



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3332]

PRESENT:THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO: 16209/2014

Between:

S.M.A. Khader,

...PETITIONER

AND

The Government Of Andhra Pradesh Rep By Its Principal ...**RESPONDENT(S)**
and Others

Counsel for the Petitioner:

1.P SRI RAM

Counsel for the Respondent(S):

1. G.P. FOR REVENUE

DATE: 20.12.2024

The Court made the following:

ORDER:

This writ petition has been filed questioning the memo No.31129/UCIII(2)/99, dated 03.09.2012 and the rejection order dated 08.07.2013 and for a consequential declaration that the petitioner is entitled to hold the urban land declared by him, which was exempted as per G.O.Ms.No.976 dated 03.08.1997 and G.O.Ms.No.2312 dated 20.05.1980.

2. The case of the petitioner as set out in the writ affidavit in brief is that he along with his mother and three sisters filed declarations under

Section 6(1) of the Urban Land Ceiling Act, 1976 in C.C.Nos.2284, 2286 to 2289/76, declaring the properties devolved from his late father clearly mentioning therein that NTS No.240, VJA measuring 1672.20 sq.mts. is covered by a cinema theatre by name Rajakumari Talkies constructed prior to 1958 and the land in NTS No.468, VJA has on its premises an automobile workshop constructed in the year 1966 with the building permission granted by Municipal Corporation, Vijayawada. Along with the said declaration, the petitioner had applied for exemption to the Industries Department, Hyderabad for the commercial units situated in NTS Nos.240 & 468. Pursuantly, the enquiry staff viz., Deputy Inspector of Survey, Urban Land Ceiling inspected the above two industrial units and submitted survey sketches on 26.10.1976 showing that the land in NTS No.240 is totally covered by Cinema talkies and though the total extent of the land in NTS No.468 is 730 sq.mts. covered by industrial structures covering a plinth area of 229 sq.mts., and 151 sq.mts. respectively, the enquiry staff of survey department, in a careless and casual manner and without application of mind had wrongly computed the same as 802.67 sq.mts. Thereafter, the Government considering existence of commercial units, issued G.O.Ms.No.976 Revenue (UCIII) Department dated 03.08.1977 exempting the total extent of 2404.85 sq.mts., in NTS Nos. 240 and 468 of Vijayawada, which are covered by Cinema talkies and automobile

workshop. Subsequently, a draft statement under Section 8(1) of the Act was issued on 29.09.1977, including the properties that were exemption by the Government under G.O.Ms.No.976, dated 03.08.1977, in computation of excess land. The petitioner filed objections to the said draft statement that in view of the exempted granted by Government vide G.O.Ms.No.976, dated 3.8.1977, the properties covered in NTS Nos.240 and 468 should not be computed as vacant land in his holding. Thereupon, an order dated 16.01.1978 was issued under Section 8(4) of the Act excluding the land covered by the G.O. referred to above and declaring that the petitioner holds 292.30 sq.mts. in excess of the ceiling limit and as no modified statement under Section 8(1) was issued as mentioned in the orders, the petitioner had applied for exemption under 20(1)(B) of the Act for exemption of the said surplus extent of 292.30 sq.mts., and thereafter the Government considering the hardship factor, exempted the surplus extent of 292.30 sq.mts. under Section 20(1)(B) of the Act under G.O.Ms.No.2312, Revenue (UCIII) Department, dated 20.05.1980. The properties covered by the declaration were mortgaged to Indian Bank by deposit of title deeds and as the company of the petitioner M/s. S.M.Abdul Haq Saheb & Bros. was running in losses, Cinema theatre and the Automobile work shop were leased out and the petitioner has been remitting the amounts realized by way of rents to the

Bank towards instalments payable. Thereafter, Indian Bank, filed a suit in O.S.No.106 of 1973 against the petitioner, other co-declarants in C.Cs. and also against partnership firm for recovery of the loan amount of Rs.9,66,096.77 ps. and the matter went in appeal to High Court and the High Court vide judgment dated 05.08.1991 allowed the appeal filed by Indian Bank directing the petitioner to pay the loan amount together with interest. The findings recorded in the suit as well as appeal proceedings by the II Additional Subordinate Judge's Court as well as High Court clearly establishes that the commercial units, viz., Rajakumari Talkies and Automobile workshop were leased out much and were under registered lease earlier to the commencement of the Urban Land Ceiling Act and long before granting of exemption. The Government while granting exemption vide G.O.Ms.No.976, dated 03.08.1977 laid a condition that the land should be utilized for the purpose of the said industry and the Government did not impose any other condition prohibiting the alienation or leasing of the said properties and as on today the commercial activity is still going on in the exempted properties. The Cinema theatre and automobile workshop having been constructed with prior permission of Vijayawada Municipal Corporation much earlier to the commencement of ULC Act, the land covered by them shall not be treated as vacant land and thus the provisions of the Urban Land Ceiling Act are not

