
(1990) 04 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.P. No. 1406 of 1989

Akbar Ali	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2

Citation : AIR 1990 MP 353

Hon'ble Judges : S.D. Jha, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; Samvatsar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This order shall also govern the disposal of M. P. No. 1407 of 1989 (Jakir Hussain v. State and two others), which raises the identical point which has been raised in this petition.

2. The lands in the two petitions belonging to the petitioners are admittedly open lands. In view of the return filed by the State, it has not been controverted that under the provisions of Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976, these lands cannot be treated as vacant lands. The definition of the vacant land under the Act reads as under:--

"2(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;....."

As such, it is manifest on the aforesaid definition that a land which is not being used mainly for the purpose of agriculture in an urban agglomeration can be treated as a vacant land but it could not include the lands which are enumerated

in Clauses. (i), (ii) and (iii) of Section 2(q). Clause (i) of Section 2(q) clearly says that a land on which construction of a building is not permissible under the building regulations in force in the area, in which the land is situated shall not be treated as a vacant land.

3. Now in the return filed by the State it is not disputed that under the development plan of Indore known as Master Plan, this land has been earmarked for the purpose of Regional Parks. As such, in accordance with Section 25 of the Town and Country Planning Act, the land cannot be permitted to be used for any other purpose than the one for which it has been reserved in the Master Plan. The State Government, in view of the aforesaid position has frankly conceded that no building construction permission can be given for the land involved in the two petitions in view of the fact that the aforesaid pieces of land have been earmarked in the Master Plan for Regional Park. As such, in view of Clause (i) of Section 2(q) of the Urban Land (Ceiling and Regulation) Act this land cannot be treated as a vacant land.

4. Consequently, the order impugned passed by the competent authority under the Urban Land (Ceiling and Regulation) Act being contrary to the provisions of law deserves to be quashed and is accordingly quashed. There appears to be some mistake in respect of measurement of the land in question but since in view of the aforesaid order there is no dispute pertaining to the application of the Urban Land Ceiling and Regulation Act, the difference in the measurement does not remain material. If and when the provisions may be attracted on this land, this order shall not come in the way of the authorities in respect of measurements.

5. The petitions are accordingly allowed with no order as to costs.