

(2014) 03 AP CK 0032

Andhra Pradesh High Court

Case No: Writ Petition No. 21934 of 2013

M/s. L.G. Polymers India Private
Limited

APPELLANT

Vs

The State of Andhra Pradesh and
Others

RESPONDENT

Date of Decision: March 28, 2014

Acts Referred:

- General Clauses Act, 1897 - Section 6
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10(3), 11, 12, 13
- Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 3, 3(1)(a), 3(1)(b), 3(2)(a), 4

Citation: (2014) 4 ALD 175 : (2014) 3 ALT 677 : (2014) ALT(Rev) 302

Hon'ble Judges: Vilas V. Afzulpurkar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vilas V. Afzulpurkar, J.

Petitioner is a private limited company and the relief sought for is as under:

...this Honourable Court may be pleased to issue a Writ of Certiorari or any other appropriate writ and quash the Memo of the 1st respondent in Memo.No.34909/UC.III (2)/2012-9, dated 22.05.2013 and direct the respondents to forbear from interfering with the possession and enjoyment of the petitioner over the subject land admeasuring 87.3464 hectares (approximately 215 acres) situated in various survey numbers in Venkatapuram, Vepagunta and Gopalapatnam villages of Visakhapatnam District and grant such other relief as it deems fit and proper in the circumstances of the case

2. The facts, as set out, are referred to hereunder:

(a) The land in question admeasuring 87.3464 hectares (about 215 acres) belonging to Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam and spread over in villages of Venkatapuram, Vepagunta and Gopalapatnam was proposed to be alienated by the hereditary trustees of the Devasthanam to a company M/s. Hindustan Polymers Limited by private negotiations. Under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, such alienation by private negotiations, being permissible only with the sanction of the Government, the Commissioner of Endowments placed the said proposal for consideration by the Government. The sale of the said land in favour of the aforesaid company was approved by the Government under their letter No. 26493/63/C3 dated 06.11.1964 notifying that the said land described under Schedule A, C, D and E at Rs. 2,500/- per acre to be sold to the said company on condition that the sale proceeds should be deposited in the interest yielding deposit in a nationalized bank till income fetching lands are purchased by the Devasthanam and the sale deed shall be executed at the expense of the said purchaser company. The said permission was, accordingly, granted under G.O.Ms.No.2177 Home (Endts.-I) Department dated 23.11.1964 and consequently, under a registered sale deed bearing document No. 169/1965 dated 01.02.1965, the said total land admeasuring Ac.210.58 cents was alienated to the said company.

(b) Vide orders of the High court of Madras in CP.No.43 of 1981 the said purchaser company merged and amalgamated with M/s. McDowell and Company Limited and later, under registered sale deed dated 10.07.1997, being document No. 1176/2008, the said land was purchased by the petitioner company herein.

(c) While the Urban Land (Ceiling and Regulation) Act, 1976 (for short "ULC Act") was enforced, M/s. Hindustan Polymers Limited was granted exemption u/s 20(1)(a) under the ULC Act vide G.O.Ms.No.1033 Revenue (UC.III) dated 08.10.1992 subject to conditions therein, inter alia, that the land shall be utilized for industrial purpose. M/s. Hindustan Polymers Limited had also obtained permission of the Government by a further G.O.Ms.No.526 Revenue (UC.III) Department dated 21.06.1997, which was amended by further G.O.Ms.No.567 Revenue (UC.III) Department dated 05.07.1997 proposing to alienate the said land in favour of the petitioner company. Under the aforesaid order, the Government examined the proposal and permitted M/s. Hindustan Polymers Limited to transfer the said land in favour of the petitioner subject to conditions mentioned under the said G.O. Accordingly, the petitioner obtained title to the said land under a registered sale deed dated 10.07.1997, referred to above.

(d) Petitioner company states that its parent company is in South Korea engaged in the manufacture and sale of General Purpose Polystyrene, High Impact Polystyrene and Expandable Polystyrene having its plant at R.R. Venkatapuram, Visakhapatnam District. It is stated that while the petitioner company is carrying on

industry in petroleum, it has expanded its production by over 100% in the last decade.