applicable in view of Clause-II of Section 2(q) of the Urban Land Ceiling Act and also in view of the pronouncements of the Hon'ble Supreme Court in Meera Gupta (AIR 1992 SC 1567) and also of the Division Bench of this Court in 1995(3) ALT 487 (DB) that the land covered by structures existing at the time of commencement of the Act and the land appurtenant thereto are non-vacant lands and therefore the buildings and appurtenant land thereto should be excluded while computing the holding of the vacant land of a person. Further, as per Section 2(G) of the ULC Act, every building constructed before the commencement of the ULC Act is entitled to appurtenant land of 500 sq.mts. each and also in their guidelines vide Ministry of W&H, Lr.No.1/132/76-1, LCU(III) dated 18.11.1976 the Government of India clearly states that non-residential buildings are entitled to an additional appurtenant land of 500 sq.meters each and further this Court in the decision reported in AIR 1991 A.P.84 as well as the Full Bench of Allahabad High Court in AIR 1987 ALL 232 also categorically held that every non-residential building constructed prior to commencement of ULC Act is eligible for an allowance of 500 sq.mts. each towards the appurtenant land. In view of the same, the property covered by "Rajakumari Talkies" constructed in 1958 and the automobile workshop constructed in 1966 together with appurtenant land thereto are not vacant lands and they do not attract the provisions of the

Urban Land Ceiling Act, since if the authorities had allowed appurtenant land of 500 sq.mts., to each building, there would not be any vacant land at all and the land would be far less than the entitlement of the declarant. The exemption under Section 20(1)(a) of the Act would only come into play when there is excess land and since there is no excess land, the question of granting exemption under Section 20(1)(a) of the Act does not arise, however, the exemption was granted prior to determination of surplus vacante land and thus, the exemption order Under G.O.Ms.No.976, Revenue UCIII Department, dated 03.08.1977 is superfluous, since the provisions of the ULC Act do not apply to the subject property, since do not come under the purview of the Act. Further, this Court vide decision in 1998(3) ALT 471 categorically held that passing of final orders under section 8(4) and 9 of the Urban Land Ceiling Act are mandatory and without passing such final orders under Section 9, further proceedings are liable to be set aside. In the instant case also, since the Special Officer & Competent Authority, ULC, Vijayawada failed to issue the statutory proceeding under Section 9 of the Act and also the modified statement under Section 8 of the Act and therefore, the Land Ceiling Cases in respect of the subject property are vitiated. The case file issued to the petitioner under Right to Information Act reveals that that since the required information was yet to be received from the Special Officer &

Competent Authority, issuance of final statement was held up and hence, it is clear that the proceedings under Section 9 of the Act had not been taken place and final statement was not issued and non-issuance of the final statement vitiates the entire proceedings. Moreover, subject properties were under lease even much prior to commencement of the Act and the same has duly been mentioned in the civil suit before Subordinate Judge, Vijayawada and Appeal before the High Court filed by the Bank and the same also was mentioned by the Special Officer & Competent Authority in his order under Section 8(4) of the ULC Act. Even though the properties were leased out, none of the conditions of the G.O.Ms.No.976, dated 03.08.1977 were violated and the commercial activity is still going on till today. Further, in the order under Section 8(4) of the Act, dated 16.1.1978, the Special Officer & Competent Authority computed 1550 sq.mts. in R.S.No.84/1/A in Bhavanipuram village in the petitioner's holding and in fact the said property does not belong to the petitioner and the learned Subordinate Judge at Vijayawada in O.S.No.100 of 1978 and this Court in Appeal No.863 of 1989 held that the said site does not either belong to the partnership company of the petitioner or to the family of the petitioner and it belonged to Sri Kantamaneni Raja Gopala Rao. However, the said extent has erroneously been added to the holding of the petitioner and consequently declared him as

surplus land holder and had the said extent not been included in the holdings of the family, there would not have been any surplus land at all in the holdings of the petitioner. While so, a show cause notice was issued in Memo No.31129/UCIII(2)/99 dated 03.09.2012 to show cause why the exemption granted in G.O.Ms.No.976 dated 03.08.1977 should not be withdrawn in view of the violation of exemption conditions prescribed in the said G.O. for which, the petitioner gave a reply on 15.04.2013 to respondent no.1 besides filing a revision petition on 29.04.2013 under Section 34 of the Act. The respondent no.1 by order dated 08.07.2013 rejected the revision petition stating that the Government cannot exercise powers under Section 34 of the Act on the revision petition at this point of time in view of the repeal Act. The show cause notice is without jurisdiction. However, the respondent no.2 is threatening to take action in pursuance of the show cause notice. The repeal Act 15/99, which was adopted by the A.P.State Legislature with effect from 27.03.2008, made provisions for certain savings. Section 3 of the repeal Act clearly mentions that the orders granting exemption under sub-section 1 of Section 20 of the Principal Act are saved and except the above saving, the entire Act 33/76 stands repealed. In view of the same, the Government have no power to exercise its right to withdrawal of exemption under Section 20(2) of the Act 33/1976 and non appreciation of this legal position vitiates the

