

(1988) 03 AHC CK 0007

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14217 of 1981

Rameshwar Dayal Goyal

APPELLANT

Vs

District Judge Meerut and Others

RESPONDENT

Date of Decision : 29-03-1988

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 4(9), 6(1), 8, 8(3)

Citation : (1988) 1 AWC 653

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

R.R. Misra, J.—The present writ petition arises out of proceedings taken against the petitioner under the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the Act). The petitioner owned properties at Meerut to the extent of about 1825 Sq. metres and a plot at Delhi covering an area of about 252 Sq. metres. The said plot at Delhi is built up leaving no vacant area at all. The Competent Authority, Meerut drew up draft statement of the case under the said Act and the same is alleged to have been sent to Sri Goel at New Delhi as required by Section 8(3) of the Act. Sri Goel, petitioner, was a teacher in the Modern School of New Delhi and after retirement he has been running Lakshman Public School at Delhi. At the relevant time when the draft statement was sent he was residing at New Delhi on the aforesaid plot of 252 Sq. metres. Since Sri Goel resided permanently at Delhi, the Competent Authority had sent a registered letter despatched on 29-7-78 to the petitioner at his New Delhi address. The said letter is alleged to have been refused by the petitioner. Taking the said refusal to be valid service in accordance with law and the fact that no objection was filed, the Competent Authority drew up a statement and made a final order dated 25-10-78 and thereunder declared an area of 1077.40 Sq. metres as surplus. Aggrieved against the same an appeal was filed by the

petitioner before the District Judge, Meerut, who also dismissed the appeal by the impugned order dated 19-8-81.

2. I have heard learned Counsel for the petitioner as well as the Standing Counsel. One of the contentions raised on behalf of the petitioner before the authorities below as well as before me is that the relevant registered letter containing the draft statement, which was purported to have been sent to the New Delhi address of the petitioner, was never tendered by the Postman concerned to the petitioner, nor the same had been refused from being taken by the petitioner as is on the endorsement of the said letter. After the impugned order was passed by the Competent Authority the petitioner filed an application supported by an affidavit before the District Judge stating that the petitioner never knew about the proceedings under the said Act, as a result of which he could not file any objection. It was further contended that the property at New Delhi was not at all liable to be taken into consideration and there is no vacant area for the purposes of the Ceiling in the hands of the petitioner. The point raised on behalf of the petitioner was that the only property that could be taken into account for the purposes of the Act was the one that was at Meerut and if a proper opportunity of hearing had been afforded to the petitioner, he could have satisfied the Competent Authority that he possesses no excess land over and above the prescribed ceiling limit. It is further submitted that these assertions and contentions of the petitioner urged before the lower appellate court and its effect were not considered at all. All that has been done is that both the opposite parties relying on the said alleged service proceeded erroneously assuming that no objection had been filed by the petitioner. Hence it is submitted that the impugned orders suffer from a manifest error of law and are liable to be set aside as the Competent Authority was not entitled to proceed on the basis that the said registered letter was served on the petitioner.

3. In regard to the contention that the property at Delhi could not be taken into account as there was no vacant area for the purposes of determining the ceiling area in the hands of the petitioner, the position has been cleared by Supreme Court in the case of *State of U.P. v. L.J. Johnson* 1983 AWC 798. In paragraph 25 at page 806 the Supreme Court has held:

...The scheme of the Act seems to be that if there is a constructed building with a dwelling unit, the structure thereon cannot be treated as open land for the purpose of declaring it as an excess land beyond the ceiling limit. Similarly, the land kept open under the municipal regulations (upto 500 sq. metres) and an additional 500 sq. metres appurtenant to the land would not be available for being declared as excess land beyond the ceiling limit. The central idea governing this philosophy of putting a ceiling on urban land is that in a urban area none can hold land in excess of the ceiling regardless of whether the land is entirely open or whether there is a structure consisting of a dwelling unit thereon subject to the rider mentioned above. Indeed, if the intention would have been to take over the entire open land without giving any benefit of appurtenant land to the land

holder then the Act would perhaps be liable to be challenged on the ground of being of a confiscatory nature and would fall beyond the permissible limits of the directive principles enshrined in Part IV of the Constitution. Furthermore, such an interpretation would discourage new building enterprises or factories or industrial units coming up in the urban areas which would be contrary to the very tenor and spirit of the Act.

4. Thus, it is manifest that even in the case of a land on a part of which there is a building as dwelling unit and rest of which is vacant, the open area which is appurtenant to that building would be allowed to be retained for the beneficial use of the building so that the person concerned may enjoy the use of a little compound also for various purposes. Since in the present case the entire building at New Delhi is built up in my opinion, no part of the land at New Delhi could be taken into consideration for determining the surplus area and the Competent Authority as well as the District Judge have plainly gone wrong in adding up the area of the plot at New Delhi by referring to Section 4(9) of the Act.

5. As regards the land at Meerut, indisputably Meerut is C class city. For the purposes of the Act 1500 sq. metres are exempted. According to the Competent Authority, the petitioner was in possession of 1825 sq. metres of land situate at Meerut. As is clear from the counter affidavit filed on behalf of the Competent Authority, out of the said area vide order dated 23-10-78 the petitioner was allowed to sell 747.60 sq. metres from the ceiling area. Accordingly, a sale deed was also executed by the petitioner in favour of Sri Manohar Lal Gupta, opposite party No. 3. Record shows that possession was also handed over to this vendee.

