

(1986) 05 CAL CK 0020
In the Calcutta High Court

M/s. A.T. Dev Private Ltd and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-05-1986

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 20(1)(a), 23

Citation : 91 CWN 466

Hon'ble Judges : B.P. Banerjee, J

Bench : Single Bench

Advocate : L.C. Bihani and Suchandra Mukherjee, for the Appellant; Samar Kumar Dutta, for the Respondent

Judgement

B.P. Banerjee, J.—The point involved in the writ petition is whether in dealing with and disposing of an application for exemption u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976, the applicant is entitled to be heard and what are the material factors that had to be taken into consideration while disposing of such application. The fact of the case is that the petitioner M/s. A. T. Dev Private Ltd., a well-known company is engaged in the business of printing and publishing several books, journals etc. and the number of employees employed in its publication unit is about 120 persons. The petitioner had its printing press at 22/5B, as well as at 24, Jhamapukur Lane, Calcutta. The publication and sales office is situated at 9/1, Subal Chandra Lane, Calcutta and at No. 1 and 6A, Shyama Charan De Street. The City Office is situated at 22/5A, Jhamapukur Lane, Calcutta. For the purpose of development and extension of business and for extension of the factory premises, the petitioner purchased a disputed land measuring about 1627 sq. meters at 128/2B, Dhana Devi Khanna Road, Narkeldanga, Calcutta, on 19th December, 1964. After the purchase of the said land, the petitioner prepared a plan for construction of its factory premises. The company could not start with the constructional work because of its acute financial crisis and thereafter the Urban Land (Ceiling and Regulation) Act, 1976 came into force (referred to as the said Act). After the said Act came into force, the petitioner made an application u/s 20 of the said Act for exemption of the

said land before the State Government, stating, specifically the description of the said land, the purpose for which the land was purchased and the particulars of the factory that was decided to be set up there. In the said application, the petitioner made out a case of great hardship and unless such exemption is granted in favour of the petitioner, the petitioner company will suffer loss and also there will be loss of employment. The petitioner also stated that Section 23 of the said Act, provides that "It was competent on the part of the State Government to allot the excess land to any person for the purpose relating to or in connection with any industry or for providing residential accommodation of such type as may be prescribed by the government, to the employees of any industry." In other words, the case of the petitioner as made out in the said application u/s 20 of the said Act that it was a fit and proper case where exemption should be granted inasmuch as the said land will be fully utilised for the purpose of setting up of an industry which would create new and additional employment and that was precisely the purpose for which the said Act was enacted as provided in Section 23 of the said Act. It was also mentioned that the petitioner company did not carry out any business excepting the printing and publishing of books and journals for students and other people in this State and that the said land was purchased solely for the purpose of setting up a factory. The said application was filed on 19th January, 1981 and was rejected by the order dated 1st December, 1981 without considering the case as made out by the petitioner in the said application and without giving the petitioner any opportunity of being heard. The said application was rejected by Stating that the said application was rejected after taking into consideration of all the aspects involved in the matter and the Government was satisfied that it was not a fit case in which exemption u/s 20(1)(a) of the said Act should be granted as the commercial needs of the company did not justify the retention of the excess vacant land and that the needs of the company would be adequately served by utilisation of the retainable land of 500 sq. meters only.

2. Mr. L. C. Bihani, learned Advocate appearing on behalf of the petitioner, contended in the first place that the impugned order was void inasmuch as the application for exemption u/s 20 of said Act was rejected without giving the petitioner any opportunity of being heard and that it was contended that it was obligatory on the part of the respondents concerned to give the petitioner an opportunity of being heard before the same was rejected. Reliance was placed to the decision of the Madhya Pradesh High Court in the case of Nandakishore Vs. State of M.P., wherein the Division Bench of the Madhya Pradesh High Court held that even though u/s 20 of the said Act, there is no specific provision for giving reasonable opportunity to the person concerned, from the language and in view of the object which the provision has to achieve it has been regarded that the principle of natural justice has to be observed while deciding the claim for exemption and that power to claim exemption is a valuable right and where under the provision of the Act, the authority is empowered to grant and a person has a right to claim for fulfillment of statutory condition, the authority is bound

to hear him and pass a speaking order giving reasons in support of its finding that he is not entitled to the exemption. Reliance was also placed to the Division Bench Judgment of Gujarat High Court in the case of Manilal Hiralal Doshi (by LR) and Others Vs. State of Gujarat, wherein it was held that "When a citizen applies for exemption, say for example for establishing any industry and such proposed user of the land is one of the relevant factors to be counted, while dealing with an application u/s 20(1)(a), the citizen in such a situation would be able to explain his difficulty more effectively if personal, hearing is granted. It is because of this far reaching effect of the Government's decision on the prospect that the hearing is required to read as the implicit requirement of the provision of Section 20(1)(a) and (b) of the Act". In my view the power conferred u/s 20 of the said Act could not be lightly exercised and in view of the object for which such power is conferred, it is implicit that hearing has to be given before any decisional taken against an applicant who is likely to be prejudicially affected in case such exemption is not granted and I respectfully agree with the above two decisions of the Madhya Pradesh and Gujarat High Court referred to above.

