
(1996) 11 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 5900 of 1986

Dhondiba N. Bargale

APPELLANT

Vs

Competent Authority and Dy. Collector, U.L.C. Sangli

RESPONDENT

Date of Decision : 30-11-1996

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 33

Citation : (1997) 99 BOMLR 575

Hon'ble Judges : D.K. Deshmukh, J;A.V. Sawant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.K. Deshmukh, J.—Heard all the learned Counsel.

2. The petitioner seeks to challenge the concurrent findings recorded by the two authorities in the proceedings under the Urban and (Ceiling and Regulation) Act, 1976 whereby the petitioner has been declared to be the surplus holder to the extent of 29150 sq.meters. Since the total vacant land held by him was found to be 31150 sq.meters, deducting the permissible area of 2000 sq.meters, the area of 29150 sq.meters has been declared to be surplus under the order dated 31st August, 1978 passed by the Competent Authority and Deputy Collector, U.L.C., Sangli.

3. Against the said order dated 31st August 1978, the petitioner had preferred an appeal u/s 33 of the Urban land (Ceiling and Regulation) Act, 1976 before the Collector, Sangli. Two specific contentions were raised in the appeal as is evident from the order annexed as Ex. B dated 31st march, 1986. One was that the Authority had failed to consider the share of the petitioner's mother who was living with him and secondly, the suit lands were agricultural lands and were used as such for a long period and that they were the only source of his family livelihood. The Collector by his order dated 31st March, 1986 has dismissed the appeal. Hence, the petition.

4. it is not necessary to go into the merits of the matter in detail since we are inclined to remand the matter for fresh hearing and disposal in accordance with law. Unfortunately, in none of the two orders there is a detailed discussion of the contentions raised by the petitioner. For instance on the question of the lands being agricultural lands, Shri Vaze, for the petitioner has invited our attention to the definition of vacant land appearing in Clause (q) of Section 2 of the Act. The opening words of the said clause read as under:

2(q) Vacant land means land not being land mainly used for the purpose of agricultural in an urban agglomeration, but does not include....

Our attention was invited to the definition of Clause (o) of Section 2 of the said Act. In the Explanation appearing below Sub-clause (ii) of Clause (o) it is provided that "Agriculture" includes horticulture but does not include certain activities like.

(i) raising of grass

(ii) dairy farming

(iii) poultry farming

(iv) breeding of live-stock, and

(v) such cultivation, or the growing of such plant, as may be prescribed;

That in Clause (B) of the said explanation it is provided that the 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 agricultural. There are two proviso to Clause (B) of the said explanation. Then Clause (C) of the explanation provides that notwithstanding anything contained in Clause (B) of the explanation the land shall not be deemed to be mainly used for the purpose of agricultural if the land has been specified in the Master Plan for the purpose other than the agricultural.

5. Unfortunately, in the two cryptic orders at Ex A and Ex. B there is no discussion of any of these provisions of law nor of the evidence that has been placed on record. This in our view, is a very unsatisfactory way of dealing with the valuable rights of a citizen as a result of which extensive property has been declared to be vacant hand and surplus.

6. In our view, ends of justice would be met by setting aside both the orders at Ex. A and Ex. B and remitting the matter for fresh disposal in accordance with law.

7. Accordingly, we set aside the two orders at Ex. A dated 31st August 1978 and Ex. B dated 30th March, 1986 passed by two authorities below. The question regarding the determination of the surplus land held by the petitioner is remitted to the Competent Authority and Deputy Collector, Urban Land Ceiling, Sangli. The petitioner will be given a fresh opportunity of producing such evidence as he

wishes to produce and, thereafter, Competent Authority will pass a fresh order in accordance with law in the light of the relevant provisions mentioned above and all other relevant provisions.

8. Since the matter is pending in this Court for nearly 10 years we direct the petitioner to appear before the first respondent Competent Authority on Monday the 20th January, 1997 for fixing the schedule of hearing.

9. We may mention here that since notice was given to the Attorney General as a result of challenge of the validity of certain provisions of the Act, Shri Desai has appeared on behalf of the Union of India. However, in the view that we have taken, it is not necessary for us to refer to the said challenge to be constitutional validity of the Act. All contentions on merit are kept open.

10. Rule is made absolute in the above terms with no order as to costs.