

CASE NO.:  
Appeal (civil) 7348 of 2001

PETITIONER:  
GOVT. OF A.P. AND ORS.

Vs.

RESPONDENT:  
J.SRIDEVI AND ORS.

DATE OF JUDGMENT: 12/04/2002

BENCH:  
Y.K. Sabharwal & K.G. Balakrishnan

JUDGMENT:

K.G. Balakrishnan, J.

This appeal is preferred by the State of Andhra Pradesh challenging the Judgment of the Division Bench of the High Court of Andhra Pradesh in Writ Appeal No. 968 of 1998. By the impugned Judgment of the Division Bench, the Judgment of the learned Single Judge in Writ Petition no. 5929/97 was confirmed. The Writ Petition was filed by the respondents praying that the lands owned by the respondents were outside the purview of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter being referred as "UL(C&R) Act") and that the Hyderabad Urban Development Authority (hereinafter being referred as "HUDA") be directed to sanction the lay-out and group housing scheme submitted by the respondents, without insisting for clearance certificate from the competent authority under the UL(C&R) Act. The Writ Petition was allowed and the State unsuccessfully challenged the judgment therein, in the Writ Appeal.

The respondents herein purchased an extent of 10 guntas of land each in Survey no. 79 of Madapur village by separate registered sale deeds in the year 1995. These lands originally belonged to one Agaiah Dhanger and his family who owned 96 acres of land in Survey No. 79 of Madapur village. The original land owner Agaiah Dhanger was served with a notice under Section 6(2) of the Act alleging that the land owned by him came within the purview of the UL(C&R) Act. He did not respond to the notice by filing a statement in Form-1, as contemplated under Section 6(1) of the UL(C&R) Act. It seems that the original landlord thereafter sold these properties to the respondents herein. The land was originally classified as agricultural land and the respondents after purchasing the property filed application for converting the same for residential purpose and the Government by G.O.Ms. No. 467 M.A. dated 3.9.1996 granted permission to convert the same for residential purposes by collecting the requisite fee towards development charges. The respondents thereafter filed application before the HUDA for sanction of lay-out. HUDA as well as the District Registrar insisted for clearance certificate from the Special Officer-cum-Competent Authority under the UL(C&R) Act, but the respondents alleged that individually they were owning 1000 square meters and even if it comes under the purview of the UL(C&R) Act, it is within the prescribed ceiling limit. The respondents approached the Special Officer-cum-Competent Authority, but no clearance certificate was issued by the Special Officer-cum-Competent Authority and thereafter they filed the Writ Petition.

The lands in Survey No. 79 including other Sy. Nos. covering an extent of 96 acres in Madapur village formed part of Moosapet Gram Panchayat. It is contended by the appellants that village Madapur formed part of Moosapet Gram

Panchayat which is included in Col. 2 of Schedule-I of UL(C&R) Act, 1976 and according to Section 2(n) at Para (A) [I] of the UL(C&R) Act, it formed part of the Urban Agglomeration specified in Col. 2 of Schedule-I of the UL(C&R) Act and the appellants contended that as the land was included within the Urban Agglomeration, any transaction without clearance as required under Section 5(3) read with Section 28(a) of the UL(C&R) Act was invalid. The respondents, on the other hand, contended before the learned Single Judge that at the time of purchase, the land in question was an agricultural land and on the date of purchase effected by the respondents, there was no legal restriction for the transfer of agricultural land situated in the peripheral area. According to the respondents, the land in question was neither an urban land nor a vacant land and the provisions of the UL (C&R) Act, 1976 do not apply. The contention of the respondents was that on the appointed day, i.e., 28.1.1976, the lands held by the vendors were agricultural lands and it was not covered by any master plan and the extension of the master plan by way of amendment to a particular area which was not included when the UL (C&R) Act came into force, cannot alter the original nature of the land. The contention of the respondents was that the master plan which was amended on 26.8.1995 had no application and the same cannot be used for the purpose for determining whether the land in question is coming within the purview of UL(C&R) Act or not. The respondents had also contended that pursuant to the request made by them after paying the requisite fee, the lands were converted into residential zone as per G.O.Ms. No. 467 dated 3.9.1996 and only on that date the land became urban land coming within the purview of the UL(C&R) Act and as these respondents were individually holding about 1000 square meters, it is within the ceiling limit prescribed under the Act.

The Urban Land & Ceiling Regulation Act, 1976 came into force in the State of Andhra Pradesh on 17.2.1976. Section 2(h) of the UL (C&R) Act deals with the "master plan" in relation to the area within Urban Agglomeration.

Section 2(h) defines 'master plan' as follows:-

" 'Master plan' in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out; "

Section 2(n) defines Urban agglomeration as:

"urban agglomeration" ---

(A) in relation to any State or Union territory specified in Col. (1) of Schedule I, means,---

(i) the urban agglomeration specified in the corresponding entry in Col.(2) thereof and includes the peripheral area specified in the corresponding entry in Col. (3) thereof; and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefor shall be one kilometer;

(B) in relation to any other State or Union territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Sch. I and peripheral area therefor shall be one kilometer."

