

(2004) 03 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No. 21720 of 2001

Hyderabad Tulaman Limited

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision: March 16, 2004

Acts Referred:

- Urban Land (Ceiling and Regulation) Act, 1976 - Section 20(1), 8(4)

Citation: (2004) 3 ALD 39

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: T. Rajendra Prasad, for the Appellant; Government Pleader for Respondent Nos. 1, 2, 4 and 5; T. Niranjan Reddy, SC for HUDA, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

Petitioner is an Industry, established in the year 1968, for the manufacture of mechanical and electronic weighing machines. The Director of Industries allotted an extent of Ac.3.30 gts., of land in Sy.No.30, Balanagar Township. Thereafter, the A.P. Industrial and Infrastructure Corporation (APIIC), came into existence to manage and handle all the industrial estates. On the basis of the previous allotment made by the Government in the year 1968, the APIIC executed a sale deed dated 7-8-1976. In the meanwhile, the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"), came into force. As required u/s 6(1) of the Act, the petitioner submitted a declaration, in respect of a land held by it, in the year 1976. 24 years thereafter, the Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad, the 5th respondent, passed an order dated 13-11-2000 u/s 8(4) of the Act, declaring that the petitioner holds an extent of 7,349 54 sq. metres of land, in excess of ceiling limits.

2. Much before the 5th respondent passed orders u/s 8(4), petitioner made several representations to the Respondents 1 and 2, Government of A P., in Revenue Departments, and Principal Secretary, Municipal Administration and Urban Development Department, respectively, seeking exemption from the Act, in respect of the excess land. When the same were not considered for quite a long time, it filed W.P. No. 17567 of 2001 seeking appropriate directions. The writ petition was disposed of through orders dated 23-8-2001, directing the Respondents 1 and 2, to pass appropriate orders, within ten weeks from the date of receipt of the order. Acting on this direction, the 1st respondent passed orders in Memo dated 21-9-2001, rejecting the request of the petitioner. This writ petition is filed challenging the same.

3. Petitioner contends that grant of exemption in respect of the open land, held by industrial units, from the provisions of the Act, was automatic, and to this extent, Government itself passed orders in G.O. Ms. No. 436, dated 23-4-1986 etc. It contends that though the exemption was automatic, the matter was kept pending for years together, and the application was rejected for extraneous reasons. Citing as many as (9) instances of grant of exemptions in favour of industrial undertakings, in and around Hyderabad, the petitioner complains of discrimination.

4. In the counter-affidavit filed on behalf of the respondents, it is stated that once the land is within the Urban agglomeration, it is subject to the provisions of the Act. It is stated that the Government had framed guidelines in the matter of grant of exemptions in favour of industrial undertakings. They contend that grant of exemption is not automatic and necessary orders are required to be passed in this regard, taking relevant aspects into account. The allegation as to discrimination, is denied, and various exemptions granted by it, are sought to be justified; or distinguished.

5. Learned Counsel for the petitioner, Sri Rajendra Prasad, submits that the petitioner was allotted the land way back in the year 1968 and transferred in the year 1976. He contends that though the Government framed necessary guidelines for grant of exemption in favour of industrial undertakings, they were not at all implemented in the case of the petitioner. He submits that the petitioner-Industry, functioned for quite some time on profitable lines, and in the recent past, it has become sick, which necessitated restructuring and diversification of the activity. According to him, the order passed by the 5th respondent is contrary to the provisions of the Act and decided cases, since all the buildings in the entire complex were treated as one unit, in the matter of computation and allowing the appurtenant lands. He submits that the respondents have discriminated the petitioner, both in the matter of computation as well as grant of exemption.

6. Sri G. Vijay Kumar, learned Government Pleader for Assignments submits that the Act did not provide for any exemption as such, in favour of lands held by industries, and with a view to relieve them from hardship, the 1st respondent has framed

guidelines from time to time in this regard. He submits that though liberal approach was adopted in such matters, there is nothing like automatic exemption. He supports the impugned order, stating that it is backed by proper reasons for not acceding to the request of the petitioner.

7. The Urban Land (Ceiling and Regulation) Act, was enacted by the Parliament in the year 1976, with a view to ensure that urban land is not concentrated in limited hands. It was presumed that this measure, in turn, would ensure equitable distribution of urban land. The Act was on the statute book for almost two-and-half decades. Individuals and institutions held their own opinions about the utility and usefulness of the Act. The fact, however, remains that the Parliament has chosen to repeal it, in the year 2000. In view of the typical scheme adopted in the Act, the provisions of the same continue to operate in the State of Andhra Pradesh, since its legislature has not adopted the repeal Act. Though the principal Act went behind the screen, its shadow continues to haunt the individuals and institutions in the State of A.P.

8. The Act defined and delineated the urban agglomeration in the respective states. It also stipulated the extents that can be permitted to be retained by each declarant in such agglomeration. The petitioner acquired the property much before the Act came into force. Industries were not spared in the socialistic measure of imposition of limits on holdings. Except the sheds where the industry as such, is established, rest of the area, was prone to be declared as vacant, as excess land and to be vested in the Government.

