

Sri Venkatreddi Vs The Commissioner of Land Reforms and Urban Land Ceilings and Appellate Authority and Another

Court: Andhra Pradesh High Court

Date of Decision: Sept. 12, 2003

Acts Referred: Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 â€” Section 2(1)

Constitution of India, 1950 â€” Article 252

Urban Land (Ceiling and Regulation) Act, 1976 â€” Section 2, 33, 4, 6(1), 8(2)

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: A. Sudarshan Reddy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.V.S.Rao, J.

The petitioner claims to be absolute owner of the land admeasuring about Acs.21.90 gts. comprised in Sy.Nos.123 to 127,

130, 132, 133, 136 and 137 situated at Nanakramguda village, Serilingampalli Mandal, Ranga Reddy District. He asserts that they are agricultural

dry and wet lands which are being cultivated till now. After coming into force of the Urban Land (Ceiling & Regulation) Act, 1976 (" the ULC"

Act for brevity), the petitioner filed a declaration u/s 6(1) of the ULC Act before the second respondent claiming the lands to be agricultural lands

and, therefore, they cannot be declared as vacant lands under the ULC Act. After processing the declaration, the second respondent issued a draft

statement u/s 8 of the ULC Act on 28-9-1977 accepting the claim of the petitioner in respect of the lands in Sy.Nos.123 to 127, 132, 133 and

137 to an extent of Acs.10.20 gts. which stood excluded from cultivation as per Section 2(o) of the ULC Act. However, the second respondent

treated the land comprised in Sy.Nos.130 and 136 admeasuring an extent of 46,135 Sq.mtrs. as vacant land. It was for the reason that during the

period 1970-71 to 1975-76, in the Revenue records the land was shown as fallow. The petitioner submitted his objections on 22-10-1984 and

25-10-1984 after receiving notice under sub-section (2) of Section 8 of the ULC Act. In the objections, he reiterated that the land in Sy.Nos.130

and 136 was agricultural land and that they are being used mainly for agriculture only. As such, they are treated as agricultural lands and are liable

to be excluded from the computation u/s 2(o) of the ULC Act.

2. The petitioner alleges that the second respondent got an enquiry made and obtained a report dated 29-10-1984. Thereafter, the second

respondent conducted enquiry on various dates. The petitioner alleges that he was not served with any notice and finally on 19-5-1986 the second

respondent issued final statement u/s 8(4) rejecting the claim of the petitioner and treating the land in Sy.Nos.130 and 136 as vacant land as they

were kept fallow. The petitioner also alleges that the report dated 12-9-1985 and another report of the Deputy Inspector of Survey dated 2-4-

1986 were not communicated to him before passing orders/issuing final statement u/s 8(4) of the ULC Act. The petitioner also asserts that these

lands were shown as agricultural lands in the proceedings under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 in

C.C.No.135W75 before the Land Reforms Tribunal, that after getting the enquiry made, in the statement it is shown that the lands were cultivated

from 1971 to 1975 and that the Land Reforms Tribunal declared the petitioner as non-surplus landholder as per orders dated 20-12-1975.

There is a well and alugu in the lands which are being used for the purpose of irrigation. There is no material before the second respondent to show

that the lands are being used for non-agricultural purpose.

3. Aggrieved by the orders dated 19-5-1986 passed by the second respondent, the petitioner carried the matter by way of appeal u/s 33 of the

ULC Act before the first respondent, who by order dated 5-9-1995 confirmed the orders passed by the second respondent holding that the lands

cannot be treated as agricultural lands as entries in the Revenue records would show that the land is kept fallow. This order is assailed in this writ

petition.

4. A counter affidavit is filed on behalf of the respondents by Additional Special officer-II, Urban Land Ceilings, Hyderabad. It is stated that the

petitioner did not produce any documentary evidence to show that the lands in Sy.No.130 and 136 are used mainly for the purpose of agriculture

during the relevant period. As such, the lands in question are treated as vacant lands as per Section 2(q) of the ULC Act. The respondents,

however, do not deny that the copies of various enquiry reports were not furnished to the petitioner. They contend that as the petitioner never

raised any objection nor asked for copies of the reports, the contention that no opportunity was given to him is untenable.

