

(1999) 09 DEL CK 0025

In the Delhi High Court

Case No : C.W.P. 1845 of 1987, 1848 of 1987

Iqbal Kaur

APPELLANT

Vs

Shri W. Shaiza, Appellate Authority and Another
 Smt.
Iqbal Kaur Vs The Lt. Governor of Delhi

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Land (Ceiling and Regulation) Repeal Act, 1999 — Section 2, 3, 4
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 20, 6, 8

Citation : (1999) 5 AD 660 : (1999) 81 DLT 821

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. A.K. Singla and Mr. M.S. Vohra, for the Appellant;

Judgement

C.M. Nayar, J.—This judgment will dispose of two writ petitions C.W.P. No. 1845/87 and C.W.P. No. 1848/87. The first petition was filed by the petitioner to impugn the order dated 11th September, 1979 of the Competent Authority as framed under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act") and Order dated 4th June 1980 of the Appellate Authority. The petitioner has also challenged notification dated 20th November, 1985 issued under sub-section (1) of Section 10 of the Act. The second petition has challenged the rejection of application of the petitioner vide Order dated 1st April, 1987 by the respondent for grant of exemption u/s 20 of the Act. The petitioner and her sons are stated to be living in House No. 61/17, Ramjas Road, Karol Bagh, New Delhi which belongs to them. It is further submitted that in 1967, two residential plots bearing Nos. F-221 and F-222 admeasuring 800 sq. yds. each in the approved colony of Mansarovar Garden, New Delhi were alleged to be purchased by the HUF in the name of the petitioner and the family is stated to be in possession of the same. The Act came into force and the petitioner submitted a statement to the Competent Authority under the provisions of Section 6 of the Act wherein two plots as referred to above and residential house known as 61/17, Ramjas Road, Karol Bagh, New Delhi were included. A draft

statement under the provisions of sub-section (3) of Section 8 was also sent on 30th April, 1977 to which the petitioner filed objections and the Competent Authority vide Order dated 11th September, 1979 held that the aforesaid two plots in Mansarovar Garden constitute the excess vacant land. The impugned order which was communicated to the petitioner reads as follows:-

"No. CAD/20/76-UIC 28586 dated 11.9.79

Smt. Iqbal Kaur resident of 61/17, Ramjas Road, Karol Bagh New Delhi, filed a statement u/s 6(1) of the ULCR Act in which she has disclosed the following holdings:-

1. Vacant plot No. F.221, Mansarovar Garden measuring 668.90 sq Meters.
2. Vacant plot No. F-222, Man Saroler Garden Measuring 668.90 sq Meters.
3. Built up residential plot No. 61/17 Ramjas Road, Karol Bagh, New Delhi, measuring 591.98 sq. Meters.

A draft statement U/s. 8(3) of the ULCR Act in relation to the above holdings was sent on 30.4.1977 and objections to the draft statement were invited. Smt. Iqbal Kaur filed the objections to the draft statement. In reply to the draft objection it was contended.

1. That the three properties belong to the joint Hindu Family.

The case was examined in light of the objections filed and the applicant was afforded an opportunity for hearing. No proof in support of the assertion that the plots belong to the HUF was produced. As per the copies of the Sale deeds.

Smt. Iqbal Kaur is the owner of the three properties in question and she will be deemed to be holding the same in terms of the provisions of the ULCR Act. As the applicant holds vacant land and land with a building containing dwelling unit the two shall be clubbed U/s 4(9) of the Act and the total holding of the applicant comes to 1929.78 sq meters.

After allowing the benefit of covered area (223 Sq. Meters), land appurtenant and additional contiguous land to the built up property No. 61/17, there is no excess vacant land in this property. However, the area of the two vacant plots in Mansarovar Garden measuring 1337.80 square meters is an excess vacant land. I hold accordingly, Final statement U/s 9 of the Act is enclosed after making necessary alterations in the draft statement which was served on him U/s 8(3) of the Act.

(S.K. Mehra)

Competent Authority

2. The petitioner filed an appeal against the aforesaid order which was dismissed on 4th June, 1980 by the Appellate Authority as constituted u/s 33 of the Act. The following order was passed:-

"The case was fixed for hearing at 10.30 A.M. today. The appellant has not turned up even up to 11.30 A.M. I Therefore, dismiss the appeal in default.

Sd/-

W. Shaiza

Appellate Authority

U/s 33 of the ULCR Act, 1976"

3. The petitioner felt aggrieved by above said Orders and filed two writ petitioners. Notice to show cause was issued on 19th June, 1987 when an interim order of stay of dispossession of the petitioner was granted which was confirmed by the Division Bench on March 21, 1990.

4. The Urban Land (Ceiling and Regulation) Repeal Ordinance 1999 was promulgated by the President on January 11, 1999 which has been since been enacted as "The Urban Land (Ceiling and Regulation) Repeal; Act, 1999 having received the assent of the President on March 22, 1999 . The provisions which are relevant for the purpose of the present controversy are stated in Sections 2, 3 and 4 of the Ordinance which may be reproduced as follows:-

"2. Repeal of Act 33 of 1976 - The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the principle Act) as hereby repealed.

3. Savings - (1) The repeal of the principle Act shall not affect -

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State government or any person duly authorised by the State Government in this behalf or by the competent authority.

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of Section 20.

(2) Where -

(a) Any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the Principle Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority, and

(b) any amount has been paid by the State Government with respect to such land then such land shall not be restored unless the amount paid, if any has been refunded to the State Government.

4. Abatement of legal proceedings - All proceedings relating to any order made

or purported to be made under the principle Act pending immediately before the commencement of this Ordinance, before any court, tribunal or any authority shall abate;

Provided that this section shall not apply to proceedings relating to sections 11, 12, 13, and 14 of the principle Act insofar as proceedings are relatable to the land, possession of which has been taken over by the State government or any person duly authorised by the State Government in this behalf or by the competent authority."

5. The petitioner is aggrieved by the dismissal of her appeal by the Appellate Authority on 4th June, 1980 which has upheld the Order of the Competent Authority passed on 11th September, 1979. The Urban Land (Ceiling and Regulation) Act, 1976 has since been repealed and it will be futile to remand the case of the Authority as no such Authority exists at present as has been contended by learned counsel for the petitioner. The effect of the repeal is that no land can be vested in the State as a result of the 1976 Act as possession continues to remain with the petitioner in terms of the interim Order passed by this Court on 19th June, 1987. The land is, accordingly not deemed to be vested in the State Government and all legal proceedings relating to any order made or purported to have been made under the Act pending immediately before the commencement of the Repeal Act, 1999 shall abate in pursuance to the provisions of Section 4.

6. In view of the above reasons the present petitions are allowed. The impugned Order dated 11th September, 1979 and 4th June, 1980 are set aside and consequent notification dated 20th November, 1985 is quashed. There will be no order as to costs.