Kamran Mirza and Others Vs Commissioner of Land Reforms and Urban Land Ceilings and Others

Court: Andhra Pradesh High Court

Date of Decision: March 28, 2006

Acts Referred: Constitution of India, 1950 â€" Article 31
Urban Land (Ceiling and Regulation) Act, 1976 â€" Section 10, 20(1), 33, 6, 8(3)

Citation: (2006) 3 ALT 794

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: N.P. Anjana Devi, for the Appellant; G.P. for Assignments for Respondent Nos. 1 and 2 and O. Manohar Reddy, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.
This Writ petition is filed challenging the orders dated 19-08-1997 passed by the Commissioner of Land Reforms

and Urban Land Ceilings, the 1st respondent herein.

2. Petitioners own certain lands and other immovable properties within the urban agglomeration of Hyderabad, in various survey numbers. They

filed individual declarations as required u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short ""the Act""). Since the petitioners have

a common ancestry and source of title to the property, the 2nd respondent processed the declarations of the petitioners, jointly. He passed on

order dated 28-01-1994, u/s 8(4) of the Act, holding that each of the petitioners is liable to surrender different extents of lands totalling to

89,170.89 Sq.mts.

3. Petitioners filed an appeal u/s 33 of the Act, before the 1st respondent. Their complaint was that the 2nd respondent did not give an opportunity

to them, before passing orders u/s 8(4) and 9 of the Act. The 1st respondent dismissed the appeal through the impugned order dated 19-08-1997.

4. On behalf of respondents 1 and 2, a common counter affidavit is filed. The developments that have taken place ever since the submission of

declarations by the petitioners till the stage of filing the writ petition have been referred to, in detail. It is stated that though the petitioners were

provided with ample opportunity, they did not choose to appear on several occasions, and that the 2nd respondent passed orders u/s 8(4), after

verifying the record. It is urged that the 1st respondent has also called for the record, on being satisfied that the computation of the lands held by

the petitioners was done by the 2nd respondent, in accordance with the provisions of the Act; he dismissed the appeal. It is stated that after the

order passed under Sections 8(4) and 9 of the Act became final, further proceedings u/s 10 were initiated. The possession of the surplus land is

said to have been taken by the Government.

5. The 3rd respondent is a Co-operative Housing Society. They pleaded that they entered into an agreement of sale with the petitioners and they

have acquired rights in respect of the land. According to them, the proceedings for regularization of excess land in their favour are at an advanced

stage,

6. Respondent Nos. 4 to 25 got themselves impleaded by filing W.P.M.P.No. 5070 of 2006. They state that they filed declarations in respect of

the same land and their rights also need to be taken into account before any finality is added to the claims of the petitioners herein.

7. Learned Counsel representing the writ petitioners, learned Government Pleader for Assignments and learned Counsel representing respondents

3 to 6, and learned Counsel for the implead petitioners, have made extensive submissions on the lines indicated in the respective pleadings.

8. The petitioners themselves recognized their obligation to submit declarations in respect of the lands held by them. For one reason or the other,

the 2nd respondent could not take up the processing of declarations for a considerable time. The declarations were filed way back in the year

1976 and the orders u/s 8(4) came to be passed nearly two decades thereafter, in the year 1994. A perusal of the order dated 28-01-1994 does

not disclose that any oral hearing has taken place, or that the submissions made thereat, have been taken into consideration. The only reference

made in the process of discussion, with reference to lands in individual survey numbers, is to the objections submitted by the petitioners, in

response to the provisional computation made u/s 8(3) of the Act.

9. In the counter affidavit filed on behalf of respondents 1 and 2, the details of the stages, which the proceedings have undergone, are furnished. It

is stated that the provisional order u/s 8(3) was passed way back on 23-10-1981, and that the petitioners have submitted their objections on 19-

01-1982. After the petitioners submitted their objections, no steps were taken for a period of 11 years. The matter was listed for hearing on 11-

08-1993. On that day, the case was adjourned to 19-08-1993, on a request made by the 3rd respondent herein. From 19-08-1993, it was

adjourned to 02-09-1993, at the request of the petitioners. The record discloses that, for every date of hearing notices were served on the parties,

even where they were represented in the previous date of hearing. However, it is neither stated in the counter affidavit nor it is found from the

record that notices of hearing were served upon the petitioners, for the date of hearing, 02-09-1993. On the ground that there was no

representation for the petitioners, the 2nd respondent proceeded to pass final orders. The relevant paragraph in the counter affidavit reads as

under.

On 19-08-1993 the case was taken up for hearing. Sri R. Karoom. Advocate appeared for the declarant and sought time for arguments. The case

was adjourned and posted to 02-09-1993. On this date, the declarant and his counsel both absent. As such further hearing was closed and orders

u/s 8(4) and 9 were passed on 28-01-1994 based on the material available on record vide procgs. No. D1/5481 & 5489 to 5491/76,

determining them as surplus vacant land holders....

