

Dr. Amar Kumar Singh and anr. Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Aug-26-2002

Reported in : [2003(4)JCR375(Jhr)]

Judge : Gurusharan Sharma, J.

Acts : Urban Land (Ceiling and Regulations) Act, 1976 - Sections 2, 8(1), 10(1), 10(3) and 26

Appeal No. : CWJC No. 1521 of 1993(R)

Appellant : Dr. Amar Kumar Singh and anr.

Respondent : State of Bihar and ors.

Advocate for Def. : R.S. Majumdar, Adv.

Advocate for Pet/Ap. : P.N. Rai Pankaj, Adv.

Disposition : Writ allowed

Judgement :

Gurusharan Sharma, J.

1. Rasamay Ganguly, son of late Heramba Chandra Ganguly of New Alipur, Calcutta owned and possessed one storeyed residential house No. 67/A in P Block situated on an area of 299 sq. meter land. There was no vacant land except

the set back area. The said area consisted of narrow strip of land 4 ft. wide on three sides of the building and 10 ft. wide back courtyard covered partly by service latrine and bathroom for servant.

2. His wife Anima Ganguly possessed 1513 sq. meter vacant land, bearing plot No. 718-A3/C at Hazaribagh road of Ranchi town.

3. Petitioners purchased the said land by registered sale-deed dated 27.4.1979 for a valuable consideration of Rs. 20,000/- from her. Before transferring their vendor had filed application under Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act') before the competent authority for permission, vide Case No. 207 of 1979, which was granted on 17.4.1979.

4. A proceeding under the Act, being ULC Case No. 78 of 1976 was initiated against Rasamay Ganguly by Deputy Commissioner -cum-Competent Authority, Ranchi. Land holder filed return. Draft statement under Section 8(1) was prepared and notified for filing objection, if any. But the land holder remained absent, in spite of publication of notice, ultimately in the district Gazette. No objection to the draft publication was filed.

5. ON 2.12.1986/7.1.1987 the competent authority was pleased to declare 716.45 sq. meter land out of 1520.45 sq. meter of plot No. 718 as surplus land under the Act and directed publication thereof under Section 10(1) of the Act. It was published on 16.1.1987 and thereafter on 8.2.1991 notification for acquisition of aforesaid surplus land under Section 10(3) of the Act was published in district Gazette.

6. Section 2(q)(ii) of the Act defines 2nd category of 'vacant land'. This category is of land occupied by any building in an area, where there are building regulations, which was constructed upon or was under construction on the appointed day under the Act, with the approval of the appropriate authority of the land appurtenant to such building. It means that if the building was constructed before the appointed day, the land occupied under the building is not 'vacant land'. Additionally, the land appurtenant to the building is also not 'vacant land'. In this regard reference may be made to the case in Smt. Mira Gupta v. State of West

Bengal and Ors., AIR 1992 SC 1567.

7. In the present case, the land was held by land-holder in Calcutta town over which a dwelling house was situated. The portion of said land occupied by building and the land appurtenant thereto as per building regulations were untouched by the Act.

8. I find that if the Calcutta land is excluded, the land holder possessed only 1520.45 sq. meter vacant land at Ranchi, which was under ceiling limit.

9. I, therefore, quash the impugned order, contained in Annexure 8, and hold that there was no surplus land with the land holder to be acquired under the Act.

10. In the result, this writ application is allowed, but without costs.

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