**SUPREME COURT OF INDIA**

Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad

Vs.

P. S. Rao

S.L.P.No.1662 of 2000

(M. Jagannadha Rao and Ajay Prakash Misra, JJ.)

17.01.2000

**ORDER**

1. Delay condoned.

2. Heard counsel on both sides. Learned counsel for the State of Andhra Pradesh has contended before us that an application for grant of exemption under S. 20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976 is not maintainable once the excess land has been declared and the excess land has vested in the State under S. 10, inasmuch as the declarant cannot be said to be "holding" the land any longer. Reliance is placed on S. 2(1) which defines the words 'to hold'.

3. We are unable to accept the above contention. The scheme of the Act is that any person holding vacant land in excess of the ceiling limit has to file a declaration under S. 6, vacant land is defined in S. 2(q) as not including land on which construction is not permissible under building regulations, land occupied by building, before the due date or under construction. Section 2(q) defines urban land as urban land which is referred to as such in master plan etc. but does not include agricultural land. As to what is the relevant 'master plan' there are some decisions of this Court. Detailed

procedure is specified in the Act as to how individuals, families, firms, companies etc. are to file declarations. As to what is to be done if land is held in different capacities or land with limited rights, like lessee, mortgagee etc. various provisions are made. Section 4(9) deals with person holding land with building and other vacant land. Section 4(9) has been the subject-matter of some decisions of this Court.

4. All these provisions require detailed computation based on the facts of each case. In addition, the effect of several judgments of the Courts are to be considered by the authority. Therefore, it is obvious that at the time when the declaration is filed a person may or may not be in a position to know definitely whether he can be said to be in possession of the excess vacant land or not, or even if he can believe he is (in) possession of excess land, how much land is liable to be surrendered exactly. This is because of the fact as pointed above, there are various provisions in the statute which provide statutory deductions and computation and unless the final computation is made, it is indeed difficult to say whether there is excess or even if there is excess, as to what is the extent of the excess land. Unless the quantum of excess land, after the statutory deductions etc. is arrived at, one cannot, in our opinion, decide whether to surrender the excess land or to seek exemption either under S. 20(1)(a) or S. 20(1)(b) or apply under S. 21 or S. 22.

5. For example, the ceiling limit in Hyderabad (from where this case arises), is 1000 sq. metres. Even if there are buildings within the property, one has to file a declaration if the total extent is more than 1000 sq. metres and claim exemption as per statutory deductions. He may claim that after deducting various areas as permitted by the statute, he need not surrender any land. The competent authority may or may not accept the statutory deductions claimed, like appurtenant land etc. and may determine excess. The declarant has a right of appeal. The appellate authority may accept or reject or modify the orders. It may turn out that the excess, in a given case, is (say) only 20 sq. metres. It is obvious that it is a case for exemption for it will not be useful for government to allot such a small piece of land to weaker sections. In yet another case, the excess may be 500 sq. metres or more and a declarant may be prepared to construct buildings for weaker sections under S. 21 or S. 22 may be invoked. In yet another case, a declarant may claim that exemption is necessary in public interest under S. 20(1)(a) or because of grave hardship, under S. 20(1)(b).

6. In our view, it is only after the excess land is actually determined under S. 10 that a person can know the exact extent of excess land in his holding and think of asking for exemption. There may, of course, be some cases where the extent is so large that a claimant may be able to seek exemption even at the time of filing the declaration but even in those cases, he cannot be definite about the actual extent of excess land.

7. Learned counsel, however, relied upon the definition of the words "to hold" in sub-Sec. (1) of Sec. (2) to contend that once the final declaration is made and the excess vacant land has vested in the State, the person does not 'hold' the excess land and no application for exemption under S. 20 can be filed since S. 20 contemplates filing an application by a person who "holds vacant land in

excess of the ceiling area". Section 2(1) states :

"unless the context otherwise requires,

. . . . . 'to hold' with its grammatical variations, in relation to any vacant land means :

(i) to own such land; or

(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

8. The definition of the words "to hold" in S. 2(1) is relevant at the time of computation of the ceiling area and at the stage of the preliminary determination of excess and the final determination, under Ss. 8 and 9 of the Act, the excess is to be determined on the basis of the land permitted by the Act to be held by a person.

9. But, the word "hold" in S. 20(1)(a) or S. 20(1)(b) cannot, in our opinion, have the same meaning that can be attributed to it as in S. 2(1). The very definition in S. 2(1) states that the sub-section applies unless there is anything in the context which suggests a different meaning to be given. In our view, in the context of S. 20(1)(a) and S. 20(1)(b), the definition given in S. 2(1) cannot be applied. The reason is that such a construction will make S. 20 unworkable and otiose. We have pointed out above that it is not possible to make any meaningful application for exemption under S. 20(1)(a) or (b) unless the exact quantum of excess is determined under S. 10 after following the various provisions of the Act relating to statutory deductions and mode of computation. If the contention of the State referred to above is to be accepted, then the peculiar position will be as follows. As stated by us, before the excess is determined, a person will not able to seek exemption because he does not know what is the actual excess land hold and once the excess is determined, he cannot apply because he is not holding the excess land. Thus, the entire object of S. 20 will be frustrated. That is why we say that the definition of the words 'to hold' in S. 2(1) cannot be applied in the context of S. 20(1)(a) or S. 20(1)(b).

10. We are, therefore, unable to accept the contention of the learned counsel for the State that an application for exemption can be maintained only before the excess is determined under S. 10. In our view, the scheme of the Act is to the contrary. The view taken by the High Court following the

decision of this Court in T.R. Thandur v. Union of India, (1996) 3 SCC 690 : (1996 AIR SCW 1700 : AIR 1996 SC 1643), Darothi Clare Parreira (Smt.) v. State of Maharashtra, (1996)

9 SCC 633 : (1996 AIR SCW 3179 : AIR 1996 SC 2553) and State of A. P. represented by Secretary to Govt., Revenue Department, Hyderabad v. Valluru Venkateswara Rao, (1997) 3 Andh LT 417 does not call for any interference.

11. We dispose of the Special Leave Petition accordingly. We do not consider it necessary to interfere with the judgment of the High Court which held that S. 20 application is maintainable even if filed after an order of vesting of excess land passed under S. 10.

Order accordingly.