Supreme Court of India
The Govt. Of Andhra Pradesh vs H.E.H., The Nizam, Hyderabad on 22 March, 1996
Equivalent citations: 1996 SCC (3) 282, JT 1996 (3) 629
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
THE GOVT. OF ANDHRA PRADESH

Vs.

RESPONDENT:
H.E.H., THE NIZAM, HYDERABAD.

DATE OF JUDGMENT: 22/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCC (3) 282 JT 1996 (3) 629
1996 SCALE (3)140

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K . Ramaswamy,J.

Leave granted.

This appeal by special leave arises from the judgment and decree dated November 11, 1992 made in A.S. No.2470/86 by the High Court of Andhra Pradesh. Notification under Section 4(1) of the Land Acquisition Act 1894 (for short, the fact') was published in the State Gazette on July 27, 1978 for public Purpose, namely, construction of Residential-cum-Commercial Complex in Saroonnagar, Phase-II in out-skirts of Hyderabad city by the Hyderabad Urban Development Authority. The total extent of the land notified for acquisition was 25 acres 12 gunthas. After conducting enquiry under Section 5A declaration under Section 6 was published on May 3, 1979. The respondent filed Writ Petition No.2510/82 in the High Court to quash the notification under Section 4(1). A learned single Judge by Order dated June 30, 1983 directed the Land Acquisition Officer [LAO] either to pass an

award or issue notification under Section 48 withdrawing the acquisition within a period of six weeks from that date. In furtherance thereof, the LAO by his award dated August 6, 1983 determined the compensation @ Rs.10,000/- per acre. On reference under Section 18, the District Judge by his award and decree dated March 31, 1986 determined the compensation @ Rs.30/- per square yard. On appeal it was confirmed by the Division Bench of the High Court. Hence this appeal by special leave.

It may be relevant to notice at this stage that the lands are within the Hyderabad Urban Agglomeration covered by Urban Land Ceiling and Regulation Act, 1976 (for short, the 'Ceiling Act') which came into force on February 17, 1976. The respondent filed the statement under Section 6 thereof By notification dated November 27, 1982, the competent authority under the Ceiling Act issued notice under Section 9 of the Act determining excess vacant land to be acquired by the Government. By further State Gazette notification dated February 23, 1983 published under Section 10(3) of the Ceiling Act the competent authority declared the acquired land notified on November 4, 1982 in the State Gazette under Section 10(1) of the Act as excess land with effect from the said date to be deemed to have been acquired by and wested in the State Government and that it stood vested absolutely in it free from all encumbrances.

Possession of the acquired land was taken on June 2, 1984 and the compensation of a sum of Rs.8,43,778/- was paid in Form No.C on June 7, 1984.

The first contention raised by Shri Sitharamaiah, learned senior counsel for the appellant is that by operation of Section 3 of the Ceiling Act which came into force in relation to Andhra Pradesh on February 17, 1976, no person shall be entitled "to hold" any vacant land in excess of the ceiling limit on and from that date. Section 4 envisages ceiling limit and every holder of vacant land in excess of the ceiling limit shall file a statement on or before six months from February 17, 1976. By conjoint operation of Section 6, Rule 3 and Form I, holder must specify vacant land which he desires to retain within the ceiling limit. A draft statement should be filed before competent authority who, after considering the objections to the draft statement, makes necessary alteration in the draft statement and prepares a final statement made under Sections 8 and 9 of the Act giving particulars of the vacant land in excess of the ceiling limit which should be published under Section 10 [1] of the Act.. If any person interested in the vacant land makes claimed under Section 10 [2], the competent authority, after considering the same will determine the nature and extent of the right. Section 10 [3] requires the competent authority to publish a declaration that the excess vacant land shall be deemed to have been acquired by the Government with effect from the date specified therein and that the same shall be deemed to have been vested in the Government free from all encumbrances. Under Section 10 [5], the competent authority may order any person in possession of the vacant land to surrender or deliver possession of the excess land within thirty days of service of notice. If he refuses, the competent authority is empowered under Section 10 [6] to take possession by using such force as may be necessary . Section 11 envisages payment of compensation for the excess land deemed to have been acquired. By operation of the declaration under Sections 10(3) and 10(1) referred to hereinbefore, such land, the subject of the acquisition is deemed to have been vested in the State free from all encumbrances. The respondent/claimants are entitled only to the payment of compensation as provided in Section 11 of the Ceiling Act. The Civil Court, therefore, is devoid of

jurisdiction to determine the compensation under the Act, since the field is already occupied by the Ceiling Act. Determination of compensation at the enhanced rate by the Civil Court, therefore, is clearly an error apparent on the face of the record. The Government, therefore, does not have to acquire land since the land already vested in it under Section 10 [3] free from all encumbrances. The vesting shall be deemed to have taken place from February 17, 1976, the date on which the Urban Ceiling Act came into force. Sri Sitamaraiah also contended that the District Court and the High Court committed grave error in determining the market value @ Rs.35/- per square yard. In Ex.A1 to A4, the market rate of the lands sold was Rs.6/- per square yard only and the remaining price of Rs.29/- was for development. The courts below, therefore, were in error in awarding the compensation @ Rs.30/- per square yard.