Under Section 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 Cl. (q), -

- (A) "agriculture" includes horticulture; but does not include---,
  - (i) raising of grass,
  - (ii) dairy farming
  - (iii) poultry farming
  - (iv) breeding of live-stock, 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."

According to the appellants, in the master plan, the land involved herein is brought under the Urban Agglomeration. Therefore, the question arises whether the property included in the Urban Agglomeration could be treated as urban land or continues to be an agricultural land. On the date of commencement of the Act, i.e. on 17.2.1976, the land was agricultural land. It is possible to contend that at that time the UL(C&R) Act had no application to these lands. The

question that came up for decision before the learned Single Judge was whether by the inclusion of this land in the Urban Agglomeration under the master plan, the property would still continue to be excluded from the purview of the UL(C&R), Act 1976. The learned Single Judge relied on the decision of this Court in *Atia Mohammadi Begum (Smt.) vs. State of U.P. and Others* (1993) 2 SCC 546 wherein this Court had held that the area of vacant land in excess of the ceiling limit under the Act is to be determined with reference to the date of commencement of the Act and the right and liability of the holder of the land for this purpose under the Act crystallizes on the date of commencement of the Act unaffected by any subsequent events. The scheme of the Act supports the construction that the aforesaid Explanation (C) means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a master plan prepared after the commencement of the Act.

Based on the above decision, the learned Single Judge held that the respondents purchased lands which are situated outside the master plan in force on the appointed day, and as such, the provisions of the UL(C&R) Act will not be attracted on such lands. This view was upheld by the Division Bench. It may be noted that the view held in *Atia Mohammadi Begum (Smt.) case* (supra) was partly overruled by this Court in *State of A.P. & Ors. vs. N. Audikesava Reddy and Others* (2002) 1 SCC 227 to which one of us (Sabharwal, J.) is a party. It was held that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, the decision in *Atia Begum case* (supra) was partly overruled. The explanation appended to Section 6(1) of the Act regarding "commencement of the Act" was taken note of by this Court and it was held in Para 13 at page 233-234 as follows:-

"Further, the Explanation to Section 6(1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under clause (ii) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17-2-1976. Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17-2-1976. It would all depend on the facts and circumstances of each case."

In that view of the matter, we feel that the Division Bench was not justified in declaring that the lands owned by these respondents were outside the purview of the provisions of the UL(C&R) Act and also further directing HUDA to sanction forthwith the lay-out and the group housing scheme submitted by the respondents.

It may be noted that these respondents submitted application before the Special Officer-cum-Competent Authority alleging that they were holding land to the extent of 1000 square meters and it is outside the purview of the UL(C&R) Act and that they may be given a certificate to that effect. These applications were not finally considered and disposed of by the Special Officer-cum-Competent Authority. Though the respondents contended that the Special Officer-cum-Competent Authority had made an endorsement in the official paper to the effect that the land involved was outside the purview of the Act, but no such order was communicated to the respondents. In the counter-affidavit filed

by the State, it is specifically stated that no decision was taken on the application submitted by the respondents and before the decision was taken, the respondents approached the Court by filing the Writ Petition. When the applications were pending before the Special Officer-cum-Competent Authority, the High Court should have directed the authority to take an appropriate decision. When a statutory authority is vested with power to determine the question as to the applicability of the provisions of the Act, it is ordinarily desirable to leave the question to be decided by such authority. The aggrieved party can file appeal against the decision within the framework provided under the Statute and the ultimate decision also could be challenged under judicial review, if permitted in law. Instead of undergoing the normal procedure, the respondents herein directly approached the High Court for the reliefs sought for by them.

The appellants would contend that the lands owned by these respondents are urban lands coming within the purview of the UL(C&R) Act. The respondents contend that originally the land in question was agricultural land and it continued to have the same identity and even if it was brought under the master plan, it may not have any effect as regards the applicability of the UL(C&R) Act. The respondents would also contend that after 3.9.1996, it may come under the purview of the UL(C&R) Act and the respondents individually owned 1000 square meters and the same is within the prescribed ceiling limit. All these rival contentions are to be decided by Special Officer-cum-competent Authority. After due regard to the various provisions contained in the relevant enactments, we do not think that this is a case where the High Court should have directed HUDA to pass the lay-out plans without insisting for "no objection" certificate from the Special Officer-cum-Competent Authority.

We allow the Civil Appeal and direct that the Special Officer-cum-Competent Authority shall take a decision in the matter at the earliest, i.e., within a period of three months from this date. The parties would be at liberty to file any additional application or documents before the Special Officer-cum-Competent Authority to substantiate their contentions. We make it abundantly clear that whatever has been stated by us regarding the applicability of the UL(C&R) Act is only for the purpose of disposal of this appeal and it shall not have any persuasive effect on the Special Officer-cum-Competent Authority and he shall take an independent decision uninfluenced by such observations.

...J.  
(Y.K. Sabharwal)

...J.  
(K.G. Balakrishnan)

April 12, 2002.