

CASE NO.:
Appeal (civil) 5956 of 1997

PETITIONER:
State of A.P.

RESPONDENT:
V. Venkataswara Rao (Dead) by L.R.

DATE OF JUDGMENT: 16/01/2004

BENCH:
SHIVARAJ V. PATIL & D.M. DHARMADHIKARI.

JUDGMENT:
J U D G M E N T

W I T H

C.A. NO. 5957-59 OF 1997

SHIVARAJ V. PATIL J.

The respondent Valluru Venkateswara Rao was holder of excess vacant land to the extent of 5849 sq. metres (1 acre 44 cents) as per the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'). He made an application under Section 20(1) of the Act claiming exemption on the ground that he had entered into an unregistered lease agreement on 1.5.1975 with M/s. Ushodaya Publications Pvt. Ltd. for a period of 33 years. This lease was entered into during the period when there was no prohibition for alienation of vacant land. The Act also prohibited any transaction other than bona fide sales during the period from 17.2.1975 to 28.1.1976. The lessee also filed an application seeking exemption under the Act. The State Government, after considering the matter, issued a Government Order G.O.Ms. No. 7 Rev.(UC.III) Department dated 3.1.1984 granting exemption under the Act with certain conditions attached including the one that after the period of exemption of 33 years of lease, the land would vest in the State Government. Respondent Valluru Venkateswara Rao filed Writ Petition No. 19026 of 1988 before the High Court challenging the said condition imposed in the aforementioned G.O. granting exemption. A learned Single Judge of the High Court by his order dated 29.3.1994 quashed said G.O.Ms. No. 7 dated 3.1.1984 and directed consideration of exemption before the preparation of the draft statement under Section 8 of the Act taking a view that the question of exemption after preparation of the draft statement was not permissible in law. Aggrieved by this order of the learned Single Judge, the State of Andhra Pradesh filed Writ Appeal No. 791 of 1994 before the Division Bench of the High Court. The respondent Valluru Venkateswara Rao also filed Writ Appeal No. 851 of 1994. The Division Bench of the High Court dealt with both the appeals together and passed the impugned judgment dated 9.4.1997 following the judgment of this Court and restored the G.O.Ms. No. 7 dated 3.1.1984 but held that the condition, namely, that after the lease period of 33 years, the land would vest in the State Government, contained in para 4(d) of G.O.Ms. No. 7,

could not be sustained. Aggrieved by the order of the Division Bench of the High Court, the State of Andhra Pradesh has filed Civil Appeal No. 5956 of 1997, to the extent of striking down condition No. 4(d) contained in G.O.Ms. No. 7. M/s. Ushodaya Publications Pvt. Ltd., had filed application for impleading before the Division Bench of the High Court in Writ Appeals. The Division Bench of the High Court did not allow the application filed for impleadment. M/s. Ushodaya Publications Pvt. Ltd., has filed Civil Appeal Nos. 5957-5959 of 1997 to the extent aggrieved by the impugned order. The original respondent Valluru Venkateswara Rao has died and his son is on record as legal representative.

It was contended on behalf of the appellant that clause (d) of para 4 of the order of exemption is valid and if the said clause is void, exemption granted subject to such condition itself becomes void and inoperative; the State Government under Section 20 of the Act was competent to grant exemption subject to such conditions as may be specified in the order of exemption and as such condition contained in clause (d) of para 4 of the order could be validly imposed; exemption did not confer any vested right in the respondent; exemption was granted only in the discretion of the State Government. The High Court exercising jurisdiction under Article 226 could not substitute the said condition.

On behalf of the Legal Representative of the Respondent Valluru Venkateswara Rao submissions were made supporting the impugned order. Pointing out to scheme of the Act and, in particular, referring to Sections 6 and 8 of the Act, it was urged that after lease period of 33 years, land could not be vested automatically with the State Government; even after the expiry of the lease period, if the vacant land became excess land, it is open for filing the fresh declaration and it is equally open to exercise option as to which land within the ceiling limit is to be retained.

For proper appreciation of the rival contentions, it is necessary to notice the provisions of the Act to the extent they are relevant:-

"Section 6. Persons holding vacant land in excess of ceiling limit to file statement \026 (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain;

Provided that in relation to any State

to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words "Every person holding vacant land in excess of the ceiling limit at the commencement of this Act", the words, figures and letters "Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement", had been substituted."