(e) Petitioner company was served with the impugned show cause notice in Memo.No.34909/UC.III(2)/2012-9 dated 22.05.2013, Ex.P1, proposing cancellation of the orders of exemption, being G.O.Ms.No.526 dated 21.06.1997 and G.O.Ms.No.527 dated 05.07.1997, on various grounds pointing out alleged violation of the conditions of exemption inclusive of non-utilization of the said land and keeping it for speculative purpose of selling it at multifold times the value. The show cause notice also referred to registered sale deeds executed by the petitioner company to the extent of Ac.2.03 cents in Sy.No.7/2A (old Sy.No.7/B) of Gopalapatnam village under two registered documents in favour of the purchasers.

3. The aforesaid show cause notice is questioned in the present writ petition, inter alia, on the ground that in view of repeal of the ULC Act with effect from 27.03.2008, the land owned by the petitioner company becomes free hold in the hands of the petitioner company and the power of the Government to withdraw exemption stood denuded in view of the repeal of the principal Act. It was also contended that since the physical possession of the land continues to remain with the petitioner company, the principal Act having been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "Repeal Act"), the Government has no jurisdiction to issue the impugned notice. It was also contended that all pending proceedings under the ULC Act stand abated except in cases where possession is taken by the State Government or any person duly authorized by the State Government on behalf of the competent authority. Hence, in the present case, since the possession was never taken by the Government, the Repeal Act squarely governs the issue and all proceedings under the ULC Act stand abate.

4. By order dated 25.07.2013, this Court passed the following order while admitting the writ petition and staying all further proceedings in pursuance of the impugned order:

WP.No.21934 of 2013

Even though the writ petition is filed against a show-cause notice, having regard to the substantive legal issue raised by the petitioner as to the very authority and jurisdiction of the respondents to revoke the exemption granted under the Urban Land (Ceiling and Regulation) Act, 1976 in view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, I am inclined to admit the writ petition.

Rule Nisi. Call for records. Notice returnable in four weeks.

W.P.M.P.No.26886 of 2013

The learned Assistant Government Pleader for Revenue (Assignments) takes notice for the respondents and seeks time for filing counter-affidavit.

Post on 10.09.2013.

The issue raised by the petitioner in the writ petition is whether the respondents have jurisdiction to issue the impugned show cause notice in view of the provisions of Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short "the 1999 Act").

In an identical case, this Court in *Surender Raj Jaiswal vs. Government of Andhra Pradesh* 2011 (6) ALT 327 has held on a harmonious reading of the provisions u/s 20(1) and (2) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the principal Act") coupled with Sections 3 and 4 of the 1999 Act, that in cases where the vacant land is exempted u/s 20 of the Principal Act and where such exemption is not withdrawn before the enforcement of the 1999 Act, such land will become the free-hold land irrespective of any conditions with regard to usage of the exempted land and that even if any conditions subject to which exemption was granted are found violated, the Government has no jurisdiction to withdraw the exemption. It is represented that the said judgment is carried in Special Leave to Appeal (Civil) No. 33773 of 2012 before the Hon"ble Supreme Court, which has passed an order of status quo regarding construction and possession.

In the light of the above facts, there shall be stay of all further proceedings in pursuance of the impugned show-cause notice dated 22.05.2013 of respondent No. 2.

5. The respondent-Government has since filed a counter affidavit together with an application seeking vacation of stay. The said counter affidavit, inter alia, states that M/s. Hindustan Polymers Limited, who had filed declaration u/s 6(1) of the ULC Act, was declared as an excess land holder to an extent of 76.8585 hectares. The said M/s. Hindustan Polymers Limited, accordingly, applied for exemption u/s 20(1) of the ULC Act in view of requirement of the land for existing industrial infrastructure project and on consideration of the said request, under G.O.Ms.No.1033 Revenue (UC-II) Department dated 03.10.1992, exemption, accordingly was granted subject to conditions. The said exemption was granted initially for two years and the said order of exemption was extended by further orders of the Government dated 25.11.1994 for two more years from end of December 1994. Later it was reported by the District Collector, Visakhapatnam that two projects of M/s. Hindustan Polymers Limited viz. U.B. Elastomers and U.B. Petro Chemicals Limited have been shifted to the State of Gujarat and in view of that subsequent development, recommended withdrawal of exemption. The Government, therefore, issued show cause notice dated 19.07.1996 proposing withdrawal of exemption to which M/s. Hindustan Polymers Limited filed a detailed reply dated 29.10.1996 explaining the post liberalization scenario and its intention to bring in LG group of South Korea where the said group promised to invest 100 crores in expansion and diversification of the plants of M/s. Hindustan Polymers Limited. Considering the said explanation of M/s. Hindustan Polymers Limited in modification of G.O.Ms.No.1033 dated 08.10.1992,

