
(1986) 05 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 14234 and 14597 of 1982

Christophar Madhai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-05-1986

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 4(7), 5A, 6, 8(3)

Citation : (1986) 05 AHC CK 0001

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.M. Sahai, J.—A very short question arises for consideration in these two petitions, one filed by owner and other by the State namely, whether Agricultural land could be declared as vacant land under Urban Land (Ceiling and Regulation Act. 1976 (hereinafter referred to as Act) because it was earmarked for abadi or for public benefit in Master plan which came into existence after enforcement of the Act.

2. Although there is divergence if the proceedings started on statement filed by Petitioner u/s 6 or on issuance of notice by competent authority u/s 8(3) of the Act but nothing turns on it. In the objection filed by the Petitioner to draft statement prepared by Competent Authority, it was claimed that all the plots mentioned in it were mainly used for agriculture ; that no Master-plan was in existence ; that Petitioner were members of joint family and were entitled for separate allotment of 2000 sq. meters ; that Petitioners were Christians and were entitled to similar benefit as had been provided for Hindus by Sub-section (7) of Section 4 of the ct; in the alternative the Sub-section was ultra vires being discriminatory The Prescribed authority held all plots to be agricultural land but rejected objection of Petitioner as they were ear-marked in Master Plan which came into effect on 27th November, 1980 It did not agree that Petitioner was entitled to benefit of Section 4(7) as it applied to Hindu joint family only. It

accepted that Petitioner had only one third share in plots in dispute. In appeal in respect of plot No. 389 it was held that it having not been entered as agricultural land in Khasra for 1383F which was the only evidence to decide if the land in dispute was agricultural land or not the Petitioner could not get any benefit. So far the remaining plots are concerned the appellate authority held that these plots having been ear-marked for Abadi etc. in the Master plan the Petitioner was not entitled to any relief in view of a decision of this Court in *State of U.P. and Others Vs. Smt. Krishna Murti and Others*, . The appeal was allowed in part and some relief was granted it having been found that Petitioner had two houses existing for more than 80 or 90 years on a covered area of 336 sq. meters and 162.11 sq. meters for cattle shed etc. Although learned Counsel for petitioner had challenged the correctness of the view expressed by appellate and Prescribed authorities on Sub-section (7) of Section 4 of the Act but there appears no substance in it.

3. Coming to the principal question vacant land has been defined in Section 2(q) as land which is not mainly used for the purpose of agriculture in Urban Agglomeration. Therefore, land which is mainly used for agriculture and is in Urban agglomeration shall not be vacant land. Urban Agglomeration has been defined in Sub-section (n) of Section 2 of the Act. According to note of Schedule I it is made up of main town together with the adjoining areas of Urban growth and is treated as one urban spread. Urban land has been defined by Sub-section (q) of Section 2 to mean:

(i) any land situated within 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 does not refer to any land was urban land, any land within the limits of an urban agglomeration and situated in any areas 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.

4. Therefore, any land situated in urban agglomeration could not be taken into consideration for determining ceiling limit of a person if it was used mainly for purposes of agriculture. How the word agriculture has to be understood under the Act is explained in Explanation appended to this clause. Sub-clause (B) of explanation provides 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 date for the purpose of agriculture". It, therefore, enacts a rule of presumption by providing that entry of such land in revenue records or land records before the appointed date shall be decisive if land was used mainly for the purpose of agriculture. It renders revenue records as best evidence. Once these records are produced and it is found that land entered was used mainly for agriculture then prima-facie it shall be deemed to have been established that land was mainly used for purpose of agriculture. But Clause (c) of Explanation

nullifies Clause (B) and creates fiction by providing that if such land has been specified in Master-plan then notwithstanding its entry as agricultural land in revenue records it shall not be deemed to be land mainly used for agriculture. That is agricultural land becomes vacant land within meaning of Sub-section (q) of Section 2 of the Act. In *Aftab Ahmad Vs. State of U.P. and Others*, it was held:

In order to qualify the requirements of Clause (C) of Section 2(o) it is necessary that a "master plan" must have been prepared and enforced in pursuance of an order made by the State Govt, for the development of such area. So far as the State of Uttar Pradesh is concerned, there are two relevant Acts dealing with the matter in issue; the first Act to which a reference may be made is the U.P. (Regulation of Building Operations) Act, 1958. This Act had been enacted for the purpose of checking haphazard development of the cities and for laying down regulations in accordance with which the constructions had to proceed. Section 5A provided that if, in the opinion of the state Government, any regulated area requires to be developed according to the Master Plan, it may cause such a plan to be prepared either through a controlling authority or through such other agency as it may think fit. This Section 5A was introduced by the U.P. Act No. 41 of 1976.