action of the respondents. Therefore, the memo issued by the respondents directing the petitioner to show cause why the exemption shall not be withdrawn is without jurisdiction, illegal and the same is liable to be set aside. A single bench by order dated 24.08.2011 clearly ruled that only Section 20(1) of the Act 33/1976 was saved under Section 3 of the repealed Act 15/99 and consequently held that Section 20(2) is not available for the Government to withdraw the exemption granted under the Act 33/1976. Therefore, the impugned memo is without jurisdiction and the issue involved in this writ petition is squarely covered by the judgment in Writ Petition No.26474 of 2009, dated 24.08.2011.

3. The contents of the counter-affidavit filed by the 2nd respondent, in brief, are that one Kadiyala Venkateswara Rao, who is lessee of Rajakumari Talkies, filed statement under Section 6(1) of ULC Act duly declaring the urban property held by their firm Shree Corporation before the Competent Authority. Originally, the land belongs to the petitioner and the Competent Authority, after hearing arguments from both the sides had issued draft statement under Section 8(1) and notice under Section 8(3) of ULC Act, calling for objections. The land owner filed an application before the Government to exempt the above land along with the land covered in NTS No.468 of Vijayawada and pursuantly the Government after receipt of the

proposals from the Director of Industries, Andhra Pradesh, Hyderabad, the Commissioner for Land Reforms and Urban Land Ceiling, Hyderabad had exempted the land admeasuring 2404.85 sq.mts. in NTS No.240 and NTS No.468 vide G.O.Ms.No.976, dated 03.08.1977 under Section 20(1)(a) of the ULC Act, while issuing the said G.O., NTS No.240 was mentioned instead of NTS No.92 for the land covered by Rajakumari Talkies and despite sending necessary proposals for modification, the Government did not modify the said NTS number so far. The petitioner, his mother and sisters also filed statements under Section 6(1) of the ULC Act including the subject properties among other properties and the then Special Officer, after examining the documents submitted by declarants and report submitted by enquiry officer had declared the sister and mother of the petitioner as surplus landholders to an extent of 1792.30 sq.mts. vide office order Rc.C.C.No.2284, 2286 to 2289/76, under Section 8(4) of the ULC Act, dated 16.01.1978. The application submitted by the petitioner to exempt the land under Section 20(1) (b) of the ULC Act, has been considered by the Government after receipt of proposals from Special Officer and Competent Authority, ULC, Vijayawada and Commissioner of Land Reforms and Urban Land Ceiling, Hyderabad and an extent of 292.30 sq.mts of land was exempted vide G.O.Ms.No.2312, Revenue (UC.II) Department, dated 20.05.1980, after

allowing the statutory limit of 1500 sq.mts. Thereafter, since the petitioner had violated the conditions imposed by the Government and without obtaining permission from the Government, constructed a multistoried complex by third parties in T.S.No.468 by removing the workshop, necessary proposals were submitted to the Government to cancel the exemption granted for the said land as he has leased out the workshop to M/s.Saboo brothers, Vijayawada, thereby the Government vide Memo No.375/UC-III/82-85, Revenue UC-III Department, dated 04.01.1995 had asked why the exempted land could not be withdrawn by the Government under the provisions of the ULC Act and in response, he submitted a reply stating that Rajakumari Talkies were leased out in the year 1969 and the workshop was leased out in 1976. Thereafter, the Government, upon receipt of the report from the office of the Competent Authority, Urban Land Ceiling to the effect that the land Cinema theater was leased out to other and the land in NTS No.468 is concerned the same is in occupation of the third party and a multistoried commercial complex was constructed therein; issued the impugned memo to Sri SMA Khadar asking him as to why the exemption granted in G.O.Ms.No.976, dated 3.8.1977 should not be withdrawn in view of violation of the exemption conditions prescribed in the said G.O. Thereafter, the petitioner filed revision petition before the Government under Section 34 of the ULC Act requesting to revise

