
(1992) 07 AHC CK 0051

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15312 of 1983

Pyare Lal Tandon

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 22-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 96

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 11, 12, 13, 14

Citation : AIR 1993 All 118

Hon'ble Judges : B.L. Yadav, J;A.P. Singh, J

Bench : Division Bench

Advocate : S.M. Dayal, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—Whether before deciding an application for exemption of vacant land held by the petitioner u/s 20 of the Urban Land (Ceiling and Regulations) Act, 1976, (for short the Act, opportunity of hearing is a must, is the short question for determination in the present petition under Article 226 of the Constitution of India filed by the petitioner for quashing the order dated 12-8-83 (Annexure 5 to the petition), passed u/s 20 of the Act, pertaining to exemption of vacant land from the provisions of Chapter III "Ceiling on Vacant Land".

2. The petitioner's case was that he was bhumidhar of 1/2 portion of plot No. 805, area 23 bigha and 4 biswas situated at Rawatpur. The petitioner entered into an agreement of sale of the land of his share with one Kakadeo Rawatpur Sahkari Grah Nir-man Samiti Ltd., a registered housing cooperative society, on 1-3-86. Thereafter the petitioner applied for approval of the lay out along with a proposed plan to the Vishesh Karya Adhikari (Bhawan), Nagar Maha-palika, Kanpur. After the enforcement of the Act, petitioner made an application u/s 20 of the Act with a prayer that vacant land held by him may be exempted from the operation of Chapter III pertaining to imposition of ceiling on vacant land. The

petitioner alleges that without affording opportunity of hearing, his application u/s 20 of the Act for exemption from Chapter III "imposition of ceiling on vacant land", has been rejected by the impugned order.

3. Sri S. M. Dayal, learned counsel for the petitioner urged that no opportunity of hearing was given before disposing of the application u/s 20 by the impugned order, nor reasons have been recorded as required by the proviso to Section 20 of the Act.

4. Learned Standing Counsel, however, urged that the impugned order was correct and oral or personal hearing was not necessary. The petitioner was afforded sufficient opportunity of making comments and representation etc., that would be sufficient compliance of principles of natural justice. The reasons in the order are sufficient.

5. There are two questions that fall for our determination. The first is as to whether the impugned order is in violation of principles of natural justice, and the second is as to whether the reasons have been recorded.

6. As regards the first point as to whether principles of natural justice have been violated as no oral or personal hearing was afforded, before we consider different sections, in order to solve the problem, there is an oft quoted maxim "AVERBIS LEGIS NON EST RECEDENDUM" which connotes that from the words of law there must be no departure and that there must be a harmonious construction of different parts of the statute which appear to be relevant to solve the problem. There is another maxim "SENTENTIA LEGIS" which connotes that the duty of judicature is to act upon the true intention of the legislature, "CONSTRUCTION EXVISCERBIUS ACTUS" connotes that every part of statute should be considered with reference to context, and at the same time it is also duty of the Court to determine the question while looking at the scope and purpose of the Act and by examining the relation of that provision with the objects sought to be achieved by such enactment. See *The Municipal Corporation of Greater Bombay Vs. M/s. New Standard Engineering Co. Ltd.*, .

7. In the light of the aforesaid cardinal canons of construction, before we answer the question, we may look to the scheme of the Act about opportunity of hearing. After the enforcement of the Act the persons holding vacant land in excess of ceiling limit to file statement, Section 7 provides filing of statement where vacant land is situate within jurisdiction of two or more authorities. A draft statement is to be prepared u/s 8 of the Act by the competent authority in respect of statement filed u/s 6 of the Act and that statement is to be served on the person concerned indicating that any objection to that draft statement may be preferred within 30 days. As the legislature wanted that the competent authority shall consider the objection and afford an opportunity of hearing, hence under sub-section (4) of Section 8 of the Act it has been indicated that the competent authority shall consider the objection and pass an order only after giving the objector reasonable opportunity of hearing. Similarly u/s 12 there is a

