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Court : Andhra Pradesh

Decided On : Feb-12-2002

Reported in : 2002(2)ALD664

Judge : S.R. Nayak and ;S.R.K. Prasad, JJ.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 5(3), 6, 10(3), 19(1), 26, 26(1) and 28

Appeal No. : WA No. 1007 of 2000

Appellant : Ducinia Rodrigues and anr.

Respondent : State of A.P. and ors.

Advocate for Def. : Government Pleader for Revenue

Advocate for Pet/Ap. : C. Hanumantha Rao, Adv.

Disposition : Appeal allowed

Judgement :

S.R. Nayak, J.

1. This writ appeal preferred by the declarants is directed against the order of the learned single Judge dated 26-2-1999 made in WP No. 13338 of 1998 dismissing the writ petition. The appellant-declarants in the above writ petition sought for a

direction to call for the records from the Special Officer and competent authority, Urban Land Ceiling, Hyderabad, the third respondent herein in CC No. F1/842/76 along with F2/863/96 and to quash the memo No. F2/862 and 863/26/96, dated 28-3-1998 and also for a consequential direction to give clearance to the petitioners in respect of the retainable area in plot Nos. 58 and 59 in Sy.Nos. 357/1 and 357/3 of Malkarjigiri village. The writ petitioners also sought for a direction to receive and register the sale deeds presented for registration in respect of the said plots.

2. The background facts leading to the filing of the writ petition may be noted briefly as under: A retainable area of 1000 sq.mts. is allowed by the third respondent to each of the writ petitioners and determined 1,780 Sq.Mts. of land as excess land vide his proceedings Nos. F2/ 842/76 and F2/843/76 dated 21-3-1980. After such determination, the petitioners were denied the right of surrendering the excess area as per their option and choice. That led to the petitioners preferring an appeal to the Commissioner (Appeals), Urban Land Ceiling where the petitioner claimed and opted to retain an area of 2000 sq.mts. of land comprised in Pl.Nq.58 P and 59 P (Sy.Nos. 357/1 and 357/3), Malkajigiri RR District. The Appellate authority by his order in Ref.No. UC2/2373/80 dated 3-8-1981 allowed the appeal acceding to the claim of the writ petitioners. The order made by the appellate authority dated 3-8-1981 has become final.

3. The petitioners, thereafter, intending to sell the retainable area issued notice under Section 26(1) of the Urban Land (Ceiling and Regulation) Act, 1976, for short 'the Act'. The third respondent refused permission to the petitioner to alienate the land by his order dated 28-3-1998. The reason to refuse permission is the following:

'With reference to the application 3rd cited, it is to inform that the request for reconsidering the notice filed under Section 26 of (he Act cannot be considered in retainable area in plot Nos. 58 and 59 in Sy.Nos. 357/1 and 357/3 of Malkajigiri as the land determined as surplus is covered by the structures.'

4. The petitioners being aggrieved by the above order of the third respondent have filed the writ petition. Opposing the writ petition, a counter-affidavit was filed

on behalf of the respondents contending -

'The contention of the declarants that excess land has been surrendered is not true. The declarants have violated the provisions of the Act and sold away the surplus land and hence the request has again been rejected and proposals have been sent to the Government seeking permission under Section 34 of the Act for revision of orders in order to declare the vacant land as surplus. Aggrieved by the said action in not accepting his request, the present writ petition is filed.'

5. The learned single Judge dismissed the writ petition mainly on the ground that granting clearance to alienate contemplated under Section 26 of the Act would arise only after the conclusion of the proceedings under Sub-section (3) of Section 10 of the Act and since the land ceiling proceedings under Section 10(3) of the Act have not been concluded, the petitioners are not entitled to clearance. Aggrieved by the said order, this writ appeal has been filed.