"Section 8 \026 Preparation of draft statement as regards vacant land held in excess of ceiling limit \026

(1) On the basis of the statement filed under Section 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement under Section 6.

(2) Every statement prepared under sub-section (1) shall contain the following particulars, namely :

(i) the name and address of the person;

(ii) the particulars of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;

(iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders

as it deems fit"

"Section 9 \026 Final statement \026 After the disposal of the objections, if any, received under sub-section (4) of Sec. 8 the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in sub-section (3) of Sec. 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power of attorney, also on the owner of such vacant land."

"Section 10 \026 Acquisition of vacant land in excess of ceiling limit \026

(1) As soon as may be after the service of the statement under Sec. 9 on the person concerned the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that \026

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land,

to be published for the information of the general public in the official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the

State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3), -

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorized by such State Government in this behalf and may for that purpose use such force as may be necessary.

Explanation \026 In this section, in sub-section (1) of Sec. 11 and in Secs. 14 and 23, "State Government" in relation to \026

(a) any vacant land owned by the Central Government, means the Central Government;

(b) any vacant land owned by any State Government and situated in a Union territory or within the local limits of a cantonment declared as such under Sec. 3 of the Cantonment Act, 1924 (2 of 1924), means that State Government."

"Section 11 \026 Payment of amount for vacant

land acquired \026 (1) Where any vacant land is deemed to have been acquired by any State Government under sub-section (3) of Sec. 10, such State Government shall pay to the person or persons having any interest therein, -

(a) in a case where there is any income from such vacant land, an amount equal to eight and one-third times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification issued under sub-section (1) of Sec. 10; or

(b) in a case where no income is derived from such vacant land, an amount calculated at a rate not exceeding \026

(i) ten rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category A or category B specified in Sch. 1; and

(ii) five rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category C or category D specified in that schedule."

"Section 15 \026 Ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees, etc. \026

(1) If, on or after the commencement of this Act, any person acquires by inheritance, settlement or bequest from any other person or by sale in execution of a decree or order of a civil court or of an award or order of any other authority or by purchase or otherwise, any vacant land the extent of which together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then he shall, within three months of the date of such acquisition, file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed of all the vacant lands held by him and also specifying the vacant lands within the ceiling limit which he desires to retain.

(2) The provisions of Secs. 6 to 14 (both inclusive) shall, so far as may be, apply to the statement filed under this section and to the vacant land held by such person in excess of the ceiling limit."

"Section 20 \026 Power to exempt \026 (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter \026

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under Cl. (a) or Cl. (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly."

The Government Order G.O.Ms. No. 7 Rev. (UC.III) Department dated 3.1.1984 granting exemption under Section 20(1)(a) of the Act reads:-

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Urban Land (Ceiling and Regulation) Act, 1976
\026

Industries \026 Vijayawada Urban Agglomeration \026
Vijayawada village \026 Exemption under section
20(1) (a) of the Act for the lands held by
Sri V. Venkateswara Rao, in NTS. No. 142,
Block No. 6, Ward No. 1 of Patamata (v)
Vijayawada leased out in favour of M/s.
Ushodaya Publications Ltd. Granted \026 Orders \026
Issued.

REVENUE (U.C. III) Department

G.O. Ms. No. 7 Dated 3.1.1984

1. From Sri V. Venkateswara., Vijayawada application dated 17.12.1980.

2. From the Chairman, M/s. Ushodaya Publications (P) Ltd. letter dated 9.9.1981.

3. From the Director of Industries and Commerce letter No. RC.No. 72/ULC/81 dt. 7.3.1981.

4. From the Commissioner of Land Reforms and Urban Land Ceilings, Hyderabad, L.Dis. No. UC3/7142/80 dt. 25.8.82.

O R D E R

Whereas Sri Velluri Venkateswara Rao, Vijayawada hold vacant land measuring 2438.60 sq. mts., in NTS. No. 142, Block-6, Ward-11 of Vijayawda Village in Vijayawada Urban Agglomeration which is in excess of the ceiling limit prescribed in Urban Land (Ceiling and Regulation Act, 1976 (Central Act, 33/1976. Which also includes in the extent of 5949 sq. mts. Of land leased out in favour of M/s. Ushodaya Publications consequent on an ur-regd. lease deed executed in their favour on the 1st May, 1975 for a period of thirty three years and hand over the possession of the said extent of land to set up "EENADU" complex for running the News paper industry.