the Government issued permission to M/s. Hindustan Polymers Limited to transfer its land in favour of LG Chemicals Limited vide G.O.Ms.No.526 dated 21.06.1997 and the said G.O. was further amended by G.O.Ms.No.567 dated 05.07.1997 substituting "Hindustan Polymers Limited" by "Hindustan Polymers - a division of Mc. Dowell and Company Limited" at all places in the said G.O. and in the place of "L.G. Chemicals Limited of L.G. group of South Korea" the following words were inserted "L.G. Polymers India Private Limited" and in the place of "Petrochemicals Industry only" substituted "Petrochemicals and Chemical Industry".

6. Subsequently, the sale deed was executed in favour of the petitioner company but on the report of the Special Officer and Competent Authority alleging violation of the conditions of exemption, aforesaid, by the petitioner company including sales effected by the petitioner company in favour of some private parties, the Special Chief Secretary and Chief Commissioner of Land Administration, Andhra Pradesh, directed issuance of show cause notice, which is impugned in this writ petition. To the extent of the contention of the petitioner company on repeal of the ULC Act, reliance is placed on Sections 3(1)(b) and 3(2)(a) of the Repeal Act and it is contended that notwithstanding repeal of the ULC Act, exemptions granted under the ULC Act and action for violation against exemption are saved. Strong reliance is also placed on Section 6 of the General Clauses Act, 1897 and it is pointed out that the petitioner company could not have approached this Court without submitting any explanation.

7. Heard Mr. V. Venkataramana, learned senior counsel for the petitioner company and learned Government Pleader for Revenue.

8. Petitioner company has questioned the validity of the impugned show cause notice in the context of the Repeal Act, 1999. It would, therefore, be appropriate to notice Sections 3 and 4 of the Repeal Act, as under:

3. Savings - (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in

this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4 - Abatement of legal proceedings -

All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

9. The Repeal Act specifically declares that all proceedings under the ULC Act not saved u/s 3 of the Repeal Act stand abated. A bare reading of Section 3(1)(a) of the Repeal Act shows that the Government is required to show not only the vesting of the land u/s 10(3) but also taking over of possession of such land. The Government has placed strong reliance upon sub-clause 2(a) of Section 3 of the Repeal Act and it is contended that the Repeal Act does not affect the land vested in the State under sub-section (3) of Section 10 even if the possession of the land is not taken. It is also contended that in all cases where exemption u/s 20(1) of the ULC Act is given when the vacant lands are held surplus, such lands have to be treated, as deemed to have been vested in the Government, as contemplated u/s 10(3) of the ULC Act. In other words, the contention raised by the Government is that the fact that the lands are exempted by the Government u/s 20 means that the lands are vested or deemed to have been vested in the State but for the exemption granted. Hence, placing reliance upon Section 6 of the General Clauses Act, it is contended that rights accrued to the State are not taken away by the Repeal Act and as such, the action of the Government in issuing the impugned show cause notice is valid and cannot be said to be without jurisdiction.

10. Keeping in view that the petitioner company has questioned the show cause notice on the issue of jurisdiction, the merits of the claim of the petitioner company vis-a-vis the contention of the Government with regard to violations or otherwise by the petitioner company is not required to be adjudicated upon in this writ petition. I will, therefore, proceed to examine the jurisdictional issue raised by the learned senior counsel for the petitioner company, assuming that the petitioner company has violated the conditions of exemption and if so, whether the Government has jurisdiction to withdraw exemption granted to the petitioner company.

