

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

WRIT PETITION No.24547 of 2008

Between:

Maraboina Yadaiah and others.

... Petitioners

v.

The State of A.P., Rep. by Prl. Secretary to Government,
Revenue Department, Secretariat Buildings, Hyderabad
and others.

... Respondents

DATE OF ORDER PRONOUNCED: 07-02-2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. : Yes
3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? : No

B. VIJAYSEN REDDY, J

* **HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY**

+ **WRIT PETITION No.24547 of 2008**

% Date: 07.02.2023

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... **Petitioners**

v.

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Revenue Department, Secretariat Buildings, Hyderabad
and others.

... **Respondents**

! Counsel for the Petitioners : Sri C. Hanumantha Rao

^ Counsel for Respondents : GP for Assignment

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. AIR 1993 SC 2465
2. AIR 2002 SC 5
3. 1936 SCC OnLine PC 41
4. (1999) 8 SCC 266
5. (2015) 13 SCC 722
6. (1997) 11 SCC 159
7. 2017 SCC OnLine Hyd 133 : (2017) 3 ALD 706

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**WRIT PETITION No.24547 of 2008****ORDER:**

This writ petition is filed to declare the action of the respondent authorities in determining an extent of 6295 sq. meters out of Ac.4.00 guntas in Sy.Nos.123, 124, 125, 128, 143 and 145 of Kondapur village, Serilingampally Mandal, Ranga Reddy District, as excess vacant land of the respondent No.7 and late B. Pochaiiah in proceedings CC.No.H1/29/2007 dated 10.03.2008 including draft statement under Section 8(1), notice under Section 8(3), orders under Section 8(4), final statement under Section 9, notifications under Sections 10(1), 10(3) and 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the ULC Act') and panchanama dated 02.05.2008 as illegal, arbitrary, without jurisdiction and contrary to the provisions of the ULC Repeal Act and consequently, hold that the impugned proceedings would not affect right, title, interest and possession of the petitioners over the subject property.

2. The brief facts of the case, as set out in the writ affidavit, as are under:

(a) That petitioners No.2 and 3 and their father late Maraboina Durgaiiah purchased agricultural land admeasuring Ac.4.00 guntas in Sy.Nos.123, 124, 125, 128, 143 and 145 of Kondapur village, Serilingampally Mandal, Ranga Reddy District,

under registered sale deed bearing document No.3109/1995 dated 09.03.1995 from one Buyya Balaraj and seven others for a valuable sale consideration. The said land is an agricultural land and being cultivated by the petitioners from time to time. The land does not come within the purview of the ULC Act. Therefore, there was no legal hitch for purchasing the said land, which is automatically exempted under the provisions of Chapter III of ULC Act as per G.O.Ms.No.733 dated 31.10.1988.

(b) That the vendor of the petitioners are eight in number and each one of them is entitled for automatic exemption of Ac.5.00 guntas under G.O.Ms.No.733 dated 31.10.1988. Thus, the total land in an extent of 40 acres of the vendors was liable for exemption. Apart from that the vendors of the petitioners were also entitled to sell the land and there was not legal hitch to execute sale deed in respect of the subject land as the judgment of the Supreme Court in **ATIYA MOHAMMADI BEGUM v. STATE OF U.P.**¹ was holding the field. The subject land was not covered by the master plan, which existed, when the ULC Act came into force with effect from 17.02.1976.

(c) That the law laid down by the Supreme Court in **ATIYA MOHAMMADI BEGUM**'s case (1 supra) was reversed by a three Judge Bench of the Supreme Court in **STATE OF A.P. v.**

¹ AIR 1993 SC 2465

N. AUDIKESAVA REDDY². However, as the sale deed was executed in favour of the petitioner in the year 1995, the same is valid and the later judgment of the Supreme Court in **AUDI KESAVA REDDY**'s case (2 supra) would not nullify the sale deed of the petitioners. The vendor of the petitioner B. Pochaiiah died on 02.11.1995. Notice issued under Section 6(2) of the ULC Act dated 12.01.2007 against late B. Pochaiiah, who died by then, is illegal and unsustainable and the entire ULC proceedings are vitiated.

(d) The respondent authorities do not have jurisdiction to determine the subject land of the petitioners as surplus. The same is done behind the back of the petitioners on the basis of Section 6(2) notice dated 12.01.2007, draft statement under Section 8(1) and notice under Section 8(3) dated 26.02.2007, order under Section 8(4), final statement under Section 9 dated 12.06.2007, Section 10(1) notification dated 27.10.2007, Section 10(3) notification dated 20.11.2007 published in A.P. Gazette No.311 dated 06.11.2007, Section 10(5) notice dated 17.0.2008 and panchanama dated 02.05.2008 and the same is non-est in the eye of law.