2. And whereas the entire extent of land measuring 2438 sq. mts., is needed to be retained in favour of Sri Valluri Venkeswaa Rao, Vijayawada till the lease period expires consequent upon establishing the news papers industry by the lease on the lease hold land and running the business.

3. And where the Government consider it expedient in the public interest to exempt the land mentioned in para two above from the provisions of Chapter-III of the said Act by imposing a condition that after the lease period expires the lands so exempted would vest in the Government along with such structures on the said land;

4. Now therefore in exercise of the powers conferred by clause (a) of sub-section (1) of section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) the Governor of Andhra Pradesh hereby exempts:

i) the land measuring 2438 sq. mts., out of 5949 sq. mts. Of leased land in favour of M/s. Ushodaya Publications Ltd. in NTS. No. 142, Block Ward 11 of Vijayawada village in Vijayawada Urban Agglomeration mentioned in para 2 above

subject to the condition that the said land should be utilized for the purpose of said proposed industry and also subject to the following conditions;

(a) that it should not be leased out or sold without the permission of the Government.

(b) that the land should be utilized for the purpose for which it is exempted within three years from the date of granted shall stand cancelled and the said land will be subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976.

(c) that the land may be mortgaged to any bank as defined in clause (iii) of sub-section (1) of section 19 including Andhra Pradesh State Financial Corporation for the purpose of raising finances for the industry.

(d) that the land so exempted above would vest in the Govt. after the expiry of the aforementioned lease period under the provision of the said Act.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.KODAMA RAMA REDDY
DEPUTY SECRETARY TO GOVERNMENT."

In the light of the contentions urged before us, the only question that arises for consideration is whether the condition contained in clause (d) of para 4 of the Government Order could be sustained.

Section 3 of the Act declares that no person shall be entitled to hold any vacant land in excess of ceiling limit. Ceiling limit is prescribed under Section 4. Under Section 6, every person holding vacant land in excess of the ceiling limit at the commencement of the Act was required to file statement before the competent authority giving particulars and also specifying the vacant lands within the ceiling limit which he desired to retain. Section 8 refers to preparation of draft statement as regards vacant land held in excess of ceiling limit. Under Section 8(2)(iii) the particulars of vacant lands which a person desires to retain within the ceiling limit are to be given. Under sub-section 3 of Section 8, draft statement shall be served on the person concerned together with notice inviting objections. After considering the objections, the competent authority after hearing the person shall pass the order. Under Section 9, final statement would be issued as to vacant land held by the person concerned in excess of the ceiling limit. Under Section 10(1), the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit stating that such vacant land is to be acquired by the State Government and the claims of all persons interested in such vacant land

may be made by them giving particulars of the nature of their interest in such land. Under sub-section (3) of Section 10, the competent authority may by notification published in the official gazette declare that excess vacant land referred to in the notification published under sub-section (1), with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified. As per Section 15, if on or after the commencement of the Act, any person acquires any vacant land together with the extent of the vacant land if already held by him exceeds the aggregate ceiling limit, then he shall within three months of such acquisition file a statement before the competent authority. Under sub-section (2) of Section 15, the provisions of Sections 6 to 14 are made applicable to the statement filed under Section 15(1). Section 20 deals with the power of exemption. Under the said Section notwithstanding anything contained in any of the foregoing provisions of Chapter III (which contains Sections 3 to 24), the State Government may by order, exempt such vacant land from the provisions of Chapter III. Under Section 20(2), the State Government has power to withdraw by order such exemption on being satisfied that any of the conditions subject to which any exemption was granted was not complied with by any person.

As can be seen from the provisions referred to hereinabove, the person holding excess land is given option to express the lands he desires to retain within the ceiling limit; he is also given right to file objections under Section 8 before making a final statement under Section 9. Under Section 10(1), after service of statement under Section 9 on the person concerned, giving particulars of the excess land held by such person in excess of the ceiling limit, the competent authority shall cause a notification stating that such land is to be acquired by the concerned State Government. After publication of notification under Section 10(1), the competent authority by notification published in the official gazette shall declare that the excess land be deemed to have been acquired by the State Government and upon such publication of declaration such land shall be deemed to have vested absolutely in the State Government free from all encumbrances from the date specified.