provision for appeal before the Tribunal and it has to follow the procedure for disposal of appeal as given in the Code of Civil Procedure, 1908, (for short the Code) meaning thereby that either in a First Appeal u/s 96 or a Second Appeal u/s 100 in view of the provisions of Order 41, Rule 11 of the Code, affording an opportunity of hearing is a must before deciding whether to issue notice to the respondent or not. u/s 16 of the Act certain persons have to file statement when the Act is adopted subsequently by any State and for disposal of such objection the provisions of Sections 6 to 14 of the Act shall be applicable. In other words, before deciding such objection the competent authority shall afford hearing as contemplated by Section 8(4) of the Act. For appeal also u/s 33 to be decided earlier by the District Judge and now by the Commissioner, specific procedure has been provided for disposal of such appeals under sub-section (2) of Section 33, which is to the effect that the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as it deems fit, as expeditiously as possible. Consequently we are of the opinion that occasions for opportunity of hearing has been specifically provided under the Act. We appreciate that the Legislature did not want that any opportunity of hearing be provided to the person making an application u/s 20. Consequently u/s 20 of the Act it has been provided that where a person holds vacant land in excess of the ceiling limit, the State Government may, on being satisfied, allow the application and exempt the vacant land from the provisions of Chapter III.

8. The person making an application for exemption is certainly to be afforded opportunity to make representation and the State Government directs to furnish further details and comments. The principle of natural justice does not mean personal hearing in every case. If the opportunity to make comments or to furnish details of certain facts is there, that would also mean compliance of principles of natural justice. We may add that natural justice is not an uncompromising virtue.

9. In *Shesh Mani Nath Tripathi Vs. Deputy Inspector General of Police and Others*, a Full Bench of this Court held that where the petitioner was a Sub-Inspector in Police Training College, Moradabad, who was expelled for misconduct, the question was as to whether during enquiry, was he entitled to personal hearing in conformity with the principles of natural justice to cross-examine witnesses produced against him. The Full Bench ruled that as Rule 23 of the U. P. Police Training College Manual does not expressly include right of cross-examination of adversary witnesses. It is the interpretation of Rule 23 which would indicate that the rule does not envisage a particular type of hearing and the denial of cross-examination does not, therefore, render illegal the order of expulsion from the college. The cross-examination of witnesses examined against him was not held to be necessary in accordance with the interpretation of Rule 23.

10. In our opinion the principles of natural justice is not to be stressed too far. It depends upon the facts and circumstances of the case as to whether the

personal hearing was a must. This need not be permitted to be exploited as a purely technical weapon. The Legislature appears to be conscious in not making provision for personal hearing under S. 20. See A. R. Antulay v. R. S. Naik A.R. Antulay Vs. R.S. Nayak and Another, 11. Reverting to the next question as to whether the impugned order contains reasons or not, we are conscious about the provision contained in the maxim "CESSANTE RATIONE LEGIS CESSANT IPSALE" which connotes that reason is the sole of law and without reason a particular order of law ceases, so the law or order itself. To put it differently, reason is the soul of judgment or order. We have looked into the impugned order and we are satisfied that it does contain reasons as required for deciding an application for exemption moved u/s 20 of the Act. In our considered opinion opportunity of personal hearing is not necessary u/s 20 of the Act, the opportunity of making comments or sending some more details have been afforded, that itself is sufficient for compliance of the principles of natural justice. The reasons required for disposal of application u/s 20 of the Act have been sufficiently given in the impugned order. The impugned order, was not a judgment of the Civil Court, it does indicate that the petitioner did not fulfill conditions as contained in the office memo 5563/49-750-C-36 dated 17-12-79. The petitioner has, however, stated that he has fulfilled the conditions. But in para 12 of the counter-affidavit it has been stated that conditions have not been fulfilled by the petitioner. We are of the opinion that the petitioner did not fulfill the conditions as indicated in the office memo. The impugned order has been passed in public interest and there was no error, much less an error apparent on the face of record.

12. In view of the premises aforesaid, the present petition fails and it is dismissed. There shall be no order as to costs.

13. Petition dismissed.