3. Counter affidavit is filed by the respondent No.2 on behalf of respondents, which, in brief, states as follows:

² AIR 2002 SC 5

(a) The sale deed dated 09.03.1995 in favour of the petitioners is null and void and is in violation of Section 5(3) and 10(4) of the ULC Act. The petitioners are neither owners nor have they filed statement under Section 6(1) of the ULC Act and they do not have *locus standi* to institute the writ petition. Sri Balaraju and Bala Pochaiiah are pattedars of the land in Sy.Nos.123, 124, 125, 128, 130, 143, 144, 145, 147, 148, 149, 161 and 164 to an extent of Ac.12.02 guntas situated at Kondapur Village. The land owners converted the land into house site plots and sold the same. As the owners of the land did not file declaration under Section 6(1) of the ULC Act, in exercise of powers conferred upon the respondent-authorities, a notice under Section 6(2) of the ULC Act was issued on 12.01.2007 to the declarants/their legal representatives to submit statement in Form-I under Section 6(1) of the ULC Act on or before 12.02.2007. The notice was served on them through the enquiry officer.

(b) The enquiry officer reported that the whereabouts of Sri Balaraju and Sri Bala Pochaiiah are not known and hence, they have affixed notice under Section 6(2) of the ULC on the walls of the plots in Sy.Nos.147 and 148 of Kondapur Village in the presence of panchas under the cover of panchanama on 19.01.2007. A copy of the said notice was also affixed on the notice board of the Deputy Collector/MRO's office, Serilingampally Mandal.

Sri Bala Raju and Sri Bala Pochaiah failed to file the statement under Section 6(1) of the ULC Act and the time stipulated in the notice expired on 18.02.2007.

(c) In pursuance of G.O.Ms.No.1499 Revenue (UC-I) Department dated 12.11.1983, the matter was enquired into *suo motu* through the Enquiry Officer. The Kondapur Village falls within the peripheral area of the Hyderabad Urban Agglomeration (HUA), as such exemption, in terms of G.O.Ms.No.733 dated 31.10.1998, is applicable to Sri Bala Raju and Sri Bala Pochaiah to an extent of Ac.5.00 guntas each. Sri Bala Raju and Sri Bala Pochaiah were declared surplus holders to an extent of 3046.56 sq. meters and 3248.90 sq. meters respectively. Accordingly, draft statement under Section 8(1) and notice under Section 8(3) of the ULC Act was issued on 26.02.2007 calling for objections within thirty days. The same were served by way of affixture on the conspicuous place on 13.04.2007 in the presence of witnesses. Within the stipulated period of 30 days, the declarants did not file objections. Then, order under Section 8(4) and final statement under Section 9 were issued on 12.06.2007 confirming the draft statement issued under Section 8(1) of the Act, without any alterations and got affixed by the Enquiry Officer on 30.08.2007.

(d) Consequently, a notification under Section 10(1) of the ULC Act was issued on 27.10.2007. Declaration under Section 10(3)

of the ULC Act was issued on 20.11.2007. Notice under Section 10(5) of the ULC Act was issued on 17.01.2008 and the same was affixed by the Enquiry Officer on 27.01.2008. The land owners failed to surrender the land within the stipulated time. Hence, order under Section 10(6) of the ULC Act was issued on 10.05.2008 authorizing the Enquiry Officer to take over possession of the surplus land and hand it over to the MRO concerned. The Enquiry Officer took over possession of the surplus land on 12.03.2008 and handed over to the MRO on 02.05.2008. The orders under Section 8(1) to 10(6) of the ULC Act are issued well within the provisions of the ULC Act and possession was legally taken over on 12.03.2008 i.e. before the Repeal Act came into force.

4. Mr. C. Hanumanth Rao, learned counsel for the petitioner, submitted that the ULC proceedings commencing from Section 6(2) notice till Section 10(6) order are against dead persons and the entire proceedings are vitiated and liable to be declared as null and void. The sale of the petitioners dated 09.03.1995 is valid, as the land purchased by the petitioners is less than Ac.5.00 guntas and automatically exempted as per G.O.Ms.No.733 dated 31.10.1988. Moreover, the lands were included in the extended master plan of Hyderabad, which came into force on 23.06.1980 and thus, could not have been included in the declaration as on 17.02.1976 when the ULC Act came into force. He further submitted that the

judgment of the Supreme Court in **ATIYA MOHAMMADI BEGUM's** case (1 supra) was holding the field from 1993 till 2002. Thus, the sale of the petitioners made in the year 1995 is valid.