Under Section 20, the State Government notwithstanding anything contained in any of the foregoing provisions of Chapter III is conferred with the power to exempt excess vacant land from the provisions of the said Chapter containing Sections 3 to 24. The G.O. Ms. No. 7 in the present case exempted the excess vacant land in question from the provisions of Chapter III of the Act by imposing condition including a condition that after the lease period expires, the land so exempted would vest in the Government along with structures. Since the excess land was not acquired and no notification was published in the official Gazette declaring that the excess land in question be deemed to have been acquired by the

State Government, it could not be deemed to have vested absolutely in the State Government free from all encumbrances under Section 10(3) of the Act as on the date the exemption order was issued. After the expiry of the lease period, in the normal course, the land would revert back to the L.R. of respondent Venkataswara Rao, in the absence of vesting the land in the State absolutely, subject to the provisions of Chapter III to the extent they are applicable. If on account of reverting the land to the respondent in Civil Appeal No. 5956 of 1997 and respondent No. 2 in Civil Appeal Nos. 5957-5959 of 1997 and his holding exceeded the ceiling limit, the provisions contained in Section 15 get attracted. In such a case, as per Section 15(2), the provisions of Sections 6 to 14 shall, so far as may be, apply to the statement filed under the said Section. The person concerned could avail the rights and protections available to him under Sections 8 to 10 including exercise of option or choice in the matter of retaining the land within the ceiling limit. If the condition contained in clause (d) of para 4 of the Government Order is sustained, it has the effect of taking away the rights and protections available under Sections 6 to 14 as far as they apply. The Division Bench of the High Court by the impugned order has held that the said condition was not valid and could not be sustained for the reasons stated therein. With regard to the reasons given by the Division Bench of the High Court in setting aside the said condition, we have some reservations to accept. Be that as it may. In the light of what is stated above, we hold that the condition contained in para 4(d) of the Government Order cannot be sustained. It is true as contended on behalf of the appellant that the State Government is empowered to impose conditions while granting exemption under Section 20 but such conditions cannot run contrary to or defeat the provisions of the Act. Conditions may be imposed to serve the object and purpose of the Act and the exemption order itself. One more thing to be noticed is that safeguard is made under sub-section (2) of Section 20 by stating that if any of the conditions imposed while granting exemption are violated, the State Government is entitled to withdraw the exemption granted. As already stated above, further after the expiry of lease period if the vacant land reverts to the contesting respondent and his holding vacant land exceeds the ceiling limit, he is bound by the provisions of the Act and the action can be taken, if need be, against him according to the provisions of the Act in respect of the excess vacant land. We have to notice one more submission made on behalf of the appellant that if the condition contained in para 4(d) of the Government Order is invalid, the very exemption order cannot remain in existence. The Government Order granting exemption has imposed other conditions to serve the purpose of exemption and public interest in terms of Section 20. In case those conditions are violated or the land is not used for the purpose for which exemption was granted, it is open to the State Government to withdraw the order of exemption under Section 20(2). The condition contained in para 4(d) of the order is separable and even after setting aside the said condition, the Government Order can be validly sustained. This position gets support from the

judgment of this Court in R.Jeevaratnam vs. State of Madras [AIR 1966 SC 951]. In that case the order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In effect the order contained two parts (1) the appellant be dismissed and (2) the dismissal to operate retrospectively as from May 20, 1949. These two parts of the composite order were severable. This Court while dealing with said order, observed that "an order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can give effect to the valid and severable part of the order."

Further this Court in R.M.D. Chamarbaugwalla and anr. vs. Union of India [AIR 1957 SC 628] while dealing with separability of valid and invalid parts of statute in para 22(2) has stated thus:-

"20(2). If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable."

This being the position, we find no force in this contention advanced on behalf of the appellant.

Thus looking to all aspects of the matter and for the reasons recorded above, in our view, the impugned order does not call for any interference. Hence, the appeals are dismissed with no order as to costs.