
(1988) 11 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 519 of 1987

Bahadur Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-11-1988

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 6, 8

Citation : (1989) 1 WLN 406

Hon'ble Judges : S.S. Byas, J; D.L. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Shelter, shelter, shelter is the cry of the dwellers of the cities. To provide land for the shelter to the millions of down-trodden people living in the cities on the pavement or beneath the trees, Urban Land (Ceiling and Regulations) Act, 1976, was enacted. The intention of the Legislation was to prevent the construction on the urban land which is in the hands of few persons and to put check on speculation and profiteering.

2. u/s 6(1) of the Act, it was obligatory on the person holding vacant land in excess of ceiling limit at the time of commencement of the Act to file return. u/s 6(2) of the Act, a notice was issued to the present petitioner by the competent authority, on 30th June, 1976, as the petitioner failed to file the return. The Competent Authority, prepared the draft statement and after examination, it was found that the petitioner held 1,490.52 sq. meters of land at Jaipur, and 590.44 sq. mets. of land at Bikaner. Thus, the petitioner held 2,080 sq. mets. of land in all. The petitioner under the laws was entitled to hold only upto 1,500 sq. mets. of land. Thus, he was having 580.96 sq. mets. of land in excess of the ceiling limit.

3. The petitioner submitted an application for the grant of exemption: u/s 20 of the Act. The petitioner has submitted a copy of the stay-application and the

informations supplied by him marked as (Annex. 3). The petitioner also submitted (Annexure-4) application and prayed that he is having 590.44 sq. mets. of land in excess of the prescribed ceiling limits and the land should be exempted from ceiling. It was also submitted that without giving due hearing, the application for the exemption was rejected by the competent authority vide order (Annexure-5) dated 29 August, 1986.

4. The petitioner has challenged the order refusing the grant of exemption.

5. On behalf of respondents, reply was filed. It was submitted that after taking into consideration all the points including the constructed part, the competent authority, came to the conclusion that the petitioner is having: 580.96 sq. mets. of land in excess of the prescribed ceiling limits. It was also submitted that petitioner wanted to sale the land of Bikaner, and he prayed for grant of no objection certificate. In the said proceedings the petitioner agreed that the surplus land of Jaipur, will be surrendered and he should be granted NOC for the sale of the land situated at Bikaner. On behalf of the respondents (Annexure-R 1/3) copy of the proceedings dated 30th June, 1980, has been produced. It was also submitted that notification (Annexure-R 2/3) was issued on 10th February, 1984, and the land measuring 580.96 sq. mets. was declared surplus.

6. As far as declaration of surplus land is concerned, there is no dispute between the parties. The matter stands settled vide (Annexure-R 2/3). The petitioner himself has moved an application for the grant of exemption u/s 20 of the Act, in which he has prayed that the order dated 29th August, 1980, (Annexure-5) may be quashed. Of course, he has made an additional prayed that the order of the competent authority dated 31st August, 1982 may also be quashed.

7. This writ petition has been filed after 5 years of the passing of the order (Annexure-2). It will not be out of place here to mention that in fact, the petitioner admitted the validity and the legality of the order (Annexure-2) by implication. Vide order (Annexure-2) the surplus land was declared. The petitioner moved an application for the grant of exemption u/s 20 of the Act. When the application for the grant of exemption was rejected, he has tried to challenge the original order passed in the year 1982 after five years. The delay of 5 years is fatal and the petitioners cannot claim any relief for that part of relief Learned counsel for the petitioner has rightly not argued about the validity of Annexure-2 though prayed in the writ petition. Apart from that we have examined the validity and we are satisfied that there is no infirmity in the said order (Annexure-2) which was passed in August, 1982.

8. Learned counsel for the petitioner has vehemently challenged the order (Annexure-5) dated 29-8-1986, in fact, this is not an order but it is a communication given to the petitioner that his application for the grant of exemption has been rejected The order (Annexure R-3/3) was produced by the respondents in the Court. Learned counsel for the petitioner submits that the order (Annexure R-3/3) it not a speaking order. Learned counsel for the

petitioner was heard and it is not dispute. The dispute is only about the fact that the competent authority, has not considered the application u/s 20 of the Act, in the right earnest and has rejected the application without assigning any reason. Learned counsel for the petitioner has cited before us the case of Manilal Hiralal Doshi (by LR) and Others Vs. State of Gujarat, in which their Lordships held as under :

Declaration about land being surplus u/s 8 & 8 can be made only after this decision on application u/s 20 for exemption is taken.

9. Learned counsel for the petitioner has also cited before us the case of Nandakishore Vs. State of M.P.,

10. We have heard the learned counsel for the petitioner in detail and section 20 of the Act empowers the State Government, that where any person holds vacant land in excess of the ceiling limit and the State Government, is satisfied, either on its own motion or otherwise, that, having regard to the location of such a land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, the Government, in public interest may exempt the such land from the provisions of the Ceiling Act. The hardship of the person who applies for exemption will also be looked into.

11. We have perused the order (Annexure Rule 3/3) and the proceedings Rule 1/3. On 30th June, 1980, petitioner wanted to sell the land which was situated at Bikaner and prayed for adjournment. He submitted through his counsel that he may be allowed NOC and he will surrender the excess land from the land which is situated at Jaipur. Thus, the doctrine of estoppel should be applied against the petitioner though it is not necessary to do. The notification was issued on 10-2-1984, and the land was acquired. The petitioner moved an application for exemption which has been rejected vide Ex. Rule 3/3. Learned counsel for the petitioner submits that the order is not a speaking order and no reasons have been assigned for not granting him the exemption. He has cited the cases referred above and submitted that it was necessary for the State Government to pass the speaking order.

12. Every one knows that the costs of the land is touching the height of the sky in Jaipur City and also in Metropolitan Cities. It will not be out of place here to mention that the organised mafia is in existence and the speculations of the land and profiteering has become the part of the life of those persons. The Housing Board is constructing the houses of dimensions of 90 sq. mts. also. The Housing Board has very reasonably put the ceiling, the area to be constructed even for the higher income group in no case they are going to construct the house of the area beyond particular dimension. The land is not a rubber which can be stretched. The growing populations will have to be adjusted on the land which is available and no one can be allowed and should be allowed to retain land for speculative and profiteering purposes. Even the big houses and Havelis will have

to be curtailed in future to make it available to the needy people who are living on the pavement or beneath the trees. It is necessary that the society should be a real society for the welfare of the down trodden needy persons. The Government, is enacting the legislation. The psychopants on the interested persons are putting impediments in the implementation of the law. The Court should act as a court for the people who are really needy and down-trodden people should not act to defeat the purpose for which the legislation has been enacted. The lawyers and the Judges can understand the law and can pass a legal order meeting all the requirements of the law but it cannot be expected from every Administrative Officer that they will pass such orders as they are laymen. Apart from that one should not forget that the technically should not prevail over the justice. The accumulation of work is increasing because we need a speaking order and a precise order, the authorities have passed the order that 590.80 sq. mts. of land is sufficient for the construction of a big house. As such the application for the grant of exemption is rejected and the approach of the authority is very correct. It is not a case of 2 meters or 3 meters land which cannot be of any use for any other one as no building can be constructed there upon. In the instant case, the building can be constructed upon independently and there should not be any problem to anyone. The requirement of the societies need that exemption should not be granted that the authorities have rightly decided the matter and rejected the application.

13. In the result, we are of the view, that the order (Annexure-Rule 3/3) is a speaking order. The reason given are sufficient. We do not find any force in the writ petition filed by the petitioner and the same is dismissed summarily.