
(1999) 08 CAL CK 0052

In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction W.P. No. 1804 of 1996 with W.P. No. 2346 of 1996

Prakash Kumar Singhi

APPELLANT

Vs

State of West Bengal and Others
 Srenik Kumar Singhi
Vs Appellate Authority, Urban Land (Ceiling and Regulation)

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Calcutta Municipal Corporation Act, 1951 — Section 414(1), 414(4)

Constitution of India, 1950 — Article 226, 227

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

Citation : (2000) 2 CALLT 315

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Judgement

The Court

1. These two writ petitions namely, W.P. No. 1804 of 1996 and W.P. 2346 of 1996 are directed against the Judgment and the orders passed by the Appellate Authority under the Urban Land (Ceiling and Regulation) Act 1976 as well as Competent Authority whereby petitioners were directed to surrender 1474.38 S.M. and 1144.46 sq.ft. of excess land to the Government. Petitioners have Inter alia claimed that they are the owners of the portions of premises No. 9/3B, Garlahat Road, 17 and 19. Garcha 1st Lane and 1/64, Garcha 1st Lane, Calcutta. Petitioners however, under wrongly legal advice, filed a return u/s 6(1) of Urban Land [Celling & Regulation) Act, 1976, hereinafter referred to as the "said Act" although they do not posses any land in excess of their ceiling limit.

2. The Competent Authority prepared a draft statement u/s 8 of the said Act and served the same to the petitioners. The had, therefore, . objected to the said draft statement but the competent Authority passed the final statement u/s 8 of the said Act.

3. Being aggrieved by and dissatisfied with the said final statement, the

petitioners filed appeals u/s 33 of the said Act by stating Inter alia that the Competent Authority did not offer an opportunity of hearing before preparing the final statement. They further stated that no enquiry was held before preparing the draft statement u/s 8 of the Act. The Competent Authority has wrongly observed that the petitioners held land in excess of permissible limits. It has been further submitted that the Competent Authority as well as Appellate Authority have wrongly held that the premises held by the appellants were vacant land as there were permanent structures standing thereon prior to the Said Act came into force. The competent Authority wrongly calculated the area possessed by the petitioners. The Competent Authority ignored the dwelling units and structures standing in the aforesaid premises which were in fact in existence prior to the said Act came into force. They also did not cause any spot enquiry to corroborate the fact stated by the petitioners and therefore the covered area, land appurtenant and additional land appurtenant to which the petitioners are entitled to have not been reflected correctly in the draft statement prepared u/s 9 of the said Act. The Competent Authority decided the total area held by the petitioners at 2056.06 s.m. of vacant land out of which one of the petitioners was entitled to 500 sq.m. and directed to surrender the remaining 1556.06 sq.m. to the Government. Similarly, the Competent Authority determined that the other petitioner held 3510.74 sq.m. out of which he was allowed to retain 500 sq.m. of land and directed to surrender remaining 1726.14 sq.m. to the Government.

4. It has not been disputed that the petitioners are the owners of the premises but only dispute centres round now in these two cases in whether the petitioners have the structures in existence prior to the Act. The petitioners have challenged the findings of the Appellate Authority that the premises at 19, Garcha 1st Lane and 1/64, Garcha 1st Lane are full of residential and non residential structures; in the final statement authenticated by the Competent Authority, shows that there have been no existence of non-dwelling structures covering an area of 731.12 sq.m. out of 2804 sq.m. Therefore, the Competent Authority has deducted 731.12 sq.m. plus 365.56 sq.m. as land appurtenant out of the total area of 2804 sq.m. and determined the vacant land in that plot to be 1707 sq.m. Similarly, the Competent Authority also deducted the area on which the structures, standing besides the land appurtenant out of the petitioner's holding at 1/64, Garcha 1st Lane. The petitioners have also submitted photocopy of certificate of the Assessment Department in connection with the submission of building plan for sanction to the City Architect's Department. These certificates however, described a list of several R.T. (I.e., Ranigunge Tile) sheds, C.I. (I.e., Corrugated Iron Sheet) sheds etc. Those certificates speak about the actual existence of the structures.

5. The learned Appellate Authority has rejected the petitioners' prayer that those structures were built according to plan sanctioned by the Calcutta Municipal Corporation. It also does not speak that those are residential structures. In the opinion of the Appellate Authority is that from the definition of "vacant land" in section 2(q) of the Act and from the definition of "land Appurtenant" in section

2(g) of the Act it is patent that from the total area of plot of land the plinth area, land appurtenant and additional land appurtenant should be deducted only when those structures constructed pursuant to the sanctioned plan by the Municipal Authority which in this case is the Calcutta Municipal Corporation. Merely because there were few temporary tenants over the land and structures of the aforesaid premises would not however, mean that those structures had been built according to the plan sanctioned by the Calcutta Municipal Corporation or those have been used as dwelling units of the appellant.

