

(1984) 08 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 12473 of 1982

Baba Jamuna Das Mahanth

APPELLANT

Vs

Prescribed Authority, Urban Land Ceiling and Others

RESPONDENT

Date of Decision : 06-08-1984

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 19(1)

Citation : AIR 1984 All 357

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : Sri Rajendra Kumar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

K.C. Agarwal, J.—This petition under Article 226 of the Constitution has been preferred by Jamuna Das Mahant against the judgment of the District Judge, Gorakhpur, dt. Aug. 27, 1982, accepting the appeal of the petitioner with respect to plot No. 26/1, situate at Bhariagarh, Gorakhpur, and remanding it for deciding the same afresh. The District Judge dismissed the appeal with respect to plot No. 26/2. In the present writ petition, the grievance is confined to plot No. 26/2.

2. Upon the commencement of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"), the petitioner Jamuna Das claimed that the aforesaid two plots which had the total area of 24929.52 square metres, were liable to be exempted u/s 19(1)(iv) of the Act. The petitioner claimed that the two plots were dedicated to Kabir Math and as this Math was holding them for public charitable or religious purposes, the area covered by these plots was not liable to be declared surplus.

3. The petitioner Jamuna Das claimed that the entire 5.46 acres area of plot No. 26/2 contained temples, kothris for residence of Sadhus, Samadhis, cattle house and a discourse hall. He claimed that since the time of Baba Tribeni Das, who

executed a Will in favour of his disciple Baba Bachcha Das in 1939, these properties are being treated to be that of the Math.

4. The State of U. P. contested the claim of the petitioner Jamuna Das by asserting that both of the plots belonged personally to him, and that as none of them was the property of the Math and was further neither required nor used for public charitable or religious purposes, the petitioner was not entitled to get the benefit of Section 19(1)(iv) of the Act.

5. The Competent Authority on 26-9-1981 found that over an area of 5159.37 square metres constructions in the nature of temples and dwelling units were standing, hence he exempted the same and declared 19770.15 square metres as excess vacant land. It was against this judgment that appeal had been preferred before the District Judge in respect of both the plots.

6. For plots 26/1 and 26/2, the District Judge held that they were the personal property of the petitioner Jamuna Das and Section 19(1)(iv) could not apply to them. He, however, allowed the appeal of the petitioner with respect to plot No. 26/2 on the plea taken in the alternative that it was an agricultural plot and the Master Plan did not cover it, and remanded the case to the Competent Authority for a fresh decision.

7. The petitioner's counsel did not challenge the finding of the Competent Authority that plot No. 26/1 was the personal property of the petitioner Jamuna Das. Under the Hindu Law, a Mahant can own personal properties. In such a case of personal property, Section 19(1)(iv) would not be attracted as the same would not be for public charitable or religious purposes and required and used as such. This finding of the learned District Judge has not been challenged before me and, as stated above, the petitioner's grievance is confined to plot No. 26/2.

8. So far as plot No. 26/2 is concerned, the petitioner's case was that there were Samadhis of various Sadhus and Mahants and also fourteen dwelling units in which Sadhus and devotees stay. This plot also had temples and some trees. According to the petitioner, this plot belonged to Kabir Math, which was established centuries ago.

9. The Competent Authority found that there were only five dwelling units and two non-residential units and on that basis, after calculating the area, had declared 19770.15 square metres as excess vacant land with the petitioner.

10. The relevant provision of Section 19(1)(iv) of the Act is quoted below :--

"Subject to the provisions of Sub-section. (2), nothing in this Chapter shall apply to any vacant land held by. :--

(i)-(iii).....

(iv) any public charitable or religious trust (including waqf) and required and used for any public charitable or religious purposes :

Provided that the exemption under this clause shall apply only so long as such land continues to be required and used for such purposes by such trust";

11. In order to avail the benefit of this section, it is necessary that it should be a trust, and that the vacant land for which exemption is being claimed is a public charitable or religious trust. The expression "trust" has not been defined. Accordingly, the dictionary meaning of that expression can be looked into for the purpose of finding its interpretation. The expression "trust" has been given the meaning in Black's Dictionary as :--

"a right of property, real or personal, held by one party for the benefit of another....."

From the meaning given, it appears that any arrangement whereby property is transferred with intention that it be administered for another's benefit is a trust. It casts an obligation on the trustee to use the property for achieving the purpose for which the trust is created.

12. In the instant case, the petitioner had pleaded that plot No. 26/2 belonged to Kabir Math and the vacant land for which exemption had been claimed was being used for public charitable or religious purposes. The purposes have already been described by me above. The learned District Judge held that the petitioner had not brought any satisfactory evidence to prove that plot No. 26/2 was being held by any public charitable or religious trust, hence he negatived the claim.

13. A religious endowment is regarded as a public trust because the purpose of making a gift is to confer a benefit on those who worship the God installed in the temple and engage themselves in spiritual uplift by following the mode of attaining self-emancipation. It is not necessary, as held by the Supreme Court in *Saraswathi Animal v. Rajagopal Ammal*, AIR 1953 SC 491, that religious or charitable purposes are confined to purposes which are productive or actual or assumed public benefit. The expression of religious merit is also an important criterion. If the origin of the Math was lost in antiquity, the inference is to be drawn from long user established by evidence. Proof of user by Mahants, Chelas and their followers would have been relevant. The learned District Judge did not consider this aspect of the matter.

14. It may be true that in order to avail the benefit of Section 19(1)(iv) it is necessary to establish and find that the vacant land for which exemption is being claimed is required and used for any public charitable or religious purposes. The expression "required" by itself is certainly ambiguous. It may mean in some context "no more than desired", and, on the other hand, in other context "indispensable". However, in the instant case, to roe it appears that this expression should be given a meaning with reference to the context of Section 19(1)(iv) that the vacant land is needed for achieving the object for which the trust was created, to which the vacant land belongs. It should further be necessary for availing the benefit of Section 19(1)(iv) that the vacant land is being used for the object of the trust. On the fulfillment of these conditions, the

benefit would be available. If, therefore, the vacant land is not being used for the benefit of the trust and for achieving its object, Section 19(1)(iv) will not be available.

15. Sri Rajendra Kumar, learned counsel for the petitioner, also urged before me that there was evidence on record to show that there were fourteen dwelling units on the plot in question, apart from other constructions and, as such, 19770.15 square metres could not be treated as excess vacant land. This argument was made to show that the learned District Judge without applying his mind to find as to how much land was occupied by building with dwelling units, had wrongly affirmed the order of the Competent Authority.

16. For what I have said above, the writ petition succeeds in part and is partly allowed. The judgment of the District Judge, Gorakhpur, dt. Aug. 27, 1982 and that of the Competent Authority dt. 29-9-1981 are quashed with respect to plot No. 26/1 (No. 26/2?). The Competent Authority is directed to decide the case afresh in the light of the observations made in this judgment. The stay order is discharged. No order as to costs.