
(2003) 07 JH CK 0098

In the Jharkhand High Court

Case No : CWJC No's. 1052 of 1992 (R) and 782 of 1999 (R)

Gossner Evangelical Lutheran Church

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 19, 6

Citation : (2004) 2 BLJR 1438 : (2004) 3 JCR 385

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : N.K. Prasad and Jai Prakash, for the Appellant; Pradip Modi, GP-I and Awani Kumar Sinha in CWJC No. 1052/1992(R), M.S. Akhtar, Shamim Akhtar, SC-II and Arvind Kumar Mahto in CWJC No. 782/1999(R), for the Respondent

Judgement

1. A Statement u/s 6 of the urban Land (Ceiling and Regulation) Act, 1976 was filed before the Appropriate Authority, by the petitioner before us. According to the statement, the petitioner was a Society registered under the Societies Registration Act. It held an extent of 121.94 acres of urban land. But in view of Section 19(vii) of the Act, the chapter relating to ceiling was not applicable to the lands held by the petitioner society. After a preliminary enquiry by the authorized officer, a draft statement u/s 8(1) of the Act was issued to the petitioner. It was indicated therein that the petitioner held an extent of 4,76,848.66 sqr. meters of land in the town of Ranchi; that an extent of 122690.26 sqr. meters was occupied by buildings and other structures and that the Society held an extent of 3,54, 158.40 sqr. meters as being in excess of the ceiling area prescribed by the Act. The petitioner Society filed objections in terms of Section 8(3) of the Act. The main contention raised by the petitioner Society was that the chapter relating to ceiling on urban land was not applicable to it in view of the fact that in was a Cooperative Society engaged in religious and charitable activities without any profit motive. The Society wanted the question of its obligation arising under the Act to be considered as a preliminary issue. The Society filed CWJC No. 1515

of 1991 (R) before this Court, urging the contention that the lands held by it stood outside the purview of Chapter III of the Act. This Court, by order dated 5.8.1991, directed the original authority under the Act to decide the question as to the said claim to stand outside the Act raised by the petitioner Society as a preliminary issue, pursuant to that direction. The Deputy Commissioner, the authority under the Act, took up for consideration that question by order dated 30.11.1991, held that the petitioner Society was not eligible for the exemption in question and that the lands held by it did not stand outside Chapter III of the Act. Feeling aggrieved by the decision, the petitioner Society filed CWJC No. 1052 of 1992 (R) before this Court. Though the writ petition was admitted on 27.3.1992, this Court did not stay the further proceedings before the Deputy Commissioner under the Act but ordered that if the Deputy Commissioner meanwhile passed a final order on the statement filed by the petitioner u/s 6 of the Act, the same will be subject to the result of the writ petition.

2. The Authority thereupon took up the matter for consideration. It passed a final order on 19.8.1992, affirming the draft statement and holding that the petitioner Society was liable to surrender an extent of 3,54, 158.40 sqr. meters of land. We are a little surprised to find that the Society went on harping upon its claim that the lands held by the institution were outside the ceiling chapter, though the claim had been finally rejected at least as far as that appropriate was concerned. Practically no other tenable claim was raised on behalf of the Society other than the exemption claimed u/s 19 of the Act. The determination of the extent to be surrendered by the Society was challenged by the petitioner Society in an appeal u/s 12(4) of the Act. Before the Appellate Authority also, except harping upon its contention that Section 19 applied to it, the Society made no attempt to raise any other contention except the plea ultimately taken that it may be given one more opportunity to choose the lands it wants to retain and it was entitled to retain. The Appellate Authority found no reason to differ from the conclusion arrived at that the lands were not liable to be exempted u/s 19 of the Act. The Appellate Authority found no reason to interfere. It appears that there was no argument on any other aspect and the appeal was dismissed giving the Society an opportunity to choose the lands it wanted to retain. This order of the Appellate Authority is appealable u/s 13 of the Act. But for reasons unknown, the petitioner Society did not choose to avail of that substantive remedy but has filed the second writ petition, CWJC No. 782 of 1999 (R) before this Court. Since the matters are connected and the question involved is practically the same, and the matters arise from the same proceeding and the question that arises for decision is the same, the writ petitions are being heard together and are disposed of by this judgment.

3. The case of the petitioner's Society in the statement filed by the petitioner was that it was a Society registered under the Societies Registration Act and the lands held by it were liable to be exempted u/s 19(vii) of the Act. Section 19(vii) provides that nothing in Chapter III of the Act shall apply to any vacant land held by a society registered under the Societies Registration Act or under any other

corresponding law for the time being in force and used for any non-profit and non-commercial purpose. Sub-section (2) of Section 19 is not relevant for our purpose. But during the submissions before the Deputy Commissioner the petitioner Society also sought to raise a contention that it was a public charitable or religious trust and the land was required and was used for a public charitable or religious purpose. It also reiterated its claim as a Society u/s 19(iv) or 19(v) of the Act as also u/s 19 (vi), (vii) of the Act on the ground that the Society was running an educational institution. On behalf of the State it was pointed out that going by the statement filed by the petitioner-Society the claim was only under 19(vii) of the Act and no foundation was laid for making any claim for exemption u/s 19(iv) or 19(v) of the Act.

