

(1999) 09 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1330 of 1990

Champabai and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2

Citation : (2001) 1 JLJ 112 : (2000) 1 MPHT 583

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : A. Qureshi, for the Appellant; Prakash Verma, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Gohil, J.—By this petition under Article 226/227 of the Constitution of India, the petitioners are seeking the relief of issuance of a writ of Certiorari as well as writ of Mandamus for setting aside the order of the Competent Authority dated 17-07-1989 (Annexure-H) by which the petitioners' application for grant of exemption from Urban Land Ceiling was rejected and the order passed by the Additional Commissioner, Ujjain dated 14-08-1990 (Annexure-I) dismissing the appeal and the Notification dated 03-06-1987 declaring the land surplus.

2. In short the case of the petitioners is that the petitioners are the Bhoomiswami of land Survey No. 44 area 1.39 hectares and Survey No. 58 having area of 0.878 hectares situated at Village Khilchipur, Tehsil Ghatia, District Ujjain. The aforesaid lands are recorded in the names of the petitioners in the revenue record and the petitioner No. 2 is having possession over the lands. It is the agricultural land. The certified copy of the Panchsala Khasra for the years 1986-87 and 1987-88 are also filed and in Column No. 12 of the Khasra it is mentioned that the land is reserved for Simhastha Mela. The contention of the petitioners in the petition is that due to the Simhastha Mela which is being

organised after every 12 years, the area of the city of Ujjain is extended upto the village Khilchipur though it is situated at a long distance from Ujjain and in the master plan of Ujjain the village Khilchipur and the land bearing Survey Nos. 44 and 58 have been included in the Mela Area in the Master Plan. The Master Plan has also been approved by the Town and Country Planning Department. Therefore, the survey numbers referred in the petition comes within the reserved area for Simhastha Mela. In view of the aforesaid factual position, the aforesaid two survey numbers do not fall within the category of open land as prescribed under the Urban Land Ceiling Act and because of the inclusion of the area into the Mela Area, the petitioners can neither make any construction over the said land nor its land use can be changed. The land can only be used for agricultural purposes as the land is reserved for the Mela Area. The case of the petitioner is that by Circular dated 18-7-1984 the State Government has directed the competent authority not to grant any permission for construction over such land which are reserved. Therefore, the land cannot be treated as an open land.

3. It is also the case of the petitioners that in another case of Bapusingh son of Onkarji, Case No. 153/6/1/77-78 by order dated 05-12-1985, the competent authority has already treated the land of village Khilchipur as a reserved land under the Master Plan for Simhastha Mela and has also declared the same as a non-open land for the purpose of Urban Land Ceiling Act. Therefore, two different and discriminatory orders regarding the land of the same village Khilchipur cannot be passed.

4. In reply, the submission of the learned Dy. Govt. Advocate for the respondents is that by Notification dated 24-07-1987, which was published on

16-12-1987, the land has already been declared as surplus and by virtue of the aforesaid Notification the land has already been vested in the Government. Though the land is reserved for Mela purposes, in the Master Plan, but it comes within the purview of open land and the construction of Bank, Dharmashala etc., is permissible over the said land after taking permission from Mela Officer. Therefore, it is an open land. The petitioners cannot seek any exemption from the provisions of Urban Land Ceiling Act.

5. I have heard the learned counsel for the parties, perused the record and considered the rival contentions.

6. Learned counsel for the petitioners has cited the Division Bench judgment of this Court in Misc. Petition No. 790 of 1990 in case of Param Pujniya Moni Baba v. State of Madhya Pradesh and Ors., in which it has been held by the Division Bench of this Court that in respect of the land reserved for Simhastha Mela as per Master Plan of city of Ujjain, the provisions of the Ceiling Act cannot be attracted. The further submission of the learned counsel for the petitioners is that Hon"ble the Supreme Court has also upheld the same view in case of State of Madhya Pradesh v. Suraj Ratan Rathi, SLP (Civil) No. 19133 of 1995, decided on 24-01-1997. Since the lands are reserved for Simhastha Mela as per Master

Plan, the provisions of Urban Land Ceiling Act are not attracted to the lands in questions, as the same cannot be treated as vacant land.

7. Urban Land has been defined u/s 2(o) of the Ceiling Act, 1976, which reads as under :--

"(o) "Urban land" means,--

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat;

but does not include any such land which is mainly used for the purpose of agriculture."

8. Section 2(q) of the Ceiling Act defines "vacant land" as follows :--

"(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include--

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building :

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."

A plan reading of this section would show that the land on which construction of building is not permissible and where the building can only be constructed with the approval of the appropriate authority the same would not be included within the definition of vacant land.

9. No doubt the land in dispute is reserved for agricultural purposes on which

building activities are not permissible and it comes under the Simhastha Mela area as per the Master Plan of the city of Ujjain, according to me the provisions of Ceiling Act would not be attracted and the land will not fall within the definition of open land. Learned counsel for respondents could not controvert this factual position that the land is not reserved for Simhastha Mela.

10. The respondents themselves alongwith the return have filed Annexure-R/4 which is an order of the competent authority dated 10th September, 1979 in which it has been mentioned that the land use of the land shown in the Master Plan is "for Mela purposes". Therefore, from this order it is very much clear that the competent authority was himself aware that this land is a reserved land for the purpose of Simhastha Mela.

11. This submission of the respondents that construction like Dharamshala and Banks can be made after taking the permission from Mela Adhikari is not forceful because the scope of this construction is quite limited. On the contrary this confirms the fact that the petitioner cannot raise any construction over the land of his own choice for his own use. The construction of Dharamshala or Banks can be for public or pilgrims, not for the petitioner. Therefore, from the aforesaid admission by the respondents it is clear that the land in question does not fall within the definition of the vacant land under the Urban Land Ceiling Act. In the case of State v. Bapusingh, the competent authority himself gave the finding on 05-12-1985, that the land, which is for the use of Simhastha Mela, is reserved land and does not fall within the category of vacant land. In view of the aforesaid order of the competent authority dated 05-12-1985, the orders passed in this case are per se discriminatory and cannot be allowed to be maintained.

12. In view of the facts and circumstances of the case and also on the basis of reasons stated above, the petition is accordingly allowed and the impugned orders passed in this case on 17-07-1989 (Annexure-H), 14-08-1990 (Annexure-I) and the Notification dated 03-06-1987 declaring the land surplus are hereby set-aside. Under the circumstances, there shall be no orders as to costs. The security amount, if any, be refunded to the petitioners, after due verification.