

**State of U.P. and anr. Vs. Suraj Kumar Gupta and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/469708](http://sooperkanoon.com/469708)

**Court :** Allahabad

**Decided On :** Dec-16-1981

**Reported in :** AIR1982All116

**Judge :** M.P. Mehrotra, J.

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

**Appeal No. :** Civil Misc. Writ Petn. No. 3144 of 1980

**Appellant :** State of U.P. and anr.

**Respondent :** Suraj Kumar Gupta and anr.

**Advocate for Def. :** Rajendra Kumar, Adv.

**Advocate for Pet/Ap. :** V.D. Singh, Adv. and ;Standing Counsel

**Disposition :** Petition allowed

**Judgement :**

ORDER

**M.P. Mehrotra, J.**

1. This petition arises out of the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. The facts, in brief, are these.

The State of U. P. is the petitioner in this case. Respondent No. 1 Sri Suraj Kumar was issued the draft statement under Section 8 and objections were filed by, him. They were decided by the Competent Authority by his order dated 21-9-77, a true copy whereof is annexure 1 to the petition. Thereafter an application dated 20-11-78 was moved seeking a fresh decision from the Competent Authority. A true copy of the said application dated 20-11-78 is annexure 2 to the petition, Thereafter the Competent Authority reopened the case and by his order dated 23-2-79 held that the said respondent No. 1 Sri Suraj Kumar had 328,62 sq. meters of surplus vacant land. A true copy of the order of the said authority dated 23-2-79 is annexure 3 to the petition, Respondent No, 1 thereafter filed an appeal and the same was allowed by the appellate authority by his judgment dated 21-12-79, a true copy of which is annexure 4 to the petition, A certified copy of the said judgment is also on record.

2. Feeling aggrieved, the State has now come up in the instant petition and in support thereof, I have heard the learned Standing Counsel, In opposition, Sri Rajendra Kumar, learned counsel for the respondents has made his submissions, The appellate Court held that the land of premises No, 188, Civil Lines, Bareilly, measuring 418.50 Sq. meters could not be included while calculating the vacant land held by respondent No. 1 on the ground that the same was covered by structures. The learned Standing Counsel has contended that the appellate Court failed to take into consideration the provisions contained in Section 4(9) of the Act, which lay down as under :--

'4 (9) Where a person holds vacant land and also holds any other land on which there is a building with dwelling unit therein, the extent of such land occupied by the building and the land appurtenant thereto shall also be taken into account in calculating the extent of vacant land held by such person.'

3. The contention seems to be correct. It should be seen that there is some controversy about the interpretation of the said provision, In the Division Bench pronouncement in State of U. P. v. L. J. Jhonson (1978-4 All LR 848) this Court laid down that for the applicability of the said provision it is necessary that there should be two separate properties in the hands of the person concerned--one

property should be vacant land and the other property should be the land with a building thereon and such building should be a dwelling unit. The State of U. P. has not accepted the correctness of the aforesaid view of the Division Bench and has gone up in a Special Leave petition to the Supreme Court against the said decision. The aforesaid Special Leave Petition has not yet been decided. However, in the instant case it should be seen that respondent No. 1 has admittedly two separate properties one being a vacant plot and the other being premises No. 188, Civil Lines, Bareilly, In this view of the matter, there Can be no controversy that Section 4(9) of the Act is applicable to the facts of the instant case. The appellate Court, therefore, was wrong in allowing the appeal. The Competent Authority has correctly determined the area of the vacant land after rightly applying Section 4(9) to the facts of the instant case.

4. Accordingly, I allow this petition and quash the judgment of the appellate Court dated 21-12-1979. The order passed by the Competent Authority on 23-2-1979 shall remain a valid and effective order. There will be no order as to costs.

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