

(1985) 01 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No's. 2241 and 2376 of 1983

Balkrishna Shantaram Dhume

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-01-1985

Acts Referred:

Constitution of India, 1950 — Article 14

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21

Citation : (1985) 87 BOMLR 82 : (1986) MhLj 998

Hon'ble Judges : Lentin, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Lentin, J.—Would the exemption of 2250 hectares of surplus vacant land in a housing scheme framed by the State Government u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 be in public interest? Such is the essential controversy raised by these two public interest petitions. Common questions of fact and law arise, A consolidated judgment.

2. The petitions also challenge a scheme framed by the Central Government u/s 21 of the Act. That challenge was however not pressed in the present petitions as indicated by my order dated January 8, 1985.

3. As parties were not entirely ad idem regarding certain facts, I am, in order to obviate unnecessary controversy, proceeding on the facts as given to me by the State Government's learned Counsel. They are as follows:-

(A) By Government Circular dated June 29, 1983, Government announced a new scheme u/s 20 of the Act, for "Housing for weaker section of the society" in the public interest. Thereby opportunity was given to the surplus land-holders "to construct tenements for the weaker section of the society, as also to obtain lands and flats for public housing programme".

(B) The scheme was not applicable to surplus lands within the limits of Bombay

City. Land-holders holding vacant land in excess of the ceiling limit were invited by Government to submit proposals for building tenements according to the scheme and claim exemption u/s 20 of the Act.

(C) The scheme specified the built-up area for the tenements, namely 25% for tenements not exceeding 25 square metres of plinth area, 25% for tenements not exceeding 40 square metres of plinth area and 50% for tenements not exceeding 80 square metres of plinth area.

(D) The estimated surplus lands available for exemption are 2250 hectares. Out of that, Government will receive from the land-holders 375 hectares free of charge. Government will also get free of charge from the land-holders 600 hectares reserved in the development plan but on which no housing will be permitted. Thus out of 2250 hectares, Government will get free of charge in all 975 hectares leaving a balance of 1275 hectares.

(E) Out of these 1275 hectares, on 200 hectares the land-holders/builders will construct 80,000 tenements of 25 square metres each or 65,000 tenements of different sizes, which they will sell to Government at a flat rate of Rs. 135/-per square foot.

(F) After deducting 375 + 600 + 200 hectares aggregating to 1175 hectares out of the original 2250 hectares, the remaining balance, namely 1075 will be exempt from acquisition. On these 1075 hectares the land-holders/builders will be permitted to construct 2,25,000 tenements.

(G) The land-holders/builders will also be entitled to sell these 2,25,000 tenements in the open market without any restriction on price. It is here that in public interest, umbrage is taken by the petitioners.

3. The scheme is challenged by the petitioners on the following grounds as formulated by Miss Jaising, the learned Counsel appearing for the petitioner in Writ Petition No. 2376 of 1983 and adopted by Mr. Vashi, the learned Counsel appearing for the petitioner in Writ Petition No. 2241 of 1983, (a) the scheme is not in public interest; (b) it is ultra vires the powers of the State; (c) it is ultra vires Section 20(1) of the Act; and (d) Section 20(1) offends Article 14 of the Constitution as it lays down no guidelines as to what constitutes "public interest".

4. Regarding the first ground of challenge, the only thrust of learned Counsels' arguments regarding the validity of the scheme, pertained to the sale of as many as 2,25,000 tenements by the land-holders/builders in the open market without any price control. That, they say will not ensure for the beneficiaries of the scheme, namely the weaker section of the society but for the aggrandisement of the land-holders/builders. Hence not in public interest. Needless to say, if that is accepted the other challenges must become academic.

5. Section 20(1) empowers Government to exempt excess vacant land from the ceiling limit if Government is satisfied that having regard to the location of the land, the purpose for which such land is being or proposed to be used and such

other relevant factors as the circumstances of the case may require, it is necessary or expedient in public interest to do so.

6. The paramount consideration of public interest must be looked at in the light of the undisputed facts and figures given by Government itself as set out in sub-paras (D) to (G) of para 3 above. The sum total is simple. It is certainly in public interest to exempt 1175 hectares, namely (a) 375 and 600 hectares as they will be given to Government free of charge and (b) 200 hectares on which the land-holders/builders will construct 80,000 tenements which they will sell to Government at a flat rate of Rs. 135/- per square foot.

