
(1990) 12 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 1670 of 1982 (J)

Randhir Singh Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-12-1990

Acts Referred:

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

Citation : (1991) MPJR 243

Hon'ble Judges : R.D. Shukla, J;B.C. Varma, J

Bench : Division Bench

Advocate : Rakesh Jain, for the Appellant; Smt. Nair, Advocate for respondent
No. 1, Mr. R.P. Jain, D.A.G. for Union, for the Respondent

Final Decision : Dismissed

Judgement

B. C. Varma, J.

The order in this petition shall also govern the disposal of Miscellaneous Petition Nos. 1585 of 1982 (V. S. Thakur v. Union of India and others), 1669 of 1982 (V. S. Gupta v. Union of India and others), 1671 of 1982 (Vijaya Singh v. Union of India and others), 108 of 1983, (R. P. Agarwal v. Union of India and others), 244 of 1983 (Balchandra v. Union of India and others) and 1267 of 1983 (V. K. Agarwal and others v. Union of India and others).

The Madhya Pradesh Legislature adopted the Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976). This Act became applicable to the State of Madhya Pradesh from 9-9-1976 which is the "appointed day" for the purpose. Section 2 (n) of the Act defines "urban agglomeration" as follows :

(n) "urban agglomeration"

(A) in relation to any State or Union Territory specified in column (1) of Schedule I means,-

(i) the urban agglomeration specified in the corresponding entry in column (2)

thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof, and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an Urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefore shall be one Kilometre;

(B) in relation to any other State or Union Territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Schedule 1 and the peripheral area therefore shall be one kilometre;

A common contention raised in all these petitions relates to the applicability of the Act to lands in various villages which are allegedly included in Durg-Bhilainagar urban agglomeration and Durg as mentioned against Item 6 in column (2) of Schedule 1 of the Act in relation to Madhya Pradesh. The contention is that Durg-Bhilainagar urban agglomeration does not have any defined limits and Bhilainagar is not a statutory town/village. Consequently, the aforesaid entry against Item no. 6 in Schedule I is unenforceable and unworkable. For this preposition, the learned counsel placed strong reliance upon a decision of the Division Bench of this Court in *Hindustan Steel Limited, Ratichi v. State of M. P. and others* 1984 MPLJ 92.

Elaborating his arguments, Shri N. S. Kale, learned counsel for the petitioner, submitted that column (ii) against Item no. 6 relating to the Madhya Pradesh) of Schedule I of the Act does not specify the area included in the urban agglomeration. The suggestion; therefore, is that the entry cannot be given effect to. We are unable to accept this contention. There is a note at the beginning of Schedule 1 of the Act. According to this note, "Urban Agglomeration" is made up of main town together with the adjoining areas of urban growth and is treated as one urban spread. Such agglomeration may be made up of more than one statutory town, adjoining one another and also other urban growths such as a Railway Colony, University Campus, etc. Such out-growth which did not qualify to be treated as individual towns in their own right and have pronounced urban characteristics are treated as constituents of the Urban agglomeration. In Miscellaneous Petition No. 1585 of 1982 (which is also being decided by this order), the respondents with their return have enclosed certain documents. Annexure K-2 is the summary of census report of the year 1961. It shows Bhilainagar as a new town in Durg District. It specifies the villages which are included in that new township with their survey numbers, area

in square miles and the population. The map annexed to the report specifies the boundaries. Similarly, We have another document Annexure R-3 That is also a census report. There, Durg Bhilainagar, Bhilainagar and Bhilainagar (non-Municipal areas) are included as township. The area comprised therein with the population is also mentioned. We also have a notification issued by the Municipal Corporation, Durg. This is dated August 30, 1983 (Annexure R-4) and appears to be in answer to some query made by the competent authority, Durg under the Urban Land (Ceiling and Regulation) Act. This notification also shows that the following villages were included in Durg Municipality :

- (1) Durg.
- (2) Kasaridih,
- (3) Titurdih,
- (4) Sikola Bhatha.

All these documents clearly show that Durg-Bhiainagar township includes Bhilainagar and Durg. Bhilainagar and Durg are thus comprised of specified out-growth and non-Municipal area, the extent of which is defined in the aforesaid documents and particularly the census reports- Villages Titurdih, Kasaridili, Sikola Bhatha and Durg are within the Municipal area, Durg which has definite boundaries. Urla (subject matter of M. P. No. 1267 of 1983) is out-growth of Durg. All these areas/ therefore, are "urban land" as defined in Section 2 (o) of that Act. The definition is as follows :

(O) "Urban Land" means-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.-For the purpose of this clause and clause (q) : -

(A) "agriculture" includes horticulture, but does not include-

- (i) raising grass,
- (ii) dairy farming,
- (iii) poultry farming,
- (iv) breeding of live-stock, and

(v) such cultivation, or the growing of such plant, as may be prescribed.