6. The Appellant Authority has, however, found even though some houses had been constructed and those have been in existence, but, since those construction were not in accordance with the sanctioned plan by the Calcutta Municipal Corporation, such premises would not, however, be meant under the Act to be residential premises. Therefore, the petitioners were not given any benefit for such construction. Petitioners filed a supplementary affidavit by enclosing a number of Tax receipts purported to have been paid to the Calcutta Municipal Corporation. From these Tax receipts it, however, appears that the petitioners have been paying Municipal Taxes for many years. The petitioners have also filed xerox copy of the plan but this plan seemed to have been submitted only on 8th April, 1999. Therefore, the plan which is purported to have been submitted before the Municipal Corporation shall not in any case help the petitioner. But other documents, namely the Tax receipt purportedly paid to the Municipal Authority disclosed that there are few houses which have been separately assessed by the Municipal Authority.

7. Mr. Saktinath Mukherjee, the learned Senior Advocate appearing for the writ petitioners has argued with strong Intensity of conviction that there being separate houses standing on the premises, the authorities have illegally directed, some land to vest in the State Government, without considering those construction. In order to appreciate his contentions I hereby quote the definition of "land appurtenant", "any building constructed before the appointed day with a dwelling unit therein". Mr. Mukherjee, therefore, laid strong stresses since there were several houses standing on the premises, the petitioner should be held to have possessed no land beyond the ceiling limit.

8. The main question arises for consideration in this case is whether the land which has been directed to vest in the State Government can be described as "vacant land". The definition of "Vacant Land" is extracted here in below;

(q) "vacant land" means land, not being land mainly used for the purpose of agriculture. In an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on, the appointed day with the approval of the appropriate authority and the land

appurtenant to such building and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not deemed to be vacant land for the purposes of this clause."

9. It was contended that there were buildings already constructed before the appointed day impliedly or with positive approval of the appropriate authority. The question therefore, arises whether the expression "approval" would be meant as sanction, the word "approval" signifies that in a peculiar situation the authority by their implied conduct approve the building construction if such construction is allowed to remain for more than twelve years. In areas where building regulation exists only such land upon which a building is occupied by the owner approved by the appropriate authority, along with land appurtenant is excluded. Upon any land, if construction has been made over a period of 12 years then such construction would be regularised u/s 414(4) of the Calcutta Municipal Corporation, Act, 1951. There was a provision u/s 414 of Calcutta Municipal Act, 1951 authorising the Corporation to alter, demolish and stop such unlawful work under sub-section 1 of section 414 of the Calcutta Municipal Act, 1951. There has been a non absentee clause under sub-section (4) of section 414 of Calcutta Municipal Act, 1951 by providing a right to the owner who made such illegal construction, if such work was allowed to continue for more than 12 years before the notice under sub-section (1). In this case till the date no notice was Issued by the Municipal Corporation.

10. In a reported Judgment Smt. Meera Gupta Vs. State of West Bengal and others, , it has been held as follows :

"Vacant land" and "any other land"--interpretation of--Land covered by building governed by building regulations, construction of which completed or under completion on the appointed day i.e., January 28, 1976 not vacant land and hence to be excluded from calculation of total vacant land held by a person--But land covered by building, construction of which commenced and completed after the appointed day would be any other land" and hence to be included in calculating the total vacant land.

One P the performs respondent, owned two properties in the city of Calcutta--one comprising 414.56 sq. metres of land of which 321 sq. metres was covered by a building constructed thereon long before the coming Into force of the Urban Land (Celling and Regulation) Act, 1976 (referred to as built-up property) and the other comprising 339.65 sq. metres of vacant land (referred to as vacant

property). In relation to the State of West Bengal, to which the Act was applicable w.e.f. February 17, 1976, the "appointed day" as defined in section 2-A was January 28, 1976. The Act ordains a ceiling limit of 500 sq. metres for the urban agglomeration of Calcutta, as per item 15 of Category A in Schedule I of the Act. On July 8, 1987, P entered into an agreement with the appellant to sell the vacant property. The Competent Authority initiated suo moto proceedings against P and sent her a draft statement specifying that she was tentatively required to surrender 254.21 sq. metres of land (figure arrived by totalling 414.56 sq. metres of the built-up property and 339.65 sq. metres of the vacant property to 754.21 sq. metres and subtracting therefrom 500 sq. metres resulting in 254.21 sq. metres excess). Thereafter, rejecting the objections of P, the Competent Authority published the final statement u/s 9 of the Act vesting the said 254.21 sq. metres of excess land in the State and communicated the same to P on June 22, 1981. P preferred appeal u/s 33 but the same was dismissed on January 18, 1983. Meanwhile on August 21, 1981 the appellant obtained a decree for specific performance of the agreement of sale, pursuant to which the deed of conveyance in respect of the vacant property was executed in favour of the appellant on November 19, 1981. The appellant thereafter, coming to know about dismissal of appeal of P in default, filed a Review Petition before the Appellate Authority stating, *Inter alia*, that she had become the owner of the vacant property and prayed for retrieval of the same from being treated as excess land in the hands of P. The review petition was dismissed and a subsequent writ petition of the appellant was also dismissed by the Division Bench of High Court allowing the appeal with costs:

The built-up property, construction of which had begun prior to the appointed day is outside the purview of Vacant land" and has to be excluded from being reckoned towards calculating the extent of vacant land held by the predecessor-in-interest of the appellant. So excluded the vacant land in the vacant property cannot be declared excess for that is within the permissible limits. Even if no land is left as land appurtenant to the built-up area, then 93.56 sq.m., of the unbuilt property would total up to the figure less than 500sq. metres, the remainder plus 339.65 sq. meters; again within the permissible limit.