7. On the other hand, it would certainly not be in public interest to exempt as many as 1075 hectares to enable the land-holders/builders to construct as many as 2,25,000 tenements for unrestricted sale in the open market without price control and thereby putting them beyond the means of the weaker section for whose benefit the scheme is said to be intended. Thereby the lion's share will be eaten up by the land-holders/builders leaving but a pittance to Government for housing the weaker section. Why a pittance? Answer: Out of as many as 2250 hectares, Government will get free of charge 975 hectares only. Even out of those 975 hectares, on 600 hectares no housing will be permitted. Even the 80,000 tenements which the land-holders/builders will construct on 200 hectares, will not be given to Government free of charge but will be sold to Government at a flat rate of Rs. 135/- per square foot.

8. There is a minor controversy whether this rate of Rs. 135/- would include the builder's profit over the construction cost. The petitioner says it would, namely at 15%, because in the earlier Section 21 scheme launched by the Central Government, the price fixed for the tenements was Rs. 135/- per square foot including the builder's 15% profit. Initially the State Government's learned Counsel Mr. Shah was unable to make a categorical statement one way or the other but for no fault of his, for the affidavits-in-reply are silent on this aspect. However Mr. Shah gave an illustration that if in a particular locality the cost of construction exceeded Rs. 135/- per square foot, the builder while selling this tenement to Government would do so at the flat rate of Rs. 135/- per square foot; whereas if in another locality the cost of construction was less than Rs. 135/- per square foot, the land-holder/builder would still sell the tenement to Government at the flat rate of Rs. 135/- per square foot. Mr. Shah gave this illustration after obtaining instructions from Mrs. K. A. Pednekar, Under Secretary to Government, Housing and Special Assistance Department, who was present in Court and who has made the affidavit-in-reply dated January 10, 1985. Thus in this manner, even in the construction of these 80,000 tenements, the land-holders/builders would make up on the swings what they may lose on the roundabouts.

9. Thus in the ultimate analysis, in exchange for giving up 975 hectares (and 200 hectares on which by constructing 80,000 tenements for sale to Government the land holders/builders will on the whole make a profit albeit a limited one) they

will get exemption of as many as 1075 hectares on which, by selling as many as 2,25,000 tenements in the open market at uncontrolled rates, the land-holders/builders will reap a rich harvest. After all, the land-holders/builders are not charitable institutions to go out of pocket or break even. The scheme cannot be made the instrument for their aggrandisement in the guise of "public housing programme". Nor is such the object of the Act.

10. And pray, who but the well-off will be able to afford the market rates for these 2,25,000 tenements? The tattered dress and the lean and hungry look to whose rescue the scheme and Act are intended to come? Certainly not. Only the land-holders/builders out for a quick handsome profit in the guise of "public housing programme" beyond the reach of the public by far and large. Yet, says Government, this is in public interest. It is not.

11. Not taking into account hutment-dwellers, Government statistics themselves, in the form of a survey conducted by the B.M.R.D.A. (Bombay Metropolitan Regional Development Authority), reveal that as many as 42% belong to the economically weaker section, not less than 39% to the low income group and 19% to the middle income group. How many from these will be able to afford 2,25,000 tenements at the uncontrolled rates at which the builders will sell? The question is absurd; the answer pathetic. Perhaps Government has momentarily lost sight that poverty and oysters do not go together. Or that there is nothing more demeaning than rags, nor a state of being more soul-searing than poverty - "the greatest of evils and the worst of crimes". Yet, Government says that these 2,25,000 tenements will be within the reach of the weaker section, In so saying, Government professes ignorance of its own statistics in the form of the B.M.R.D.A. survey. That is studied amnesia. And worse still, Government says to define weaker section only in economic terms is a mistake. That is cynical brutality or brutal cynicism or both.

12. Echoing Government's protestation of serving public interest, Mr. Shah says that the scheme is reasonable and fair and in accordance with the Act. Mr. Shah says the land required to be surrendered to Government shall be levelled and got certified by the concerned authority as fit for construction with a motorable access thereto provided by the land-holder at his own cost which shall also be surrendered to Government free of cost and free from all encumbrances. All the development plan reservations held by the land-holder must be transferred to the Government free of cost, whereby Government would save a lot of money.

13. No particulars in respect of all this have been given though Government has filed not less than 4 affidavits in these petitions. If it was not possible for Government to do so at this stage, the very basis of Mr. Shah's submission must rest on shifting sands.

14. Mr. Shah says the land-holders/builders would be unable to charge any arbitrary prices in the open market as with 2,25,000 tenements, the prices would crash to the advantage of the weaker section.