6. The petitioner did not accept the calculation given in the draft statement. Therefore, in view of the above facts and also on the ground that no opportunity had been afforded to him as contemplated by law for filing the objection, the petitioner seriously objected to the calculation of the ceiling area. It is therefore, urged on behalf of the petitioner that the impugned orders are liable to be set aside and the matter may be sent back to the Competent Authority for re-determination as to whether in regard to Meerut property there is any excess beyond the ceiling prescribed for "C" class City.

7. To my mind, the controversy in the present case centres round the question as to whether on the facts of the case the petitioner was afforded a reasonable opportunity to file his objection as contemplated by the mandatory provision of Section 8 of the Act.

8. As mentioned in the impugned order of the Competent Authority, exhibit 2 is the registered cover which is said to have been sent to the petitioner and is alleged to have been refused by him. It has been held by the Supreme Court in the case of Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana, that where a notice sent by a registered post is returned with endorsement as "refused", it is not always necessary to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its

own admission or conduct. Subsequently this Court has also taken a note of this very situation in the case of *Jamal Khan v. Haji Yusuf Ali* 1978 ALJ 993. Mr. Justice K.N. Singh, as he then was, has after referring to the case law on the point observed:

In view of the above discussion the conspectus of opinion appears to be that the presumption would stand rebutted on the denial by the addresses on oath, but the veracity of the statement must be considered by court in the light of evidence available on record having regard to the conduct of the party concerned: No exhaustive principles can be laid down, each case must be considered on the facts and circumstances of the case as available on the record. It is open to the Court to Judge the veracity of the denial of the party against whom the presumption of service of notice is raised. In a particular case a mere denial of service of notice may be sufficient to rebut the presumption, while in other case such denial may not be worthy of credence having regard to the conduct of the party and the circumstances of the case. I am in respectful agreement with the view of S.S. Dhavan, J, in *Wasu Ram's case* (1963 All ER (HC) 472) that the question whether the presumption is rebutted is always a question of fact and the court should consider it having regard to all surrounding circumstances and the conduct of the party concerned. In *Amarnath's case* (1978 AWC 84) M. P. Saxena, J. followed this principle and he pointed out that the defendant's denial on oath was worthy of credence as he was not cross-examined and there existed no other circumstances to discredit his testimony.

9. To the same effect is also a decision of the Division Bench of this Court in the case *Commissioner, Sales Tax Vs. Brij Kishore Satish Chandra*, wherein it has been held that the endorsement of refusal by the postman merely raises a presumption of service which was rebuttable and not conclusive and the question as to whether the said presumption had been rebutted or not depends upon the evidence produced in the case and the findings recorded by the Authority concerned on the material placed before it.

10. The question, therefore, arises as to how far the veracity of the said statement of denial on oath by the petitioner is worthy of credence and whether there is any material on record in that regard, if so, with what result. Ordinarily the matter ought to have been remanded back to the authorities below for recording a finding on this part of the case. However, in the present case I am not inclined to do so. In the present case, proceedings under the Act had commenced in the year 1976 itself, i.e. the year in which the Urban Land (Ceiling and Regulation) Act had come into force and that a statement u/s 6(1) of the Act was furnished by the petitioner to the Competent Authority vide his statement dated 13-8-1976. After such a long lapse of period as in the present case and on the facts of this case, in my opinion, it would not be expedient to remand back the case to the authorities below for recording a finding on this aspect of the matter. I, therefore, on the peculiar circumstances of this case and in the interest of justice proceed to examine the material on record in this regard.

11. Having regard to the averments made in the counter affidavit and rejoinder affidavit also there is nothing at all on the record to show as to why Sri Goel should not be believed on this aspect of the matter, when he states on oath that the said letter was never tendered to him nor he had refused to accept the same. Sri Goel, petitioner, has been a disciplined school teacher all his life in a Modern School and after his retirement he is also running a public school. In these circumstances, I find that there was no need or occasion for him to avoid a notice when it is issued by the Competent Authority, more particularly when Sri Goel can be presumed to be aware of the fact. If he declines to accept the notice, an order declaring surplus area may be passed by the Competent Authority to his prejudice. I, therefore, find that in this case not only the presumption raised regarding service stands rebutted but also that the said registered letter in question was never tendered to the petitioner and was not refused by him.

12. At any rate, the matter can be looked from another angle. The impugned orders were passed without affording a reasonable opportunity of hearing to the petitioner, more so, in a matter covered by the provisions of the Act declaring a portion of his property as surplus area consequently depriving him of the said property. As is manifestly clear from the impugned order that the Competent Authority has proceeded merely on the basis of an endorsement of refusal and the Appellate Authority has failed to decide the question of rebuttal of presumption although a plea to that effect as aforesaid regarding non-receipt of the said registered letter was raised by the petitioner before him. In this situation, both the impugned orders passed by the authorities below, in my opinion, are erroneous in law and deserve to be set aside.

13. In the result, the writ petition succeeds and is allowed with costs. The impugned orders dated 25-10-1978 passed by the Competent Authority and the order dated 19-8-1981 passed by the Appellate Authority, copies of which have been filed as Annexure No. I and III to the writ petition, are hereby quashed. In view of the fact that the petitioner disputes the calculation given both in the draft statement and the order dated 25-10-1978 passed by the Competent Authority, the matter is remanded back to the Competent Authority with directions that after affording a reasonable opportunity to the petitioner of being heard, the matter should be proceeded with from the stage of draft statement by the Competent Authority and an order be passed by him in conformity with the observations made above. Since the dispute is by now about 12 years old, it is expedient and necessary that the Competent Authority shall decide the matter and pass the necessary orders within a period of two months from the date of production of a certified copy of this judgment.