

(2006) 12 KAR CK 0057
Karnataka High Court
Case No: Writ Petition No. 49442 of 2004

Abay Joseph

APPELLANT

Vs

The Tahasildar (ULC)
Section Special
Deputy Commissioner
and Competent
Authority, The Special
Deputy Commissioner
and State of
Karnataka

RESPONDENT

Date of Decision: Dec. 15, 2006

Acts Referred:

- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10 (2), 10 (3), 10 (6), 33, 6

Hon'ble Judges: D.V. Shylendra Kumar, J

Bench: Single Bench

Advocate: Lakshminarayan, for B.L. Acharya, for the Appellant; Asha Kumbargirimath, HCGP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.V. Shylendra Kumar, J.

Writ petition by a person who claims interest in urban land measuring an extent of 37 cents in Sy. No. 98-2/C of Alape Village, Mangalore Taluk though under a registered sale deed dated 13-2-2004 executed by the erstwhile owner of this land namely, one Mrs. Alice D'Souza and Mrs. Grancis Lobo, who has questioned the legality of an endorsement dated 23-8-2004 issued by Deputy Commissioner, Dakshina Kannada, Mangalore [copy at Annexure-J] declining the request of the petitioner for dropping further proceedings in respect of the land for not disturbing the possession of the petitioner and also for release of the property from acquisition

proceedings and in the event of the acquisition notification having been issued, to re-notify the same in terms of his representation dated 31-7-2004 (copy at Annexure-H).

2. The Deputy Commissioner having declined such request, inter alia, indicating that in respect of the land in question, its erstwhile owner Alice D'Souza had filed a declaration of excess holding in terms of the provisions of Section 6(1) of the Urban Land [Ceiling & Regulation] Act, 1976 [for short the Act"]; that in respect of such a declaration, an extent of 0.37 acres of land had been determined to be in excess of the permitted limit as per the order dated 29-2-1984 u/s 10(2) of the Act and the further Notification dated 23-9-1985 a declaration u/s 10(3) of the Act published in the Gazette dated 10-10-1985, all steps are taken under the Act; that pursuant to the order of determination of excess land, in terms of the order dated 13-1-1993, the possession of the land had been taken over under the provisions of Section 10(6) of the Act and as the provisions of Section 4 of the Urban Land [Ceiling & Regulation] Repeal Act, 1999 [for short "repealing Act"] are not applicable and the proceedings do not abate, the question of dropping the proceedings does not arise.

3. It is aggrieved by this endorsement, the present writ petition.

4. It is necessary to notice a few brief facts before referring to the contentions urged on behalf of the petitioner in support of the petition.

5. Though the petitioner claims to have acquired interest in the land in terms of a sale deed of the year 1984, it is not as though the petitioner is agitating the matter afresh, but has only sought for clarification or relief in the light of the earlier development and proceedings that had taken place even in the hands of his vendor and the remedies that had been pursued by his vendor and only as a continuation of the action initiated by his vendor and for a clarification/declaration as to the effect of the repealing Act on such proceedings at the time when the repealing Act came into force.

6. The erstwhile owner - the vendor of the petitioner, it appears had filed a declaration on 18-8-1976 in terms of Section 6 of the Act. That declaration came to be adjudicated and the Deputy Commissioner, the competent authority passed an order on 29-2-1984 determining an extent of 1,493.42 sq. mtrs., of land in Sy. No. 98-2/C of Alape Village, Mangalore Taluk to be excess land, over and above the permitted limit under the Act. It appears that the action was followed up by an issue of a notification dated 23-9-1985 issued under Sub-section (3) of Section 10 of the Act and published in the Karnataka Gazette dated 10-10-1985 [copy at Annexure-A] and the owner was called upon to surrender the excess land and there is also a recording to the effect that thereafter the possession of the excess land had been taken over as on 13-1-1993.

7. No doubt in so far as vesting and taking over of possession of the excess land is concerned it has reached a culmination if there should not have been any other

proceedings. But the declarant-owner had taken remedial action by approaching this court by filing writ petition No. 8895-96/1993.

8. This Court relegated the writ petitioner to avail of the statutory appellate remedy u/s 33 of the Act in terms of the order dated 30-3-1993 [copy at Annexure-B]. Thereafter the owner having filed an appeal before the Divisional Commissioner in Case No. RA.ULC.4/1993-94, the Divisional Commissioner in terms of his order dated 25-6-1996 [copy at Annexure-C] allowed the appeal holding that the determination of excess land was not in accordance with the provisions of the Act and that the calculations were incorrect and set aside the same and remanded the matter for fresh determination in accordance with law.