5. Sri E.Manohar, learned Senior Counsel appearing for the petitioner, submits that both the respondents failed to appreciate Section 2(o) of the

ULC Act in a proper perspective. The proceedings before the Land Reforms Tribunal and also the master plan prepared by Hyderabad Urban

Development Authority (HUDA) conclusively show the lands in question as agricultural lands. There is no evidence before the respondents to

show that the lands are being used for non-agricultural purpose. In the absence of such allegation, the lands must be treated as agricultural lands.

An entry in the Revenue records that the land is kept fallow or the land is fallow would not alter the use to non-agricultural purpose. Even if the

land is kept fallow, it cannot be treated as vacant land u/s 2(q) of the ULC Act. It is also contended that as per the Government orders in

G.O.Ms.No.733, Revenue, dated 31-10-1988, the petitioner is entitled to retain the land in Sy.Nos.130 and 136 as the lands are being used for

agricultural purpose even according to the various entries in the Revenue records. The learned Senior Counsel placed reliance on the judgment of

Calcutta High Court in Bishnu Kumar v. Sub-Divisional Officer(1979) 1 Cal.L.J. 38, AIR 1979 NOC 129 (Calcutta) Howrah¹ and HUDA

Regulations.

6. Per contra, Sri G.Vijay Kumar, learned Govt. Pleader for Revenue submits that if any land is not cultivated as on the date of coming into force

of the ULC Act, the same cannot be treated as agricultural land and the same has to be treated as vacant land. He placed reliance on the

provisions of Sections 2(o) and 2(q) of the ULC Act. He also placed reliance on the judgment of the Supreme Court in State of U.P. v.

Nandkumar Agarwal, (1997) 1 SCC 754. He also submits that even as per the master plan Nanakramguda was included in the non-municipal

area of Hyderabad forming part of urban agglomeration and therefore, the petitioner cannot claim the land as agricultural land. As per the Revenue

records, during 1970-75, the land was recorded as "fallow" and the fallow land cannot be termed as agricultural land.

7. The learned Senior Counsel for the petitioner placed reliance on the decisions of this Court in support of the contention that if agricultural land is

included in the master plan subsequently, the same has to be treated as non-agricultural land only from the date of inclusion in the master plan.

Admittedly, as on the date of coming into force of the ULC Act on 17-2-1975 {See Sections 4 and 4(a)} in the State of Andhra Pradesh, the land

was not registered in the Revenue records as meant for non-agricultural purpose. It was only mentioned that his father was cultivating the land.

Hence, the only question that falls for consideration is whether the land which was kept fallow and recorded as such in the Revenue records can be

treated as agricultural land for the purpose of Section 2(o) of the ULC Act in which event it does not fall under any category of vacant land as per

Section 2(q).

8. Before considering the question whether fallow land can be treated as agricultural land, it is necessary to refer to the relevant provisions of the

ULC Act.

9. Sections 2(a), 2(o) and 2(q) defines ""appointed date"", ""urban land"" and ""vacant land"" and read as under.

2 (a) ""appointed day"" means,-

(i) in relation to any State to which this Act applies in the first instance, the date of introduction of the Urban Land (Ceiling and Regulation) Act,

1976 in Parliament, and

(ii) in relation to any State which adopts this Act under clause (1) of article 252 of the Constitution, the date of such adoption;

2(o) ""urban land"" means,-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban

agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a

town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land

which is mainly used for the purpose of agriculture.

Explanation.- For the purpose of this clause and clause (q),-

(A) ""agriculture"" includes horticulture, but does not include-

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breeding of livestock, and

(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the

appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day, as for the purpose of agriculture, there

is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed

to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State

Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture

if the land has been specified in the master plan for a purpose other than agriculture; 2(q) "vacant land" means land, not being land mainly used for

the purpose of agriculture, in an urban agglomeration, but does not include -

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed

on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being

constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock,

on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as

has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the

purposes of this clause.

10. In pith and substance, ULC Act is a regulatory legislation for imposition of ceiling on vacant land in urban agglomerations with a view to

preventing concentration of urban land in the hands of a few persons and speculation and profiteering. Section 3 declares that no person shall be

entitled to hold any vacant land in excess of the ceiling limits and Section 4 prescribes ceiling limits in various urban agglomerations. As per Section

5, no person shall be entitled to transfer vacant land in excess of ceiling limits by way of sale, mortgage, lease or otherwise and any such transfer of

the vacant land shall be null and void. Section 6 makes it mandatory for every person holding vacant land in excess of the ceiling limits to file a

statement before the competent authority specifying the location, extent, value and other particulars as may be prescribed. Section 8 empowers the

competent authority to determine the land in excess of ceiling limits after conducting enquiry in accordance with the provisions of the ULC Act.

