
(1984) 05 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6039 of 1989

Bhudeo Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-05-1984

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 6(1)

Citation : AIR 1984 All 386

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : S.N. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Sapru, J.—This writ petition arises out of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the Act.

2. In proceedings under the Act, the Competent Authority, Aligarh, declared 3350.07 Sq. metres of land belonging to the petitioner as vacant land in excess to the ceiling limit. Aggrieved, the petitioner filed an appeal. The appeal was dismissed by Sri N.N. Sharma, District Judge, Aligarh on 1-4-1980. Now the petitioner has filed the instant writ petition.

3. Before the appellate authority as also before this Court in writ petition it is being urged that the land, comprised in plot No. 1664/2, measuring 2764.22 Sq. metres, should not have been treated as vacant land as it was agricultural land. This contention was rejected by the appellate authority on the ground that in the Khasras of 1382 and 1383 Faslis, the land measuring 1 bigha 4 biswas was entered as Parti Purani and in the Khasra no crop was mentioned in these years. The learned Judge was of the view that in view of the explanation (B) to Section 2(o), the land could not be deemed to be mainly the agricultural land.

4. The petitioner submits that he was the Sirdar tenant of this land and was

entered as such and in the year 1359 F., consequent of the abolition of the Zamindari in the area, he became a Sirdar of the plot and has now become Bhumidhar of the plot. Section 2(o) Explanation (B) provides as follows :--

"Land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture."

5. The learned Judge has apparently taken the view that the revenue records mentioned in Explanation (B) to Section 2(o) referred to the annual registers and went on to hold that since crops were not mentioned in the Khasras of 1382 and 1383 Faslis, the land could not be deemed to be used mainly for agricultural purpose.

6. The Section refers to the revenue or land records. If land is entered as agricultural land in any of the records maintained by the State, that would be enough for the purpose of Explanation (B). The petitioner's name was entered as Sirdar at the relevant time and Sirdari land can only be used for the purposes of agriculture. In the circumstances, the learned Judge committed a manifest error in treating plot No. 1664/2, measuring 2764.22 Sq. metres as vacant land. The order of the two authorities below in regard to plot No. 1664/2 cannot be sustained. The matter will now go back to the District Judge to redetermine the vacant surplus land with the petitioner. In proceedings in appeal the petitioner can indicate the choice of the land which he would like to retain as provided in Section 6(1) of the Act.

7. I may add here that some other questions were sought to be raised in this writ petition but the learned counsel could not successfully challenge the findings of the court below in view of the decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, .

In the result, the writ petition is allowed with costs. The case is remanded back to the District Judge to re-determine the vacant surplus land with the petitioner.