
(1984) 11 AHC CK 0068

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 1073 and 1583 of 1983

Brig. M.C. Sanyal

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 14-11-1984

Acts Referred:

Constitution of India, 1950 — Article 133(1), 134A, 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 1(2), 1(3), 10, 11, 12
Uttar Pradesh Imposition of Ceiling Land Holdings Amendment Rule — Rule 19(2), 3
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5

Citation : (1984) AWC 691 Supp

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : Ravi Kiran Jain, for the Appellant;

Final Decision : Disposed Of

Judgement

B.D. Agarwal, J.—These connected petitions under Article 226 of the Constitution are directed against an order passed by the District Judge, Debra Dun, dated November 9, 1982, in proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, (hereinafter referred to as the "Act").

2. One Lieutenant Colonel D. Sanyal was owner of the premises No. 26-B, Mohini Road, Dehra Dun, comprising of three dwelling units and having the total area of 7395 square meters. The covered area is 554 square meters. Upon the commencement of the Act, D. Sanyal (hereinafter referred to as the "Objector") put in statement u/s 6(1) asserting that there was No. surplus vacant land held by him. On March 23, 1977, he executed a will whereby he bequeathed the property to his three grandsons. The objector died on April 21, 1977. The legatees filed statements thereafter u/s 15 of the Act. The competent authority was of the view that the shares of these legatees under the will could not be taken into account inasmuch as the determination of the extent of the vacant land in excess of the ceiling limit to be made in reference to the date of

commencement of the Act and not with reference to the period subsequent thereto. He also was of the view that regard been had to the Section 4(9) the land to be treated as vacant over and above the ceiling limit is 3841 square meters. Against this decision of the competent authority dated November 17, 1980, there was appeal filed u/s 33 of the Act in the Court of the District Judge. The District Judge affirmed the finding of the competent authority to the effect that the determination of the vacant land in excess of the ceiling limit has to be in reference to the date of the enforcement of the Act and not in reference to the date of the death of the objector. As regards the application of Section 4(9) of the Act, however, the decision taken was that the vacant land over and above the ceiling limit is 1841 square meters only.

3. Brigadier M.C. Sanyal one of the legatees, under the will dated March 23, 1977, and also the executor has preferred the writ petition No. 1073 of 1983. The other petition has been filed by the State, which assails the view taken by the appellate authority in regard to the application of Section 4(9) of the Act. Both these petitions were heard together.

4. Sri Ravi Kiran Jain, learned Counsel for the Petitioner in Writ Petition No. 1073 of 1983, argued that the objector, to whom the building in question belonged, died before this could vest in the state u/s 10(3) of the Act. The title was retained by the objector till his death, which took place on April 21, 1977. According to him, the determination of the vacant land in relation to the legatees is with reference to the date on which the decision is arrived at and not as on February 17, 1976. It was further submitted that Section 3 is subject to what is otherwise provided in the Act. Reference was also, in this connection, made by the learned Counsel to Rule 19(2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act.

5. In my opinion none of these contentions is possessed of merit.

6. In this State to which the Act applies in the first instance, the appointed day is January 28, 1976, vide Section 2(a)(i) this being the day when the Urban Land (Ceiling and Regulation) Bill, 1976, was introduced in the Parliament. The date of the commencement of the Act is February 17, 1976, vide Section 1(3). Section 3 reads as under:

Except as otherwise provided in this Act, on and from the commencement of this Act, No. person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under Sub-section (2) of Section 1.

7. The general provision contained in Section 3 is that a person is not entitled to hold on and from the commencement of this Act, that is, February 17, 1976, vacant land in excess of the ceiling limit. This general rule is accompanied with a qualifying clause in the shape of the words "Except as otherwise provided in this Act." It may, therefore, be scrutinised as to what are such other provisions in contemplation herein. Section 19 lays down certain provisions and is to the effect that Chapter III (Ceiling on Vacant Land) comprising of Sections 3 to 24 does not

apply to certain vacant land. The instant case is not claimed to be covered under any of the categories enumerated in this section. Provision is made in Section 20 for the power of the State Government to grant exemption and permit a person to hold vacant land in excess of the ceiling limit. It is not said that there is any exemption granted by the State Government to the Petitioner. In Section 21 we find it provided that in certain cases excess vacant land is not to be treated as excess. Those are cases where the person holding any vacant land in excess of the ceiling limit makes declaration in the prescribed form before the competent authority that such land is to be utilised for the construction of dwelling unit for the accommodation of the weaker sections of the society in accordance with the approved scheme. Nothing of the sort is averred in the present—there is neither any such declaration nor any intention suggested to build for the weaker sections. Section 22 permits retention of vacant land under certain circumstances where the building is destroyed or demolished solely due to the vis major and this also is not attracted to the present. Sri Jain, the learned Counsel, does not cover the case under any of these provisions nor is there any other thing referred to by him which may be said to lay down any departure from the general provision contained in Section 3 suggesting that the extent of the vacant land in excess of the ceiling limit may be in reference to any date other than the commencement of the Act.

