

(1987) 07 CAL CK 0046

In the Calcutta High Court

Case No : Civil Revision No. 3277 (W) of 1979

Birajananda Das Gupta (deceased by LRs)

APPELLANT

Vs

Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 and Others

RESPONDENT

Date of Decision : 16-07-1987

Acts Referred:

Constitution of India, 1950 — Article 252, 254

Evidence Act, 1872 — Section 4

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

West Bengal Land Reforms Act, 1955 — Section 51A, 51A(9)

Citation : AIR 1988 Cal 8 : 92 CWN 492

Hon'ble Judges : Ajit Kumar Nayak, J;A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : Ranajit Kr. Mukherjee and Sanjit Kr. Bakshi, for the Appellant; Amaresh Chakraborty and S.K. Barua, (for Nos. 1 to 3), B.C. Dutt and A.B. Das, (for No. 4), for the Respondent

Judgement

A.M. Bhattacharjee, J.—This writ proceeding has been referred to us by the learned Chief Justice as our learned brother Mukul Gopal Mukherji, J., who was initially hearing the matter, was of opinion that the proceeding involves a substantial question of law of general importance relating to the interpretation of some of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and should be heard and decided by a Division Bench. After hearing the learned Counsel for the parties, we have, however, found that the disposal of this writ petition involves a question slightly larger than what was formulated by our learned brother and since the entire writ petition has been referred to us for disposal, we have disposed of that question in the larger form.

2. The avowed objects of the Urban Land (Ceiling and Regulation) Act, 1976 inter alia are to impose a ceiling on vacant lands in urban agglomeration and to acquire vacant lands in excess of the ceiling limit. u/s 2(q) of the said Act, the expression vacant land shall not include "land mainly used for the purpose of

agriculture". The only question involved in this writ proceeding is whether or not the Competent Authority can initiate proceeding under the Act even in respect of land recorded in the revenue or land records as agricultural land in order to be satisfied as to whether such record still represents the true character of the land on the appointed day under the Act in 1976 to warrant its exclusion from the operation of the Act. An affirmative answer would result in discharge of the Rule while a negative answer would require the Rule to be made absolute. We record an affirmative answer.

3. It is not disputed that the plots of land in question have been recorded in the Record-of-Rights as agricultural and Mr. Mukherjee, the learned Counsel for the petitioners, has very seriously urged that agricultural land being a prohibited area for the Urban Land Ceiling Act, 1976, once a land is recorded as agricultural in the relevant Record-of-Rights, the operation of the Act to such land shall at once stand excluded. And, therefore, Mr. Mukherjee has contended that the lands in question being so recorded, the Competent Authority could have no jurisdiction to initiate proceeding under the Act in respect of those lands. Strongest possible reliance has been placed by Mr. Mukherjee on the provisions of the Explanation (B) to Section 2(o) of the Act which reads that-

"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."

And Mr. Mukherjee has contended that if land shall not be deemed to be used mainly for the purpose of agriculture unless so recorded in the relevant records, then, conversely, land shall be deemed to be used mainly for the purpose of agriculture if it is so recorded in the concerned records and would accordingly cease to be vacant land u/s 2(q) and would thus go out of the purview of the Act. We are afraid that we would be misreading the provisions of Explanation (B) if we read them in the manner in which Mr. Mukherjee has wanted us to do. To our mind, the said provisions only mean that even though a land is in fact used mainly for the purpose of agriculture, it would still not be deemed to be so used for the purpose of this Act, unless it is also recorded as such in the relevant records. In other words, in order to justify exclusion from the operation of the Act, a land must satisfy two tests-- (1) it must in fact be used mainly for the purpose of agriculture and (2) it must also be entered as such in the relevant records. Both the tests must be satisfied and both the user and the entry as agricultural land must concur. The provisions, therefore, unmistakably demonstrate that mere entry in the records as agricultural is not, by itself, at all decisive as to the land being used mainly for the purpose of agriculture within the meaning of the Urban Land Ceiling Act to justify its exclusion from its operation. And, therefore, if the mere entry in the records does not determine the character of the land, such an entry, by itself, cannot stand in the way of initiation of proceeding under the Act in order to determine as to whether the land is in fact mainly used for agriculture to go outside the ambit of the Act As

neither mere user without corresponding record, nor mere record without actual user, is decisive of the matter, it should be, and it really is, obvious that a mere record as agricultural can not prevent the Competent Authority from initiating proceeding in order to ascertain as to whether the land in question is really one which is mainly used for agricultural purpose within the meaning of the Act.