Shri K. Madhava Reddy, learned senior counsel for the respondent, contended that the appellant having proceeded to acquire the land under the Acts has no power, unless the acquisition is withdrawn Section 48, to contend that the excess vacant under the Ceiling Act vests in the Government. notification published under Section 6 of the Act is conclusive of the public purpose which would be crystalized by making an award under Section 11. Compensation having been determined under Section 11, as directed by the High Court and possession thereof having been taken, it is no longer open to the appellant to contend that they are not required to pay compensation under Section 23 of the Act nor is the respondent entitled to fall back upon Section 11 of the Ceiling Act which is contrary to the Scheme of the Act. It cannot, therefore, be contended that the respondent is entitled to compensation only under Section 11 of the Ceiling Act. He also contended that the Government had exempted the lands from the Ceiling Act.Therefore, the High Court was right in determining the compensation under the Act. He further contended that the Hyderabad Urban Development Authority [for short, 'HUDA'] itself had sold the lands in the neighborhood @ Rs.30/- per square yard and, therefore, that would form basis for determination of the compensation in respect of the acquired land. The reference Court, therefore, was right in placing reliance on that piece of evidence.

The rival contentions give rise to the primary question: whether the excess vacant land covered by the Ceiling Act stood vested in the State is liable to be acquired under the Act? It is seen that Section 3 in Chapter III of the Ceiling Act declares that except as otherwise provided in the Act, on and from the commencement of the Act [February 17, 1976 in relation to Andhra Pradesh) "no person shall be entitled to hold any vacant land in excess of the ceiling limit". The ceiling limit for Hyderabad Urban Agglomeration is 1000 sq. meters prescribed in category 'B' of Schedule I referred in Section 4. "Hold" means own. This expression connotes two concepts, i.e., physical possession or legal title to the vacant lands. Both the concepts stand attracted to the concept 'hold' under the Ceiling Act. The owner or excess vacant land in excess of the ceiling limit is required to file a statement under Section 6 and by operation of Section 3, he ceases to hold the said vacant land subject to the operation of the provisions of the Ceiling Act.

Section 5 prohibits transfer of vacant land in excess of the ceiling limit at any time between commencement of the appointed day and the commencement of the Act. Section 6 enjoins the holder of the vacant land in excess of ceiling limit to file a statement within the prescribed time in the manner laid under the Act the rules and in the form prescribed therefor. Section 8 enjoins the

competent authority to prepare a draft statement as regards vacant land held in excess of the ceiling limit. Section 9 envisages final statement after disposal of objections, if any, received in that behalf and service of the notice in that behalf on the person concerned as envisaged therein. Under Section 10(1), after service of the statement under Section 9 on the concerned person, the competent authority should cause publication of a notification in the State Gazette with particulars of the vacant land in excess of the ceiling limit, for information of the general public. After considering claims, if any laid under sub-Section (2) and disposal thereof, the competent authority shall determine the nature and extent of such claim and pass such orders as it deems fit. Thereafter the competent authority by notification under Section 10(3) published in the State Gazette may declare that the excess land published under sub-Section (1) shall he deemed to have been acquired by the State Government with effect from the date specified in the declaration and such land shall "be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified". The word "deemed" is used to give effect to the operation of Section 3 from the date the Act was brought into force. In other words, the deemed vesting under Section 10(3) would date back to February 17, 1976 and the date specified under Section 10 [3]. In Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshithulu & Ors. [(1991) Supp. 2 SCC 228 at 239] this Court in para 10 had held that the word 'vest' takes varied colors from the context and situation in which the word came to be used in the statute. It is common knowledge that under the Act, the acquired lands vest in the State from the date of taking possession under Section 16 of 17 [2]. Under the land reforms like abolition of estate and taking over thereof the vesting takes effect from the date of publication of the notification in the official gazette. In Consolidated Coffee Ltd. & Anr. etc. vs. Coffee Board, Bangalore etc. etc. [1980) 3 SCR 625 at 645] this Court had held that the word 'deemed' is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision is made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the Legislature has made such a deeming provision. It would thus be seen that determination of the excess ceiling land pursuant to the statement filed under Section 6 becomes conclusive by publication of the notification under sub-Section (3) of Section 10 and the excess lands were prohibited to be held under sub-Section 3 on and from the date of the commencement of the Act. Such excess and shall vest in the State only from a date specified in the notification. The vesting under Section 10 [3] takes effect from the date of publication of the notification under sub-Section (3) of Section 10 in the State Gazette with effect from the date specified therein. It would thus be apparent that the State acquired absolute right, title and interest in the excess urban vacant land in the State from the date of the publication of the notification under Section 10 [3] of the Ceiling Act and from February 28, 1983 that date the State Government became absolute owner of the excess vacant land free from all encumbrances.