the order dated 16.01.78 earlier issued under Section 8(4) of the Act passed by the Special Officer and Competent Authority and the Government in Memo No.31129/UC-III (2) 1999-26 Rev.UC-III Department, dated 08.07.2013 has informed the declarant that ULC Act was repealed by Repeal Act, 1999, which was adopted by the State of A.P. with effect from 27.03.2008 and in the said Repeal Act, section 34 of the principal Act, 1976 is not saved and thereby the petitioner filed this writ petition. It is incorrect to state that the land in NTS No.468 is only 730 sq.mts and the ULC staff upon careful measurement of the land confirmed the extent to be 802.67 sq.mts and moreover the petitioner himself admitted that he is having 802.67 sq.mts in NTS NO.468. The Government had exempted on conditional basis on the condition that the subject lands should be utilized for the purpose of said industry. It is incorrect to state that the buildings constructed prior to the commencement of the Act, do not attract the provisions of the ULC Act. Since the declarant had not applied to Government to reopen the file in terms of the decision in ***Meera Gupta vs. State Government of West Bengal*** for cancellation of the exemption granted under Section 20(1)(a) of the ULC Act on the ground that since the subject premises are covered with buildings by the date of coming into force of the Act, the subject lands cannot be computed as vacant land. Further, since the Act was repealed in Andhra Pradesh with effect from

27.03.2008 saving the exemptions under Section 20(1)(a) of ULC Act, the case of the petitioner for providing benefits under the decision referred to supra deserves no consideration. The petitioner, pursuant to issuance of the order under Section 8(4) of the Act by the Competent Authority, had approached the Government and filed exemption application for granting exemption to the above industries and thereupon the Government had asked the Special Officer and Competent Authority and pursuantly the matter was referred to the Inspector of Survey for furnishing the particulars and as the Inspector of Survey had caused delay in sending the reply, the Government had exempted the above two industries under Section 20(1)(b) of the ULC Act and therefore, the question of issuance of statutory proceedings under Section 9 of ULC Act does not arise. The declarant in violation of the exemption granted vide G.O.Ms.No.976, dated 03.08.1977, disposed of the land admeasuring 802.67 sq.mts. to others wherein a multistoried complex was constructed. The declarant himself had admitted in his statement about possessing an extent of 1550 Sq.mts. in R.S.No.84 of Bhavanipuram and accordingly, the same was included in the holdings of the declarant and the averment contra is false. Since the declarant had violated the conditions of Section 20(1)(a) of the ULC Act and disposed of the exempted land to third party, who occupied and constructed a multistoried complex in the exempted

land, the impugned proceedings came to be issued, since the repealed Act saves the exemptions granted under section 20(1)(a) of the Act and the exempted lands continue to be surplus lands and violation of conditions gives right to the Government to withdraw the exempted lands after due process of law. Accordingly, the impugned proceedings were issued. The writ petition being meritless deserves dismissal.

4. The respondent no.2-joint Collector filed additional affidavit contending that a Special Surveyor and Special Revenue Inspector were deputed to inspect the land and submit ground report in relation to the property situated in NTS No.468 (R.S.No.601, Revenue Ward No.10) of Vijayawada and they found that the subject land is used for commercial purpose and the subject land was occupied by a three storey building (G+3) for commercial purpose with the name "MALABAR GOLD & DIAMONDS" and the location of the said building is matching with the boundaries mentioned in the schedule submitted by the declarant at the time of submitting declarations before the competent authority. It revealed in the enquiry that Malabar Gold & Diamonds had taken the land on lease since 10 years from Mallineni Trading Pvt. Ltd. and thus the writ petitioner had violated the conditions of exemption issued vide G.O.Ms.No.976, dated 03.08.1977 even before the

repeal of the ULC Act, 1976 and there is continuous exchange of notices/ correspondences since 1955, regarding the said violation of conditions.

5. Heard *Sri Patanjali*, learned counsel, for Sri *P.Sri Ram*, learned counsel for the petitioner and Sri *Vishnu Teja*, learned Special Government Pleader.

6. During the course of arguments, the learned counsel for the petitioner confined his arguments only in relation to the property covered by NTS No.468, which is one of the properties exempted under G.O.Ms.No.976, dated 03.08.1977.

7. The learned counsel for the petitioner, while reiterating the contents of the writ affidavit, would contend that the property covered under NTS No.468 (R.S.No.601, Revenue Ward No.10), which was exempted from the operation of ULC Act by the Government vide G.O.Ms.No.976, dated 03.08.1977 was leased out under registered lease deed much prior to granting of exemption as evidenced by the observations made in the proceedings initiated by Indian Bank, Governorpet, Vijayawada Branch for realization of the loan facility availed by the petitioner upon creation of equitable mortgage over the subject property vide O.S.No.106 of 1973 by the learned II Additional Subordinate Judge, Vijayawada and in A.S.No.97 of 1982

