

(1981) 03 BOM CK 0045

In the Bombay High Court

Case No : Spl. Civil Application No. 138 of 1978 with Writ Petition No. 1355 of 1980

Dattatray Shankarbhat Ambalgi and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-03-1981

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 43
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 20, 20(1), 2Q, 3

Citation : AIR 1981 Bom 326 : (1981) 83 BOMLR 401 : (1981) MhLj 764

Hon'ble Judges : Palshikar, J; Dharmadhikari, J

Bench : Division Bench

Advocate : G.R. Rege, for the Appellant; C.S. Sawant, Addl. Govt. Pleader and R.T. Walawalkar, Asst. Govt. Pleader, for the Respondent

Judgement

Palshikar, J.—The petitioners in these two petitions are brothers and they own Various lands in Sholapur City. Consequent upon the passing of the Urban Land (Ceiling and Regulation) Act, 1976, (hereinafter referred to as "the Act") they filed returns as required by the provisions of the said Act. They had also applied for exemption u/s 20(1) of the Act. However, by an order dated 12-7-1977, their application was rejected and the exemption sought for was declined. Special Civil Application No. 138 of 1978 is directed against that order. As already stated they had filed a return of the lands held by them before the competent authority and an order dated 6-7-1978, was passed declaring certain lands as surplus. The petitioners filed an appeal against this order and the appellate authority vide its order dated 12-8-1978, remanded the case to the competent authority for a fresh decision. On remand the competent authority passed an order and the said order was confirmed in appeal by the appellate authority on 27-3-1980. Writ Petition No. 1355 of 1980 is directed against the said order.

2-3. A Scheme under the Maharashtra Regional and Town Planning Act, 1968 was prepared and the plots held by the petitioners were included in the said scheme known as "Sholapur Town Planning Scheme No. 1". These lands are situated

within the limits of the Sholapur Municipal Corporation. The lands in question are final Plots Nos. 26, 28A, 22, 42/1, 56A, 44A/1 and 23: Plots Nos. 53, 46 and 52 are also held by the petitioners but they have been leased out to various lessees who have constructed their houses thereon and are in possession of the said lands. Survey No. 53A, which also belongs to the petitioners, is reserved for garden-under the Town Planning Scheme No. 1. Survey Nos. 56A and 53A are finally reserved for the purposes of garden as per the scheme. Survey Nos, 26, 28A, 22, 42/1 and 44A/1 are the plots which are reserved for various public activities, such as buildings of primary school, high school, civil hospital, bus terminus etc., under the Town Planning Scheme. About 3 cases were decided by the competent authority and thereafter by the appellate authority and orders were passed. These orders are collectively challenged in the present petition.

4. The main contention of Shri G. R. Rege, the learned Counsel for the petitioner is that the lands in question are specifically reserved for various public purposes. No building activity is, therefore permitted on these" lands so far as the petitioners are concerned. The petitioners cannot develop these plots and undertake any construction activity on those plots as they are reserved for the purposes aforesaid, According to him, therefore, these lands are not vacant lands within the meaning of Clause "Q" of Section 2 of the Act. He relies for his argument upon the definition of the expression "vacant land". He further says that from the commencement of the Act no person shall be entitled to hold any vacant land in excess of the ceiling limit is the territories to which the Act, applies, under Sub-section (2) of Section 1; but since the building activity is prohibited on these plots these lands are not covered by the expression "vacant land" and thus they are outside the purview of the provisions of the Act and consequently could not be declared as surplus under this Act. He also drew our attention to Section 43 of the Maharashtra Regional and Town Planning Act, 1966. His submission is that u/s 43 there is a total prohibition upon the building activity after the date on which the intention to prepare a development plan in any land is declared by the authority and such intention has to be published in the official gazette. According to him once this intention is declared and it is published in the official gazette no person can change the user of any land for carrying the development of the land without the permission in writing of the competent authority. He, therefore, says that Section 43 is a blanket prohibition upon the building activity and therefore it cannot be covered by the expression "vacant land" since construction of a building is not permissible under the building regulations imposed in any area in which such land is situated. In short, therefore, his submission is that under the relevant rules and regulations no building activity is permitted on these plots so far as the petitioners are concerned and hence it is not possible for the petitioner to undertake any construction activity on these plots. These are not the vacant lands within the meaning of the expression "vacant lands" and could not be declared as surplus or in manner dealt with as per the provisions of the Act.