9. Thereafter, the Deputy Commissioner re-examined the matter and passed orders afresh on 30-6-1998 [copy at Annexure-D] re-determining the proper excess vacant land to be at 1,266.89 sq. mtrs., as against the earlier determination of 1,493.42 sq. mtrs., as excess holding but nevertheless, ordered that as the appellate authority had not set aside or withdrawn the Notification issued u/s 10(3) of the Act on 23-9-1985 indicating the excess land to be 0.37 acres or 1,493.42 sq.mtrs., as per the earlier notification, the same remains notwithstanding his present order! The declarant quite naturally being aggrieved by this order, yet again approached the Divisional Commissioner invoking the appellate jurisdiction.

10. While the appeal was so pending before the Divisional Commissioner, the appellant it appears had also sought for reviewing the order of the Deputy Commissioner by filing an application before the Deputy Commissioner and when the Deputy Commissioner had requested the appellate authority to return the records for considering the review application, the Divisional Commissioner in terms of his endorsement dated 26-5-1999, directed his office to file the appeal papers, inter alia, observing that if the appellant is aggrieved by the order to be passed by the Deputy Commissioner in review, he may approach him again, in terms of the order dated 26-5-1999 [copy at Annexure-E].

11. It appears thereafter no other proceedings have taken place either before the Deputy Commissioner or before the Divisional Commissioner. But, the matter was at large before the Deputy Commissioner for some more time as indicated by the copy of the order sheet and the recordings of the Deputy Commissioner dated 1-3-1999 and 7-6-1999 [copy at Annexure-F].

12. It is in the wake of such developments, when it appears that the present writ petitioner who was earlier acting as a power of attorney holder of the owner-declarant also purchased the very land gave a representation dated 31-7-2004 [copy at Annexure-H] praying for dropping of the proceedings and for de-notifying the earlier notification so that the lands are released from the acquisition proceedings etc.,. The impugned endorsement dated 23-8-2004, came to be issued by the Deputy Commissioner.

13. It is also significant to note here that the petitioner has asserted that he has continued to remain in possession; that in fact, physical possession of the land had never been taken over by the authorities, notwithstanding the endorsement dated 13-1-1993 or the proceedings purported to be u/s 10(6) of the Act; that the petitioner had the benefit of a stay order even before the appellate authority during the pendency of the appeals safeguarding his possession of the land.

14. Submission of Sri. Lakshminarayan Acharya, learned Counsel for the petitioner is that the respondents-authorities have failed to act in consonance with the provisions of the repealing Act; that the proceedings pending before the Deputy Commissioner was not merely for reviewing his earlier order, but even the proceeding pursuant to his order dated 30-6-1998 which was an order passed in terms of the provisions of Section 10(2) of the Act and thereafter no further proceedings had taken place either for issuance of a notification u/s 10(3) of the Act or for taking over possession subsequent to the issue of the notice to the person concerned nor any such development; that the authorities are not justified in relying upon a declaration or recording that physical possession was taken over on 13-1-1993 pursuant to the notification dated 23-9-1985 issued u/s 10(3) of the Act which itself was in furtherance of the order of determination of excess land dated 29-2-1984; that even the Deputy Commissioner is in error in thinking that the appellate authority had not set aside the Notification u/s 10(3) of the Act or any further proceedings; that understanding is clearly not tenable in law; that when once the order of the Deputy Commissioner dated 29-2-1984 was set aside by the appellate authority and the matter was remanded, the original order of the Deputy Commissioner does not stand in the eye of law any more; that all further proceedings pursuant to that order automatically falls to ground; that all subsequent actions whether one of notification u/s 10(3) of the Act or of the taking of possession u/s 10(6) of the Act are all actions which were based only on the order passed by the Deputy Commissioner determining the excess; that when once that order itself had been set aside and the matter remanded, further action does not sustain independently in law; that there being no further progress in terms of the provisions of the repealing Act subsequent to the re-determination of excess land pursuant to the order dated 30-6-1998 passed by the Deputy Commissioner, even the proceedings upto that stage also has to inevitably abate in terms of Section 4 of the repealing Act.

15. Learned Counsel for the petitioner also points out that it is only such proceedings which had reached the stage of taking of possession pursuant to the Notification u/s 10(3) of the Act that are saved and proceedings if had reached that stage, the repealing Act does not affect such proceedings and not anything else and in the present situation there being no further progress from the stage of the order dated 30-6-1998 passed u/s 10(2) of the Act by the Deputy Commissioner, the provisions of Section 3 of the repealing Act are not attracted to the present situation and it is only Section 4 of the repealing Act which is attracted and therefore

endorsement at Annexure-J is not sustainable in law; that the action on the part of the authorities not to give effect to the provisions of Section 4 of the repealing Act is not sustainable in law; that while the endorsement at Annexure-J is to be quashed, the authorities should be directed to act in conformity with the provisions of Section 4 of the repealing Act.