5. Per contra, the learned Government Pleader for Assignment submitted that the sale deed of the petitioners is in violation of Section 5(3) and Section 10(4) of the ULC Act. The petitioners do not have *locus standi* to challenge the ULC proceedings. The petitioners are not valid purchasers of the land nor are the declarants. It is held by this court in WA.No.1336 and 1338 of 2005 dated 07.06.2006 that it is only the original owner, who can seek exemption under G.O.Ms.No.733 dated 31.10.1988 and not the purchaser. In WP.No.26416 of 2008 dated 19.12.2008, the High Court of Andhra Pradesh held that the petitioners purchased the land after coming into force of the ULC Act and sale of urban vacant land after 14.02.1975 is null and void as per Section 5(2) of the ULC Act.

6. It is not in dispute that though notices from Section 6(2) till Section 10(5) notice of the ULC Act were issued, the same were not served on the declarants, namely, Bala Raju and Bala Pochaiah. Notice of orders under Section 8(1) and order under Section 8(4) of the ULC Act are stated to have been served by way of affixture on conspicuous place in the presence of the witnesses. Notice under

Section 10(5) of the ULC Act dated 17.01.2008 is also stated to have been served by way of affixture.

7. Rule 5(2) of the ULC Rules, 1976 reads as under:

5. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same. –

(1) Every draft statement prepared under sub-section (1) of Section 8 shall contain the particulars specified in Form III.

(2) (a) The draft statement shall be served, together with the notice referred to in sub-section (3) of Section 8, on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far as maybe known, who have, or are likely to have, any claim to, or interest in the ownership or possession or both, of the vacant lands-

by sending the same by registered post addressed to the person concerned---

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of Section 6, and

(ii) in the case of other persons at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the efforts to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, any other person referred to in clause (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in clause (b), the draft statement and notice shall be served by affixing copies of

the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

8. According to the respondents, notice under Section 6(2) of the Act and all other subsequent notices were served on the declarants by affixture of notice on the wall of the subject property. However, there is no material to place before this Court and also the enquiry, allegedly, conducted by the respondents to substantiate their case that reasonable efforts have been made to find out the address of the declarants. It is settled law that a thing to be done in a particular manner has to be done in that manner only. This was enunciated by Privy Council in **NAZIR AHMAD v. KING EMPEROR**³ and reiterated and followed by the Supreme Court in **CHANDRA KISHORE JHA v. MAHAVIR PRASAD**⁴ and **CHERUKURI MANI v. CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH**⁵.

9. As seen from Rule 5(2) above, the notices should have been issued to the declarants to the address shown in Section 6(1) declaration. However, in the instant case, notice under Section 6(2)

³ 1936 SCC OnLine PC 41

⁴ (1999) 8 SCC 266

⁵ (2015) 13 SCC 722

of the Act was issued by the respondents and as such, notices should have been issued to the declarants by registered post to their known address. The address of the declarants was not known, thus, efforts should have been made to find out their correct address. A conjoint reading of Rule 5(2)(a) and sub-clauses therein makes it very clear that notices should be issued to the declarant through registered post to the address given by him or last known address. Thus, it was imperative for the authorities to find out proper address of the declarants. Service of notice at the residential address of the declarants was mandatory. Mere affixture of notice on the compound wall of the subject property would not meet the requirement of the above provisions. Even affixture of notice should have been on the conspicuous part of the house and not any other place. Only if the respondents were able to point out that even after finding out proper address of the declarants, service of notice through registered post was not possible, the next step was to serve notice by affixture. However, without resorting to proper procedure as mandated under Rule 5(2), the respondents, allegedly, sent notice under Sections 6(2) and orders under Section 8(1) and 8(4) of the Act to the declarants by affixture on the wall of the subject property, which is not in accordance with law. The Supreme Court in **YELLAWWA v. SHANTAVVA**⁶ held that

⁶ (1997) 11 SCC 159

"...It must be kept in view that substituted service has to be resorted as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way...". In view of the same, the entire proceedings, which were conducted *ex parte*, by affixing notice on the compound wall of the subject property without resorting to serve the declarants in the ordinary way, are vitiated and declared as null and void.

10. Though it is contended by the learned counsel for the petitioners that Bala Pochaiah died, there is no document produced to prove such claim. However, such point is not relevant for rendering decision in the case.