11. The precise issue as to whether the power to withdraw exemption granted vests with the State fell for consideration before this Court in *Surender Raj Jaiswal v. Government of Andhra Pradesh* 2011 (6) ALT 327 wherein it was held that where such exemption is not withdrawn before the enforcement of the Repeal Act, such land becomes a free hold land irrespective of any conditions attached to the order of exemption. The said decision of the learned single Judge was also affirmed by Division Bench in W.A.No.951 of 2012 dated 25.07.2012 (to which I am also a party). It is stated that a SLP has since been preferred by the State against the said judgment in SLP.No.33773 of 2012 wherein the Supreme Court has ordered status quo with regard to construction and possession in the said SLP and the said SLP is stated to be pending.

12. Apart from the said decision, learned senior counsel for the petitioner company has brought to the notice of this Court two others decisions rendered by learned single Judges of this Court taking similar view in [M/s. Tata Coffee Limited Vs. The Government of Andhra Pradesh, The Chief Commissioner of Land Administration and The Special Officer and Competent Authority](#), and *M/S. Nile Limited v. Stat of Andhra Pradesh* in WP.No.23846 of 2008 dated 06.11.2013. In the later decision, reliance is placed by this Court on a decision of the Supreme Court in [Vinayak Kashinath Shilkar Vs. Dy. Collector and Competent Authority and Others](#), . In addition to the aforesaid decisions, learned senior counsel for the petitioner company has placed reliance upon a latest decision of the Supreme Court in [State of U.P. Vs. Hari Ram](#), where the precise question with regard to deemed vesting u/s 10(3) of the ULC Act fell for consideration in the context of saving clause under the Repeal Act. On an elaborate consideration, the Supreme Court came to the conclusion that for the purpose of saving contemplated under the Repeal Act de facto possession is required to be taken by the State and not de jure. With regard to Section 10(3) of the ULC Act and the deemed vesting, the Supreme Court held in paras 31, 34, 35 and 41 to 43 as under:

Voluntary Surrender

31. The "vesting" in Sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The Court in [Maharaj Singh Vs. State of Uttar Pradesh and Others](#), , while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that "vesting" is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in *Rajendra Kumar v. Kalyan* (2000) 8 SCC 99 held as follows:

28. ... We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. *Coverdale v. Charlton*. *Stroud's Judicial Dictionary* 5th Edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a

subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well.

...

Peaceful dispossession

34. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under Sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under Sub-section (3) to Section 10, there is no necessity of using the expression "where any land is vested" under Sub-section (5) to Section 10. Surrendering or transfer of possession under Sub-section (3) to Section 10 can be voluntary so that the person may get the compensation as provided u/s 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under Sub-section (5) to Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while Sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

...

Effect of the Repeal Act

41. Let us now examine the effect of Section 3 of the Repeal Act 15 of 1999 on Sub-section (3) to Section 10 of the Act. The Repeal Act 1999 has expressly repealed the Act 33 of 1976. The Object and Reasons of the Repeal Act has already been referred to in the earlier part of this Judgment. Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under Sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under Sub-section (5) of Section 10 or forceful dispossession under Sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the Respondent is

entitled to get the benefit of Section 3 of the Repeal Act.

43. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the Respondents had been dispossessed before coming into force of the Repeal Act and hence, the Respondents are entitled to get the benefit of Section 3 of the Repeal Act. However, there will be no order as to costs.

13. In the present case, on hand, since the possession of the land of the petitioner company was, admittedly, not taken and de facto possession continued with the petitioner company clearly shows that the proceedings under the ULC Act are not saved, as contemplated under the ULC Act. Hence, the land in the hands of the petitioner company remained a free hold land after the Repeal Act came into force on 27.03.2008 in the State of Andhra Pradesh.

14. The issue also can be examined from another angle viz. assuming that the State passes an order of withdrawal of exemption, in pursuance of a show cause notice, however, the ULC Act is no more in force and the Government cannot take possession of the land under any of the provisions of the Repeal Act. The power of the State to proceed against the petitioner company after the Repeal Act, being not traceable to any other law, the impugned show cause notice even otherwise is not sustainable. Going further, even the impugned show cause notice only has to be traced to Section 20 of the ULC Act and not to any other provisions and since the principal Act itself does not survive, no other statutory power exist in the Government either calling upon the petitioner to show cause against withdrawal of exemption or for proceeding further in the matter including action as to withdrawal of exemption. As such the State is, accordingly, held to be denuded of any jurisdiction or power under the ULC Act, 1976 and consequently, the impugned show cause notice is without jurisdiction and accordingly quashed.

The writ petition is accordingly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.