5. His next contention is that Section 3 lays down that no person shall be entitled

to hold any vacant land in excess of the ceiling limit and therefore, the lands upon which building activity can-not be undertaken is not vacant land and no ceiling can be fixed upon such lands and hence they are entitled to hold all the lands in their possession. He further contended that ceiling is with respect to the person who is holding the land and not with respect to the lands. He further contends that while determining whether a particular land is a vacant land or not what has to be seen is whether there is any prohibition upon any person to undertake building activity at the time of commencement of the Act, and future possibility of construction of buildings on those lands is not to be considered. He says that if on the date of the commencement of the Act a person is prohibited from constructing building on the land then the same will have to be excluded while determining the ceiling area.

6. Another contention raised by Shri Rege is that u/s 43 when the intention to prepare a development plan is declared and published in the official gazette what is done is that a draft plan is prepared and under the provisions of the Maharashtra Town Planning Act, 1966, it has to be made final, till then the plan is only at the stage of a draft plan. It is possible for the authority concerned to effect changes in the said plan and it is also possible that the land which is reserved today for a garden or for a civil hospital may not be reserved for the said purpose when the draft plan is finalised. He further says that u/s 126 the lands required for public purpose are to be acquired under the Land Acquisition Act and not the Ceiling Act, He therefore, contended that the authorities under the Ceiling Act had no jurisdiction to declare these lands as surplus or take any other step under the Act.

7. Before we discuss the questions raised by Shri Rege, it is worthwhile to consider the object and the scheme of the Act. The object of this Act has been stated in the case of Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others, , as follows (at P. 1419):--

"The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976 "the Act" as the long title and the preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the directive principles of Article 39 (b) and (c)."

Similar is a statement by the Supreme Court in Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others,

8. Keeping in view the aforesaid aims and objects of the Act the relevant visions of the Act will have to be interpreted so as to achieve these objects and any other interpretation which would defeat the objects of the Act cannot be

accepted. We would, therefore, deal with the main contention of the petitioner whether these lands are vacant lands or not. As already stated, according to the petitioners, after the publication of the scheme and reservations made in the scheme for certain public purposes, the petitioners are prohibited from constructing any building on these lands and therefore, these lands are not included in the definition "vacant land". The definition of vacant land is as follows:--"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 buildings; 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."

It is clear from the definition that what the said expression contemplates, is that the land on which construction is not permissible under the building regulations in force in the area in which such land is situated, cannot be treated as vacant land. Therefore, what we have to see is that, is there any prohibition upon the construction of buildings on these lands. It appears that these lands are reserved in the plan for certain public purposes and it is only the petitioners who cannot construct buildings upon these lands, but that does not mean that building activity as such is totally prohibited upon these lands under the building regulations in force. The very purpose of reserving these lands is to construct buildings" though for public purposes, such as, Civil Hospital, Schools etc. In our opinion the law- contemplates that there should be a total prohibition upon construction of building upon the land under the relevant building regulations but if the building regulations or the Town Planning Schemes specifically reserve the lands for construction of buildings it cannot be said that it is taken out of the purview of the definition of vacant land. What has been argued is that it is the petitioners who are prohibited from constructing any building under the building regulations contained in the Town Planning Scheme and hence the building activity is not permitted so far as they are concerned. Hence this land is not a "vacant land" and it is outside the scope of Section 3, which prohibits a person from holding any vacant land in excess of the ceiling limits. It is not possible for us to accept this contention. As already seen what is contemplated is that the building regulations totally prohibit the building activity upon certain lands by any individual or public authorities or even by the State Government. But if the regulations allow the building activity not by a person who holds the land but by public bodies or the State Government then certainly construction of building is permissible. Once it is found that construction of building is permitted either by

an individual or even by public authority then certainly it is "vacant land" and can not be taken out of the definition.

