

(1992) 09 CAL CK 0008
In the Calcutta High Court
Case No : Matter No. 377 of 1989

Induprova Mitra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 11(3)(b), 2(o), 2(q), 6(i)

Citation : 97 CWN 515

Hon'ble Judges : N.K. Mitra, J

Bench : Single Bench

Judgement

N.K. Mitra, J.—The short question involved in this case is, whether a tank is to be treated as a Vacant land" within its meaning as given in the Urban Land (Ceiling and Regulations) Act, 1976. Shorn of all details, the facts as stated by the writ petitioner in the writ application inter alia, are that the original writ petitioner Induprova Mitra, since deceased, owned the properties as described in paragraph 2 of the writ application namely. premises No. 22, Tantibagan Lane, Calcutta, 2/4, Chrispher Road. Calcutta, 24, Gorachand Road, Calcutta, 12/C, Chakraberia Lane, Calcutta and 30, Masjid Bary Bye Lane, now known as 34. Bediadanga Bye Lane, Calcutta, together with a tank in the said premises No. 34. Bediadanga Bye Lane. According to the petitioner, though she had filed statement u/s 6(i) of the Urban Land (Ceiling and Regulations) Act, 1976, such statement was filed under misconception of law since the original writ petitioner did not hold any excess vacant land, but the competent authority held that the petitioner owned 3.846.18 sq. meter of excess vacant land and that was to be vested to the State and accordingly, a draft statement was published by the competent authority (Annexure "A" to the writ application). Against the same, objection was filed, which the respondent No. 1. however, by his order dated 10th July, 1981 was pleased to over-rule and also disallowed the petitioner's prayer for spot enquiry (Annexure "B"). Against the said order, the original writ petitioner preferred an appeal before the respondent No. 2 which was also dismissed on 10th July, 1981

(Annexure "C").

2. It is contended by Dr. Mukherjee, learned Senior Counsel, appearing on behalf of the writ petitioner, that the tank situated at premises No. 34, Bediadanga Bye Lane, cannot be treated to be a vacant land, and if the area of the said tank is excluded, the petitioner cannot be held to be owing and /or possessing any excess vacant land as per the provisions of the Urban Land (Ceiling and Regulations) Act, 1976. Dr. Mukherjee further contends that Vacant land within its meaning as given in the aforesaid Act, means land on which structure is permissible and/or is possible. Since no structure or building cannot be constructed on a tank as it is, without first of all covering and/or filling it up, the tank as it is cannot be said to be Vacant land" so as to bring it within the purview of the Urban Land (Ceiling and Regulations) Act, 1976 even if there is no specific rule or restriction made and/or imposed in any Municipal Act or Regulation regarding construction of any building or structure, on a tank. In support of his contentions, Dr. Mukherjee refers to the Division Bench judgment of this Hon'ble Court in Shila Moitra's case reported in 1981 (1) C.L.J. 148 and also to the provisions of the Calcutta Municipal Act, 1951 and the Calcutta Municipal Corporation Act, 1980 and contends inter alia that automatically, a tank cannot be used as building site, without being filled up.

3. Mr. Roychowdhury, learned counsel, appearing on behalf of the State respondents, however, refers to the definition of "urban land" as given in Section 2(o) and that of Vacant land as given in Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976 and distinguishes the Division Bench judgment of this Hon'ble Court in Sm. Srila Moitra Vs. State of West Bengal and Others, submitting inter alia, that the said decision, however, does not say that there is an absolute prohibition regarding raising of any building and/or construction on a tank and that if, there is no such absolute bar and/or restriction under any Municipal Act, such land should be treated to be a vacant land and refers to the decision of the Bombay High Court in Prabhakar Narhar Pawar Vs. State of Maharashtra and Another, , the decision of the State of U.P. and Another Vs. Radha Raman Agarwal and Another, and the decisions of the Supreme Court in State of Uttar Pradesh and Others Vs. L.J. Johnson and Others,

4. Dr. Mukherjee in reply contends that building site and construction are too different things and the same cannot be equated. First, it is only to be seen, whether a plot is a building site, and only if it is so, then the question of construction will arise, and refers to the embargo given in the Schedule XVI of the Calcutta Municipal Act, 1951 in respect of a plot to be called as a building site. According to Dr. Mukherjee, the judgements cited by Mr. Roychowdhury are all distinguishable on facts and none of the said judgements would help the State respondents in any way to establish the proposition that tank is a Vacant land" as defined in the Urban Land (Ceiling and Regulations) Act, 1976.