by this Court and moreover the condition laid in the exemption G.O. is only to the effect that the land should be utilized for the purpose of the said industry and there was no condition prohibiting alienation or leasing out of the property and since commercial activity is still going on, there was no violation of any conditions at all. The learned counsel would further contend that as per section 3 of the repeal Act 15/99, the orders granting exemption under Sub-Section 1 of Section 20 of the Principal Act are saved and except granting exemption the entire Act was repealed and therefore, the Government have no power to exercise its right to withdrawal of exemption under section 20(2) of the Act 33/1976. However, without having any authority or jurisdiction, the memo came to be issued and under the guise of such an unsustainable memo now the second respondent is threatening to take action in pursuance thereof. Therefore, the memo impugned is liable to be aside. Accordingly, prayed to allow the writ petition.

In support of his contentions, the learned counsel for the petitioner relied on the decisions in ***Surender Raj Jaiswal and another vs. The Principal Secretary to Government, Revenue, (U.C.III), Department and another***¹ and ***State of Uttar Pradesh vs. Hariram***².

¹. Orders of the High Court of Andhra Pradesh dated 24.08.2011 passed in W.P.No.26474 of 2009

². (2013) 4 SCC 280

8. On the other hand, the learned Special Government Pleader, would submit that the declarant has violated the conditions of Section 20(1)(a) of the ULC Act and disposed of the exempted land to third party, who constructed a multistoried complex with the name "MALABAR GOLD & DIAMONDS" in the exempted land and therefore, the memo impugned in this writ petition was issued. The learned Special Government Pleader would further contend that as per clause (b) of Section 3(1) of the repeal Act; the validity of any exemption order under Section (1) of Section 20 of the Principal Act and also the action taken thereunder are declared immune from the consequences of repeal. Section 3(1)(b) of the Repeal Act does not expressly bar or take away the rights and liabilities under an exemption order and Section 6 of the General Clauses Act becomes applicable with all its force, and hence, the repeal of the Principal Act, would not affect the rights, privileges, obligation or liability, acquired, accrued, or incurred under the principal Act qua section 20(1) exemption order. Therefore, since the petitioner has violated the exemption granted to him, the conditions of grant would come into play and pursuantly the notice impugned in this writ petition has been issued directing the petitioner to show cause as to why the exemption granted in G.O.Ms. No.976, dated 03.08.1977 for the land in NTS No.468, Block No.10, Vijayawada, should not be withdrawn for violating the

conditions prescribed in the said G.O. There are no merits in the writ petition and the same deserves dismissal. Accordingly, prayed to dismiss the writ petition.

In support of his contentions, the learned Special Government Pleader relied on the decisions in ***Maharashtra Chamber of Housing Industry, Mumbai and others vs. State of Maharashtra and another***³ and ***Bombay Wire Ropes Ltd., and another vs. State of Maharashtra and others***⁴.

9. Perused the material available on record and considered the submissions made by both the learned counsel.

10. At the outset it is relevant here to mention that the petitioner while assailing the Memo 31129/UC.III(2)/1999, dated 03.09.2012 and the rejection orders passed vide Memo.No.31129/UC.III(2)/1999-26, dated 08.07.2013 prayed for a declaration that the petitioner is entitled to hold the urban land declared by them, which was exempted as per G.O.Ms.No.976 dated 03.08.1997 and G.O.Ms.No.2312, dated 20.05.1980. However, the relief sought in relation to the property situated in NTS No.240 and the property

³. 2014 SCC Online Bom 1083

⁴. 2019 SCC online Bom 264

exempted under G.O.Ms.No.2312, dated 20.05.1980 was not pressed and the relief sought in the writ petition is confined only in respect of the property exempted as per G.O.Ms.No.976, dated 03.08.1997 viz., the land measuring 2,404.85 Sq.Mts. in N.T.S.No.468 (R.S.No.601 Revenue Ward No.10) of Vijayawada village in Vijayawada Urban Agglomeration. It is the specific contention of the petitioner that he had never violated any of the conditions of exemption. Therefore, it is needless to consider the contentions and submissions made by the learned counsel for the parties either with regard to the other property exempted under G.O.Ms.No.976, dated 03.08.1997 and also the property exempted under G.O.Ms.No. 2312, dated 20.05.1980 or with regard to the contentions raised by the learned counsel for the parties in relation to the rejection order dated 08.07.2013, other than the ones concerned to violation or not of the conditions of exemption granted in G.O.Ms.No.976, dated 03.08.1997, regarding the property situated in NTS No.468.