3. The second contention of Mr. Bihani is that the impugned order is on the face of it bad and illegal inasmuch as the impugned order did not disclose the application of mind of the competent authority nor the same was reasoned order and in the facts and circumstances of the case, the respondents should have exercised its discretion in favour of granting exemption. This submission requires careful consideration. Section 20(1)(a) of the said Act is as follows :

20. Power to exempt (1) Notwithstanding anything contained in any of the foregoing provisions of this chapter:

(a) where any person holds land in excess of the ceiling limit and the State Government is satisfied either on his motion or otherwise, that having regard to the location of such land, the purpose for which the said land is being or is proposed to be used and such further relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, the Government may by order, subject to such condition, if any, as may be specified in the order, such vacant land from the provisions of this Chapter.

4. On the analysis of the provisions of Section 20(1)(a) of the said Act, it appears that while deciding an application for exemption, the State Government is to take into account the following considerations, viz. (a) Location of such land, (b) the purpose for which such land is being or is proposed to be used, (c) such further relevant factors as the circumstances of the case may require in. public interest. Though the word employed in Section 20 is "may", since the power is conferred upon the Government coupled with a duty, the State Government cannot pass an order of blanket refusal without exercising discretionary power vested in it in respect of each and individual case Discretion means when it is said that something is to be done, at the discretion of the authority that something is to be done according to private opinion. It is to be, not arbitrary vague and fanciful, but legal and regular, Evidently, therefore a discretion cannot be

arbitrary, but must be as a result of judicial thinking. The word in itself implies vigilant circumspection and care when legislature concedes wide discretion, it also implies heavy responsibility.

5. Modern Government demands discretionary powers which are as wide as they are numerous, parliamentary draftsmen strive to find new forms of words which will make discretion even wider and Parliament too readily enacts them. It is the attitude of the courts to such seemingly un-bounded powers which is perhaps the most revealing feature of a system of administrative law. The first requirement is the recognition that all power has its legal limits. The next requirement no less vital, is that the court should draw this limit in a way which strikes the most suitable balance between the executive efficiency and legal protection of citizen. Parliament constantly confers upon the public authorities the powers which on their face might seem absolute and arbitrary, but arbitrary power and unfettered discretion are what the court refuses to countenance. They have woven a network of restrictive principles which requires statutory powers to be exercised reasonably and in good faith for proper purpose only and in accordance with the spirit as well as the letter of the empowering Act. They have also imposed stringent procedural requirements. In *Padfield v. Minister of Agricultural, Fisheries and Food* reported in 1968 AC 997, the House of Lords had to consider the dispute under the Milk Marketing scheme established under the Agricultural Marketing Act, 1958. The Act provided for a committee of investigation which was to consider and report on certain kinds of complaint "if the Minister in any case so directs". The Milk Producers of the region closed to London complained that differential element in the price fixed for their Milk by the Milk Marketing Board was too low since it ought to reflect the increased cost of transport from their regions, but had not been revised since the second world war. But since that region was in a minority on the Board and any increase would be at the expense of other region, the Board could not be persuaded to act. "he Minister had power if the committee of investigation was recommended to make an order overriding the Board, but he refused to direct the committee to act saying that producers were represented on the Board they should be content with the normal democratic machinery of the marketing scheme. His officials also added incautiously that if the committee made a favourable report, the Minister might be expected to take action on it. The whole object of Minister's overriding power, however, was that he might correct the "normal democratic machinery" where necessary and the suggestion that he might be embarrassed by a favourable report, was, as Lord Reed said, "plainly a bad reason." It was also held that where there was a relevant and specific complaint, the Minister had a duty as well as a power and that he could not use discretion to frustrate the policy of the Act, otherwise he would be rendering nugatory, a safeguard provided by the Act and depriving the producers of remedy which Parliament intended them to have. The mandamus was, therefore, granted to compel the Minister to act as the law required. The importance of the House of Lords' above decision was underlined by Lord Denning M. R. in the case of *Breen v. Amalgamated Engineering Union*

(1571) 2 W.R. 175 at 190 that the discretion of a statutory body is never unfettered. It is a discretion which has to be exercised according to law. That means at least this: a statutory body must be guided by relevant considerations and not be irrelevant ones. If decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter the statutory body have acted in good faith nevertheless, the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in the modern administrative law.