The visible contract between "vacant land" and "any other land" held by a person on which there is a building with a dwelling unit therein construction commenced after the appointed day. and the land appurtenant thereto. The said "any other land" is reckoned and brought at par with the "vacant land" for the purpose of calculating the final extent of vacant land. "Any other land" in the sequence would thus mean any other built-up land except the one excluded from the expression "vacant land" on account of it being occupied by a building which stood constructed, or was in the process of construction, on the appointed day. Therefore, If the construction of a building with a dwelling unit therein had begun after the appointed day, then it is all the same "any other land" to be reckoned for calculating the extent of vacant land held by a person. And If the construction of a building with a dwelling unit therein on land had been completed or was in

progress by and on the appointed day, then it is not "any other land" to be reckoned for calculating the extent of vacant land held by a person.

The expression "land appurtenant" in section 2(g) applies to buildings constructed before the "appointed day" as well as to buildings, construction of which commenced before the "appointed day", and was in progress on that day. It applies to buildings, constructed thereafter too.

Section 4(11) provides that a building which gets excluded by virtue of the definition of "vacant land" gets clothed with the protective cloak for not being reckoned again as any other land, over which there is a building with a dwelling unit therein. Sub-section (11) means to convey that what is not vacant land under sub-clauses (ii) and (iii) of clause (q) of section 2 cannot go to add up as "vacant land" under sub-section (9) of section 4 by descriptive overlapping. If the distinction of "vacant land" and "any other land" is wiped out, that would destroy the spirit and life-blood of the appointed day and the gap period between the appointed day and the date of coming Into force of the Act in the State of West Bengal.

The above interpretation finds support from section 5 of the Act which pursues and does not leave alone transfer of vacant land in the gap period.

Such an interpretation is required by the context as otherwise the concept of the appointed day and the gap period would be rendered otiose. The legislature cannot be accused to have Indulged in trickery or futility in giving something with one hand and taking it away with the other. Court would loathe giving a construction which would strangle and destroy the spirit and life-blood of the "appointed day" and the gap period. It would rather opt for a construction which carries out the objectives of the Act, primary of which is to fix a ceiling limit on the holding of vacant lands, conditioned as they are on the appointed day, and as held on the date of the commencement of the Act."

11. It has been contended by Mukherjee, the learned Senior Advocate that from the affidavit-in-opposition filed by the Competent Authority that it has, however, appeared that the Competent Authority has expressed in no uncertain term that the petitioners are not entitled to any notice at the time of enquiry conducted before Issuing the draft statement. Mr. Dutta, the learned Advocate appearing for the State has submitted with vehemence that such dates collected through enquiries before Issuing draft statement need not be furnished to the petitioners Inasmuch as they are duty bound to submit their return u/s 6 of the Act. I find that since there was no Judicial or quasi Judicial proceedings initiated prior to issuance of draft statement, the Competent Authority was therefore, not obliged to furnish any dates or materials to the petitioners at that stage.

12. The Appellate Authority appears to have committed an error to construe the term "approval" same as the "sanction". In case, the use of expression "sanction" it pre-supposes that owner of the premises cannot proceed with construction without a sanction plan whereas the word "approved". It can notes

that in certain cases even though such construction was illegal at Inception but if no action was taken for a period of twelve years, such Inaction would crystalise into a right to the owner to protect the construction from being demolished. Therefore, in the Instant case the Competent Authority as well as the Appellate Authority have not considered whether the Municipal Corporation had approved the construction of the houses situated on the premises.

13. In the aforesaid circumstances I am, however, unable to agree with the observation of the Competent Authority as well as Appellate Authority and, therefore, I vacate the order of vesting with the following direction that 1) The Competent Authority shall make an enquiry as to whether building construction was made before the appointed day as a dwelling unit therein, and if so, whether such construction was within 12 years prior if passing of the Urban land Ceiling and Regulation Act, 1976, If it is found such construction was within twelve years from the date of passing of the Act, then notwithstanding such construction, such area wilt be treated as "Vacant Land" and necessary order of vesting shall be passed. While determining such fact the Authority shall offer opportunity to the petitioner to prove the same and it also takes such other further steps as it deemed fit and proper even by making of enquiry and by taking other evidence from the Municipal Corporation for arriving at such conclusion.

With the above observation, both the orders passed by the Competent Authority as well as Appellate Authority are vacated and the matter is remitted back to the Competent Authority for re-determination of Ceiling Limit. With the above circumstances writ petitions are allowed without costs.)

Let a xerox copy of the judgment duly signed by the Assistant Registrar of this Court be given to the parties upon their undertaking to apply for Certified Copy of the Judgment.

14. Petition allowed