

(1985) 08 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2906 of 1985

N.S. Bansal Private Limited

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 28-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 6, 6(1), 8(3), 9

Citation : (1985) AWC 872

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : V.K. Gupta, for the Appellant;

Final Decision : Disposed Of

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India arising out of proceedings under the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the Act. On 22-8-1984 the competent authority declared 934.93 square meters of land as surplus in the hands of the Petitioner. The Petitioner filed an appeal against the said order before the District Judge, Aligarh. This; was registered as Misc. Appeal No. 160 of 1984. In the appeal the Petitioner did not challenge the order of the Competent Authority on merits by which the competent authority had declared 934.93 square meters of land but the Petitioner submitted before the appellate court that the surplus land should not be taken from the land situate near Novelty Talkies but the same may be taken from the land of the Petitioner situated at Grand Trunk Road. The District Judge by order dated 24-1-1985 dismissed the appeal with the observations that the question of choice would be considered at the time of proceedings u/s 9 of the Act. The Petitioner has now challenged the order dated 24-1-1985 by means of the present petition.

2. I have heard the Learned Counsel for the Petitioner and Shri L.N. Pandey, learned Standing Counsel on behalf of the Respondents.

3. Learned Counsel for the Petitioner has urged that the District Judge has acted illegally and with material irregularity in the exercise of jurisdiction in not modifying the order dated 22-8-1984 and directing the Petitioner to give his choice. Learned Standing Counsel, however, has further urged that the ultimate order passed by the District Judge is correct and it is not open to the Petitioner to give any choice now after proceedings u/s 6 of the Act have been finalised by the competent authority. According to the learned Standing Counsel the choice had to be given at the time when the statement is filed u/s 6(1) of the Act and since choice had not been given in that statement, the Petitioner cannot be permitted to exercise his choice at this stage now.

4. Section 6(1) of the Act provides that every person holding vacant land in excess of the ceiling limit at the commencement of this Act has to file a statement before the competent authority specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him and also specifying the vacant lands within the ceiling limit which he desires to retain.

5. Learned Standing Counsel has laid great stress on the words "and also specifying the vacant lands within the ceiling limit which he desires to retain" used in Section 6(1) of the Act. His submission is that in view of this provision the choice should have been made by the person at the time of filing of the statement and not at any subsequent stage.

6. I do not agree with the submissions made by the learned Standing Counsel. It is no doubt correct that at the stage of filing of statement it is open to a person to specify the vacant land within the ceiling limit which he desires to retain but there is no prohibition in the Act that at any stage after the finalisation of the proceedings u/s 6 of the Act, the person cannot give his choice as to which land he would give towards the excess land determined by the competent authority. At the stage of Section 6 of the Act the facts are disputed. The extent of the vacant land which would come within the provisions of ceiling Act has to be determined by the competent authority. It is only after such a determination that a person whose land is sought to be taken by the competent authority can give a proper choice as to which land he would like to give to the State Government under the Act and as to which land he would like to retain. In this view of the matter, the provisions of Section 6(1) of the Act cannot be interpreted to mean that a person whose vacant land is found to be in excess of the ceiling limit is prohibited from giving a choice except at the stage of Section 6(1) of the Act.

7. In *Beni Prasad Vs. The District Judge, Allahabad and Others*, a learned Single Judge of this Court has opined as follows:

There is nothing in the Act which can be said to lay down that if the choice is not expressed u/s 6(1) then such choice regarding the vacant land to be retained and the vacant land to be surrendered, cannot be exercised at the subsequent

stage, when the objections u/s 8(3) of the draft statement are filed.

8. I respectfully agree with the opinion expressed by the learned single Judge in the case of Beni Prasad (*supra*).

9. In view of the above, I am of the opinion that the Petitioner was entitled to give a choice after the extent of the land has been declared surplus in the hands of the Petitioner in the order passed u/s 6 of the Act.

10. So far as the impugned order is concerned, the learned District Judge has also observed that it will be open to the Petitioner to exercise his choice at the time of proceedings u/s 9 of the Act. It cannot therefore, be said that the view taken by the District Judge is manifestly erroneous. The order of the District Judge consequently, which has been impugned in the present petition has to be sustained.

11. It may, however, be observed here that in paragraph 9 of the petition, the Petitioner specifically alleged that the excess vacant land should be taken from the land of the Petitioner situated in gata No. 359, or, from gata No. 242 situate at village Rasoolpur Swad, ITI Road Aligarh. A counter affidavit of Jaideo Singh has been filed on behalf of the ceiling authority. In paragraph 7 of this counter affidavit which is a reply to paragraph 9 of the writ petition, it has not been denied that gata Nos. 339 and 242 do not belong to the Petitioner or that the land from these plots cannot be taken towards the excess vacant land which has been declared surplus. In view of the admitted facts on record, the competent authority while exercising his power u/s 9 of the Act by drawing a final statement, shall take into account first the Petitioner's choice and in case the land in plots No. 359 and 242 situate in village Rasoolpur Swad, ITI Road, Aligarh is not sufficient then only the other vacant land of the Petitioner shall be declared surplus and taken possession of by the authorities concerned.

12. With the above observations the petition is disposed of. The parties are directed to bear their own costs.