10. It has to be noted that the only lapse attributed to the petitioners in the pendency of proceedings for a period of about two decades was, their

absence on 02-09-1993. It is not as if the 2nd respondent has intimated to the petitioners that no further adjournments would be granted. He was

very liberal in granting adjournments to the 3rd respondent, on 11-08-1993. It must not be forgotten that the hearing of the proceedings was

resumed in August 1993, after lapse of 11 years, and the petitioners genuinely need time to make necessary arrangements, either for briefing their

counsel, or to re-arrange the necessary material. The Act is almost expropriatory in nature. Valuable immovable property in urban areas, held by

the petitioners and their predecessors for generations together, is to vest in the Government, completely divesting them, of their right over it. The

extent involved was about 1,00,000 sq. mts.

11. Further, it is not as if the 2nd respondent passed the order within few days from the last date of hearing i,e. 02-09-1993. He has taken almost

four months to pass an order, which contains the reproduction of particulars furnished in the declarations; cryptic and stereotype discussion, in

relation to vast extents of land, and ultimately a conclusion that the petitioners are entitled only to retain an area of 1,000 sq. mts.,, each. The order

is so vague, imperfect and callous, that it did not take into account the existence of structures. The petitioners were not even allowed the

appurtenants and additional lands, in relation to the dwelling units, as provided for under the Act itself. It can be safely said that the incumbent who

held the office of the 2nd respondent at the relevant point of time was interested in statistical accomplishment of such a vast area for the

Government. In a country governed by Rule of Law, such an exercise is totally impermissible. The officer was required to be much more objective,

and reasonable. He lost sight of the fact that an authority is under obligation to furnish consistent and cogent reasons, even to evict an unauthorized

occupant of small extent of Government land.

12. The Act provides for a regular appeal to the 1st respondent. The petitioners preferred an appeal and one of their grievances was that, they

were not given an opportunity of being heard by the 2nd respondent. The order passed by the 2nd (sic. 1st) respondent runs into 11/2 typed

pages. The only portion of the order, which can be said to be the actual adjudication, reads as under.

As could be seen from the orders of the Special Officer and Competent Authority. Hyderabad, he has taken into consideration all the objections

filed by the appellant and considered, the objections and passed orders excluding the extents from the holding of the appellant, and finally arrived

at a total surplus vacant land of the declarant in the orders passed by him. The orders of the Special Officer and Competent Authority, Urban Land

Ceiling Hyderabad are exhaustive and he has also taken into consideration the terms and conditions of G.O.Ms.No. 733, Rev., dated 31-10-1988

and also the orders issued by the Government on the exemption u/s 20(1)(a) for the lands held in Sy. Nos. 138 & 140 measuring 35,107.28

S.Mts. in favour of Vegneshwara Co-operative Housing Society, under the Urban Land Ceiling Act, and finally determined total extent of

89,170,89 S.Mts. in Sy.Nos. 139 of Saidabad (V) and Sy.Nos. 322 and 323 of Shaikpet Villages in respect of the declarants.

In view of the above, I see no reason for interference with the orders passed by the Special Officer and Competent Authority, Urban Land Ceiling

Hyderabad in his Proceedings No. D1/5481, 5485 to 5491/76, dated 28-01-1994.

In the result, the appeal is dismissed....

13. In a way, it can be said that the nature of adjudication undertaken by the 1 Respondent is not, substantially different from the one undertaken

by the 2nd respondent.

14. In Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, , the Supreme Court upheld the constitutional validity of the

Act, on the touchstone of Article 31 of the Constitution of India and the noble object sought to be achieved through the Act. With the passage of

years, the Parliament itself had repealed the enactment, obviously to pave the way, to the reforms on the economic front, The Act, however

continues to be in force in the State of A.P. The effect of the Executive Orders passed by the Government from time to time is that the owner of

land, which is declared as excess, is permitted to hold it, by paying the cost of the same to the Government. The object sought to be achieved

under the Act, viz.

to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to

regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in

the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban

agglomerations to subserve the common good.

stares, at such measures. That however is a different aspect. But, the petitioners cannot be told that they can just forget about the 90,000 sq mts.,

which was inherited by them from their ancestors. Viewed from any angle, the petitioners certainly deserve to be given an opportunity, and they are

entitled, as of right, to be heard before their rights, in respect of such vast extent of property, are taken away.

15. For the foregoing reasons, the writ petition is allowed, and the orders dated 19-08-1997 and 28-01-1994 are set aside. The matter is

remanded to the 2nd respondent for fresh consideration and disposal.

16. The Government is said to have taken possession of the land in pursuance of the orders, which are set aside herewith,. The land shall continue

to be in the same condition, in all respects, till the 2nd respondent passes fresh orders. The nature of steps to be taken thereafter, would depend

upon the purport of the order, and the rights of the petitioners, in respect of any portion of the land, shall not be defeated on the sole ground that

possession of the same was taken by the Government, in pursuance of the orders, which are set aside in this writ petition.

17. It is made clear that the 2nd respondent shall be under obligation to deal with each and every contention and furnish reasons in support of the

conclusions arrived at by him, after providing an opportunity to the petitioners and other interested parties. There shall be no order as to costs.