
(1996) 09 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 832 of 1991

Ashok Kumar Saxena and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 23, 26

Citation : (1996) 09 AHC CK 0147

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—Ashok Kumar Saxena and four others have moved this writ petition, inter alia, praying for issuance of a writ of mandamus commanding the Respondent authorities not to disturb the possession of the Petitioners over the land in dispute on the basis of notification dated 9.1.1991 and, a writ of certiorari, quashing the impugned notification dated 9.1.1991, which is contained in Annexure 11 to the writ petition.

2. Briefly stated, the facts, as narrated in the writ petition, are that the controversy Involved In the present case relates to an area of 0.40 acres of land of plot No. 211, situated in village Jungle Salik Ram, Tappa Khuthan, Pargana Haveli, Tehsil Sadar, district Gorakhpur.

3. Plot No. 211 has total area of 3 acres, I decimal, of land. It belonged to one Jokhan son of Ram Ratan. In the proceedings for determination of surplus land under the provisions of Urban Land (Ceiling and Regulation Act, 1976 (hereinafter referred to as "the Act"), the Prescribed Authority, by his order dated 20.2.1981 declared 25105.30 sq. meters of land, held by Jokhan, as surplus. He accordingly adjusted an area of 12181.47 sq. meters of land out of plot No. 211 against the surplus land. Thus, according to the was 3 acres and 1 decimal, even after adjustment of an area of 12181.47 sq. meters, an area of

2386.93 was left out, within the ceiling limit, even under the aforesaid order of the Prescribed Authority dated 20.2.1981,

4. Consequent upon passing of the aforesaid order, dated 20.2.1981, after obtaining choice of Jokhan, the Prescribed Authority excluded an area of 40 decimal out of plot No. 211 from surplus area. Therefore, the total area of 12181.47 sq. meters, which had been taken out of plot No. 211 as surplus, was reduced by 1936 sq. yards. Therefore, according to the Petitioners, the total area of plot No. 211, determined by the Prescribed Authority, was well within the ceiling limit.

5. It is further case of the Petitioners that when the aforesaid order was passed, neither notification u/s 10, nor notifications u/s 10(3) were issued. Therefore, no portion of plot No. 211 could be deemed to have been vested In the State Government.

6. Thereafter, on the notice given by Sri Jokhan, u/s 26 of the Act, the Prescribed Authority issued a certificate on 10.8.1987 to the effect that the State had no objection to the proposed transfer. In pursuance of the aforesaid certificate, Jokhan transferred various portions of plot No, 211 by means of 5 sale-deeds in favour of different Petitioners of the present writ petition.

7. On the strength of aforesaid sale-deed, Petitioner No. 3 applied for sanction of a building plan, which was sanctioned by the Gorakhpur Development Authority on 31.3.1990. All the Petitioners also constructed boundary walls surrounding the pieces of land purchased by 111 them under the aforesaid sale-deeds. They have also raised certain constructions, and they are in actual physical possession of the same.

8. On 9th January, 1991, a notification was published in the Daily Newspaper "Dainik Jagran" notifying that the State Government, in exercise of power u/s 23 of the Act, allotted, apart from some other plots, the entire plot No. 21.1 in favour of President Catholic Diocese of Gorakhpur. The total area of land allotted to the Respondent No. 4 was shown to be 27789.09 sq. meters comprising of plot Nos. 193, 211, 245 and 345. These plots are belonging to Jokhan. Aggrieved, the Petitioners have invoked the extraordinary jurisdiction of this Court, under Article 226 of the Constitution by means of the present writ petition.

9. When this writ petition was moved, Hon"ble Mr. Justice S.P. Srivastava of this Court was learned Counsel for the Petitioners (as his Lordship then was). On his elevation to the Bench, Sri. Mool Behari Saxena filed his power on behalf of the Petitioners and lie appeared before me today, and, argued the case with vehemence. Sri. R.D. Gupta learned standing counsel represented the Slate Government.

10. Sri. Saxena contended that once the land, in dispute, having been transferred to the Petitioners on the strength of a certificate issued by the Prescribed Authority In favour of the Petitioners, who are 5 in number, the said

land cannot be allowed to be allotted to third party, being Respondent No. 4 in the present case, by means of a general notification, after a lapse of four years. He further submitted that not only the possession of the respective land has been delivered to the Petitioners, but they have also raised constructions thereon on the basis of sanctioned building plans, and, therefore, the Respondent are now estopped from dispossessing the Petitioners and the impugned notification is a void document, insofar as it relates to acquisition of land of the Petitioners.

11. Although, learned Counsel for the Petitioner could not support his contention by any case law on the point, but this Court is not unmindful of catena of decisions, operating on the field. In *Abdul Haq v. State of West Bengal* AIR 1964 Cal 153, Hon"ble Mr. Justice D.N. Sinha, (as his Lordship then was. and. later on, became the Chief Justice) observed that land having been transferred after the notification under the West Bengal State Acquisition Act, 1953, and possession having been delivered to the third party after the general notification, and rent being collected from the Petitioner, with the remarks "without prejudice" the writ Petitioner has acquired right, title and Interest over the said property, and cannot be evicted there from, in any manner, whatsoever.

12. In a later case of *Panchamulla v. J.L.R.O.* 1981 (1) C HN 1. Hon"ble G.N. Ray, J., (as his Lordship then was, and, now an Hon"ble Judge of the Supreme Court), without referring to the decision in *Abdul Haq* (supra), came to the conclusion that if the land is transferred and name has been duly mutated, the Petitioners acquired a right, although the Petitioners purchased the land being excess of land, and, by acceptance of rent, and, recording of his name, under regular process of mutation, the Petitioner has acquired an independent right from which he cannot be divested in any manner, whatsoever.

13. From the aforesaid conspectus of decisions, which have the persuasive value, this Court has no hesitation in holding that the impugned notification issued by the State Government on 9.1.1991 is without jurisdiction, insofar as it relates to the land of the Petitioners. Once the certificate of transfer is issued in favour of the Petitioners, the State Government is estopped from treating the said land as excess and it cannot distribute the aforesaid land to the third party, as has been done in the present case.

14. In the result, the writ petition succeeds and is allowed. Notification dated 9.1.1991, contained in Annexure 11 to the writ petition is quashed insofar as it relates to the land being occupied by the Petitioners. The Respondent and, each one of them are restrained from dispossessing the Petitioners from the land in dispute, except in accordance with law. The parties shall bear their own costs.