

State of U.P. and anr. Vs. District Judge, Varanasi and anr.

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Court : Allahabad

Decided On : Dec-05-1984

Reported in : AIR1986All178

Judge : K.C. Agrawal, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 1(2), 2(1), 3 and 4(9)

Appeal No. : Civil Misc. Writ Petn. Nos. 7302, 7315 and 7319 of 1980

Appellant : State of U.P. and anr.

Respondent : District Judge, Varanasi and anr.

Advocate for Def. : Radhe Krishna and ;Prakash Krishna, Adv.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Petitions allowed

Judgement :

ORDER

K.C. Agrawal, J.

1. These three writ petitions have been preferred by the State of U. P. against the judgment of the District Judge. Varanasi passed in Ceiling appeals Nos. 45 of

1979. 455 of 1979 and 12 of 1980.

2. Gyan Das and his two sons, Sri Kumar Agrawal and Vinod Kumar Agrawal filed separate statements under Section 6(1) of the Urban Land (Ceiling and Regulation) Act (hereinafter referred to as the Act). After survey, the draft statements were served under Section 8(3). Against the draft statements, four objections were filed. These objections were by Gyan Das, Sri Kumar Agrawal and Vinod Kumar Agrawal and Pravin Kumar, minor son of Gyan Das. The main objection of Gyan Das was that the entire property was the joint Hindu family property consisting of Gyan Das, and his aforesaid three sons and, as such, each one of the members had one fourth share. Similar objections were filed by his sons Vinod Kumar, Sri Kumar and Pravin Kumar (minor).

3. The Competent Authority consolidated all the cases and proceed to decide them by a common judgment. The case of Gyan Das was made the leading case.

4 Before proceeding with the points arising for decision in this writ petition it may be noted that the only property involved in the case is house No. D.63/10, Mahmoor Ganj, Varanasi City which was bounded by boundary walls on all the four sides and the total area of which is 13192 sq. metres. Out of this total area, the covered area is 2302.64 Sq. metres, The details of the building have been mentioned in the judgment of the Competent Authority.

5. The Competent Authority held that the property aforesaid was a joint Hindu family property and the share of Gyan Das was one half being that of his own and his minor son Pravin Kumar and out of the remaining half, one fourth belonged to Vinod Kumar and the remaining one fourth to Sri Kumar. The Competent Authority also declared 712.41 sq. metres of the premises D.63/10 Moorganj as surplus of each one of the four. Against this judgment of the Competent Authority, three appeals were preferred. The appeals were allowed by the District Judge on 19-3-1980 on the view of Section 4(9) made in State of U. P. v. L. J. Johnson, 1978 All LJ 1222. Against the aforesaid judgment, the present writ petitions have been filed.

6. The first question that arises for consideration is about the land held by each one of the members of the joint Hindu family aforesaid. This was not disputed before me that the property in question was the joint Hindu family property. It has been noted above that the joint family consists of Gyan Das, and his three sons whose names have also been given. Out of the three sons, one of them was minor. The Competent Authority has found the share of each one of the four persons to be one fourth. It is here that the question arises whether the minor could also have a share independently for himself.

7. Section 2(i) of the Act defines 'person' as :

' 'person' includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not.'

'Family' is also given an artificial meaning by treating it as a person. This term 'family' is quoted below :

'family' in relation to a person means the individual the wife or husband, as the case may be, of such individual and their unmarried minor children.'

8. Section 3 of the Act provides that no person except as otherwise provided in this Act. on and from the commencement of this Act, shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under Sub-section (2) of Section 1.

