

M. Chandraiah and anr. Vs. the Commissioner, Land Reforms and Urban Land Ceiling and anr.

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Court : Andhra Pradesh

Decided On : Oct-13-1992

Reported in : 1992(3)ALT573

Judge : B. Subhashan Reddy, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976

Appeal No. : Writ Petition No. 16949 of 1991

Appellant : M. Chandraiah and anr.

Respondent : The Commissioner, Land Reforms and Urban Land Ceiling and anr.

Advocate for Def. : Vijayalakshmi, Asst. Govt. Pleader for Revenue

Advocate for Pet/Ap. : C. Hanumantha Rao and ;V. Venkata Reddy, Adv.

Judgement :

ORDER

B. Subhashan Reddy, J.

1. Though more than one contentions have been raised, particularly stressing on the nature of the property as to whether self-acquired or joint family, only one

contention deserves consideration and not the remaining contentions.

2. The said contention which deserves consideration is with regard to availability of area for exemption under G.O.Ms. No. 733 Revenue (UC. III) Department, dated 31-10-1988. This contention was raised as a third contention before the first respondent herein. While the petitioners pleaded that even assuming that the land in question was to be treated as a separate property of the first petitioner herein, the same stands exempted by virtue of the G.O. referred to above. The legal aspect as to whether an application has to be filed seeking exemption pursuant to the above G.O., or the above G.O. perse exempts the extent of the land mentioned in it was already decided by me in *Nalla Yakoob v. Govt of A.P. and Ors.*, 1992 APLJ 411.

3. In the above decision, I took a view that inasmuch as the above G.O. grants general exemption for the lands in peripheral areas, no application need be filed and that the exemption to the specified extents is automatic. Yet another aspect which falls for consideration in the instant case is as to whether only Acs. 5.00 of land stands exempted under the above G.O., or more than that. Reading G.O.Ms. No. 733, Revenue (UC.III) Department, dated 31-10-1988, even without straining the language used in it and on bare reading of the contents of the same, absolutely there is no doubt to come to the conclusion that if the land in peripheral area is to be retained by the declarant, then the above G.O. grants exemption to an extent of Acs. 5.00 only. But should the declarant opt to sell the same by making out plots, Acs. 5.00 of clear land excluding the areas required for roads, hospitals and other public use is exempted. As such, the determining factor for arriving at the extent of the land available for exemption under the above G.O. is the user to which it is put or intended to be put. If the land is to be retained by the excess land holder in peripheral areas, he can retain only a total extent of Acs. 5-00 of land without claiming any exclusion towards roads, hospitals and for other public use on assumption basis. On the other hand, if the land is to be used, laid-out into plots and is to be sold, then the said excess land holder is entitled for claiming exclusion of the area required for roads, hospitals and other public use, thus entitling him to have a clear extent of Acs. 5-00 for disposal i.e., for sale.

4. Now, I shall apply the above principle having regard to the facts of the instant case. In the instant case, the first petitioner do not intend to retain the land as it is. In fact, he has pleaded that while an extent of Acs. 2.20 guntas was already converted into plots pursuant to lay-out sanction granted by Hyderabad Urban Development Authority on 124-1990 and release of permit by letter dated 7-4 1990 pursuant to the remission of amounts towards developmental charges, for the remaining extent of land of Acs. 5.00 lay-out is sought for and the same is pending consideration. The very fact that for some extent of land, the lay-out has been sanctioned and for the remaining extent of land, lay-out was sought for, shows the clear cut intention of the first petitioner to sell the above land by converting into plots and actually it is stated that the first extent of Acs. 2.20 guntas covered by lay-out permit, the plots have already been sold. If that be so, as a necessary corollary, the first petitioner shall be entitled to exercise his rights for sale of the plots in S.Nos. 505/1 ad measuring 2.20 guntas and 505/2 ad measuring Acs. 4.30 guntas situated at Kapra village (the factum of Kapra being in peripheral area not being disputed) for a clear extent of Acs. 5.00 after excluding the areas left towards roads, hospitals and for other purposes mentioned in the above G.O. For this purpose again I need not remand the matter for determination of the excess area as pleaded by Ms. Vijayalakshmi, Assistant Government Pleader for Revenue. Suffice it to say that even after excluding the area towards roads, hospitals and for other purposes as earmarked in the two lay-outs mentioned supra if among the plotted area, the areas covered by plots ad measure more than Acs. 5.00 of land, it is open to the respondents to treat the said excess over and above Acs. 5.00 clear plotted land, as an excess land and take over the same as contemplated under the provisions of Urban Land (Ceiling and Regulation) Act, 1976.

5. This writ petition is allowed to the extent indicated above. No order as to costs.