8. Learned Counsel points to Section 5(1) in this connection. The provision made therein is to the effect that where any person, who had held vacant land in excess of the ceiling limit at any time during January 23, 1976 (the appointed day) and February 17, 1976 (the commencement of the Act) has transferred such land or part thereof by sale, mortgage, gift, lease or otherwise, the extent of such land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall be selected so far as possible out of the vacant land held by him after such transfer. Instead of supporting the Petitioner's contention, the provision lends assistance to what the State contends in this case. According to this provision the transfer made before the commencement of the Act, but after the appointed day, is not allowed to escape in the calculation made of the extent of the vacant land. To the transferee in such a case there is in the nature of a concession inasmuch as the vacant land in excess of the ceiling limit may be carved out of other such vacant land but with this rider that in case vacant land found in excess is not satisfied by this mode, the area covered shall also be rendered liable to be taken over. This cannot be taken to suggest by any means that the determination of the vacant land in excess of the ceiling limit can be with reference to any period other than the commencement of the Act. Section 15 is also referred to by the learned Counsel. Sub-section (1) thereof reads as under:

If, on or after the commencement of this Act, any person acquires by inheritance, settlement or bequest from any other person or by sale in execution of a decree or order of a civil court or of an award or order of any other authority

or by purchase or otherwise, any vacant land the extent of which together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then, he shall, within three months of the date of such acquisition, file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed of all the vacant lands held by him and also specifying the vacant lands within the ceiling limit which he desires to retain.

9. Section 15 is in reference to a case where a person already held vacant land on the commencement of the Act and he acquires by inheritance, bequest, or sale in execution of decree or order of a civil court or an award or order of any authority or by purchase or otherwise some other vacant land subsequent to the commencement of the Act. In that event the determination of the vacant land in excess of the ceiling limit held by such a person is to be made in accordance with the procedure laid herein. The underlying requisite to invoke Section 15(1) is that there be vacant land in excess of the ceiling limit at the commencement of the Act and there is addition over the same by virtue of some subsequent event as narrated therein. The instant, on the contrary, is a case where admittedly none of the legatees of the objector held any land of their own on the commencement of the Act. The case set-up on the Petitioner's side has throughout been that the only property, which the legatees own, is that which was bequeathed on March 23, 1977, in their favour by the objector. It follows clearly, therefore, that Section 15(1) is inapplicable.

10. It is that that the vacant land in excess of the ceiling limit does not vest in the State till the stage of the notification u/s 10(3) arrives. Under the scheme of the Act, every person holding vacant land in excess of the ceiling limit at the commencement of the Act is required u/s 6 read with Rule 3 to file a statement before the competent authority within a period of 212 days from the commencement of the Act. Such a statement had been shed by the objector contending, however, that there was No. excess vacant land held by him. Draft statement, accompanied with notice, is issued by the competent authority u/s 8(3); the objections are required to be decided by him under Sub-section (4). The final statement is drawn thereafter u/s 9 and the notice thereof is given to the objector. Section 10(1) envisages that after the service of the final statement competent authority shall notify the particulars of the vacant land held by such person in excess of the ceiling limit, and stating that such vacant land is to be acquired by the State Government. In case any other person has claim with respect of such land, he may put in the same and the objection has to be decided by the competent authority. The competent authority thereafter issues notification u/s 10(3) declaring the excess vacant land referred to in the notification under Sub-section (1) to vest in the State with effect from such date as is specified in the declaration. The land is then deemed to have been acquired by the State Government upon the publication of such notification. The objector in this case died before the draft statement was issued u/s 8(3), meaning thereby that he retained title to the land till his death. This retention of title by

him was, however, ever since the enforcement of the Act subject of determination of the vacant land in excess of the ceiling limit. The fact that this determination could not take place during his life time is of little consequence. This could be made under the law with the legatees representing the state subsequent to the death of the objector. They have stepped into the shoes of the deceased, the determination is not adversely affected due to the fact that the individual, who held the land on the commencement of the Act, No. longer survives.