After the excess land is determined as per Sections 8(4) and 9, the land has to be acquired and taken possession in accordance with the provisions

contained in Sections 10 and 11.

11. The various provisions referred to hereinabove i.e., Sections 4 - 10, specifically refer to vacant land and not urban land or agricultural land.

Therefore, if there is any agricultural land in urban agglomeration which is agricultural land as well, the same cannot be treated as urban land u/s

2(o) and as vacant land for the purpose of Section 2(q). Any land which is situated within the limits of urban agglomeration, but not put to any non-

agricultural use, cannot be treated as urban land unless it is so referred to in the master plan prescribed under any law in force for the development

of the area.

12. The term "agriculture" is not specifically defined in the ULC Act. However, the explanation to Section 2 gives some guidelines. As per this

explanation, agriculture includes horticulture. But, raising of grass, dairy farming, poultry farming, breeding of livestock etc. are not treated as

agriculture. The explanation only gives few instances where the land cannot be treated as agricultural land. It is admitted case that the land has been

kept fallow at the relevant time. Whether the land which is registered in the Revenue records as agricultural land and/or as land which is not meant

for non-agricultural purpose when kept fallow ceases to be agricultural land?

13. The land is situated in Nanakramguda in Ranga Reddy District, which is part of Telangana area of Andhra Pradesh. The Revenue laws

regulating the land tenures, inams and tenancies in the Telangana area are different. It is, therefore, necessary to refer to these enactments to

understand the term "agriculture". While interpreting the term "agriculture", in my considered opinion, it is permissible to refer to the provisions of

the various Revenue Acts which alone would throw some light. Further, the respondents relied on the entries in the Revenue records which were

again kept and maintained in accordance with A.P. (Telangana Area) Land Revenue Act, 1317 F. (Telangana Revenue Act).

14. Though the term "agricultural land" is not defined in Telangana Revenue Act, by Section 2(1)(b), "land" is defined as including all types of

benefits pertaining to land or things attached to the earth. Section 50 stipulates that the land revenue shall be assessed according to various modes

of use; whether agriculture use or in addition to agricultural use any other use from which profit is derived. Section 61 lays down that every

occupant of agricultural land is entitled to construct godowns or wells on the land occupied by him or otherwise improve its condition, but without

written permission from the Collector, he will not be entitled to appropriate agricultural land for purposes other than agriculture. It is nobody's case

that the petitioner applied for permission for converting agricultural land into non-agricultural land and that the same was granted by the Collector.

In A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (Telangana Tenancy Act), the term "agricultural land" is defined in Section

2(1)(c) as under.

15. "'Agricultural land'" means land which is used or is capable of being used for agriculture or reserved for growing forests and includes:

(i) fallow land,

(ii) the sites of farm buildings appurtenant to agricultural land, and

(iii) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses;

16. A plain reading of the above provision would show that the land which is used or is capable of being used for agriculture is agricultural land and

it includes fallow land, site for farm building situated in agricultural land and site for dwelling houses occupied by agriculturists. I may also refer to

A.P. (Telangana Area) Abolition of Inams Act, 1955. The said Act was enacted to safeguard the rights of the tenants of inamdar by duly

compensating the inamdar. Though it deals with abolition of inams in respect of agricultural lands, the term "agriculture" is not defined. Section 9,

however, deals with vesting of buildings and inam lands used for non-agricultural purpose.

17. The Chambers English Dictionary defines the term "fallow" as land left untilled or unsown for a time; land that was unsown after having been

ploughed and to plough without seeding. In New Oxford Dictionary of English (1998), the word "fallow" is defined as "'ploughed and harrowed

but left unsown for a period in order to restore its fertility as part of a crop rotation or to avoid surplus production: incentives for farmers to let land

lie fallow in order to reduce grain surplus.

18. A reference may be made to Words and Phrases Legally Defined (Butterworths 1969 Vol.1 p 61) where the expression of "'agricultural land

is defined as under.

19. The expression "'agricultural land'" includes arable and meadow land and ground used for pastoral purposes or for market or nursery gardens,

and plantations and woods and orchards, and also includes any fences on such land, but does not include any moorland or buildings.