9. While industries, as such, were not exempted from the purview of the Act, State Government issued guidelines in the matter of grant of exemption to them. Initially, G.O.Ms.No.931, dated 12-8-1976, was issued prescribing the procedure for grant of exemption in favour of industrial undertakings and Committees were constituted, It was realized that red tapism held the field, and industries were made to depend on the mercy of powers, that be, in the matter. The policy was revised, through G.O. Ms. No. 436, dated 23-4-1986 was issued. Paragraphs 3 and 4 thereof, reflect the problem and provide for solution. They read as under:

"It is, however, noticed that even after following the simplified procedure laid down in the G.O., second read above, considerable delay is still occurring in the grant of exemptions to the entrepreneurs. Government have, therefore decided that the grant of requisite clearances under the Urban Land Ceiling Act will be automatic in cases of land allotted for the Industries by the A.P. Industrial Infrastructure Corporation for Industrial uses.

Accordingly Para 3(i) of the G.O. second read above will be modified as follows;

"The Managing Director, Andhra Pradesh Industrial Infrastructure Corporation should send a copy of the allotment order together with a copy of the lease-cum-sale deed to Government in Revenue Department who would grant

exemption u/s 20(1)(a) of the Urban Land Ceiling Act, 1976 without enquiry by any other agency."

10. Another important aspect of the matter is, that the industries were in need of alienating lands held by them in the matter of restructuring. For this purpose, guidelines were issued in G.O. Ms. No. 900, dated 8-9-1989.

11. The order u/s 8(4) of the Act, in the case of the petitioner, was passed after 13-11-2000. The reasons for the delay are neither referred to in the order itself, nor, are relevant for the purpose of this writ petition. On receiving a provisional computation from the 5th respondent, the petitioner submitted a representation stating that there are several individual units, in the factory and each needs to be allowed appurtenant land of 500 sq. yards. As many as (41) such structures were indicated in the enclosed map together with their location. The 5th respondent, however, has chosen to treat the entire industry, almost, as one unit, so much so, the expansion undertaken subsequent to the date on which the Act came into force, were not even recognized, and treated as vacant land. This discloses the amount of seriousness with which the Government is pursuing its policy of promoting industries. An incentive provided for by the Industries Department, is mercilessly stifled by the revenue department.

12. Much before the 5th respondent passed an order u/s 8(4) of the Act, the petitioner approached the Respondents 1 and 2 for grant of exemption. As seen in Paragraphs 3 and 4 of G.O. Ms. No. 436, it needed nothing more than forwarding a copy of the sale deed by the APIIC. Still, Respondents 1 and 2 proceeded as though the orders contained in G.O. Ms. No. 436, was not meant to be taken seriously. It required an order of this Court to make them to act. The impugned order emerged out of such exhortation.

13. A perusal of the impugned order discloses that the only reason on account of which the exemption was refused is, that the petitioner proposes to undertake commercial activity. The 1st respondent has not taken the guidelines contained in G.O. Ms. No. 436, dated 23-4-1986 into account. When the said G.O. is so clear in terms that, exemption in such cases was automatic, to be granted, as a matter of course, the 1st respondent has ignored the law on the subject and kept his discretion above everything.

14. One can understand, if the 1st respondent acted consistently in the matter, even in refusing to implement or following G.O. Ms. No. 436, dated 23-4-1986. Its approach was selective. Pressures and considerations that bring about selective approaches by the authority vested with the power, are not difficult to be discerned. As observed earlier, petitioner has furnished as many as (9) instances, where such exemption was granted. The explanation offered by the respondents in the counter-affidavit is hardly convincing. For example, one instance alleged by the petitioner is as under:

"M/s. Vijaya Foundaries, Coimbatore had procured 32 acres of land in Uppal area with the intention of starting a big Foundry in Hyderabad and due to the present recession in Industry they have dropped the idea of a new foundry and they have obtained permission to sell their land."

15. The reply given to this, by the respondents in their counter-affidavit reads as under:

"With reference to Para 6(b)(i) it is further submitted that M/s. Vijaya Foundry is a registered firm under the Registrar of Firms. The extent of land is Ac.29.18 guntas covered by 159/1, 160 to 162 of Mallapur Village situated in the peripheral area of Hyderabad Urban Agglomeration. The lands are earmarked for agricultural purpose, as per the Master Plan. Therefore, the said land does not attract the provisions of Urban Land Ceiling Act as long as the land use remains agriculture. The declarant firm has not started any industry in the said land. The writ petitioner also mentioned in the affidavit that the declarant had not started any industry."

16. If the land was in peripheral area, exemption is limited to (5) acres. If the use of the land continued for agriculture, there was no necessity to grant exemption at all. The explanation offered, as regards the other instances, is not substantially different.

17. This Court does not find any legal basis or justification for the Respondent No. 1, in not extending the benefit under G.O. Ms. No. 436, dated 23-4-1986 to the petitioner. The impugned memo dated 21-9-2001, is accordingly set aside, and the 1st respondent is directed to consider the matter afresh, strictly in terms of G.O. Ms. No. 436, dated 23-4-1986, and pass appropriate orders, within six weeks from the date of receipt of a copy of this order.

18. The writ petition is accordingly allowed. There shall be no order as to costs.