6. Sri C. Hanumantha Rao, learned Counsel appearing for the appellants, placing reliance on the judgment of a single Judge of this Court in *George Jacob Kuruvilla v. Special Officer and Competent Authority*, 1996 (1) ALD 356, as confirmed by the Division Bench in WA No. 185 of 1995 dated 26-7-1995, would contend that the reason assigned by the third respondent not to accord clearance to alienate the retainable land is extraneous to the decision-making under Section 26 of the Act. The learned Counsel would contend that the only action that may be taken by the third respondent, on receipt of the notice issued by the petitioners under Section 26 of the Act, is the initiation of the proceedings for acquiring the land and in that event the State Government is bound to pay the market price for the land sought to be acquired and that is the only power available to the third respondent and he cannot refuse permission to the petitioners to alienate the land on any other ground if the land sought to be alienated falls within the retainable area. The learned Counsel would also contend that the opinion of the learned single Judge to dismiss the writ petition, referred to above, is *ex facie* erroneous if one were to read the provisions of Sub-section (3) of Section 5 and the provisions of Sub-section (3) of Section 10 of the Act conjointly. The learned Counsel would contend that the two restrictions specified under Sub-section (3) of Section 5 of the Act for

alienation of the land do not exist in the present case and therefore the petitioners, who are allowed to retain 2000 sq.mts. of land comprised in Pl.Nos. 58 P and 59 P, are at liberty to alienate the land. On the other hand, the learned Government Pleader for Assignment would support the order of the learned single Judge and maintain that the third respondent as well as the learned single Judge are fully justified in refusing the permission to the writ petitioners to alienate the said land. The learned Government Pleader would contend that as noticed in the order of the learned single Judge, the petitioners have entered into an agreement of sale in respect of the land which forms part of the excess land and in that view of the matter, the third respondent was well within his authority and power to refuse permission to the petitioners to alienate the land.

7. It is well settled that a statutory power has to be exercised by the donee of the power within the limitations of the statute. The third respondent, who functions as a donee of the statutory power under Section 26 of the Act is bound by the provisions of that section. Therefore, the primary question to consider is whether in refusing permission to alienate, the third respondent acted within the parameters of his power or not. If the answer is 'no', there is no necessity for us to delve into several other allegations and counter allegations of the parties. Therefore, in the first instance, it becomes necessary to examine whether the order of the third respondent impugned in the writ petition is within the parameters of the power granted to him under Section 26 of the Act or he has exceeded his jurisdiction in refusing permission to the petitioner to alienate the land and whether in the decision-making he has taken into account extraneous considerations.

8. This Court in Jacob Kuruvilla's case (supra) while dealing with the power of the Special Officer on receipt of the notice issued by the declarant under Section 26 of the Act held:

'There is another aspect of the matter. That is, under Section 26 a person holding vacant land within the ceiling limit is required to give a notice before selling the land. This is only to give a pre-emption to State Government to acquire that land under the Land Acquisition and if that option is not exercised within a period of sixty days, it is presumed that the State Government has no objection to the sale

of the land. Therefore, the only action that can be taken on receipt of the notice is the initiation of the proceedings for acquiring the land and the State Government is bound to pay the market price for that land sought to be acquired. The section does not provide for any other objection to the proposed sale of the land within the prescribed ceiling. The authorities below have, therefore, misdirected themselves in applying the provisions of Section 26.'

9. The State authorities being aggrieved by the above pronouncement of the learned single Judge preferred WA No. 185 of 1995. A Division Bench of this Court dismissed the appeal by its order dated 26-7-1995 holding thus:

'The appellants, it is not in dispute, have accepted the total area comprising the holdings of the owner respondents being 9,441 sq.mts. There is nothing on the record to show that the writ petitioner - respondents for any reason have disentitled themselves 1,000 sq. mts. each i.e., 3,000 sq.mts. of land under the Urban Land (Ceiling and Regulation) Act, 1976. It is somewhat strange how the Competent Authority under the Act can refuse permission to the owner of the land to sell, out of the total area, such extent of land which is not in excess of the ceiling area. Learned single Judge has rightly issued by the direction to register the sale deeds relating to the land, to the extent indicated above, retained by the owners. There is no merit in the appeal.'