15. This ipse dixit, despite the optimism of its sentiment, is wishful thinking.

16. Mr. Shah philosophises that to put a ceiling on the- sale price of the 2,25,000 tenements would lead to and encourage black money transactions.

17. Mr. Shah was unable to state how black-market transactions would be obviated by sales at uncontrolled prices. Be that as it may, that is an aspect for Government's consideration. For that matter, even in the Section 21 scheme framed by the Central Government, sale prices have been fixed, unlike the present Section 20 scheme.

18. Mr. Shah says that a time-bound programme is given to the land-holders/builders. They must start the construction work within the years and complete it within five years under the peril of withdrawal of exemption and acquisition. A progress report of the construction work is also to be submitted by the land-holders/builders.

19. None of this would be any deterrent to the land-holders/builders from charging fancy prices for the 2,25,000 tenements and thereby place them out of the means of those for whom they are intended, namely the weaker section. In fact, the land-holders/builders would only be too anxious to complete the 2,25,000 tenements as fast as possible, so as to reap a quicker profits even at the cost of shoddy work over which even Government does not say it would have any control.

20. Mr. Shah says the sole attempt on the part of the Government is to see that as many tenements as possible are constructed so that a large number of persons are benefited.

21. The largest number of tenements, viz. 2,25,000, will not be within the reach of those for whom the scheme and Act are intended, as they will be sold without price control.

22. Mr. Shah says the scheme is not for the benefit of the builders but for the benefit of the land-holders so that they can construct tenements for the public.

23. This protestation I look at with a great deal of scepticism. Mr. Shah was unable to state which land-holder was himself going to put up the tenements. Surely the land-holders would have to give the work to builders on terms and conditions over which even Government does not even say it proposes to or can exercise any control. To say, as does Mr. Shah, that the scheme is for the benefit of the land-holders, is to make a mockery of both the scheme and the Act.

24. Mr. Shah says that one family would be allotted only one tenement; thereby concentration, of tenements by a few persons would be obviated. There is also a restriction against transfer of tenement to a person if he or a member of his family owns a dwelling unit in the same urban agglomeration. Thus concludes Mr. Shah, only genuine buyers will purchase the tenements and profiteering will be obviated.

25. The conclusion assailed by Mr. Shah is, with respect to him, inverted logic, the futility of which must stand out from the fact that none of the 2,25,000 tenements to be sold in the open market without price control can possibly be purchased by the beneficiaries of the scheme, namely the weaker section

26. Mr. Shah says certain minimum specifications of items are required to be provided, namely marble mosaic tile flooring in all rooms, white glazed tile dado in the bath room and W.C., cooking platform in the kitchen with built-in sink, a wash basin with towel rod and fan points in addition to the minimum number of light points and plug points in the living and bed rooms.

27. Mr. Shah apparently overlooked the fact that these minimum specifications pertain only to the 80,000 tenements to be sold to Government at the flat rate of Rs. 135/- per square foot. No minimum specifications are provided for the 2,25,000 tenements which the land-holders/builders will sell in the open market at uncontrolled rates.

28. Mr. Shah pontificates that the scheme was framed with good intentions.

29. It is with good intentions that the road to hell is paved.

30. Mr. Shah says the scheme will encourage building activity.

31. Pray for whose benefit? Only the land-holders/builders and those who can afford accommodation at uncontrolled prices, beyond the reach of the weaker section.

32. Mr. Shah asserts that the Court will not interfere with or probe into the merits of exercise of discretion by an authority, as the Court is not a forum to hear decisions taken by the authority. The Court cannot go into the question whether the opinion formed by the authority is right or wrong. The Court does not substitute" its own views with that of the authority. The Court is concerned with the legality rather than the merits of an administrative order.

33. No exception can possibly be taken to all these broad well-settled propositions, except that in the present case none of them apply.

34. Mr. Shah expresses Government's financial inability to acquire vast areas of land and stresses the legal hurdles of the acquisition process.

35. This can never be an excuse of making a virtual gift of 1075 hectares to the land-holders for their aggrandisement at the cost of those for whom the scheme is intended.

36. I hold that the exemption of 1075 hectares to the land-holders for the purpose of allowing them to sell 2,25,000 tenements at uncontrolled rates in the open market, is not in public interest. To that extent the scheme is bad in law and must be struck down. To that extent the petitions are allowed and the rules are made absolute accordingly. In both the petitions, the State shall pay to each petitioner the costs of his petition.