
(1982) 06 OHC CK 0002

In the Orissa High Court

Case No : Original Jurn. Case No. 189 of 1982

Benjamin Mohanty

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 24-06-1982

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2

Citation : AIR 1982 Ori 236 : (1982) 54 CLT 111

Hon'ble Judges : R.N. Misra, C.J.;B.K. Behera, J

Bench : Division Bench

Advocate : Jayant Das, Y. Das, T. Hafiz and M.S. Haque, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, C.J.—This application under Article 226 of the Constitution seeks to challenge the order of the Competent Authority in a proceeding under the Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) (hereinafter referred to as the "Act") and the appellate decision rendered by the Member, Board of Revenue against the order of the Competent Authority.

2. The short facts relevant for the matter are these:--

The petitioner owns a vacant land within the Cuttack municipal area. Cut-tack has been notified as an urban agglomeration within category "D" as would appear from the Schedule appended to the Act. u/s 4(1)(d) of the Act, the ceiling limit is 2000 square metres.

The petitioner filed a voluntary statement u/s 6 of the Act before the Competent Authority and Case No. 8 of 1978 was registered by the Competent Authority on the basis of such statement. Though the petitioner had filed a statement, at the time of hearing he took the stand that he was not possessed of a vacant site beyond the statutory limit and as such he was not governed by the Statute. Two pointed contentions were raised by him:--

(1) His entire area of 917 decimals came to 3668 square metres. The entire area once upon a time was a tank- Bulk of it had been filled up and had been rendered suitable for construction, but a part of it being nearly 100 decimals still continued to be a ditch where water was standing and such land was not fit for building. The land was not fit for construction of a building under the Building Regulations prescribed under the Orissa Municipal Act. As the land was located within the Cuttack town, no construction was also possible without appropriate permission of the Greater Cuttack Improvement Trust set up under the provisions of the Orissa Town Planning and Improvement Trust Act 10 of 1957.

(2) In the permission granted by the Trust, 1709.84 square metres were directed to be kept vacant. If that was to be excluded from calculation of the ceiling as required by law, the petitioner did not possess vacant land beyond 2000 square metres.

3. The Competent Authority took the view that the entire land was fit for building and, at any rate, even if water accumulated in a part of the land which was in the nature of a ditch, since it was not fit for pisciculture, the same was not available for exemption. There was no definite finding in regard to the other aspect and the draft statement was made final by holding that the land in excess of 2000 square metres was surplus.

4. The petitioner appealed against the order of the Competent Authority and raised two contentions:--

(1) In view of the condition indicated by the Trust in the permission granted to the petitioner that no construction should be raised on 1709.84 square metres, the same should have been exempted from calculation while computing the ceiling.

(2) That part of the land where water stood was not fit for building purpose and, therefore, should have been excluded. There was no necessity to establish that the land was fit for pisciculture.

The appellate authority in the impugned decision stated:--

"Appellant has relied on AIR 1981 Calcutta 126 wherein it has been held that lands where water seeps from underground and which are unfit for house construction cannot be treated as vacant land. Obviously, tanks suitable for pisciculture alone are not to be excluded as vacant land. The Competent Authority has, therefore, erred in holding that this is a ditch not suitable for pisciculture and as such should not be excluded."

With reference to the other aspect relating to the permission granted by the Trust, the appellate authority relied upon the definition of "land appurtenant" in Section 2(g) and the maximum limit indicated in Clause (i). Though as a fact it was found that the permission clearly indicated that there should be no construction on 1709.84 square metres, in view of the upper limit of 500 square metres provided under the Act the petitioner was entitled to exemption to that

extent. The appellate authority, therefore, allowed the petitioner's appeal in part and directed that from the surplus area found by the Competent Authority 500 square metres should be deducted. He accordingly determined the surplus area of 1168 square metre.

5. This determination is assailed and it has been contended before us that Clause (i) of the definition of "vacant land" in Section 2(q) of the Act authorises exemption of the entire land on which construction has not been permitted. Once that area is excluded, the petitioner must be found not to be in possession of surplus land.

6. A counter affidavit has been filed by the Administrative Officer, Urban Ceiling, Cuttack. In paragraph 5 thereof it has been stated that the petitioner's total land is 906 decimals in extent which worked out at 3668 square metres. As no building was standing on the property and was yet to be constructed, the benefit u/s 2(q) was not available.

7. Claim advanced by the petitioner has been on two counts:--

(1) Exclusion of 1709.84 square metres in terms of Section 2(g)(i) of the Act; and

(2) Exclusion of 100 decimals which is equivalent to a little more than 400 square metres (see paragraph 2 of the counter-affidavit) on the ground that it was not permissible under the Building Regulations to raise construction on that land as provided u/s 2(1)(i) of the Act.