11. There is no dispute regarding granting of exemption to the subject property. For quick reference the Government Order under which the said exemption was granted to the petitioner in relation to the subject property and another property is extracted hereunder:

"Whereas Shri S.M.A.Khader, S/o.S.M.A.Haq, Vijayawada hold vacant land measuring 2,404.85 sq.Mts. in N.T.S.No.240 (Block No.6, Revenue Ward No.7) and N.T.S.No.468 (R.S.No.601 Revenue ward No.10) of Vijayawada 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 of 1976).

2. AND WHEREAS the entire extent of land measuring 2,404.85 Sq.Mts. is essential to run the Cinema Theatre and Work Shop.

3. AND WHEREAS 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.

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 (Central Act, 33 of 1976) the Governor of Andhra Pradesh hereby exempts the land measuring 2,404.85 Sq.Mts. in N.T.S.No.240 (Block No.6 Revenue Ward No.7) and N.T.S.No.468 (R.S.No.601 Revenue Ward No.10) of Vijayawada village in Vijayawada Urban Agglomeration mentioned in Para two above subject to the condition that the said land should be utilized for the purpose of said Industry."

12. The terms of the Government Order in unequivocal terms says that the land in NTS No.468 was exempted from the operation of the provisions of the Urban Land Ceiling Act subject to the condition that the said land should be utilized for the purpose of running workshop.

13. The additional affidavit filed by the 2nd respondent- Joint collector and Competent Authority, Urban Land Ceiling, Vijayawada and the reports of the Special Revenue Inspector & Special Surveyor, ULC, Vijayawada dated 02.08.2024 and 03.08.2024 and the photographs annexed to the said additional affidavit show that the land in NTS No.468 exempted under G.O.Ms.No.976, dated 03.08.1977 was covered with a three storey building

(G+3) used for commercial purpose with the name MALABAR GOLD & DIAMONDS and enquiries reveal that the said firm has taken the said land on lease from Mallineni Trading Private Limited and therefore, the petitioner had violated the conditions of exemption issued vide G.O.Ms.No.976, dated 03.08.1977.

14. Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, which is adopted by the State of Andhra Pradesh with effect from 27.03.2008, reads thus:

“3. Savings – (1) the repeal of the principal Act shall not affect-

- (a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
- (b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary;
- (c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where-

- (a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and
- (b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.”

15. In the decision in ***Maharashtra Chamber of Housing Industry, Mumbai and others*** (supra 3) relied on by the learned Special Government

Pleader, Full Bench of Bombay High Court while deciding the issue as to whether the associations which have taken benefit of the schemes under Section 20 of the ULC Act and constructed buildings subject to the condition that they have to surrender certain number flats to the State Government, could be allowed to contend that, in view of repeal of ULC Act, their obligations under the said scheme do not survive and there is no need for them to surrender flats to the government, held thus:

"196. It is settled that a saving provision in a repeal statute is not exhaustive of the rights, obligations so saved or rights that survives the repeal as is clear from the judgment of the Constitution Bench in the case of *Bansidhar v. State of Rajasthan* reported in (1989) 2 SCC 557. It is, therefore, imperative that section 6 of the General Clauses Act which provides for the effect of a repeal, stands completely attracted. Section 6(c) of the General Clauses Act provides that the repeal shall not affect any right, privilege, obligation or liability acquired, 'accrued or incurred under any enactment was repealed unless a different intention appears.

197. A proper examination of the provisions of the Repeal Act and more particularly the provisions of sections 3 and 4 do not indicate that it would be the intention of the Legislature to save the validity of a section 20(1) Exemption Order to exclude the enforcing power being applicability of Chapter III of the Principal Act being one of the conditions under the exemption order. It cannot be said that the rights accrued and the liabilities incurred under section 20(1) exemption order stands completely effaced when the validity of such an exemption order has been saved by the provisions of section 3(1)(b) of the Repeal Act. As no such contrary intention can be gathered from the provisions of the Repeal Act, the petitioner's contentions that the validity of the exemption order as saved by section 3(1)(b) of the Repeal Act is valid de hors the conditions of the exemption order cannot be accepted on the basis of the plain wordings of section 3(1)(b) of the Repeal Act. In the decision of the Supreme Court in the case of *Shantibai Gaikwad v. Shivajibhai Haribhai*, reported in (2001) 5 SCC 101, the Supreme Court has once again recognized the principle that a repealing statute is not exhaustive and does not automatically extinguish accrued rights unless they are taken away completely. The Repeal Act in no manner expressly takes away the applicability of the conditions under section 20(1) exemption order. In fact the intention of the

legislature is to wholesomely save the validity of an exemption order which ipso facto include the teeth namely to take action under Chapter III of the Principal Act in case of breach of the condition under which an exemption has been granted for the beneficiary of the section 20(1) of the order.