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture.

Thus, we find that Durg and Bhilainagar is well defined and specified area. It is, therefore, urban land as defined in Section 2 (o) of the Act.

The decision in Hindustan Steel's case (*supra*), is really not very helpful to the petitioner as it turns mostly upon the facts in that case. The Court there was concerned with the applicability of the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 (No. 14 of 1964) to Bhilainagar Industrial Township and Rajhara-Jharandalli Mining Colony in Durg District. During the course of the judgment, the Court observed that "even if Bhilainagar Industrial Township was the same as Bhilainagar town, the Court was unable to delineate the area comprised within Bhilainagar industrial township" The Court concluded that "as the area within this description cannot be found out, the notification cannot be given effect to." The Court also observed that the authorities were indefinite as to what villages or what area is included in Bhilai Nagar Industrial Township. It was, therefore, hold that the notification applying the M. P. Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 to Bhilainagar Industrial Township could not be given effect to. From the facts, as disclosed in the return filed in these writ petitions, we have reached the conclusion that the villages and the area comprised in Durg-Bhilainagar urban agglomeration is very well specified and the villages where the lands in question are situated fall within the Municipal area. We, therefore, do not find any difficulty in ascertaining what the Bhilainagar urban agglomeration is and, therefore, we reject the contention that the entry against Item 6 in Schedule I relating to Madhya Pradesh is not specific enough to make the Act applicable to the lands in question.

The next limb supporting the main argument is that there is no master plan in respect of the land in question and, therefore, the land cannot be treated as urban land. This contention is completely devoid of substance and appears to be based upon improper reading of clause (ii) of sub-section (o) of Section 2 of the Act which defines the term "urban land" (reproduced by us-above). A reading of clause (ii) of that definition would show that in the absence of a master plan, land would be covered under the definition of urban land if it falls within the limits of urban agglomeration and is situate within the area included within the local limits of a Municipality, a notified area committee, a town area committee, a city and town committee, a small town committee, and cantonment board or a panchayat. It has been held in *Union of India (UOI) and Others Vs. Valluri Basavaiah Chowdhary and Others*, that under the scheme of the Act, the imposition of a ceiling on vacant land in urban agglomeration does not depend on the existence of a master plan and, therefore, the existence of a master plan is not a sine qua nan for applicability of the Act to an urban agglomeration. It was pointed out that where there is a master plan, the Act extends to all lands

situated within the local limits of the Municipal area or other local authority and also covers the peripheral area thereof, but where there is no master plan, its applicability is confined to the Municipal limits or the local area, as the case may be. The view taken in that decision thus completely negatives the argument so advanced.

Shri Kale, learned counsel for the petitioner, tried to catch the last straw by resort to the part of the second clause of Section 2 (o) of the Act which takes out lands mainly used for the purpose of agriculture from the definition of "urban land". Learned counsel submitted that the lands in question are all agricultural lands and, even if, were not brought under cultivation for certain period immediately before the Act was made applicable to the State of Madhya Pradesh, it will not be legitimate to draw an inference that the lands ceased to be mainly used for agricultural purpose. Relying on decision in *Smt. Srila Moitra v. State of West Bengal*, it was submitted that for the purpose of applicability of the various provisions of the Act, existing State of affairs has to be seen. We cannot accept this contention as well. It cannot be denied that the question whether any land is mainly used for the purpose of agriculture is necessary a question of fact depending upon various circumstances. For the purpose of clause (ii) of sub-section (o) of section 2 of the Act, although "agriculture" includes horticulture, it excludes raising of grass, dairy farming, poultry farming, breeding of live-stock and other operations as mentioned therein. It is significant that such question was not raised before the lower authorities, viz., the competent authority and the appellant authority, who alone could examine and take decision on these questions of fact. We, therefore, shall not be justified in permitting the question to be agitated for the first time in these writ petitions. We do not see our way to agree with the learned counsel that the respondents in their return have admitted that the lands in question are agricultural lands.

No other point was urged.

For the aforesaid reasons, we dismiss all these petitions. There shall be no order as to costs. Security amount be returned to the petitioners.