Counsel for the petitioner has advanced alternative contentions. According to him the appellate authority should have held that the Building Regulations, both under the Orissa Municipal Act as also under the Improvement Trust Act, were applicable. Under the Municipal Building Regulations as provided in Rule 530 (b) (iv), no construction is permitted where the soil is saturated with water in consequence of which there is likely to be dampness of floor and walls of the building. Under Rule 534-B, where the building on a site exceeding 1400 square yards was to be raised, the maximum permissible plinth area was to be one-fourth of the site or 400 square yards (whichever was more).

The Trust had similar powers under the Act and its Building Regulations. In exercise of that power, the Trust had directed that no construction would be permitted on 1709.84 square metres. The contention, therefore, is that in regard to both the items upon which the petitioner had relied, Section 2(1) applied. It was not a case where Section 2(g) of the Act should have been invoked. Admittedly, there was no construction on the land yet and the petitioner had only obtained permission for construction. "Land appurtenant" in Section 2(g) of the Act to our mind seems to be a provision for determining surplus land with reference to standing buildings while "vacant land" in Section 2(q) is intended to cover cases where there is no construction and, therefore, exclusion has been provided in clause (2) of that subsection. In view of the fact that the petitioner does not have any standing construction, he is not entitled to the benefit u/s 2(g)

(i) which has been allowed to him by the appellate authority. Some support is available from the observations of the Division Bench of the Madhya Pradesh High Court in Surendra Kumar , Jabalpur Vs. Kumari Lilawati Violet Manorama Laxmanan, Jabalpur and Others, , for this view. We are of the opinion that land set apart in the permission to be vacant site cannot be taken to be covered by Section 2(g) of the Act. The appellate authority went wrong in invoking that provision and allowing the benefit of deduction of 500 square metres in the matter of calculation of the ceiling limit. Ordinarily, that part of the order being in favour of the petitioner would not have been open to challenge in the absence of a writ application from the side of the Competent Authority, but as the petitioner himself is aggrieved by that method of calculation, we have allowed the contention to be advanced.

8. As we have already pointed out, it is the contention of the petitioner that he is entitled to deduction of both 1709.84 square metres as also roughly 400 square metres on the ground that the first item is available in view of the condition in the building permission and the second item is available on account of unsuitability of the same for building purpose. We shall presently consider the tenability of this submission.

There is a clear finding by the appellate authority that the 100 decimals of land equivalent to about 400 square metres out of the plot continues to be water-logged though the same may not be suitable for pisciculture. We agree with the appellate authority that the test of "pisciculture" applied by the Competent Authority was wholly unwarranted. Rule 530 (b) (iv) of the Orissa Municipal Rules provides that no land shall be used as site for erection or re-erection of masonry building if the soil or sub-soil is saturated with water in consequence of which there is likely to be dampness of floor and walls of the building". The Bench decision of the Calcutta High Court in Srila Moitra Vs. State of West Bengal and Others, does support this view. It has been held by the Division Bench that a tank is not a vacant land and such land would be exempted u/s 2(q)(i) of the Act. Endorsing the view expressed by the Division Bench of the Calcutta High Court, we hold that land on which construction of building would not be permitted to be raised under the Building Regulations would be excluded from the operation of the Act. Accordingly, the 400 square metres corresponding to 100 decimals of the vacant site is not to be taken into consideration at all for purposes of the Act. It must be borne in mind that the scheme of the Act is to take into account vacant site fit for building. That is why, suitable exemption has been provided in regard to agricultural land as also land which is not suitable for building purpose. In our view, therefore, the petitioner is entitled to exemption of the 100 decimals of land which correspond to near about 400 square metres.

9. We may now refer to Rule 534-B of the Municipal Rules. Admittedly, the petitioner's land is located in a residential area and Rule 534-B of the Municipal Rules is applicable. Clause (e) thereof provides that in a residential area on a site exceeding 1,400 square yards the maximum permissible plinth area shall be one-

fourth of the site area or 400 square yards whichever is more. Under the Improvement Trust Act, the Trust has also a set of regulations and while granting permission to the petitioner, the restriction of not building on 1709.84 square metres has been imposed. In the background of these restrictive provisions in the Building Regulations, it follows that on the entire area of 1709,84 square metres it was not permissible under the Building Regulations to construct any building. Therefore, this also came under Clause (i) of Section 2(q) of the Act and in calculating the ceiling the same was available to be exempted. If both these items are excepted, the balance that is left out is certainly within the permissible area and no statement under the Act was required to be filed. The law being new and the situation being uncertain, the petitioner seems to have filed a statement with a view to avoiding the liabilities arising out of default and wanted a determination by the Competent Authority as to his claim of exclusion. If as a fact the petitioner was not liable on admitted facts, his filing of a statement voluntarily would not make the Act applicable. We are inclined to agree with Mr. Das for the petitioner that both the items have to be excluded and the determination of the statutory authorities has to be quashed.

10. We allow the writ application, quash the orders of the Competent Authority and the appellate authority and hold that the petitioner is not possessed of urban land in excess of the ceiling limit.

Parties are directed to bear their own costs.

Behera, J.

I agree with my Lord the Chief Justice.