198. The petitioners contention that for some reason the scheme under a section 20(1) order could not be completed and hence the exemption order cannot be enforced due to the repeal of the Principal Act, cannot be accepted. Once the legislature holds an exemption order issued under section 20(1) to be valid, all incidental powers which are necessary to preserve its validity would be available to the State. This would be firstly by virtue of the clear provisions of section 3(1)(b) of the Repeal Act and secondly by virtue of the provisions of section 6 of the General Clauses Act. Any other interpretation would be nothing short of doing a violence to the solemn intention of the legislature in saving the validity of an exception order by in view of the express provisions of section 3(1)(b) of the Repeal Act.

199. In view of the aforesaid discussion, the legal position as would emerge can be summarized as under:—

- (a) section 3(1)(b) of the Repeal Act saves the validity of an order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary.
- (b) this would mean that the validity of section 20(1) exemption order is saved in every regard so as to hold the same valid for all the purposes.
- (c) the phrase "validity" would mean that an exemption order would be construed to be valid in regard to all the rights and liability attached to such an exemption order. These rights and liabilities may be either of the beneficiary of the exemption order or the Government.
- (d) As section 3(1)(b) of the Repeal Act does not expressly bar or take away the rights, and liabilities under an exemption order, section 6 of the General Clauses Act becomes applicable with all its force, and hence, the repeal of the Principal Act, would not affect the rights, privileges, obligation or liability, acquired, accrued, or incurred under the Principal Act qua a section 20(1) exemption order.
- (e) Any other interpretation would render section 3(1)(b) of the Repeal Act to the extent it saves the validity of a section 20(1) exemption order meaningless, as section 3(1)(b) of the Repeal Act not only saves the validity of section 20(1) exemption order but also any action taken thereunder notwithstanding any judgment of any Court to the contrary.

- (f) If the Legislature in so many words has saved the validity of a section 20(I) exemption order then it would be absurdity to say that on one hand the legislature has saved its validity and on the other hand such a validity would be required to be read as meaningless in view of repeal of the Principal Act.
- (g) The arguments of the petitioners that what is saved under section 3(1)(b) of the Repeal Act are only actions which stand completed and closed, is per se not acceptable for the reason that such interpretation would only be possible when there is no saving clause in the repealing statute. More particularly it is also unacceptable in view of a saving clause of the nature section 3(1)(b) of the Repeal Act provides. A plain reading of section 3(1)(b) definitely cannot be construed to attribute such a meaning to section 3(1)(b).
- (h) The Repeal Act, if construed in its entirety, manifest a clear intention of the Legislature to save the validity of a section 20(1) exemption order in totality including its enforceability as observed by my learned brother."

16. In the above decision, the Full Bench held at point (d) of Para-181 as follows:

"181 in the light of the above discussion, my answers to the questions referred to the Full Bench are as follows:

(a) x x x x x x

(d) Question (3)(b) in the Affirmative, with a clarification that the order of exemption can be implemented or enforced otherwise than by recourse to the Urban Land (Ceiling and Regularization) Act, 1976. The State may enforce the order together with its conditions through a Court of law or devise any legislative or executive means to implement the order of exemption and its conditions. The enforceability of the order, and legality of the measure adopted for its implementation will, however, have to be decided in the facts and circumstances of each individual case.

xxxxxxxxxx"

17. Therefore, the enforceability of the order of exemption and legality of the measure adopted for its implementation will, however, have to be decided in the facts and circumstances of each individual case.

18. As stated supra, the condition imposed while granting exemption in the instant case is that the land in NTS No.468 covered by the subject G.O. shall only be used for the purpose of running workshop. In the case covered by the decision referred to above ***Maharashtra Chamber of Housing Industry, Mumbai and others*** (supra 3), the condition imposed was that the association shall handover certain number of constructed flats to the Government. Therefore, keeping in view the observations made at para-181(d) of the judgment referred to supra, the decision arrived at by the Full Bench of Bombay High Court at paras-196,197,198 and 199 extracted above cannot be made applicable to the facts of the case on hand, since the condition imposed in the instant case while granting exemption was that the premises shall only be used for the purpose of running workshop, whereas the condition imposed in the case covered by the ***Maharashtra Chamber of Housing Industry, Mumbai and others*** (supra 3) was that certain number of constructed flats are to be handed over to the Government i.e. to say the exemption granted created an interest in favour of the Government in the flats to be handed over to the Government.