4. In support of its claim, the petitioner Society produced certain accounts and audit reports. It also relied on an order by a Deputy Commissioner showing that a complaint was made about violation of Municipal laws by the petitioner Society. The State pointed out that the order passed by the Deputy Commissioner relied on by the petitioner Society was in a Miscellaneous Case which had nothing to do with the Urban Land Ceiling Act and in any event, the State of Bihar was not even a party to the same. The Deputy Commissioner, the original authority under the Act, on a consideration of the relevant aspects found that the petitioner Society has not laid any foundation for claiming exemption u/s 19(iv) or 19(v) of the Act. As regards the claim u/s 19(vii) of the Act, the Deputy Commissioner held that the Society was not using the land for a non-profit and non-commercial purpose. Actually the arguments before the original authority turned on the nature of construction put up by the Society subsequent to the appointed day, which as far as the State of Bihar was concerned, was 1.4.1976. But the Deputy Commissioner found on the basis of the accounts and audit reports produced by the petitioner Society that the petitioner Society was not expending its income substantially for non-profit and non-commercial purposes or for public religious charitable purposes, but as a matter of fact, it had entered into a commercial venture. This view was upheld by the Appellate Authority in the second round when the final order of the original authority was challenged before him in the appeal u/s 12 of the Act.

5. The learned Senior counsel appearing for the petitioner Society contended that the petitioner Society was a public charitable or religious trust and it required the land for its charitable or religious purposes. We find considerable difficulty in appreciating this argument. First of all, the petitioner Society laid no foundation for raising such a claim in its statement or in the statement it filed accompanying its return, wherein the claim was only for exemption u/s 19(vii) of the Act. The petitioner admittedly is registered under the Societies Registration Act. The petitioner had to plead the facts supported by the relevant evidence if it wanted to claim benefit on the basis that it was a public charitable or religious trust. We have scrutinized with some anxiety the accounts and audit reports relied on the by petitioner Society in this proceeding and which are available before us also. On a scrutiny of those documents, we do not see any evidence to support a claim

that the petitioner is entitled to the exemption u/s 19(iv) of the Act on the basis that it was a public charitable or religious trust. No doubt the petitioner Society is running some educational institutions and also has established some places for religious purposes but that by itself is not sufficient to establish that the petitioner Society is a public charitable or religious trust and the land was being used for such public or religious purposes. In fact the subsequent conduct of the petitioner itself shows that it had taken up a substantial portion of the property and had let it out to strangers for commercial purposes. No doubt learned Senior counsel pointed out that we are concerned with the state of affairs as on the appointed day, namely 1.4.1976, and any construction made subsequently should not be taken into account and the land had to be treated as vacant land. The aspect that is being emphasized here is that there is no adequate material to show that the petitioner Society could be treated as public charitable or religious trust and the lands are used for such public charitable or religious purposes. Of course, we have noticed that the petitioner Society had laid no foundation for such a claim in its statement. The order of the Deputy Commissioner said to have been passed on a miscellaneous complaint case by certain other persons in a proceeding which was not under the Act, cannot have any conclusive effect or be binding on the authority under the Act. Only the authority constituted by this Act has been given the power to decide the question whether the petitioner is liable to be exempted u/s 19 of the Act. That power cannot be usurped by any other authority exercising any other jurisdiction. Therefore, the order of the petitioner Society relied on by the petitioner Society is of no avail in supporting its claim under the Act. Moreover as rightly observed by the original authority and the appellate, the State of Bihar was not a party to that proceeding and the order cannot be said to be binding on it or on the authorities under the Act.

6. We may notice here that while directing the original authority to decide the preliminary issue of the claim for exemption by the Society in CWJC No. 1515 of 1991 (R), this Court also indicted that the order of the Deputy Commissioner was an order in some other proceedings and the question raised by the petitioner Society had to be decided independently by the authority constituted under the Act. Therefore, nothing turns on the so called order of the Deputy Commissioner in some other proceedings.

7. What remains is a claim that the petitioner is entitled to exemption u/s 19(vii) of the Act. Section 19(vii) postulates the existence of two conditions so as to enable a person to claim exemption under that provision. The first is that the Society should be registered under the Societies Registration Act or an other corresponding law for the time being in force. The second is that the land involved must be used for any non-profit and non-commercial purpose. The petitioner is a Society registered under the Societies Registration Act. But the question is whether the petitioner has proved that it was using the land non-commercial purpose. On the materials available, both the original authority and the appellate authority came to the conclusion that the petitioner Society has failed to prove that it was using the land in question for a non-profit and

noncommercial purpose. There is no material on the basis of which we can find that the authorities have acted unreasonably, or perversely in rendering such a finding on the materials available in the case. Obviously, we are not sitting in the appeal over the decision of the appellate authority. We are only exercising a certiorari jurisdiction. We have already indicated that the documents made available by the petitioner Society do not establish that the petitioner Society is using the land for a non-profit and non-commercial purpose. It is seen that even going by the statement filed and the documents produced, various investments on constructions have been made by the petitioner Society and the buildings or portions thereof, have been let out for rent which is a commercial return on its investment. This activity obviously only be considered as a commercial activity. The fact that some amounts are spent on religious or charitable purposes is not sufficient to find that the entire lands involved is being used for a non-profit and non-commercial purpose. On the other hand, the subsequent conduct of the petitioner Society as discussed by the authorities below, clearly indicates that the land was also being commercially exploited by the petitioner Society. It is, therefore, clear on the materials that the orders of the authorities that the petitioner is not entitled to have the land exempted u/s 19(vii) of the Act cannot be said to suffer from any error apparent on the face of the record justifying our interference.