Learned Standing Counsel urged that ratio of this decision was not helpful to Petitioner as after the decision was given the master plan received sanction of State Government and it came into force in 1980, and as land in dispute is earmarked in it Clause (C) became applicable. This raises an important question as to whether Master Plan which comes into existence after enforcement of the Act can also exclude agricultural land from the Explanation and render it vacant land u/s 2(q) of the Act. Master Plan has been defined by Sub-section (h) to mean in relation to Urban agglomeration, a plan prepared under the law for the time being in force or in pursuance of an order made by the State Government for development of such area or part thereof. The plan, therefore, sanctioned by State Government in 1980 can be said to satisfy this definition. But according to learned Counsel for Petitioner that alone is not sufficient as Clause (C) excepts land used mainly for purposes of agriculture if it was specified in Master-plan. According to him it is a non-obstante clause which should be applied with full vigour. He urged that it may have overriding effect, but not beyond its language is capable of. According to him it does not operate in its own sphere and it has to be read along with Clause (B), and the principal clause. The argument does not appear to have substance. The field of operation of Clause (C) is undoubtedly confined to Clause (B) because of the expression notwithstanding anything contained in Clause (B). But it demolishes the presumption of Clause (B) once land is referred to in Master plan. Clause (B) as pointed out earlier enacts rule of presumption only depending on entry of land in revenue records on the appointed day. It is itself in negative form. That is presumption shall be drawn against owner if it was not entered in revenue record. In other words the clause shall not apply if land was entered out by Clause (C) even that is nullified. If land is entered in revenue records on the appointed date as agricultural land it shall

be deemed to be vacant land if it was specified in Master-plan. But Master plan of what year or time. According to learned Counsel for Petitioner not of any year but in existence on the appointed date. At the first flush argument appeared plausible but if entire Clause (o) is examined it demonstrates its hollowness. Sub-clause (i) and (ii) exhaust amongst themselves the meaning of urban land. If land is situated in urban agglomeration and is referred to as such in Master Plan then nothing further is needed. But if there is no Master plan or land is not referred as urban land in Master Plan but it is situated in limits of local body namely, Municipal Board or town area etc. then also it is urban land except if the land is used mainly for the purpose of agriculture. In other words land referred to in Master Plan or in limits of local area except land used mainly for purpose of agriculture is urban land. But if such land that is agricultural land is specified in Master Plan then it shall not be deemed to be for agricultural purposes. Specification of land in Master Plan cannot obviously refer to Master Plan in existence on the appointed date as Sub-clause (B) to which Sub-clause (C) is an exception is applicable to such land which is situated in local limits and is not mentioned in Master Plan. Therefore, referring of land in Master Plan referred to Sub-clause (C) has to be understood as Master Plan coming into existence subsequent to appointed date. It comes into operation when the owner claims any land situated in local area to be agricultural land. In other words if on the date the vacant land is being determined of any land covered by Sub-clause (ii) then if such land even though used mainly for agricultural purpose shall be taken out of its purview if it is mentioned in Master plan. That is if land is ear-marked in Master-plan even before the date of determination of ceiling limit and vacant land then it has to be given effect. It is strengthened further by yet another consideration. As stated earlier Sub-clause (B) enacts a rule of presumption. It is applied or can be applied when proceedings for determination of ceiling area are being finalised, if land is entered in revenue extract as being used for agricultural purpose then the Prescribed Authority shall draw presumption in favour of owner. But if on the date the presumption is being drawn it transpires that land has been specified in Master Plan for a purpose other than agriculture then not only no presumption can be drawn but by over-riding effect of Sub-clause (C) the land shall not be deemed to be mainly used for the purpose of agriculture. So from whatever aspect it is examined it appears irresistible conclusion that even if land was not ear-marked in Master Plan on the appointed date but if it becomes ear-marked later on for a purpose other than agriculture then it ceases to be land for agricultural purpose and it cannot be excluded while calculating vacant land under Clause (q) of Section 2 of the Act.

5. As regards State's petition the appellate authority found that houses of Petitioner were standing for last 80 or 90 years, therefore, they were to be excluded while determining ceiling limit of Petitioner from vacant land under Clause (i) and (ii) of Sub-section (q) of Section 2 of the Act. In the writ petition no foundation has been laid whether land on which building was constructed was not permissible under building Regulation or if the building regulation applied

then the construction was without approval of the appropriate authority. In fact there could be none as the building has been found to exist since last 80 or 90 years.

6. In the result both petitions fail and are dismissed. Parties shall bear their own costs in both petitions.