5. Considering the facts and circumstance of the case and the contentions of the learned counsels for the parties. I find, there is much substance in the

contentions of Dr. Mukherjee. Vacant land has been defined in Section 2(q) in the Urban Land (Ceiling and Regulations) Act, 1976 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 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 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 purpose of this clause.

6. In the Calcutta Municipal Acts, there are certain criteria regarding describing a land is a building site. No doubt, in so many words, it has not been specifically stated in the Calcutta Municipal Acts anywhere that tank is not a building site or that no construction is possible on a tank, and no doubt, the Division Bench judgment in Shila Moitra's case (supra) was subsequently set aside by the Supreme Court, of course, not on merits, but only on the ground that the writ petitioner Shila Moitra withdrew the writ application, but at the same time, nowhere in the Calcutta Municipal Acts it is stated that tank can be considered to be a building site. A tank is a water reservoir, either naturally created, or artificially made. A tank contains an embankment, the underground land and the bed of the tank. A tank is no doubt land, but it is not solid land. A building under the Calcutta Municipal Acts is permissible to be constructed on solid land which is vacant that is, not put to any use. The underground of the tank is undoubtedly land. The Municipal authorities will not surely permit anybody to construct on the underground land of a tank, nor will anybody wish to construct on tank land. It is inconceivable that building can be constructed on a tank as it is without first filling it up, and in my view, that is obviously the reasons, why the possibility of a tank being used as a building site has not been considered in the Calcutta Municipal Acts. A building site means a site or place, on which construction can be raised without changing the nature and character of the site. Further, a building is constructed on the solid surface of the earth. A tank, however, without being filled up, cannot be held to be a building site inasmuch as, no construction is possible on a tank as it is, without filling it up. That is to say, without changing

the nature and character of a tank and becomes solid land. A tank as such, has no solid surface. No doubt construction can be made over a tank but cannot be made on a tank as it is. If tank as such, is to be treated as a building site, then a river over which a bridge is constructed, can very well be termed as a building site also.

7. Clause (i) of Section 2(q) of the Act postulates the existing state of the land and not its altered state or improved state. A piece of land with a building thereon is not a building site, but it will become so if the building is demolished and removed. Clauses (ii) and (iii) of section 2(q) of the Act have excluded lands with buildings from the category of vacant land. This also indicates that the existing condition of the land should be taken into consideration for the purpose of the definition of vacant land. In this connection, we may refer to the provision of section 11(3) (b) of the Act under which the State Government has to fix the rate per square metre of vacant land in each zone acquired u/s 10(3) of the Act for calculation of payment to the persons interested. The rate that may be fixed will be applicable to all vacant lands in the zone. In my opinion, if the legislature had intended to include tank as vacant land, it would not have surely prescribed one uniform rate for solid land and for tank which is undoubtedly of lesser value than solid land. Section 11(3) (b) also indicates that tank is not included within the definition of vacant land.

8. Accordingly, I hold that a tank as it is, cannot be held to be a vacant land within its meaning as given under the Urban Land (Ceiling and Regulations) Act, 1976. The impugned decisions of the concerned authorities, holding "tank" as a vacant land, therefore, cannot be sustained in law for the reasons as aforesaid and stand quashed.

9. I, however, make it clear that this order will not prevent the authorities concerned from proceeding afresh against the writ petitioners, if it is found that their total vacant land barring the disputed tank exceeds the ceiling limit as provided under the Urban Land (Ceiling and Regulations) Act, 1976. The matter is made absolute to the extent as indicated above with costs. Hearing fee being assessed at 60 Gms.

All parties to act on a signed xerox copy of the dictated order on the usual undertaking.