19. In the decision relied on by the learned counsel for the petitioner in ***Surender Raj Jaiswal & another*** (supra 1), while dealing with the similar question as to whether permission is necessary to change use the land covered under the exemption proceedings for other purposes, a coordinate bench of this court while was at Hyderabad, after extracting Sections 3 and 4 of the Repeal Act 15/99, held thus:

“From a perusal of the aforesaid provisions under Section 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act of 1999, it is clear that the orders granting exemption under sub-section (1) of Section 20 of the principal Act are saved. It is also clear from a perusal of the provisions under Section 3(1)(c) of the Repealing Act that repeal of the principal Act shall not affect any payments made to the State Government as a condition for granting exemption under sub-section (1) of Section 20 of the principal Act. But, at the same time, the provision under sub-section (2) of Section 20 is not saved. Section 20(1) of the principal Act empowers the Government to exempt any land subject to certain conditions, but under sub-section (2) of Section 20 of the principal Act, the Government was empowered to withdraw such exemption in cases where conditions are violated. A harmonious reading of the provisions under Sections 20(1) and 20(2) of the principal Act, coupled with Section 3 of the Repealing Act, makes it clear that the order granting exemption is saved only with a view to avoid repayment of any amounts collected by the State Government, while granting exemptions. When the principal Act itself is repealed on the ground that it has failed to achieve the objective expected of it, it is not open for the 1st respondent-Government to refuse permission in the instant case, only on the ground that the conditions imposed in the order granting exemption shall continue to operate. In the absence of any saving clause, saving sub-section (2) of Section 20 of the principal Act, even in cases where conditions are violated, Government is not empowered to withdraw the exemptions granting under Section 20(1) of the principal Act, after coming into force of the Urban Land (Ceiling Regulations) Repeal Act, 1999. In the absence of such power, and further, in view of the Repealing Act itself, the conditions imposed in the order granting exemption, have become unenforceable and are non-est. In the absence of initiation of proceedings or withdrawal of exemption granted under Section 20(1) of the principal Act before the enforcement of the Urban Land (Ceiling and

Regulation) Repeal Act, 1999, the land, which is exempted, will become a free-hold land, and hence, the stand of the respondents that even after coming into force of the of the Repealing Act,1999, the conditions imposed in the order granting exemption under Section 20(1) of the principal Act shall continue to operate, cannot be accepted. The said interpretation will run contra to the every objection of the Urban Land (Ceiling and Regulation) Repeal Act,1999. Said view also gains support from the other provisions of the Repealing Act, particularly Section 4, which states that all proceedings relating to any order made or purported to be made under the principle Act, pending immediately before the commencement of the Urban Land (Ceiling and Regulation) Repeal Act of 1999, shall stand abate, except in cases where possession is taken by the State Government or any person duly authorized by the State Government on behalf of the competent authority. Having regard to the provisions under Section 20(1) and (2) of the Urban Land (Ceiling and Regulation) Act, 1976 and the provisions under Section 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act,1999, it is to be held that in cases where the vacant land is exempted under Section 20 of the principal Act and where such exemption is not withdrawn before the enforcement of the Repealing Act,1999, such land will become the free-hold land irrespective of any conditions with regard to usage of the exempted land. As held above, as the land in question has become the free-hold land in view of the Repealing Act,1999, there appears no reason or justification for not granting permission to use the land covered by exemption proceedings, for the purpose of multiplex theatre-cum-shopping complex. In a strict sense, no such permission is necessary, but, when the competent authority under the Greater Hyderabad Municipal Corporation Act has not received the application, petitioner had to approach the Government, and as permission is denied by misconstruing the various provisions of the Repealing Act,1999, the impugned order is liable to be set aside."

20. In the case covered under the decision referred to supra-1, when the petitioners therein sought permission of the authorities to change use of the land covered under the exemption from Cinema hall to Multiplex Theatre-cum-shopping complex, the same was denied by the authorities by issuing a memo. The said memo with the observations referred above was set aside by coordinate bench of this Court holding that after coming into force of the

Repealing Act,1999, the said land would become a free-hold land and as such no permission whatsoever is required for changing use of the land.

21. In the instant case, as stated supra, it is contended in the additional counter that use of the land exempted under G.O.Ms.No.976, dated 03.08.1977 was changed and a three storey building was built therein and therefore the petitioner had violated the terms of exemption and the proceedings impugned in the writ petition has been issued directing the petitioner to submit explanation as to why the exemption granted under G.O.Ms.No.976 cannot be withdrawn.

22. In view the observations made by a coordinate bench of this Court, as the land became a free hold land in view of the provisions of the Repealing Act, 1999, issuance of the impugned memo calling upon the petitioner to show cause as to why exemption cannot be withdrawn, is unsustainable and the same is liable to be set aside.

23. As already stated above, this Court is not inclined to go into the other aspects raised by the parties, since the petitioner had confined the relief so far as the property situated in NTS No.468 covered under G.O.Ms.No.976, dated 03.08.1977.

24. In the above view of the matter, this writ petition is allowed, setting aside the memo No.31129/UCIII(2)/99, dated 03.09.2012. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

Note: L.R.copy be marked.

B/o
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