4. Mr. Dutt, the learned Counsel appearing for the respondent No. 4 alleged to be the Bargadar in respect of some of the disputed plots and supporting the writ petition, has drawn our attention to the provisions of Section 51A(9) of the West Bengal Land Reforms Act, 1955, which provides that every entry in the Record-of-Rights finally published "shall be presumed to be correct". But as is well-known, the very expression "shall presume", as would be apparent from Section 4 of the Evidence Act, carries with it the irresistible implication that such presumption is liable to be rebutted by evidence and, therefore, notwithstanding such presumption, the Competent Authority would be within its rights to inquire as to whether there are materials to rebut that presumption.

5. But that apart, as already noted, the provisions of Explanation (B) to Section 2(o) of the Urban Land Ceiling Act clearly indicate that entry in the Record-of-Rights classifying the land as agricultural is only one of the two requirements required to be satisfied before a land can be deemed to be mainly used for the purpose of agriculture to justify exclusion of the land from the operation of the Act and the Competent Authority would obviously be required to inquire further as to whether the other requirement as to the land being actually used for the purpose of agriculture has also been satisfied before it can order exclusion of a land from the operation of the Act. In our view, the approach to Record-of-Rights u/s 51A(9) of the West Bengal Land Reforms Act and that under Explanation (B) to Section 2(o) of the Urban Land Ceiling Act is materially different. In the former case, a party relying on the entry in the Record-of-Rights classifying the land as agricultural can straightway invoke the presumption of correctness in his favour and need not affirmatively show that there are foundations for the entry. But in the latter case, a party seeking to exclude a land from the operation of the Urban Land Ceiling Act on the strength of such entry would have to show further that, the entry apart, the land in fact is used for the purpose of agriculture and as such there are foundations for such entry. To that extent, the otherwise mandatory presumption of correctness emanating from Section 51A(9) of the West Bengal Land Reforms Act stands greatly modified, if not displaced, by the provisions of the Urban Land Ceiling Act and be it noted that in matters covered by the latter Act, its provisions "shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force", because of the provision of Section 42 thereof.

6. It has, however, been urged that the Urban Land Ceiling Act cannot operate to modify or amend the West Bengal Land Reforms Act, the latter being an enactment by the State Legislature on a matter included in the State List in Entry No. 18. We have no doubt that this contention must be repelled. Under Article

254 of the Constitution, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, "which Parliament is competent to enact", the law made by Parliament shall prevail and the State Law shall, to the extent of repugnancy, be void. It is true that Parliament would not have the competence to enact the Urban Land Ceiling Act, 1976, but for the resolutions passed to that effect by the State of West Bengal and several other States under Article 252(1); but once such resolutions have been passed, and the Act has been enacted on the strength of those resolutions, the Act would be an enactment "which Parliament is competent to enact" within the meaning of Article 254(1). If Article 254 would have applied to the case, we could have very easily held that the Urban Land Ceiling Act being a Parliamentary Act would outweigh the provisions of the West Bengal Land Reforms Act to the extent of repugnancy. But we do not propose to do so since there are apparent authorities of the Supreme Court in *A.S. Krishna Vs. State of Madras*, and in *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*, to the effect that Article 254 would apply only when both the Parliamentary Law and the State Law are in respect of matter enumerated in the Concurrent List. But both the Urban Land Ceiling Act made by Parliament and the West Bengal Land Reforms Act made by the West Bengal State Legislature relate to Entry No. 18 in the State List and, therefore, it may not, and this we say without deciding the question, be possible to apply Article 254 in this case and to hold that the Parliamentary Act would overthrow the provisions of the State Act to the extent they are inconsistent with the former.