9. Consequently, a person will also not be entitled to hold in excess of the ceiling limit. The person includes in the case of a male, his wife and his minor children. From this definition, it is clear that the joint Hindu family is excluded from the purview of the Act. Since under Section 3, no person is entitled to hold any vacant land in excess of the ceiling limit and the definition of the word 'person' includes wife and minor children as well, the result would be that the interest of the minor would go with that of the father and he will not be entitled to have a separate share in the joint family property. The expression 'minor children' as embodied in Sub-section (f) of Section 2 shall be construed in the context of the date of the commencement of the Act in respect of the respective State as defined in Sub-

section (2) of Section 1 of the Act. Therefore, a minor son on the date of commencement of the Act subsequently attaining majority cannot be regarded as an individual within the meaning of Sub-section (f) of Section 2, for the purpose of calculating the ceiling limit applicable for the family. In connection with the validity of the Urban Land the Supreme Court held in *Maharao Sahib Sri Bhim Singhji v. Union of India*, AIR 1981 SC 234 that there is nothing wrong in the exclusion of a joint Hindu family from the purview of Section 3 of the Act. Consequently, it would appear that the share of Pravin Kumar, the minor, should have been clubbed with that of his father Gyan Das and he should not have been given a separate share as was done by the Competent Authority in the instant case. After having clubbed his share with Gyan Das the excess should have been found. In not doing so, the Competent Authority erred.

10. The second question which arose before the Competent Authority and the District Judge was about exclusion of the land appurtenant to the dwelling units. The District Judge excluded the covered area and land appurtenant and additional appurtenant on the basis of the decision of the Division Bench reported in *State of U. P. v. L J. Johnson*, 197 All LJ 1221. The standing counsel urged before me that the District Judge committed an error in excluding the covered area and land appurtenant and additional appurtenant. The submission of the standing counsel is correct. The Division Bench in the aforesaid decision had found that for applying Section 4(9), it was necessary that the land holder owned two separate constructions. The Supreme Court did not approve the above interpretation and found that Section 4(9) would be attracted regardless of whether the land holder owned a distinct part of land on which there is no construction along with any other parcel of land where there is some construction. The view of the Supreme Court was : --

'In other words, whether or not there is a surplus will not depend on whether the land holder holds a separate plot of land which is open land. To take the other view is to hold that if there is no separate plot but the construction is on the same plot then even if the entire plot comprises 10000 sq. metres that would fall beyond the purview of Section 4(9). Even if the structure is built only on 1000 sq. metres. Such an interpretation of Section 4(9) cannot be accepted by us....'

11. In the above case, the Supreme Court further laid down that :

'Section 4(9) contemplates that if a person holds vacant land as also other portion of land on which there is a building with a dwelling unit, the extent of land occupied by the building and the land appurtenant thereto shall be taken into account in calculating the extent of the vacant land.'

12. The District Judge was, therefore, wrong in holding that the covered area and land appurtenant to be excluded in calculating the extent of the vacant land. In this connection, the facts of the case before the Supreme Court may be considered. That case arose from Dehradun where the maximum ceiling limit prescribed is 2000 sq. metres. Out of the total area of the land measuring 2530 sq. metres held by the person who was being proceeded with 464 sq. metres was covered. To this 464, the Supreme Court added 1000 sq. metres as appurtenant and additional appurtenant. The total of the two came to 1464 sq. metres. This was well within 2000 sq. metres. As the person of that case was entitled to 2000 sq. metres of the vacant land, the Supreme Court took the covered area and land appurtenant and additional appurtenant in calculating the extent of the vacant land and, thereafter, declared 530 sq. metres as vacant land. This illustration has to be kept into account while making calculation of the extent of the vacant land. In Varanasi, 1500 sq. metres is the ceiling limit. It is on this basis that surplus has to be found. In calculating the extent of the vacant land, the land covered by construction and the land left as appurtenant and additional appurtenant will have to be adjusted and taken care of.