20. "'Agricultural land'" means land used as arable meadow or pasture ground, or for the purposes of poultry farming, market gardens, nursery

grounds, orchards, or allotments, including allotment gardens within the meaning of the Allotments Act 1922 (i.e., allotments not exceeding forty

poles in extent which are wholly or mainly cultivated by their occupiers for the production of vegetable or fruit crops for consumption by

themselves or their families). "Agricultural land" means any land used as arable, meadow or pasture land, land used for a plantation or a wood or

for the growth of saleable underwood, or land used for the purpose of poultry farming, market gardens, nursery gardens, orchards or allotments,

including allotment gardens within the meaning of the Allotments Act 1922.

21. In Corpus Juris Secundum (Vol.III, pp 360-361), while describing the term "agricultural" as pertaining to, connected with, or engaged in

agriculture or tillage as distinguished from "commercial" and "residential", "agricultural land" is defined as under.

22. Agricultural lands. A term synonymous with "land of an agricultural character," that is, land susceptible of being plowed and seeded, or from

which crops may be produced, in which sense it was held under a particular statute to include all lands not within the limits of "a town or city nor

within three miles of such limits, lands valuable only for grazing purpose, and lands principally valuable for the timber on them.

23. Therefore, arable land or land which is not used for commercial or residential purposes and recorded in the Revenue records as land meant for

cultivation, must be treated as agricultural land. Even if the land is kept fallow, the same is treated as agricultural land for the purpose of Telangana

Tenancy Act. The land in question before coming into force of the ULC Act was governed by various Revenue laws applicable to Telangana area.

The land is admittedly registered as fallow from 1971-76; Whether it ceases to be agricultural land? The answer to the question must be in the

negative. The reasons are more than one.

24. First, it is not the case of the respondents that the petitioner has applied for permission to convert the land into non-agricultural land as per

Section 59 of the Telangana Revenue Act. Secondly, it is not the case of the respondents that the petitioner is using the land for commercial

purpose or other non-agriculture purposes like residence or one of the purposes which are specifically mentioned in Section 2(o) of the ULC Act

namely, raising grass, poultry farming, breeding of livestock etc. Thirdly, the land in question is dry land and cultivation of the same is depended on

rains. In a given year, if rains are not adequate or there is a drought, the petitioner could not have cultivated the land when there is no irrigation

source for cultivating large extent of land. In such an event, the land has to be kept fallow for a year or more. Fourthly, if the respondents"

contention is accepted, agricultural land which was used for agricultural purpose and for some reason or the other declarant does not cultivate it in

a given year, it is automatically ceases to be agricultural land. That is not the intention of the legislature either in the Telangana Revenue laws or

under the ULC Act. Lastly, it is now well known that agricultural scientists recommend the farmer to keep the land fallow during a crop year for

the purpose of soil management and to ensure continued fertility of land. There could be myriad reasons for keeping the land fallow. Unless and

until the land is converted into non-agricultural land as per law or on one's volition, the authorities under the ULC Act cannot treat it as non-

agricultural land and vacant land for the purpose of ULC Act.

25. In this context, a reference may be made to the judgment of Sri Justice Sabyasachi Mukharji (as His Lordship then was) in *Bishnu Kumar v.*

Sub-Divisional Officer, Howrah (supra) wherein it was held: "the fact that the land is left fallow at say a particular year or a particular period owing

to certain adverse seasonal conditions or to some other reason would not make the land which is used for agricultural purpose, non-agricultural

land.

26. In *Pratima Paul and others Vs. Competent Authority and others*, a Division Bench of Calcutta High Court referred to the above judgment in

Bishnu Kumar v. Sub-Divisional Officer, Howrah (supra) and on interpretation of Sections 2(o), 2(q) and certain words "by any reason

whatsoever" in Explanation (ii) to Section 6(1) of the ULC Act laid down as under.

27.even if the owner is not at all in a position to cultivate the land for the time being due to circumstances beyond his control, like

flood, draught, requisition by the Government or illness or indigence, the land would cease to be agricultural and would become vacant land liable

to be vested under the Act. I have no doubt that the expression "by any reason whatsoever" in Explanation (ii) to S.6(1) cannot include cessation

of cultivation due to such circumstances as aforesaid and that mere non-cultivation cannot make agricultural land a vacant one, unless it can be

shown that the owner could, but still did not cultivate. That being so, the case of the petitioners that they could not and did not cultivate the lands

due to indigence and want of adult male member as a result of the sudden death of their predecessor, the last holder, not having been disputed or

controverted by the respondents, I must hold that the lands in question have not become vacant land. In our country, with half the population under

the bread-line and much more than that under the poverty-line and with our resolve and pledge in the National Charter to secure Social and

Economic Justice, i.e. justice to the poor and the weak, it would be a sacrilege to construe law in a manner which would go to penalize poverty

and other economic disability.

