

Sandamma and Others Vs. State of A.P. and Others

Sandamma and Others Vs. State of A.P. and Others

SooperKanoon Citation : sooperkanoon.com/441719

Court : Andhra Pradesh

Decided On : Jul-16-1998

Reported in : 1998(5)ALD518

Judge : A. Hanumanthu, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 6(1), 8(1 and 3) and 9

Appeal No. : WP No. 25299 of 1997

Appellant : Sandamma and Others

Respondent : State of A.P. and Others

Advocate for Def. : Government Pleader for Revenue

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

Judgement :

ORDER

1. These writ petitioners who are 31 in number are seeking a writ more particularly one in the nature of Certiorari calling for the files in CC bearing Nos.H2/ 11707 to 11711/76, dated 16-6-1997 as confirmed by the appellate authority and quash the same and declare that the survey numbers 94, 96, 97, 135, 136, 139, 140, 141, 146, 156, 163 and 185 of Kondapur Village, Serillingampally Mandal, Ranga

Reddy District belonging to them are situated outside the limits of Hyderabad Urban Agglomeration and consequently the provisions of Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the Act') are not applicable with respect to those lands.

2. The facts in brief are as under:

The petitioners submit that they are the joint owners of the agricultural lands bearing survey numbers 94, 96, 97, 135, 136, 139, 140, 141, 146, 156, 163 and 185 situated at Kondapur village, Serilingampally Mandal, Ranga Reddy District and that they have been in possession and enjoyment of the said lands. The said lands are situated beyond the distance of 5 K.Ms. to the municipal limits of Hyderabad on the date of enforcement of the Act and as such the said lands are situated outside the Hyderabad Urban Agglomeration limits and consequently the provisions of the Act are not applicable to the said lands. Some of the writ petitioners filed declarations under Section 6(1) of the Act in CC Nos.H2/I 1707 to 11711 of 1976. The draft statement under Section 8(1) of the Act and notice under Section 8(3) of the Act were issued in the order dated '28-3-1984 provisionally determining the surplus area to an extent of 1,31,594.31 sq.mts. in the said survey numbers and the petitioners were also directed to file objections within 30 days therefrom. In response to that draft statement, the declarants filed their objections petition dated 8-8-1988 contending that all these lands are outside the purview of Hyderabad Urban Agglomeration, that they are the joint family properties, that late Pentaiah had only 1/3rd share in the property and out of that 1/3rd share Smt. Sandamma and Smt. Pochamma are 1/4th share holders and M. Bhikshapathi, M. Satyanarayana and M. Krishna have got 1/4th share each. As all these lands are agricultural lands situated beyond the distance of 5 K.Ms. to the Hyderabad Urban Agglomeration area, the provisions under the Act are not applicable. The Special Officer and Competent Authority under the Act by his order dated 16-6-1997 overruled those objections and held that all these lands are the self-acquired property of the declarant-M Bhikshapathi and that they are vacant lands and as such he computed the same to the holdings of the declarant M Bhikshapathi in CC No.H2/11711/76. The Special Officer and Competent Authority also held that the declarant - M. Bhikshapathi is holding an extent of 1,32,594.31 sq.mts. Out of it an

extent of 124.69 sq.mts was deducted as it was not a vacant land and also held that the declarant -M. Bhikshapathi is having a holding in excess of the ceiling limit to an extent of 1,11,235.32 sq.mts. Final statement under Section 9 of the Act was accordingly prepared, signed and served. Aggrieved of that order, these writ petitioners preferred an appeal to the Commissioner of Land Reforms and Urban Land Ceilings, Hyderabad. The said Commissioner dismissed that Appeal by his order dated 19-8-1997 confirming the orders passed by the Special Officer and Competent Authority. Aggrieved of that order, the petitioners have come up with this writ petition.

3. Heard Sri C. Hanumantha Rao, learned Counsel for the writ petitioners and learned Government Pleader for Revenue and perused the impugned orders and other record.

4. The learned Counsel for the writ petitioners raised the following contentions: firstly that all these lands which are situated in Kondapur village are located beyond the limits of Hyderabad Urban Agglomeration and as such the act has no application to these lands; secondly they are joint family properties of the writ petitioners and not the exclusive or self-acquired properties of the declarant -M. Bhikshapathi as held by the Special Officer. The learned Counsel for the petitioners further elaborates that the share of each of the petitioners in these lands is within the limits prescribed under the Act. Thirdly, they are agricultural lands and they are not included in the master plan, as such they are exempted from the provisions of the Act. The learned Government Pleader submitted his arguments in support of the impugned order.

