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Court : Andhra Pradesh

Decided On : Nov-16-1998

Reported in : 1999(1)ALD135; 1999(1)ALT77

Judge : C.V.N. Sastri, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 5, 5(3), 8, 10 and 26

Appeal No. : WP No. 7080 of 1998

Appellant : Shaik Azeem and Others

Respondent : Special Officer and Competent Authority, Hyderabad Land Ceiling Office, Hyderabad and Others

Advocate for Def. : Government Pleader for Revenue, ;Mr. Ghanta Rama Rao, SC for Municipalities and ;Mr. Vilas Afzul Purkar, Adv.

Advocate for Pet/Ap. : M/s. C.R. Pratap Reddy and ;K. Goverdhan Reddy, Adv.

Judgement :

ORDER

1. Heard the learned Counsel on both sides.

2. In this writ petition the petitioners seek to assail the surrender of the land and the buildings in their possession by respondents 4 to 8 herein to the Government under the provisions of Urban Land (Ceiling and Regulation) Act, 1976. According to the petitioners they have purchased the lands in question under an agreement of sale long prior to the date of the commencement of the Act from respondents 4 to 8 for valuable consideration and that subsequently registered sale-deeds were obtained by them on 15-10-1976 and 6-8-1979 after issuing notices under Section 26 of the Act to the competent authority, that they constructed buildings on the lands purchased by them long prior to the commencement of the Act, that respondents 4 to 8 have surrendered the land and buildings in the occupation of the petitioners with a mala fide intention, that the surrender proceedings are without any notice to the petitioners and the same were managed behind the back of the petitioners and they had no opportunity to put forward their objections to the same.

3. On the other hand, the stand taken in the counter-affidavit filed on behalf of the respondents is that the orders determining the surplus lands passed under Section 8 of the Act have become final, that the applications for exemption filed by the declarants also were rejected by the Government, that the declarants have a right to surrender any portion of the excess land held by them to the Government, that the petitioners have no right to question the surrender of the lands by the declarants and that the petitioners are not entitled to any relief in the writ petition. It is further contended that the surrender proceedings are in the nature of execution proceedings and the petitioners have no right to go behind the orders passed under Section 8 of the Act which have become final. It is also contended that the sale-deeds obtained by the petitioners are admittedly subsequent to the date of the commencement of the Act and as such they are null and void.

4. It is seen from the material on record that the surplus lands which are allegedly surrendered by respondents 4 to 8 are not vacant lands but are lands in which there are constructions. According to the petitioners all the constructions were made long prior to the commencement of the Act. The petitioners placed reliance on Section 5 of the Act. It reads as follows:

'S.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 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.

.....'

Admittedly the petitioners had no notice at any stage of the proceedings. In *J. Pitchaiah v. Urban Land Ceiling Authority*, 1990 (3) ALT 262, this Court, on a consideration of Sections 5 and 10 of the Act, held that where land has been transferred by the declarant to a bona fide purchaser, the excess land has to be taken out from the land that has been retained by the declarant and that the innocent purchaser should not be penalised and that the authorities are at liberty to choose some other land retained by the declarant and which is in his or her exclusive possession instead of taking the land declared as excess and which has been sold to a bona fide purchaser. In *M. Prabhakar Rao v. Sub-Registrar*, 1988 (1) ALT 685, this Court, while considering the scope of Sections 5(3) and 26 and

also the scheme, scope and intendment of the Act, held that the Act is not intended to be enforced against innocent third party purchasers and the authorities should proceed only against the original owners but not against innocent third parties.

5. The question whether the petitioners are bona fide purchasers for valuable consideration and whether they have made the constructions in the land prior to the commencement of the Act are questions of fact which have to be ascertained after due enquiry by the competent authority. Similarly the question whether the petitioners have obtained the registered sale-deeds after issuing notices under Section 26 to the competent authority is also a disputed question of fact since the same has been denied in the counter-affidavit filed on behalf of the respondents. So also there is a dispute whether the constructions in the land were made prior to the commencement of the Act or whether they have been made subsequently. Though it is claimed by the respondents that physical possession of the surrendered land has been taken in the year 1988 itself, the same is disputed by the petitioners who assert that they are still in possession of the land and constructions therein. This Court, by an interim order granted on 24-5-1989 in WP MP No.9267 of 1989 ordered stay of demolition and dispossession of the buildings and shopping complex hearing Municipal Door No.8-3-845, Ameerpet, Hyderabad, belonging to the petitioners herein pending further orders. Subsequently by order dated 13-12-1989, passed in WP MP No. 18369 of 1989 this Court directed that the status quo obtaining as on that date shall be maintained.

6. Under these circumstances, this writ petition is disposed of with a direction to the first respondent, Special Officer and competent authority, to consider the objections of the petitioners with regard to the surrender of the lands in question by respondents 4 to 8 and pass appropriate orders thereon in accordance with law after giving a reasonable opportunity to the petitioners as well as the declarants (respondents 4 to 8) to put forward their case, within three months from the date of receipt of this order. Meanwhile the status quo obtaining as on today shall be maintained. There will be no order as to costs.