10. What emerges from the ratio of the judgment is that the only option available to the Special Officer-competent authority on receipt of a notice under Sub-section (1) of Section 26 of the Act is to initiate proceedings to acquire the land sought to be alienated if he so desires and thinks it fit, and he cannot refuse permission on any other ground or extraneous consideration. We are in respectful agreement with the above view taken by the co-ordinate Bench. If that is so, on that short ground itself, the order of the third respondent impugned in the writ petition could not be sustained. Be that as it may, even otherwise, the ground stated in the order of the third respondent not to accord permission to alienate the land, in our considered opinion, is extraneous to decision-making. The third respondent has refused permission on the ground that the land determined as excess is covered by structures. This ground stated by the third respondent is totally extraneous to

the decision-making under Section 26 of the Act. Even assuming that the whole or a part of the surrendered land is covered by the structures, we are at a loss to understand, how that ground could be a valid and justifiable ground for the third respondent not to accord permission sought under Section 26(1) of the Act particularly when even according to the third respondent, the land sought to be alienated as per the notice issued by the petitioners under Section 26(1) of the Act, admittedly, falls within the retainable area and such retainable area could be alienated by the declarants subject to obtaining a clearance from the third respondent because such an obligation flows from the provisions of Section 28(a) of the Act.

11. Before concluding, the observation made by the learned Judge, which we think has gone into the decision-making, may be noted. The learned Judge has pointed out that under the guise of G.O. Ms. No. 136, dated 28-1-1981 the writ petitioners seemed to have entered into an agreement of sale with a Co-operative Housing Society by name Sivaramakrishna Co-operative Housing Society in regard to the surplus land. To substantiate this allegation, nothing was placed before the Court by the third respondent or the other State authorities. Even assuming that the petitioners have entered into an agreement with the Cooperative Society as noted by the learned Judge, that would in no way alter or affect the right of the declarants to alienate the lands permitted to be retained by them. Mere execution of an agreement with the Co-operative Society to sell the excess land or the land to be surrendered would not divest the title of the declarants and invest any title in the alienees. Such transactions by force of the provisions of the Act would be null and void ab initio. Similarly and with respect, we are not persuaded to fall in line with the view taken by the learned Judge that grant of approval under Section 26 of the Act to alienate the land within the retainable area would arise only after the proceedings under Sub-section (3) of Section 10 of the Act are completed. There is no warrant to cull out such implied limitation and on the other hand, the conjoint reading of the provisions of Sub-section (3) of Section 10 and Sub-section (3) of Section 5 of the Act would not support such interpretation. As could be seen from Subsection (3) of Section 5 of the Act, two conditions, are imposed on a person holding vacant land in excess of the ceiling limit immediately before the commencement of the Act to transfer any such land or part thereof by way of sale,

mortgage, gift, lease or otherwise and they are: (i) such person has to furnish a statement as prescribed under Section 6 of the Act; and (ii) a notification regarding excess of vacant land held by him after determination has been published under Section 19(1) of the Act. In the instant case, both the conditions did exist when the petitioners issued notice under Section 26(1) of the Act to the third respondent. Apart from all these legal flaws in the action of the third respondent, it needs to be emphasized that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by reason of affidavit or otherwise as held by the Apex Court in *M.S. Gill v. The Chief Election Commissioner*, : [1978]2SCR272 . The Supreme Court held-

'The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J., in *Gordhandas Bhanji*: Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.'

12. As seen the from the order of the third respondent impugned in this writ petition, it is not the ground stated by the third respondent that the petitioners after determination of the excess land executed an agreement to sell the excess land in favour of the Co-operative Society. It is needless to state that the above plea is a factual plea and if the third respondent wanted to put forward that plea as a defence to sustain his action, that plea should have been reflected in the order or atleast in the form of a responsible pleading before this Court, which is completely

absent in the present case.

13. Looking from any angle, we cannot sustain the order of the learned single Judge under appeal. The writ appeal is, therefore, allowed. The order of the learned single Judge dated 26-2-1999 is set aside and WP No. 13338 of 1998 is allowed. The impugned proceedings of the third respondent in Memo No. F2/862 and 863/26/96 dated 28-3-1998 are quashed. A direction shall issue to the third respondent to accord clearance for alienation of the lands sought by the writ petitioners in their notice issued under Subsection (1) of Section 26 of the Act. A month's time is granted for compliance of the above direction. There shall be no order as to costs.

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