13. In justification of the judgment of the District Judge, learned counsel for the respondents urged that as the three families were living separately, each one of them was entitled to the benefit of Section 2(g)(i) and (ii). Section 2(g) requires land appurtenant to be given in relation to a building. If there is one building, it is immaterial as to how many dwelling units are there in the same for the purpose of Section 2(g). Section 2(g) will confer benefit of land appurtenant to the building irrespective of their being separate apartments in the use of persons living therein. The land appurtenant is given to the building and in no case it can be more than 500 sq. metres and as additional appurtenant another 500 sq. metres. Anything

beyond this area would not be land appurtenant and would thus be not allowable, as that land would not form an integral part of the main land containing the building in question. In this connection, reference be made to the Circular issued by the Union of India under Section 36 of the Act. Paras 1 and 2 of this Circular are quoted below :

'Circular No. 1/132/76 dt. 18-11-76.

6.3. Question as to what land appurtenant should be given to a building containing more than one dwelling unit land appurtenant for multistoreyed residential buildings :

1. A question has been raised as to what extent of land appurtenant should be provided to a building containing more than one dwelling unit, if the building and all the dwelling units contained therein are -- (i) held by one person; and (ii) each dwelling unit is held separately by different persons.

2. The matter has been considered. It is clarified that 'land appurtenant' is determined with reference to the building and the fact that the building contains more than one dwelling unit does not make any difference. Further, the fact that each dwelling unit is held by a separate person should not also make any difference and would not entitle him to the additional extent of contiguous land for each dwelling unit.

14. In *State of U. P. v. Mrs. Rakesh Murthy*, 1984 All WC 715 : (1986 All LJ 112), a Division Bench has also taken the same view by holding :

'We are not to consider how many families are actually living in a building. Even in the main building there may be more than one family living, but it would not follow that appurtenant land is separately to be allowed for each such residential unit. Likewise assuming that appurtenant land is to be allowed for servants' quarters then the number of servants living in one building would be immaterial. What is to be seen is the number of independent buildings detached from the main buildings.'

15. Besides this, there was some land covered with non-residential building which had been left out by the Competent Authority. Leaving out land covered by non-

residential building is perfectly in accordance with law. As Section 4(9) applies only to a building with a dwelling unit, the land underneath the non-residential building will not be taken into account in calculating the extent of the vacant land as it is to be done in respect of a dwelling unit. For a non-residential construction, 500 sq. metres is allowable under Section 2(g). In this connection, the following guidelines had been given by the Central Government.

'Land appurtenant for non-residential multistoreyed buildings :-- A non-residential building irrespective of its size is entitled to land appurtenant equivalent to that fixed under the building regulations subject to a maximum of 500 sq. metres only.'

16. From the judgment of the Competent Authority, it is not clear as to how much area was for non-residential building and as to how much he left for land appurtenant for non-residential building. This controversy has to be carefully dealt with and decided. While deciding this controversy, the situation of the non-residential building also has to be taken into consideration. It must be borne in mind that what is to be left for a non-residential building is the land appurtenant and, therefore, if there is no land appurtenant- to a non-residential building, the owner will not be entitled to get the same allowed out of the land which may not be appurtenant to the non-residential building.

17. 541.74 sq. metres would be the area likely to be affected by road widening. This road widening is contemplated by the Master Plan. Therefore, over this area no construction would since be possible, there being an absolute prohibition, this cannot be considered as vacant land as provided in Section 2(g)(i) of the Act. The District Judge was right in leaving from consideration this area.

18. Counsel for the respondents also urged that the land required for carrying on the manufacturing business in the factory would also be liable to be exempted. He could not, however, cite any provision under which exemption would be granted. This submission is, therefore, not accepted. The proper remedy for such a matter is to apply to the State Government for exemption under Section 20 of the Act,

19. As the whole case would be required to be reconsidered on merits and in accordance with the evidence on record, the best course is to set aside both the

judgments and to direct the Competent Authority to decide the same afresh.

20. In the result, the three writ petitions succeed and are allowed. The judgment of the District Judge as well as that of the Competent Authority are set aside. The case is sent back to the Competent Authority with a direction to decide the same afresh in accordance with the evidence on record and in the light of the observations made above. In the circumstances, there shall be no order as to costs.

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