16. In support of such submission, learned Counsel for the petitioner places reliance on a single Bench decision of the Gujarat High Court in the case of [Dahyabhai Manorbhai Patel Vs. The Competent Authority and Additional Collector, Unit No. 2, Vadoara and Another, .](#)

17. Smt. Asha Kumbargirimath, learned Government Pleader, appears on behalf of the respondents. Statement of objections has also been filed on behalf of the respondents.

18. What is essentially urged in the statement of objections is that the present petitioner being a purchaser of the land in the year 2004 cannot maintain the writ petition for questioning an action that was much earlier to the purchase of the property; that the petitioner does not get any right, title or interest to the subject property as he is the purchaser subsequent to the land having vested in the State Government and the possession having been taken over by the State Government; that the physical possession of the land, in fact, having been taken over as early as on 13-1-1993, it is only the provisions of Section 3 of the Act which are attracted to the present situation and not the provisions of Section 4 of the repealing Act and therefore the writ petition deserves to be dismissed; that the writ petition need not be entertained; that the endorsement at Annexure-J does not suffer from any infirmity or illegality and hence the writ petition should be dismissed.

19. Learned Government Pleader has also brought to the notice of the court in so far as legal provisions of Section 3 of the Act and Section 4 of the repealing Act are concerned, a decision rendered by the Constitution Bench of the Supreme Court in the case of "Smt. Angoori Devi v. State of U.P. and Ors." reported in JT 2000 [1] SC 295.

20. The sequence of events and the facts as noticed above does indicate that the earlier order of the Deputy Commissioner dated 29-2-1984 had been set aside by the appellate authority - the Divisional Commissioner in terms of his order dated 25-6-1996. The matter was remanded for fresh determination. That means the earlier determination of excess ceiling land does not stand any more. When once that order is set aside, quite naturally all subsequent actions pursuant to that order also vanishes. They cannot remain independently as was the understanding of the Deputy Commissioner in terms of the order dated 30-6-1998.

21. The order of the appellate authority having set aside the order of the original authority, it will have to be given its full effect even in terms of the decision relied upon by learned Counsel for the petitioner in DAHYABHAI'S case supra and its

consequence will have to be taken to its logical conclusion. If so, the earlier action on the part of the authorities under Sections 10(3), 10(5) and 10(6) of the Act all fall to ground when the order u/s 10(2) of the Act was set aside.

22. In fact, the Deputy Commissioner is also clearly wrong in thinking that notwithstanding his re-determination, he has to revive his earlier order only because the Divisional Commissioner technically had not set aside the subsequent order u/s 10(3) of the Act or taking over of possession u/s 10(6) of the Act etc.,. Such a view is clearly unsustainable in law.

23. In so far as provisions of the repealing Act is concerned, Section 4 of the repealing Act applies to a situation where any proceedings were pending and had not crossed the stage of taking over of possession u/s 10(6) of the Act as a follow up of issue of a Notification u/s 10(3) of the Act. It is the notification u/s 10(3) of the Act which has the effect of making the land vest in the Government as though it is deemed to have been acquired under the relevant acquisition law.

24. In the present case, factually, after the order dated 30-6-1998 was passed by the Deputy Commissioner, subsequent to the remand from the Divisional Commissioner, this is an order u/s 10(2) of the Act. No fresh proceedings have taken place thereafter. That means the proceedings remained at the stage of Section 10(2) of the Act. If so, Section 4 of the repealing Act is clearly attracted and not the provisions of Section 3 of the Act. The legal position is that even the order passed by the Deputy Commissioner u/s 10(2) of the Act also abates in the wake of the provisions of Section 4 of the repealing Act and if all proceedings abate, there is no determination of any excess land under the Act. No action under the repealed Act remains in law and if so the petitioner is entitled for retaining the land that he had purchased from his erstwhile owner.

25. In fact, the submission of learned Counsel for the petitioner gets support even from the decision relied upon by learned Government Pleader also.

26. At any rate, the endorsement bearing No. ULC/SR/11/1976-77 dated 23-8-2004 issued by the Deputy Commissioner, Dakshina Kannada, Mangalore [copy at Annexure-J] cannot be sustained and it is accordingly quashed by issue of a writ of certiorari.

27. Respondents are also directed not to interfere or disturb the possession or the ownership of the particular subject matter land i.e., 37 cents or 1,493.42 sq. mtrs., of land by the petitioner purporting to act in exercise of their powers under the repealed Act or the repealing Act. If the respondents have acted in a situation independent of the provisions of the Act, in respect of any extent of land, that action is not disturbed under the present order. What is declared to have lapsed in terms of Section 4 of the repealing Act is only a proceeding that had taken place under the provisions of the repealed Act.

28. Writ petition allowed. Rule made absolute. No costs.