7. But when the two or more State Legislatures resolve under Article 252 that a particular State List item would thenceforward be regulated by the Parliament by law and such a law is enacted by Parliament, then in so far as those States are concerned, and so long that Act is in operation, the relevant legislative item comes not only within the legislative competence of Parliament, but comes within its exclusive jurisdiction so to say, so much so that the State Legislature would thereafter have no jurisdiction to amend or repeal that enactment. Notionally, therefore, so long the Parliamentary Act would remain in force, the relevant legislative item goes out of the State List and enters the Union List by legal fiction. But if it is held that the State Legislature still continues to have legislative competence in respect of such an item, notwithstanding a Parliamentary enactment under Article 252, then Article 254 would at once come into operation whereunder if an item of Legislation is within the concurrent legislative competence of both Parliament and the State Legislature and both have legislated, the Parliamentary enactment would override the State enactment unless the latter was reserved for the consideration of the President and has received his assent.

8. It has been held by Chinnappa Reddy, J., (as his Lordship then was in the Andhra Pradesh High Court) speaking for a five-Judge Full Bench in *Tumati Rangayya Vs. The State of Andhra Pradesh and Others*, , that the expression "any Act so passed shall apply to such States" in Article 252(1), "is peremptory

enough to suggest that the Act so passed shall prevail over any State Law" and that "the position is further clarified by the second clause of Article 252 which bars the amendment or repeal of the Act by any Act of a State Legislature". As already indicated hereinbefore, we are also taking the same view and would, therefore, express our respectful concurrence with the aforesaid Andhra Pradesh Full Bench decision, which also appears to have been followed in a decision of the Karnataka High Court in T. Khande Rao and Sons and etc. Vs. State of Karnataka and Others, . We would accordingly hold that a mere entry in revenue or land records classifying any land as agricultural cannot stand in the way of initiation of any proceeding under the Urban Land Ceiling Act in order to ascertain further whether such land is also actually used mainly for the purpose of agriculture warranting its exclusion from the operation of the Act.

9. Our attention has been drawn to the decision in Isthia Prasad Ghosh v. District Registrar (1979) 2 CLJ 191, where Mookerjee, J. (now Mookerjee, C. J.,) has construed (at p. 197) the provision of Explanation (B) to Section 2(o) of the Urban Land Ceiling Act in the manner done by us hereinbefore. The learned Judge has held that "the intention of the Legislature is that a land will be considered an agricultural one when it is actually mainly used for an agricultural purpose and that also such land is entered in the revenue or land records before the appointed day as for the purpose of agriculture" and that while "mere user for agricultural purposes without any entry in the revenue or land records as agricultural does not exclude such land from the ambit of "urban land" or "vacant land" under Clauses (o) and (q) of Section 2", a "mere entry in the revenue or land records prepared before the "appointed day" classifying a land as "agricultural" is not decisive". With respect, we fully endorse this view. Our attention has also been drawn by Mr. Mukherjee to a single Judge decision of the Allahabad High Court in Bhudeo Singh Vs. State of Uttar Pradesh and Others, , where it has, however, been held (at p. 387) that "if land is entered as an agricultural land in any of the records maintained by the State, that would be enough for the purpose of Explanation (B)". For the reasons stated hereinbefore, we cannot but record our respectful dissent from this view. Had that been the intention of the Legislature, nothing could prevent it from providing in so many words in Explanation (B) or anywhere else, that land shall be deemed to be used mainly for the purpose of agriculture, if such land is so recorded or entered in the revenue or land records before the appointed day. The appointed day under the Act, for the State of West Bengal and also several other States, is in the year 1976 as provided in Section 2(a), while the Record-of-Rights in West Bengal were finally published in the year 1956 or thereabout. We should not construe the Act to have tied down the hands of the Authorities implementing the Act to records two decades old, unless the Act has so provided by clear declaration or irresistible implication and we have not been able to find out any such declaration or implication anywhere in the Act.

