
(1984) 11 AHC CK 0005
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3934 of 1980

Mohammad Manzarullah

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-11-1984

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 1, 10, 10(1), 10(2), 10(3)

Citation : (1984) AWC 685 Supp

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—Smt. Saddiq Fatma, the mother of the Petitioner, filed statement u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) before the Competent Authority, Aligarh. After enquiry, the Competent Authority prepared a draft statement proposing to declare 4694.44 square metres is vacant land. Smt. Saddiq Fatma died on 26th April, 1977. The Petitioner, thereafter, filed an objection on 27-2-1979 stating that the draft statement was wrong. As there was a sanctioned Scheme on the 17th February, 1976, i.e. when the Act was enforced, the entire covered area was entitled to exclusion u/s 4(9) of the Act.

2. It was also alleged that under the approved and sanctioned map 851.32 square metres was required to be left for the roads and parks for providing facilities to the occupiers of different dwelling units, as such, this area was liable to exclusion u/s 2(q)(i) of the Act.

3. The competent authority partly allowed the objection holding that 9778.37 square metres was vacant land in excess to the ceiling limit of the deceased mother of the Petitioner, the Petitioner went up in appeal to the District Judge, Aligarh, who reduced the area to 3261.77 square metres. Aggrieved, the

Petitioner has come to this Court.

4. The main contention of the Petitioner's learned Counsel was that on the death of Smt. Saddiq Fatma her rights in the properties were extinguished and got vested in him as well as in his sister. Accordingly, the ceiling limit prescribed by the Act is required to be decided with reference to the heirs and legal representatives of the deceased Smt. Saddiq Fatma and not on the basis that the property belong to her. The learned Counsel urged that the property belong to her. The learned Counsel urged that on the death of Smt. Saddiqu Fatma her rights lapsed.

5. In order to test the correctness of this submission, a reference may be made to some of the provisions of the Act. Section 3 of the Act provides that on and from the commencement of this Act, No. person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under Sub-section (2) of Section 1 of the Act. Section 4 of the Act lays down the ceiling limit in respect of towns enumerated in Categories A to D Specified in Schedule 1.

6. The Act was passed to provide for the imposition of a ceiling on vacant land in urban agglomeration with a view to bringing about an equitable distribution. Determination of the excess vesting is a matter of procedure, which starts after the endorsement of the Act. The extent of vacant land, held in excess of the ceiling limit, on the date of commencement, is surplus. It is for this reason that Section 5(3) of the Act provides that No. person, holding vacant land In excess of the ceiling limit immediately before the commencement of this Act, shall transfer any such land or part thereof by way of gift, sale, mortgage, lease or otherwise until he has furnished a statement u/s 6(i) of the Act and a notification regarding the excess vacant land held by him has been published under Sub-section (1) of Section 10 of the Act and any such transfer made in contravention of this provision shall be deemed to be null and void. Sections 8 and 9 of the Act deal with the service of a draft statement and its finalisation. Upon the finalisation taking place, Section 9 provides that the final statement is issued to the person concerned about the vacant land which he is found to possess. Section 10 of the Act provides for the acquisition of the vacant land in excess of the ceiling limit. The first step u/s 10 of the Act is to issue a preliminary notification under Sub-section (1) giving the particulars of the vacant land in excess of the ceiling limit and inviting claims and objections from the persons interested. The claims and objections are determined under Sub-section (2). The official notification is Issued under Sub-section (3) declaring that the excess vacant land shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government. Sub-section (4) of the Act provides that during the period commencing on the date of the publication of the notification under Sub-section (1) and ending with the date specified in the declaration made under Sub-section (3), No. person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land specified in the notification.

7. From a reading of these provisions, it would appear that the vacant land possessed by a person is determined with reference to a date on which the Act commenced. This has nothing to do with his death. The proceedings would be taken against him and it is with reference to him that the excess vacant land would be found. The heirs and legal representatives of the deceased person do not come into picture for the purposes of determining the ceiling limit. The fact that a person holding the land in excess died before the issuance of the notification under sub-Section (4) of Section 10 of the Act shall be ignored and the surplus vacant land shall be determined, as if that person had not died.

