
(1982) 08 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 508 of 1981

Magni Devi Jain

APPELLANT

Vs

Deputy Commissioner, Kamrup & Ors.

RESPONDENT

Date of Decision : 11-08-1982

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 27(4), 27(4)

Citation : (1982) 1 GLR 671

Hon'ble Judges : D.Pathak, C.J. and S.M.Ali, J

Bench : Division Bench

Advocate : F.Ali, N.C.Das, P.K.Goswami, P.Pathak, P.Roy, S.N.Sarma, Advocates appearing for Parties

Judgement

Pathak, C.J. (Actg.).

1. This application under Article 226 read with Article 227 of the Constitution of India for issue of a writ in the nature of certiorari and/or any other writ, is directed, against the order passed by the learned Deputy Commissioner, Kamrup, vide order dated 12.3.80, cancelling the registration of three sale deeds in favour of the petitioner. The petitioner has also challenged the order of the competent authority, respondent No. 1, passed on 16.4.81 rejecting the petition filed by the petitioner for revision of the order passed by him on 12.3.80.

2. A brief narration of the facts leading to the present petition is that the petitioner contracted to purchase three plots of land with building described in the petition within the Urban Agglomeration of Gauhati which is within the purview of the Urban land (Ceiling and Regulation) Act, 1976, (hereinafter called "the Act"). In case of sale or transfer or mortgage of any land with building within the agglomeration to be effected, by virtue of the provision of Section 27 of the Act, permission on the competent authority has to be taken. In view of the aforesaid provision, the respondents No. 3, 4 and 5, the vendors applied for necessary permission on 5978 to respondent No. 1 but the respondents did not hear anything about it from the competent authority either according permission

or rejecting the same. Meanwhile the respondent No. 4, one of the vendors wrote to the competent authority again on 3479 for doing the needful for registration of the sale deeds. On this application of respondent No. A. the SubDivisional officer (Sadar) on behalf of respondent No. 1 made a detailed note and sent it to the SubRegistrar for registration of the three sale deeds and they were registered accordingly on 12979

3. It is to be noted that in view of the provision of subsection (4) of section 27 of the Act, if the petitioner does not hear within 60 (sixty) day from the competent authority either of according permission or of rejecting the same, then by operation of law, it will be deemed that the permission is granted.

4. However, on 12.3.80 the petitioner received the order passed by respondent No. 1 to the effect that all the three sale deeds have been cancelled for being registered in contravention of the provision as contained in Sections 26 and 27 of the Act. On receipt of this order, the petitioner preferred a review petition for revising the order passed by the respondent No. 1. This petition was also rejected by the order of respondent No. 1 passed on 15/1641981 to the effect that there is no merit in the application filed by the petitioner. As we have indicated earlier that in view of the provision of subsection (4), the necessary permission required under Section 27 of the Act, would be deemed to have been granted after expiry of 60 (sixty) days from 5.9.78 when the petition was made for necessary permission. After the period of 60 (sixty) days, the competent authority would be incompetent to pass any order either refusing or cancelling the registered deeds. Now the law is well settled by a decision of the Supreme Court in Bhim Singni vs. Union of India and others, AIR 1981 SC 234, where Section 27 (I) of the Act has been held to be invalid in the following term:

"We are of the opinion that subsection (1) of section 27 of the Act is invalid in so far as it imposes a restriction on transfer of any urban or unbaisable land with a building on a portion only of such building, which is within the Ceiling area. Such property will therefore be transferable without the constraints mentioned in subsection (1) of section 27 of the Act."

In view of the aforesaid clear decision of the Supreme Court no permission is necessary under subsection (1) of Section 27 of the Act.

5. Here in this cases as we have already indicated, the respondents No. 3, 4 and 5 sought for permission which was not replied to within the period of 60 (sixty) days. Therefore, even when the provision of subsection (1) of Section 27 of the Act was extant, by operation of law, the respondents, 3, 4 and 5 would be deemed to have taken permission for the necessary transfer, of the land with the building.

6. Mr. P. Roy, the learned counsel appearing on behalf of the respondents 1 and 2, does not dispute the legal position as noticed above.

7. For the reasons stated above, the orders passed by the respondent No. 1 on

12.3.80 as well as on 16.4.81 are not sustainable in law and accordingly they are quashed.

8. The petition is allowed. The Rule is made absolute. However, we pass no order as to costs.