28. Learned Govt. Pleader placed strong reliance on the decision of the Supreme Court in *State of U.P. v. Nandkumar Agarwal (supra)* in support

of the contention that if the land is not mainly used for agriculture as on the appointed date, the same shall have to be treated as vacant land for the

purpose of Section 2(o) of the ULC Act.

29. In *State of U.P. v. Nandkumar Agarwal* (supra), the Supreme Court was dealing with a case where the declarant admittedly was carrying on

the business of brick kiln and for that purpose substantially digging the earth and using the land for drying kachha bricks. It was also the case of the

declarant that the agricultural land was also being used for the huts of the bricklayers for their residences and for stacking the manufactured bricks.

On these facts, it was held that though the land was shown as agricultural land in the master plan, the land was registered in the Revenue records as

ghatta land (may be for the purpose of making bricks). The Supreme Court agreed with the contention of the State that the land ceased to be

agricultural land. It was laid down as under.

30.It is correct that the land in question is entered in the revenue record but at the same time the record shows that the land is being used

for ghatta. The foremost question is: If the land in question though agricultural was being mainly used for the purpose of agriculture on the

appointed day? Seeing the definitions as set out above and the affidavit of the 1st respondent dated 13/8/1976 the answer is obvious that the land

in question is not being mainly used for the purpose of agriculture. Agriculture under the explanation to clause (o) has limited meaning. It includes

horticulture but does not include cultivation of every type of vegetation or rearing of animals or birds. That apart, to hold that land is mainly used for

the purpose of agriculture it is not enough even if the land is entered in the revenue records before the appointed day used for the purpose of

agriculture or even if so entered the master plan gives purpose of the land other than agriculture. In the present case though (B) and (C) to the

explanation are satisfied but (A) is not as the purpose to which the land, though agriculture and so entered in the revenue records, was being used

for running of brick kiln. The High court was not, therefore, correct in holding that the land was being mainly used for the purpose of agriculture

merely on the strength of the purpose in master plan which is specified as agriculture (krishi bhumi) and that the land is entered in the revenue

records. The High court has wrongly applied Explanation to clause (o) of Section 2 of the Act. Simply because land is entered in the revenue

record would not mean that it is being used mainly for the purpose of agriculture. Here the land is mainly used for the purpose of brick kiln business

of the 1st respondent. It is not material if a small portion of the land was being used for the purpose of agriculture as well.

31. In this case, there is no allegation against the petitioner, as noticed hereinabove, that the petitioner is using the land for any other purpose other

than agricultural purpose. If the contention of the petitioner that merely keeping the land "fallow" does not change the nature of the land and does

not amount to converting agricultural land as non-agricultural land. This aspect of the matter has not been effectively met by the other side. Be that

as it is, in view of my finding that even if the land is kept fallow, it must be treated as agricultural land unless contrary is proved, the impugned order

cannot be sustained.

32. The other submission made by the learned Govt. Pleader is that the land in Sy.Nos.130 and 136 was included in the Hyderabad urban

agglomeration and, therefore, it ceased to be agricultural land. Even this aspect of the matter cannot be considered here because that is not the

ground on which the petitioner's appeal was rejected. This has to be decided by the appropriate authority.

33. In the result, for the above reasons, the writ petition is allowed. The impugned order passed by the first respondent dated 5-9-1995 is set

aside. The matter is remitted to the appellate authority to re-determine the appeal keeping in view the observations made hereinabove with regard

to Sections 2(o) and 2(q) of the ULC Act. It is also open to the appellate authority to consider the effect of inclusion of Sy.Nos.130 and 136, as

contended by the learned Govt. Pleader, in the urban agglomeration in deciding surplus vacant land held by the petitioner. Needless to point out

that it is open to the petitioner as well as the ULC authorities to place any material evidencing any subsequent events for proper consideration of

the appeal by the first respondent. There shall be no order as to costs.