land was held by Babu Kotian. The exemption was granted subject to the following conditions:--

(1) That the land should actually be used only for agriculture.

(2) That whenever the land is proposed to be used for any other purpose, prior intimation should be given to the Government and the Competent Authority concerned and prior permission of Government should be taken.

(3) That the land should not be transferred by sale, gift, lease, or otherwise without the previous permission of the Government and that the land should not be subdivided and sold. There is however no objection to mortgage of the land without possession to support a loan from a bank or finance institution.

(4) That if at any time, if any of the conditions (1) to (3) is violated or if the State Government or any other public agency require the exempted land for its own use, then the State Government may withdraw the exemption under sub-section (2) of Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976.

Subject to the these conditions, the exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 was granted with respect to the land. Subsequently by order dated 24-4-1993 (Annexure-E) the State Government held that Babu Kotian had violated the terms of the exemption and accordingly the exempted lands were liable to be taken over. A reading of the order Annexure-E which had been read over and explained to me in English clearly reveals that before passing the order dated 24-4-1993, Babu Kotian was given an opportunity to show cause and his objections were considered. Thereafter, Government found that there has been violation of the conditions of the exemption order and so it withdrew the exemption and directed the Deputy Commissioner to take possession of the land. In pursuance of the order, notice Annexure-D dated 13-6-

1996 and Annexure-G dated 25-11-1996 were issued by the Tahsildar and the Deputy Commissioner. Feeling aggrieved by that order, the petitioner has come up before this Court under Article 226 of the Constitution.

4. The learned Counsel for the petitioner contended that once exemption had been granted, the petitioner was entitled to put up construction on the land and the petitioner was entitled to construct a residential house as the land belongs to him. He further contended that no alienation of exempted property was made in favour of any person. Learned Counsel contended, as such, order Annexure-E dated 24-4-1993 is illegal and without jurisdiction and the notice Annexure-D and G issued by the Tahsildar and the Deputy Commissioner in pursuance of the order of the Government were also bad in law.

5. These contentions of the learned Counsel for the petitioners have been hotly contested by Sri M.H. Ibrahim, learned Government Pleader. Learned Government Pleader contended that the petitioner is not entitled to raise any construction. Exemption was granted for the purpose of land being used for agriculture. It could not be used for any other purpose and once it has been granted by the Government with the terms and conditions, it is within the jurisdiction of the Government to withdraw the exemption. Learned Government Counsel contended that in cases where exemption is granted subject to the conditions mentioned in the exemption order, if the conditions, subject to which the exemption is granted, are flouted, it is open to the Government to withdraw the exemption. He referred to the decision of this Court in the case of T.R. Thandur v Union of India.

6. I have applied my mind to the contentions of the learned Counsel for the parties. Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 reads as under:--

'20. Power to exempt.--

(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter--

(a) Where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard

to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) Where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly'.

A perusal of sub-section (2) of Section 20 per se reveals that it is open to the Government if it is satisfied that any of the conditions, subject to which any exemption has been granted under clause (a) or (b) or (c) of sub-section (1) have been flouted or has not been complied with by the person concerned, it shall be within the competence of the Government to withdraw by an order such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of Chapter III shall apply according to law. A reading of sub-section (1) and sub-section (1)(a) and (1)(b) and in particular the expression used in clause (a) and (b) to the effect that, 'the Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter' very clearly reveal that the Government has power to exempt even though no doubt, Government may not impose any conditions in a case. If it does not put any

conditions, it may stand on a different footing. But if conditions' are mentioned and if those conditions are flouted, it is open to the Government to withdraw the exemption on violation of such conditions, No doubt, one thing is clear that before passing an order withdrawing the exemption, the person concerned has to be given reasonable opportunity of making representation against withdrawal. When I so observe, I find support for my view from the observations of their Lordships of the Supreme Court in the case of T.R. Thandur, *supra*. In paragraph 9, their Lordships have observed as under:--

'The condition precedent for granting exemption under clause (a) or clause (b) must, however, exist but on the exemption being granted thereunder, the logical consequence of the exemption as indicated must follow. It must follow that if the restriction on transfer of the vacant land in excess of the ceiling limit is only because of any provision contained in Chapter III in Sections 3 to 24, then the effect of the exemption under Section 20 is to lift even that embargo. Sub-section (2) gives to the State Government power to withdraw the exemption under clause (a) or clause (b) of sub-section (1) if it is satisfied in the manner indicated that any of the conditions subject to which the exemption has been granted is not complied with. The power of withdrawal of exemption in subsection (2) is to ensure full compliance of the conditions subject to which the exemption is granted. The restriction on transfer may be imposed by such a condition. In that event, the restriction is by virtue of the condition imposed and not because of any statutory prohibition in Chapter III of the Act'.

7. In the present case, the order of exemption, as quoted in the earlier part of this judgment, clearly reveals that exemption had been granted for land being exclusively and actually being used for agriculture. Clause (2) further clarifies that if the land is to be used for any other purpose, prior intimation must be sent to the Government and the Competent Authority and prior permission must also be obtained from the Government. It means that without giving any prior intimation and without obtaining the prior permission of the Government, the petitioner had not been authorised to make any use of the land other than for agricultural purposes. User of land for other purpose was barred and the bar could be only removed by obtaining necessary permission. Here in this case, the land has been

used for construction of a building. It is not the case of the petitioner that he has obtained prior permission. No doubt, learned Counsel for the petitioner tried to urge that the construction did exist prior to the grant of exemption. This contention cannot be accepted. The exemption order does not indicate that the building existed on the land before the exemption order was granted. Further no proof or evidence has been given that there existed any building prior to the grant of exemption. So this contention that building existed on the land in the year 1978 cannot be accepted. The order has been passed after giving notice to Babu Kotian. As such, there is no violation of provisions of law. The order Annexure-D, as such, cannot be said to be illegal, null and void and without jurisdiction. The notices, Annexure-D and G, are nothing but follow-up action in pursuance of order dated 24-4-1993 as per Annexure-E to the writ petition.

Thus considered in my opinion, the writ petition has got no force. It has to be dismissed and is hereby dismissed.

Sri M.H. Ibrahim, learned Government Pleader, is permitted to file his memo of appearance.