11. The contention of the learned Government Pleader for Assignment that proof of service of notice at every stage is substantiated by panchanamas dated 19.01.2007 and 02.05.2008 cannot be sustained. The respondents, at the first instance, ought to have taken necessary steps to ensure that notices are served through registered post as contemplated under Rule 5(2) of the Rules.

12. The judgment relied upon by the learned Government Pleader of Assignment in WA.Nos.1336 and 1338 of 2005 dated 07.06.2006 (*Paruchuri Ratnakar Rao v. State of A.P.*) has been held to be *per incuriam* in **T. MURALIDHAR RAO v. STATE OF ANDHRA PRADESH**⁷. The learned Single Judge in **MURALIDHAR RAO's** case (10 supra) discussed several judgments in connection with G.O.Ms.No.733 dated 31.10.1988 and following observations were made in paras 70 and 71:

"70. In my opinion, the Division benches decision in *Parchuri Ratnakar Rao* (6 supra) was rendered oblivious of clause (b) of para (6) of *Parchuri Ratnakar Rao* (6 supra), that the said clause itself permitted a declarant to alienate land in peripheral area upto Ac.5.00, and had the Bench noticed it, it would not have held that it is only the original holder who can seek exemption under G.O.Ms.No.733 and not any purchaser after the Act. In my view, the decision of the Division Bench is thus *per incuriam*. Therefore it cannot be a binding precedent.

71. If a declarant of vacant urban land under the Act is not only entitled to exemption thereof, if it is located in the peripheral area of Hyderabad Urban Agglomeration and is of extent less than five acres, but he is also permitted to transfer the same and he exercises such option and transfers the land after G.O.Ms.No.733, dated 31.10.1988 came into operation, (particularly when such exemption is automatic without even any application), I am of the opinion that not only the declarant but purchaser from the declarant would be entitled to contend, relying on G.O.Ms.No.733,

⁷ 2017 SCC OnLine Hyd 133 : (2017) 3 ALD 706

that the sale is valid. If the contention of the learned Government Pleader that the purchaser from the declarant cannot plead the benefit under G.O.Ms.No.733 is accepted, then the permission accorded by the Government permitting the declarant to sell the land subject to conditions specified therein, in clause (b) of paragraph-6 would become otiose. Merely because the authorities under the Act ignored the effect of G.O.Ms.No.733 and continued the proceedings under the Act against the declarant under Sec.9 or Sec.10(1) or Sec.10(3) or Sec.10(5), all such proceedings would be null and void."

The learned Single Judge further held in paras 76, 77 and 81 as under:

"76. Therefore, transferee from such declarant after the Act came into force and after issuance of G.O.Ms.No.733, dt. 31.10.1988 cannot be said to be an illegal purchaser or that sale in his favor is void because by virtue of clause (a) of paragraph-6 of G.O.Ms.No.733, the operation of Section 5(3) of the Act is excluded.

77. The further contention of the learned Government Pleader that notice under Section 26 of the Act ought to have been issued by the declarant before selling the land to Smt. Y. Sharada Devi, the predecessor-in-title of the petitioners is concerned, is also untenable. This is because if in clause (b) of paragraph-6 of G.O.Ms.No.733, the State Government had already accorded permission for sale of the land in the peripheral area, it would be absurd to insist on the declarant again applying to the State Government for No Objection Certificate under Section 26 of the Act to sell the land to third parties.

...

81. In view of the above finding, I hold that the petitioners would certainly have locus to file the Writ petition when the petitioners were informed that the subject land was declared as surplus land under the Act.”

13. The judgment in **MURALIDHAR RAO**'s case (10 supra) was upheld by a Division Bench of this Court in WA.No.871 of 2017 dated 03.08.2018. Thus, the judgment in WA.Nos.1336 and 1338 of 2005 dated 07.06.2006 (*Paruchuri Ratnakar Rao v. State of A.P.*) and judgment in WP.No.26416 of 2008 dated 19.12.2008, which is passed relying on the judgment in *Paruchuri Ratnakar Rao*'s case, are of no help to the respondents. This Court holds that the petitioners have *locus standi* to institute this writ petition, as sale deed of the petitioners dated 09.03.1995 was registered by granting exemption under G.O.Ms.No.733 dated 31.10.1988. The contention of the learned counsel for the petitioner that the sale deed of the petitioners, executed in the year 1995, is valid in view of **ATIYA MOHAMMADI BEGUM**'s case (1 supra), is not necessary to be dealt with in this case in view of the above observations.

In the result, the writ petition is allowed and the proceedings in C.C.No.H1/29/2007 are set aside. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

B. VIJAYSEN REDDY, J