6. The scope of judicial review of this discretionary power is conditioned by a variety of factors. The wording of statutory power, the subject matter to which it is related, the character of the authority to which it is entrusted, the purpose for which it is conferred, the particular circumstances in which it has in fact been exercised, the materials available to the courts and in the last analysis whether a court is of the opinion that the judicial intervention would be in public interest. Now looking into the facts of the case, it was the case of the petitioners which has not been disputed by the respondent that the petitioner company was and is still engaged in printing and publishing of books and journals and that it was specifically stated in the application for exemption u/s 20 of the said Act that the said land will be utilised for the purpose of the petitioner's present and future business requirement and that the entire land in question was meant for the use of the petitioner's business by constructing factory which was necessary for the purpose of the growth of the petitioner's business and that the same would also offer additional employment to many persons and admittedly it would be a public purpose for which even land could have been acquired under the Land Acquisition Act, 1894 and that this was one of the two specified purposes for which the land vested under the said Act, could be distributed, It was also stated that the petitioner's present godown is situated at a rented house and that the petitioner wants to shift the godown near the proposed construction on the land in question which would not only help for the growth of the business but would also create additional employment to persons. It was also stated that the considerable portion of the land will be utilised for the purpose of parking of the cars and lorries necessary for the purpose of loading and unloading of necessary articles and for the purpose of residence of the members of the godown employees. It was also prayed in the said application for personal hearing in the matter and the petitioner undertook to produce at the hearing necessary papers, documents and other materials in support of the case made out by the petitioner for grant of such exemption. Looking at the scheme of the Act particularly u/s 23 of the said Act which provides for provisions for disposal of the vacant land vested under the Act and that it has provided therein that the excess land which is vested to the State should be allotted for the purpose of setting up of industry and/or for the purpose relating to or in connection with an industry. If the avowed object of the Act is to vest excess land and for the purpose of allotting the same for industrial growth and development which will create employment and that the same will achieve social justice which is one of the avowed object of

our constitution, in view of this, in my view while granting exemption u/s 20, if a case is made out that the same would be required for the purpose of setting up of an industry and/or industrial development, that is the most relevant and important factor which has to be taken into consideration while considering application for exemption and if it is established in that event it would be a fit and proper case where such exemption u/s 20 of the said Act should be granted. But unfortunately without application of mind and without considering the application of the petitioner in its true and proper perspective, the same was rejected mechanically holding that the same was not a fit case and the exemption would not be granted as commercial needs of the company did not justify retention of the excess land without assessing such commercial need. The Act did not provide any procedure and/or machinery for such assessment of the need for retention. The authorities concerned, in my view, either did not go through the application for exemption filed by the petitioner or did not care to apply their mind at all to the facts of the case inasmuch as in the application for exemption a clear case was made out that the said land was purchased and kept for the purpose of setting up of a factory and godown. In my view setting up of a factory may be a commercial need of the company, but from the scheme of the Act it appears that setting up of an industry is a most relevant and important factor which had to be taken into account u/s 20(1)(a) of the said Act. In my view simply by characterising setting up of a factory as the commercial need of the company, the respondents concerned acted illegally, arbitrarily in rejecting the claim of the petitioners. In this behalf. The impugned order suffers from serious infirmity inasmuch as it had not taken into consideration that the location of the land, the purpose for which the land is being or proposed to be used and other relevant factors as mentioned u/s 20 of the said Act. In my view the purpose of granting exemption u/s 20 of the said Act had been frustrated and made nugatory in the instant case inasmuch as the authorities concerned who have exercised the power, were not at all aware of the scope and ambit of the provisions of Section 20 of the said Act and/or the duties and/or the responsibilities imposed by the Statute upon the said authority, it is a case where the respondents concerned failed to perform a duty imposed upon it by law. In this case, the respondent concerned had discarded and/or had not taken into consideration the relevant factors which it ought to have taken into consideration. In my view, the rejection of the said application on the ground mentioned therein and in the facts and circumstances of the case amounts to refusal to exercise jurisdiction vested on it under the law. It is also firmly established principle of law that the exercise of statutory power is invalid unless the repository of the power has acted honestly and in good faith. The deliberate promotion of a purpose be it public or private, alien to that for which that power was conferred, is to be regarded as an act of bad faith. The dominant purpose of Section 20 of the said Act was lost sight of by the respondent concerned. The manner in which the power u/s 20 of the said Act in the instant case has been exercised has in my view frustrated the very purpose for which the power was conferred upon the authority concerned. In the instant case it is clearly

established that the vacant land was required bona fide by the petitioner for the purpose of setting up of a printing press which is an industry and that in the facts and circumstances of the case the respondents had acted illegally and arbitrarily in rejecting the said application for exemption u/s 20 of the said Act. The petitioner company submitted plans for their proposed factory and disclosed in detail all other relevant factors for the purpose of obtaining such exemption but in the instant case, the said application was rejected mechanically and in a most arbitrary manner. In the result, the writ petition succeeds. The impugned order dated 1st December, 1981 which is Annexure "D" to the petition, is set aside. Let a writ in the nature of certiorari do issue quashing the impugned order which is Annexure "D" to the petition. Let a writ in the nature of Mandamus do issue commanding the respondents to deal with and dispose of the petitioner's application u/s 20 of the said Act in accordance with law and in the light of the observations made in this judgment forthwith but not later than a period of 2 months from to-day. The Rule is made absolute and there will be no order as to costs.