11. Learned Counsel laid emphasis upon Rule 19(2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act and made a reference to the decision of the Division Bench of this Court reported in *Horam Singh and Others Vs. District Judge and Others*, . A careful perusal of tots decision shows that instead of supporting the Petitioner?s contention it is more in accord with what the State "submits herein. Section 5 of the Uttar Pradesh Imposition or Ceiling on Holdings Act declares that on and from June 8, 1973, No. tenure-bolder shall be entitled to hold in the aggregate land in excess of ceiling area Applicable to him. Section 9(2) contains the provision relevant to give effect to this declaration. It says that after June 8, 1973, when the U.P. (Amendment) Act, 1973, (U.P. Act VIII of 1973) came into force the prescribed authority shall by general notice call upon every tenure-holder holding land in excess of ceiling area applicable to him on the enforcement of that Act to submit to him within thirty days of publication of such notice a statement as required under Sub-section (1) of Section 9. It will thus be noticed that in view of Section 9(2) a person could not fall within the purview of that Act until the prescribed authority had by general notice called upon tenure-holders holding land in excess of the ceiling area to submit the prescribed statement! The decision taken by the Division Bench was that in case the tenure-holder concerned died before the issue of general notice by the prescribed authority u/s 9(2) he could not be said to be brought within the purview of the Act and since this was the position under the Act, Rule 19(2) as then in force providing that where a tenure-holder died before the publication of the general notice u/s 9 such publication shall be deemed to apply to his legal representatives etc. and the prescribed authority may proceed to determine the ceiling area applicable to the deceased person as if the legal representatives etc. were the tenure-holders could not be sustained. The provision in this rule, it was found in consequence, did not have its base in the Act itself. Where, however, the death of the tenure-holder takes place subsequent to the publication of the general notice u/s 9(2), it would be immaterial and the land held by him in excess of the ceiling area applicable to him on June 8, 1973, would come within the purview of the Act. The Division Bench accordingly observed:

Position of a tenure-holder who held land in excess of ceiling area applicable to him on the date when U.P. Imposition of Ceiling Land Holdings Amendment Act, 1972 came into force and who died after the general notice u/s 9(2) of the Act had been issued, is, however, slightly different. In his case as soon as the general notice u/s (2) of the Act was issued, the land held by him in excess of

ceiling area applicable to him as on 8-6-1973 came within the purview of the Act and. notwithstanding any subsequent event, the surplus land held by him on 8-6-1973 was to be acquired by the State. Once a tenure-holder had been called upon to submit a statement of his holding and he failed to submit the same for any reason whatsoever, the provisions contained in Sections 10 to 12 of the Act which deal with procedure for declaration of surplus land for its acquisition became applicable.

12. Under the Act, however, the scheme in this behalf is not Identical with that contemplated u/s 9(2) referred to above. In accordance with Section 3 the vacant land in excess of the ceiling limit is in reference to the commencement of the Act. Section 6(1) requires every person holding vacant land in excess of the ceiling limit at the commencement of the Act to file a statement before the competent authority within such period as may be prescribed. The period prescribed under Rule 3 is 212 days from the commencement of the Act. Unlike Section 9(2) of the other Act Section 6 does not require a general notice to issue by the competent authority in order that a person may be brought within the purview thereof. It may not, therefore, be said that the Act had not become applicable to the objection before his death, which took place on April 21, 1977. The objector was brought within its purview as soon as the Act commenced. The well settled principle of interpretation applied also in relation to this Act is that the language of beneficial statute must be construed so as to avoid the mischief and advance its object.

13. Taking up the other writ petition filed by the State, the error in the computation of the vacant land in excess of the ceiling limit made by the learned District Judge is manifest. The appellate authority did not have the benefit of the decision of the Supreme Court in State of U.P. v. L.J. Johnson 1983 AWC 798 (decided on 8th September, 1983). The admitted facts are that the total area of land held by the objector on the commencement of the Act was 7395 square meters. This comprises of three dwelling units. In the light of the interpretation of Section 4(9) by the Supreme Court in L.J. Johnson case (Supra) this covered area plus 1000 square meters in respect of each of the three dwelling units if the land appurtenant and the additional land for the more convenient enjoyment thereof has also to be taken into account in computing the extent of the vacant land in excess of the ceiling limit. The ceiling limit in this agglomeration is 2000 square meters. The total of the covered area plus the appurtenant and additional land comes to 3554 square meters The vacant land in excess of the ceiling limit would thus be 3841 square meters as found by the competent authority and the learned Counsel for the Respondent in this writ petition also concedes that in case his point of objection raised in the other writ petition is not accepted the extent of the vacant land in excess of the ceiling limit shall be 3841 square meters.

14. Having regard to the discussion made in the above, the Civil Miscellaneous Writ Petition No. 1073 of 1983 Brigadier M.C. Sanyal v. District Judge Dehra Dun

fails and is dismissed. The Civil Miscellaneous Writ Petition No. 1583 of 1983 State of U.P. v. Brigadier M.C. Sanyal is allowed. The appellate authority is directed to re-determine the vacant land in excess of the ceiling limit in accordance with law and in the light of the observations contained herein. Costs on parties.

15. Immediately after the pronouncement of this judgment, oral application was made by Sri Jain, learned Counsel for the Petitioner in Civil Miscellaneous Writ Petition No. 1073 of 1983 Brigadier M.C. Sanyal v. District Judge Dehra Dun for the grant of certificate under Article 134-A read with Article 133(1) of the Constitution. In my opinion the case does not involve a substantial question of law of general importance requiring decision of the Supreme Court. The certificate asked for is refused.