8. The policy of the Act also appears to be that on or after the appointed date No. person in the State shall be permitted to hold any land in excess of the ceiling area as laid down by Section 4 of the Act. The ceiling area so fixed would not be subject to fluctuation.

9. In *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, , the controversy was whether on account of birth taking place in the family of a tenure-holder, the ceiling area was required to be re-determined. The Supreme Court was dealing with Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961. This Act was passed in order to provide for more than equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra. The argument was that the determination of the ceiling area is liable to be re-opened, if a member is born in the family. The Supreme Court repelled the argument holding that under the scheme and policy of the Act, ceiling area is to be determined with reference to state of affairs of a person on the appointed date. The area so fixed would not be liable to increase or decrease due to subsequent events.

10. This decision of the Supreme Court supports the conclusion arrived at in this case that neither does the Act nor the policy behind the Act permit reduction in the area to be declared surplus, on account of death of a person holding it. Whatever is held in excess is liable to be declared as surplus. Upon the declaration taking place that area gets vested. In between the date of the commencement of the Act and the final notification under Sub-section (4) of Section 10 of the Act, sometime is bound to lapse, but that is of No. consequence. The imposition of ceiling automatically comes into operation on the area, which a person holds, on the date of the commencement of the Act. Determination is only a procedural pArticle It would not affect the ultimate liability of the person which be incurred on the date of the commencement of the Act.

11. In *Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others*, . The Supreme Court has taken the same view. The Supreme Court agreed with its decision given in *Raghunath Laxman Wani v. State of Maharashtra* (supra).

The Supreme Court observed:

The above view supports our contention that the surplus land in the case of a person who at any time after the fourth day of August, 1959 but before the appointed day held any land (including any exempted land) in excess of the calling area has got to be determined as on the appointed day even though such person may die before the actual extent of surplus land is determined and notified u/s 21 of the Act. The persons on whom his "holding" devolves on his death would be liable to surrender the surplus land as on the appointed day because the liability attached to the holding of the deceased would not come to an end on his death. The heirs of the deceased cannot be permitted to contend to the contrary and allowed to get more land by way of inheritance than what they would have got if the death of the person had taken place after the publication of the notification u/s 21.

12. For what I have said above I do not find any merit in the submission of the learned Counsel.

13. Section 15 of the Act relied upon by the learned Counsel in support of his argument is not applicable to the present controversy. This section is meant to be applied to the case, where a person may not have any vacant land beyond the ceiling limit at the commencement of the Act, but subsequently by inheritance, settlement, bequest etc. from any person he acquires vacant land, as a result of which that the total vacant land after the acquisition exceeds the ceiling limit. The purpose of the Act can be achieved, when at No. point of time, after the commencement of this Act, a person is allowed to hold in excess of the ceiling limit. Precisely, for this purpose that Section 6 of the Act was enacted. The words "commencement of this Act" has been defined in the explanation to the proviso to Sub-section (1) of Section 6 of the Act. It takes within its purview subsequent acquisitions of the vacant land and lays down that any person getting vacant land after 17th February, 1976 would be liable to submit statement u/s 6 of the Act and, thereafter, proceedings against him would be taken in the same manner as is required as against the person holding excess ceiling land on 16th February, 1976. Section 15 of the Act did not apply to the present case. Inheritance by the Petitioner and his sister would be subject to the State's rights. If after the reduction of the area declared surplus of Smt. Saddiq Fatma, the property inherited from her coupled with the vacant land held by the Petitioner would have been in excess of the prescribed limit, separate proceedings could be taken against the Petitioner. In that event the property inherited and the property possessed would be added and surplus would be declared on its basis. However, in the present case where proceedings were taken with regard to the property of Smt. Saddiq Fatma it had to be determined with reference to the date of the commencement of the Act.