5. The first question raised by the learned Counsel for the writ petitioners that these lands are situated beyond the Hyderabad Urban Agglomeration limits is purely a question of fact which has to be gone into by the Competent Authority. The writ petitioners filed a xerox copy of a map relating to the area under Urban Agglomeration of Hyderabad and Secunderabad. As seen from this map, part of Kondapur village is shown as falling under this Urban Agglomeration. But that map does not contain the survey numbers of Kondapur village which fall within that Urban Agglomeration. On a consideration of that map, it cannot be conclusively

stated that the lands under dispute fell under Hyderabad Urban Agglomeration. As seen from the impugned order of the Special Officer and Competent Authority dated 16-6-1997, it is simply observed that the village Kondapur falls in the peripheral area of Hyderabad Urban Agglomeration. But as seen from the map filed by the writ petitioners, such observation cannot be accepted as the entire village Kondapur does not fall within the Hyderabad Urban Agglomeration. For reasons best known to the Special Officer, the map with survey numbers showing the area covered under Urban Agglomeration is not filed into Court. Therefore, this question effect has to be gone into by the Special Officer and Competent Authority and to decide whether these disputed survey numbers are actually situated beyond the peripheral area of Hyderabad Municipal Corporation as contended by the petitioners. Hence, it is a fit case that the matter has to be remanded to the Special Officer and Competent Authority to conduct an enquiry and determine that fact whether these lands fall within the Hyderabad Urban Agglomeration limits or not.

6. As regards the other contentions that they are all undivided joint family properties of the petitioners and that they are being used for agricultural purpose, the Special Officer and Competent Authority has not embarked on an enquiry into this aspect and he simply stated in the impugned order that the names of Mallaiah, Pentaiah and Bhikshapathi are recorded as occupants in respect of these lands in the pahani for the year 1975-76 and that he treated them as self-acquired property of the declarant - M. Bhikshapathi alone for the reason that no evidence was produced before him. Therefore, he computed the said lands in the holding of the declarant - M. Bhikshapathi alone. In the counter affidavit filed in this writ petition, it is categorically pleaded that the names of Mallaiah, Pentaiah and Bhikshapathi are recorded as owners in the Pahani for the year 1974-75 with respect to these lands and as no documentary evidence has been produced that the lands are ancestral lands, the property was treated as self-acquired property of the said three persons and 1/3rd share to each of the said three persons was computed. But this recital is contrary to the finding of the Special Officer and Competent Authority. Therefore, the Special Officer and Competent Authority is directed to conduct an enquiry on this aspect also i.e. whether these lands belong to the Hindu undivided joint family properties of the petitioners herein and whether the

said lands have been in actual cultivation as contended by the writ petitioners. If the Special Officer finds the said lands are the joint family properties of the writ petitioners, the Special Officer may ascertain whether the share of each of the petitioners comes within the limits prescribed under the Act. The Special Officer and Competent Authority may also consider whether G.O.Ms. No.733 Revenue (UC-II) Department, dated 31-10-1988 is also applicable with respect to these lands even if it is found that they are agricultural lands.

7. Though all these objections have been raised before the appellate authority also, they were not considered. It is simply observed by the appellate authority that the Special Officer and Competent Authority that already dealt with these issues and that he did not see any reason to interfere with the impugned order and thus dismissed the Appeal. This order of the appellate authority is not a speaking order. The merits and demerits of the contentions raised by the appellants were not at all considered by the appellate authority.

8. On a careful consideration of the facts and circumstances in this case, the impugned order dated 16-6-1997 passed by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, is set aside and consequently the order of the appellate authority dated 19-8-1997 is also set aside. The matter is remanded to the Special Officer and Competent Authority under the Act to hold fresh enquiry as directed in this order, after giving an opportunity to the petitioners to adduce evidence. After considering such material as produced by the writ petitioners, the Special Officer and Competent Authority shall pass appropriate orders on merits afresh.

9. The writ petition is disposed of accordingly with the above said directions. No costs.