

(1984) 09 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 640 of 1982

Badri and Others

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 14-09-1984

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 33, 8, 9

Citation : AIR 1985 MP 21

Hon'ble Judges : G.L. Oza, Acting C.J.; V.D. Gyani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; G.S. Solanki, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Oza, Ag. C.J.

1. The petitioners have filed this petition challenging the order passed by Respondent No. 3 declaring the land as surplus u/s 9 of the Urban Land (Ceiling & Regulation) Act, 1976, and also the order passed by Respondent No. 2 who disposed of the appeal by holding that the appeal is not competent.

2. The facts necessary for the disposal of this petition are that the petitioners were holding agricultural lands in villages Niranjapur and Kabirkhedi, tahsil and district Indore. It is alleged that the petitioners filed a return u/s 6 of the Act before respondent No. 3 on 16th May 1977. It is also alleged that the petitioners submitted an application u/s 20 of the said Act for exemption of the petitioners' lands from operation of the Act. According to the petitioners, on this application the competent authority on 15th March 1978 passed an order that further proceedings under the Act are stayed till the application u/s 20 is disposed of and thereafter without notice to the petitioners, on 1st June 1981 acted on some report which he had received from the Revenue Inspector and declared 6.840 hectares of land as surplus and directed preparation of a statement u/s 8.

According to the petitioners, all this was done at the back of the petitioners with no opportunity to the petitioners. As after the statement u/s 6 was filed it was expected of the competent authority to hold an enquiry and arrive at conclusions before preparing the statement u/s 8. It is contended that even after the statement u/s 8 was prepared, the petitioners were entitled to an opportunity and this opportunity was sought by the petitioners but it appears that on 12-8-1981 as nobody could remain present for the petitioners, the competent authority directed issuance of statement u/s 9 although in law even in absence of the petitioners the competent authority was bound to consider the objections raised by the petitioners and decide the matter and pass an appropriate order for drawing up of the statement u/s 9. It is contended that even after this when notice was issued for delivery of possession, the petitioners learnt about the order passed u/s 9 and, therefore, preferred an appeal but the learned appellate authority rejected that appeal holding that it was not competent.

3. The scheme of the Act enacts that when the statements are filed u/s 6, the competent authority is expected to enquire into the matter and thereafter proceed to draw up a statement u/s 8. Section 8 reads:

"8. Preparation of draft statement as regards vacant land held in excess of ceiling limit : --

(1) On the basis of the statement filed u/s 6 and after such inquiry as the competent authority may deem fit to make, the competent authority shall prepare a draft statement in respect of the person who has filed the statement u/s 6.

(2) Every statement prepared under subsection (1) shall contain the following particulars, namely :

(i) the name and address of the person;

(ii) the particulars of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person ;

(iii) the particulars of the vacant lands Which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land; and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof. (4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in Sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has

been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard pass such orders as it deems fit."

It clearly contemplates that after the statement u/s 6 is filed and after such enquiry as the competent authority may deem fit, the competent authority will prepare a draft statement. It appears from the order-sheets of the competent authority that on 15-3-1978 the draft statements were filed and therefore the competent authority directed that the petitioners be directed to submit the copies of the Khasras and also the evidence about title of the land. This order-sheet clearly discloses that the competent authority was proceeding to enquire into the matter on the statement being filed u/s 6 but, as it is alleged by the petitioners, on the same day the petitioners had also submitted an application u/s 20 for exemption and the order dated 15-3-1978 further discloses that the competent authority in view of this application directed that further proceedings under the Act are stayed until the application is disposed of as this order reads :

vkosnd mifLFkrA mlus ch&? [kljs ds lkFk /kkjk 2? esa eqfDr gsrq vkosnu fd;k gSaA vr% mlds fujkdj.k rd ;g izdkj.k LFkfxr fd;k tkrk gSA

It appears that thereafter the petitioners were never informed and the next order-sheet which is of 1st June 1981 practically about three years thereafter discloses that the competent authority took up the matter on a report from the Revenue Inspector and it appears that impressed by the report of the Revenue Inspector the competent authority instead of issuing a (notice to the petitioners proceeded to draw up a statement u/s 8 which the competent authority could not have done without holding a proper enquiry and after notice to the petitioners as has already been indicated in view of the language of Section 8. This order-sheet clearly indicates that this order was passed at the back of the petitioners and there is nothing on the basis of which it could be contended that the petitioners had notice thereof and where. Even in the return it is not stated as to how the competent authority acted on the report of the Revenue Inspector and it is also not stated that it was done after! notice to the petitioners. It appears that after the order-sheet dated 1st June 1981 a statement was drawn up u/s 8 which without holding any enquiry could not) have been done and this order, therefore, passed by the competent authority could not be maintained in law.

4. After the statement u/s 8 was prepared, it appears that notice was issued and thereafter the petitioners submitted their reply by way of objection on 23rd July 1981. The date fixed for consideration of reply and argument was 12th August 1981 and the order-sheet dated 12th August 1981 shows that nobody was present for the petitioners and, therefore.

The competent authority directed issuance of statement u/s 9. Section 9 reads :

"9. Final statement.-- After the disposal of the objections, if any, received under Sub-section (4) of Section 4, the competent authority shall make the necessary alterations in the draft statement in accordance with the orders passed on the

objections aforesaid and shall determine the vacant land held by the person concerned in excess of the ceiling limit and cause a copy of the draft statement as so altered to be served in the manner referred to in Sub-section (3) of Section 8 on the person concerned and where such vacant land is held under a lease, or a mortgage, or a hire-purchase agreement, or an irrevocable power-of-attorney, also on the owner of such vacant land."

A mere reading of the provision indicates that the competent authority is expected to dispose of the objections received in the light of the language of this section and it is only then that the competent authority is expected to proceed for preparation of a final statement u/s 9. The order by which the objections were disposed of only reads that as nobody is present for the objectors although the objections in writing are on record, the learned competent authority directs that statement u/s 9 be prepared. This indicates that the learned competent authority did not apply its mind at all to the objections which were already filed by the petitioners and proceeded in a routine manner with a direction probably to the clerk to draw up a statement u/s 9. This order also, therefore, could not be said to be in accordance with Section 9 of the Act.

5. It appears that when notice for possession was issued to the petitioners they preferred an appeal and the manner in which the learned appellate authority dealt with the matter by disposing of the appeal also indicates that the learned authority did not bother to consider what was expected to be done under the provisions of the Act and only disposed of the appeal without going into the merits of the case and where no attempt has been made to go into the merits it appears that the learned authority also did not see what the competent authority was expected to do.

6. The main theme of the above order appears to be that an order staying the proceedings u/s 20 could not have been passed but the learned appellate authority failed to notice that rightly or wrongly such an order was passed by the competent authority and if the appellate authority felt that that order was- not justified in law, the only course open to the appellate authority was to set aside that order and send the matter back so that the competent authority should have proceeded from that date and disposed of the matter but it appears that the competent authority felt that the petitioners should be penalised for the orders passed by the competent authority staying the proceedings. It is, therefore, apparent that neither the competent authority nor the appellate authority acted in accordance with law. The petition has, therefore, to be allowed.

7. The petition is allowed. It is directed that all the proceedings passed by the competent authority after 15th March 1978 as are not in accordance with law are hereby quashed and it is directed that the competent authority shall proceed to dispose of the matter in accordance with the provisions of the Act after starting with the enquiry on the basis of the statement submitted u/s 6 and proceed to dispose of the matter in accordance with law. In the circumstances of the case, the petitioners are entitled to costs of this petition. Counsel's fee Rs. 350/-, if

certified. Security amount be refunded to the petitioners.