14. The second argument of the learned Counsel was that as a "Group Housing" scheme had been sanctioned before the commencement of the Act the area of 4051 square metres was liable to be ignored and the same could not be considered as vacant land under the Act. For this purpose reliance had been

placed on Sub-section (3) of Section 4 of the Act which lays down an exception. The relevant portion of Sub-section (3) of Section 4 is as under:

Section 4-Ceiling Limit--(1) Subject to the other provisions of this section, in the case of every person, the ceiling limit shall be--

XX XX XX XX

(3) Notwithstanding anything contained in Sub-section (1) where in respect of any vacant land any scheme for group housing has been sanctioned by an authority competent in this behalf immediately before the commencement of this Act, then, the person holding such vacant land at such commencement shall be entitled to continue to hold such land for the purpose of group housing:

Provided that not more than one dwelling unit in the group housing shall be owned by one single person.

Provided further, that the extent of vacant land which such person shall be entitled to hold shall, in No. case, exceed--

(a) the extent required under any building regulations governing such group housing; or

(b) the extent calculated by multiplying the number of dwelling units In the group housing and the appropriate ceiling limit referred to in Sub-section (1) whichever Is less.

Explanation--For the purposes of this Sub-section and Sub-section (10)--

(i) "group housing" means a building constructed or to be constructed with one or more floors, each floor consisting of one or more dwelling units and having common service facilities;

(ii) "Common service facility" includes facility like stair-case, balcony and varandah.

15. The general scheme of the Act is that whatever is vacant land in excess of the ceiling limit was got vested in the State and the State would be entitled to acquire It. Sub-section (3) is an exception. Explanation has been added to explain the meaning of the words contained in the section. Intention of the legislature In enacting is not widened or narrowed down.

16. For being a Group Housing Scheme u/s 4(3), the following requirements are necessary:

i. It must have been sanctioned in respect of the vacant land by an authority competent In this behalf;

ii. Sanction must have been given immediately before the commencement of this Act;

iii. Building constructed or to be constructed must have one or more floors;

- iv. Each floor must consist of one or more dwelling unit;
- v. The building must have common service facilities including facilities like stair case, balcony and varandah; and
- vi. One person should not own more than one unit In the group housing.

17. The instant case has to be examined by taking these facts into consideration.

18. The competent authority found, as a fact, that there was No. "Group Housing" Scheme as is laid down in the Act. Whatever was got sanctioned by the deceased Smt. Saddiq Fatma was a plan for establishing a colony after having demarcated the entire area into plots. The plan, thus, could not be considered as a "Group Housing" Scheme. It has given a number of other points, i.e., that there was No. common service facility like stair-case, balcony and varandah in the scheme. I also have considered the two judgments and heard the counsel for the Petitioner at length on this controversy. The learned Counsel failed to satisfy me that the map sanctioned by Municipal Board, Aligarh, satisfied the requirements of Section 4(3) of the Act. I do not consider it necessary to mention all these points in my judgment.

19. The learned Counsel for the Petitioner urged that the authorities below committed an error in not according benefit of Section 2(q)(1) of the Act to the present case. According to this contention the area reserved for parks, roads in the Group Housing Scheme was liable to exclusion under the said provision of law.

20. A perusal of Section 4(3) of the Act would show that exemption relates to the vacant land for a scheme of "group housing" sanctioned by an authority competent in this behalf immediately before the commencement of the Act. Since Section 4(3) of the Act does not apply, the entire land is liable to be taken into account for calculating the vacant land.

21. Parks and roads etc. were provided in the scheme. If the Scheme had been covered by Section 4(3), the land reserved in it for the purposes aforesaid, would have been ignored. But as the Scheme relied upon did not attract Section 4(3), the land reserved In it for common beneficial engagement, could not be left out.

22. Section 2(1)(i) applies to a case where there is an absolute prohibition under the Master Plan or any other regulation from making construction.

23. For the reasons given above, the writ petition fails and is dismissed with costs.