9. Shri Rege, the learned Counsel for the petitioner relies upon the decision of the Delhi High Court in *Shanti Devi Vs. Delhi Administration and Others*, Relying upon this decision he argues that while determining whether a particular piece of land is vacant land within the meaning of the Act what has to be seen is whether any building activity is or is not permissible on the date when the land is sought to be dealt with and not at any future time. He relied upon certain observations in that judgment and says that the possibility that such activity can be permitted in future or that there are buildings constructed in the area or that there is no prohibition to construct would not be sufficient to treat the land as vacant land within the meaning of the provision. He says that in the present case on the commencement of the Act the petitioners were prohibited from constructing any buildings on the lands in question as they were reserved for certain public purposes and therefore, the lands were not covered by the definition of vacant land. In our opinion the judgment is distinguishable on facts, . It may be noted that the land in dispute in the Delhi case was in Sant Nagar area in the Union Territory of Delhi and the said Sant Nagar Colony was an unapproved colony where building activity was still not permissible. An argument was advanced on behalf of the competent authority in that case that though construction activity was not permissible in Sant Nagar area in the absence of Zonal Plans prepared under the Delhi Development Act at that time, it was possible that in future building activity would be permissible and it appears that the building activity in Sant Nagar area at the relevant time was totally prohibited and nobody including the Government could undertake any building activity, on those lands. In the present case the lands in dispute are clearly earmarked for construction of buildings for public purposes "viz., Civil Hospital, Schools etc. Therefore, in fact building activity is permissible on the lands in dispute in the present case though by the public authority and not by the petitioner. The judgment of the Delhi High Court, therefore, cannot be applied to the facts of the present case. We are, therefore, unable to accept the contentions of Shri Rege that the lands in dispute are not vacant lands,

10. The next contention of Mr. Rege is that u/s 43 of the Maharashtra Regional and Town Planning Act as soon " as the intention to prepare a development plan - is published in the official gazette, no person can undertake any building activity. Such declaration was made while preparing the development plan for Sholapur City and the petitioners were unable to construct any buildings on the lands in question. Therefore, according to him, since the building activity was not permissible u/s 43, the lands cannot be considered as vacant lands. The perusal of Section 43 and other relevant provisions of the Act makes it clear that building activity "is still permissible under the provisions of the Act but a prior permission of the concerned authority has to be obtained and there is no total prohibition upon the building activity when a declaration is made u/s 43. It this is the position then We are unable to accept the contention of Shri Rege that by virtue

of Section 43 there is a total prohibition to construct any buildings upon the lands when declaration contemplated by Section 43 is made. Furthermore in the present case a final development plan has been prepared and final plot numbers have also been allotted and under it certain plots have been reserved for buildings to be used for public purposes. In view of these facts also the aforesaid argument cannot be accepted.

11. As far as Special Civil Application No. 138 of 1978, is concerned it is directed against the refusal by the State Government to exempt these lands from operation of the provisions of the Act. Section 20 confers a discretion upon the authority, depending upon facts and the circumstances of the case either to grant or refuse the exemption from the provisions of the Act. In the present case the plots have been reserved in the master plan for buildings to be used for public purposes. In our opinion the State Government was right in rejecting the request of the petitioner to grant any exemption.

12. It was then contended on behalf of the petitioners that they should be allowed to retain lands out of final plot No. 28 in the Town Planning Scheme No. 1 of Sholapur in place of lands which are now ordered to be retained by the petitioners as per the order of the Competent Authority. The petitioners, therefore, requested that the order to that extent be modified. This request appears to be reasonable and we, therefore, modify the orders passed by the Competent Authority and the Appellate Authority to the extent that the petitioners be allowed to retain land out of Final Plot No. 28 in the Town Planning Scheme No. 1 of Sholapur in place of lands which are now ordered to be retained as per the order of the Competent Authority. Subject to this modification, the orders are confirmed.

The rule is discharged. However, there will be no order as to cost.

At this stage Shri Rege makes an oral request, for leave to file an appeal before the Supreme Court. We do not find that this is a fit case where such leave should be granted. Hence leave refused. Respondents Not to take possession till 30th of April 1981.

13. Petitions dismissed.