The question, therefore, is: whether it is necessary for the Government to determine compensation under Section 23 of the Ceiling Act for the land which already vested in it under the Ceiling Act. In Maharao Sahib Sri Bhim Singhli etc. etc. vs. Union of India & Ors. etc. etc. [(1985) Supp.1 SCR 862], where the constitutionality of the Ceiling Act was questioned, the Constitution Bench had held that the primary object and purpose of the Ceiling Act is to acquire such land as may be in excess of the ceiling limit with a view to prevent concentration of urban land in the hands of a few persons and

speculation and profiteering therein and also to bring about an equitable distribution of land in urban agglomerations to subserve the common good in furtherance of Article 39(c) and (b) respectively of the Constitution. this view was reiterated in Union of India vs. Valluri Basavaiah Chaudhary [(1979) 3 SCR 802] and State of Gujarat vs. Parshottamdas Ramdas [(1988) 1 SCR 997]. In Dattatrava Shankarbhat Ambalgi & Ors. vs. State of Maharashtra & Ors. [AIR 1989 SC 1796], a Bench of two Judges of this Court had held that the land to the extent which falls within the ceiling area stands as a class different from the land which is in excess of the ceiling area. It is liable to be declared surplus to give effect to the purpose and object envisaged under the Act. The Ceiling Act is a self-contained Code. As far as the acquisition of surplus of ceiling land and payment of compensation is concerned, it is governed by the provisions of the Ceiling Act. It was, therefore, held that it would not be necessary to acquire the land under the Maharashtra Act No.37 of 1966 resulting in misuse of public funds by granting higher compensation, when the purpose of acquisition could be achieved on payment of lesser amount of compensation prescribed in Section 11 of the Ceiling Act. In Parshottamdas's case [supra], the same question had arisen. Another Bench of two Judges had held therein at page 1007 that it is open to the State Government to withdraw from acquisition under the Land Acquisition Act and when the lands under the Ceiling Act could be acquired by paying compensation as provided thereunder, it would not be proper to compel the Government to acquire them under the provisions of the Land Acquisition Act, 1894. As already stated, the Act has the overriding effect on all other laws". In State of M.P. vs. Surendra Kumar & Anr. [(1995) 2 SCC 627], a Bench of two Judges [to which one of us, K.Ramaswamy, J., was a member] was to consider whether it would be open to the Government to purchase the land pending proceedings under the Ceiling Act and publication of the declaration under Section 10 [3]. This Court at page 629 in para 3 had held that two courses were open to the Government in that situation. The Government could return the application for permission for sale; finalize the process in Chapter Ill or it could purchase the lands. It was held that there was no prohibition for the State to purchase the property though the declaration was not finalized.

It would, thus, be clear that when the vacant land is declared under the Ceiling Act, it is not necessary for the State to acquire the excess vacant land vested in it under the Act. But unfortunate to the appellant that benefit of the declaration was unavailable for the reason that the Government in GOMs No.1552/MA dated May 20, 1981 had permitted HUDA to acquire the surplus land under the provisions of the Act. In consequence, having exempted the excess vacant lands from the purview of the Ceiling Act, the appellant had denied itself of the benefit of Section 11 of the Ceiling Act to pay compensation as prescribed thereunder. The result is that the appellant would determine the compensation under the Land Acquisition Act.

The next question is: whether determination of market value at Rs. 30/- per sq. yd. is valid in law? The District Judge had proceeded on the premise that the HUDA had acquired adjacent land under the Act and had sold @ Rs.35/- per sq. yd. and that, therefore, the compensation claimed at Rs.30 per square yard should be paid to the respondents. That found favour with the High Court. It is stated in the evidence adduced on behalf of the appellant that out of the sale consideration of Rs.35/- per sq. yd., the cost of the land was Rs.6/- per sq.yd. and Rs. 29/ was collected towards tentative development charges. They were tentative prices fixed thereunder. In other words, Rs.29/- was incurred towards developmental charges and Rs.6/- per sq.yd. was the actual cost. The sales

took place in the year 1976. It is seen that the lands were being used as horse-stable. The respondent claimed compensation @ Rs.30 per sq. yd. It is seen that the notification under Section 4(1) of the Act was issued on July 27, 1978. The sales by the HUDA of the plots of the neighboring lands took place in the year 1976 after full development. The lands required development. It is well-settled law that deduction of developmental charges varies between 33-1/3% to 65% depending on facts and circumstances in each case. view of the fact that we have in evidence tentative developmental charges of Rs.29 per incurred in 1975-76, taking a pragmatic view we that after deducting developmental charges respondent is entitled to compensation @ Rs.8/- sq.yd. with a statutory rate of solatium on enhanced compensation @ 30% and 9% interest for one year from the date of taking possession, i.e., June 2, 1984 and after expiry of one year, @ 15% till the date of deposit. The respondent is not entitled to additional amount under Section 23 [1-A] for the reason that the respondent had filed W.P No.2510 of 1982 and kept the matter pending till the Amendment Act became operative. The award could not be made on account of the pending proceedings in the High Court and the same was made as per the directions of the High Court.

The appeal is accordingly allowed but, in the circumstances, without costs.