8. Learned Senior Counsel appearing for the petitioner raised a contention based on the facts reported by the authorized officer while verifying the statement filed by the petitioner u/s 6 of the Act. Annexure-15 is the report. Counsel pointed out that going by that report, not only the extent of 1,22,690.26 sqr. meters of land occupied by buildings and other constructions were liable to be excluded but also the extents occupied by the Garison Engineering, by the Cooperative Training Institute and the Tank are also liable to be excluded. Unfortunately for the petitioner Society, it does not appear that this factual contention was properly raised either before the original authority or before the appellate authority. Learned Government Counsel is, therefore, justified in saying that such a contention should not be permitted to be raised for the first time in facts contained in the verification report submitted by the authorized officer himself. In that situation, we are not inclined to reject the claim raised on behalf of the petitioner Society merely on the ground that it was not raised either before the original authority or before the appellate authority. But we must express our surprise at the fact that such a valid contention if it was available, was not properly raised at least before the appellate authority in the circumstances. Whatever it be, the question is whither the areas occupied by the Garison Engineering and the Cooperative Training Institute are liable to be excluded, from the direction for surrender.

9. Annexure-15 the report shows that the Garison Engineering occupied an extent of 35,275.52 sqr. meters of land. It also shows that an extent 23,450.88 sqr. meters of land was being held by the Cooperative Training Institute run by the State of Bihar. In its return u/s 6 of the Act, the petitioner Society had the

opportunity to show the extent of land it had leased to the Army and that leased to the State of Bihar for the purpose of the Cooperative Training Institute. What we find from the report of the authorized officer is that the area occupied by Garison Engineering was 35,275.52 sqr. meters and the Cooperative Training Institute occupies 23,450.88 sqr. meters. Whatever may be the right of the petitioner Society in that--We are not concerned with the question of rights and liabilities as between the petitioner Society those in occupation--Those lands are clearly lands occupied by buildings and other constructions. Therefore, the extents occupied by them cannot be treated as vacant land and the petitioner Society cannot be asked to surrender excess land, treating those extents as vacant land. Of course, the authorities below cannot be blamed for not advertng to this aspect, since no such claim was raised by the petitioner Society. In view of the report, referred to above, we are satisfied that the claim of the petitioner Society for exclusion of the extents of the land occupied by the Garison Engineering and the Cooperative Training Institute making a total of 58726.40 sqr. meters of land is also liable to be excluded from the direction for surrender.

10. What remains is a claim by the counsel for the petitioner Society that the area occupied by a tank shown as having an area of 19,840.00 sq. meters must also be excluded. Here we find that there is no adequate material which would justify it being excluded on the basis that this area is not vacant land within the meaning of the Act. The decision of the Calcutta High Court is Sanat Kumar Mukherjee and another Vs. State of West Bengal and another, , in our view, cannot be taken as an authority for the position that every tank must be treated not vacant within the meaning of the Act. Paragraph 9 of that judgment after noticing the two definitions, that of urban land and the other of vacant land simply records a conclusion that a tank was liable to be excluded. That question appears to be pending in appeal before the Supreme Court. Here, as we have noticed, the petitioner Society laid no factual foundation for claiming an exemption regarding the area occupied by the tank. The question whether the said extent occupied by the tank should be considered as vacant land or not is a question that will have to be decided based upon the facts pleaded and established. Land as such is not defined in the Act. In this situation, we are satisfied that adequate ground is not made out for our interference and for grant of any relief to the petitioner Society even inspite of the fact of the petitioner Society not having raised such a claim either before the original authority or before the appellate authority. Therefore, that argument raised by the counsel for the petitioner Society is rejected.

11. The result is that the writ petition challenging the applicability of the Act has to be dismissed and the writ petition challenging the final order has to be partly allowed by reducing the extent of land to be surrendered from 3,54,158.40 sqr. meters by 58726.40 sq meters of land. In other words the petitioner Society has to surrender an extent of 2,95,432 sq meters of land, instead of 3,54158.40 sqr meters, as fixed by the original authority and affirmed by the appellate authority. We are not inclined to interfere with the direction of the appellate authority

giving the petitioner Society an opportunity to select the lands it wants to retain within its ceiling limit.

12. In the result, we dismiss the CWJC No. 1052 of 1992 (R) and partly allow CWJC No. 782 of 1999 (R), as indicted above. We direct the original authority to pass an order u/s 9 of the Act on the basis of this finding forthwith and take possession of the excess land without delay.