10. A very novel contention has been put forward by Mr. Dutt and also by Mr. Mukherjee to the effect that under the Urban Land Ceiling Act, the Competent

Authority has no jurisdiction to initiate and proceed with any enquiry as to whether any land is or is not a vacant land for the purpose of the Act. It is too extreme a contention which is to be stated only to be rejected. u/s 6 of the Act, every person holding vacant land in excess of the Ceiling Limit has to file a statement and Section 8 requires the Competent Authority to prepare a draft statement on the basis of the statement so filed by the person concerned "after such inquiry as the Competent Authority may deem fit to make", to serve a copy of the draft statement on the person concerned inviting objection thereto and on receipt of such objection to duly consider and dispose of such objection after giving the objector a reasonable opportunity of being heard. u/s 9 of the Act, the Competent Authority is then required to prepare a final statement determining the vacant land held by the person concerned in excess of ceiling limit and to serve a copy thereof on the person concerned and u/s 10, the Competent Authority is then required to proceed to acquire the excess land. And Section 31 provides that for carrying out all these, the Competent Authority shall have all the powers of a Civil Court while trying a suit under the CPC in respect of (a) summoning, enforcing attendance of and examining any person on oath, (b) requiring discovery and production of any document, (c) receiving evidence on affidavit, (d) requisitioning any public record or copy thereof, (e) issuing commissions for the examination of witnesses or documents and also other matters. All these provisions clearly invest the Competent Authority to make such inquiries as may be necessary making it absolutely futile to contend that it has no such power.

11. Even if these express provisions were not there, the power of the Competent Authority to make such enquiries as may be necessary to determine whether or not a land is a vacant land would have to be taken to be obviously implied. It is settled law that when an Authority under a statute has been invested with the jurisdiction to proceed in a certain manner in respect of certain specified matter, then that authority would and cannot but have obvious jurisdiction to determine whether any particular matter satisfies the tests of the matter so specified. Since the Competent Authority under the Urban Land Ceiling Act is to proceed in respect of vacant lands only, the right to determine whether a land is such a one or not must necessarily vest in that Authority. Since its jurisdiction is solely confined to vacant lands only, it must of necessity have jurisdiction to determine whether or not the disputed land is a vacant land. It is too well settled to admit any dispute that, unless otherwise provided, every Authority must have the obvious authority to decide whether it has or has not authority in a matter. That its decision is liable to be overturned by a higher authority is a different matter, but its jurisdiction to decide the ambit of its jurisdiction and the amenability of matters to its jurisdiction must be conceded.

12. Be that as it may, it must be noted that in *Istha Prasad Ghosh* (1979(2) CLJ 191) (supra), Mookerjee, J. has also held (at p. 200) that the authorities under the Urban Land Ceiling Act have powers to hold an enquiry to ascertain whether a particular plot of land is urban land or agricultural land. It should also be noted

that in the earlier decision in *Krishna Narayan Mukherjee v. State of West Bengal* (1979) 1 CLJ 427, *Sabyasachi Mukharji, J.*, (as his Lordship then was) has also held (at p. 439) that while an authority of limited jurisdiction cannot by making a wrong decision on fact upon which its jurisdiction depends derive jurisdiction to determine the question, "the enquiry into the question as to whether a particular land is agricultural or not is an incidental requirement for the implementation of the Act" and, therefore, "power to enquire into such question must be implied to the authorities under the Act". Both on principle as well as on authority, we accordingly hold that the Competent Authority has perfect jurisdiction to enquire, decide and determine as to whether or not a land in question is a vacant land for the purpose of the Act and that, notwithstanding an entry in revenue or land records classifying the land as agricultural, the authority will be required to decide whether such land is in fact mainly used for the purpose of agriculture.

13. As indicated at the very outset, in view of our answer in the affirmative to the question involved, we would discharge the Rule, which we hereby do and vacate all interim orders with a direction to the Competent Authority to dispose of the proceeding as expeditiously as possible and within a period of six months from the date of the receipt of a copy of this order and, therefore, let a copy of this order go to the Competent Authority forthwith. In view of the importance of the question involved, no costs.

Ajit Kumar Nayak, J.

14. I agree.