

(2003) 09 JH CK 0040
In the Jharkhand High Court
Case No : CWJC No. 628 of 1995 (R)

Satyawati Khemka and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 33, 6(1)

Citation : (2004) 1 JCR 424

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Debi Prasad and S. Srivastava, for the Appellant; R.S. Mazumdar, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—5405.20 square meters vacant land, bearing R.S. Plot No. 54, situated in Ranchi town said to be belonging to the petitioners was declared surplus, under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter to be referred to as "the Act").

2. According to the petitioners, Satya Narayan Khemka along with his two sons, Laxmi Kant Khemka and Vishnu Kant Khemka, constituted a joint family. From the joint family fund, 1.87 acres land of R.S. Plot No. 54, appertaining to Khata No. 7, situated in village Gari, within Ranchi town was purchased by two registered sale deeds dated 4.10.1994, Annexures 1 and 1/A in the name of Vishnu Kant Khemka.

3. Subsequently, in the year 1975, there was an amicable oral partition of the said 1.87 acres land, wherein 1994.75 square meters land was allotted to Satya Narayan Khemka, 1988 square meters to Laxmi Kant Khemka and 1988 square meters to Vishnu Kant Khemka, i.e. total 5970.75 square meters and the rest 1555.75 square meters was kept joint for being used as road for ingress and egress. In respect of the said oral partition, on 31.3.1975 a memorandum of

partition was also prepared, which was duly signed by all the three parties.

4. A proceeding under the Act was initiated only against Vishnu Kant Khemla. He filed return (Annexure 3) on 30.9.1976, u/s 6(1) of the Act, wherein for the aforesaid 5970.75 square meters area of vacant land, he claimed three ceiling units for himself, his father and elder brother.

5. On verification of the return, it was found that the land holder was possessing total 7405.20 square meters vacant land, within Ranchi Municipal Corporation in the town. Consequently, Ranchi being category "D" town, he was allowed to retain only 2000 square meters and the rest 5405.20 square meters land was found surplus. Accordingly, draft statement was published.

6. The land holder filed objection to the draft statement and claimed that the land in question was not his individual property, rather it was a joint family property of three co-sharers, who were entitled to three ceiling units and on amicable partition in the year 1975, each one of them were allotted specified portions as shown above in the said land, area whereof was less than the ceiling area prescribed under the Act. Out of the total land 1555.75 square meters land was kept for common use for road purpose.

7. The Deputy Commissioner, Ranchi, who was the competent Authority under the Act, on consideration of his objection, held that the land under the proceeding was self-acquisition of landholder, Vishnu Kant Khemka. No evidence was brought on record to show that there was a joint family and it was actually purchased by the said joint family fund. Hence, there was no question or occasion for its partition. It was further held that the memorandum of partition was manufactured only to defeat purpose of the Act. By order dated 10.1.1987 (Annexure 11) 5405.20 square meters land was declared surplus.

8. The land-holder preferred appeal; u/s 33 of the Act, which was dismissed by order dated 6.1.1995 (Annexure 12). At the appellate stage a different stand was taken by the land-holder that so called 1555.75 square meters land was handed over to the Ranchi Municipal Corporation for construction of road. Affirming the order dated 10.1.1987 the statutory appellate authority held that the land-holder was actually entitled to only one ceiling unit i.e., 2000 square meters and the rest 5405.20 square meters land was rightly declared surplus.

9. It is true that in the return filed u/s 6(1) of the Act, the landholder claimed his interest to the extent of only 1/3rd in the total area of the vacant land, which was subject matter of the proceeding, but the title deed being in his exclusive name, it was for him to satisfy the competent authority that it was not his individual acquisition; rather the joint family consisting of him, his father and elder brother had purchased the same in his name. Absolutely no evidence was brought on record to substantiate the aforesaid claim of the land-holder. Unless it was established that land under the proceeding belonged to aforesaid joint family, there was no meaning of alleged amicable oral partition among the land-holder, his father and elder brother. The family was governed by the Mitakshra

School of Hindu Law and during the life time of the land-holder, his father and the elder brother were not entitled to any share in the property belonging to him exclusively. He did not claim himself to be the Karta. However, if the land-holder so wanted, he could have parted with the land in question by virtue of either gift or sale to any person, including his father and the elder brother.

10. Much stress has been given on the verification reports of the Halka Karmachari and Circle Inspector (Annexures 4 and 5). The land-holder filed return, Annexure 1 in the year 1976, which was verified by the concerned Halka Karmachari in the year 1980 and on that basis the Circle Inspector submitted verification report on 8.2.1980. Although in the revenue records-Register II, the tenants' ledger maintained by the State Government the entire 1.87 acres Jamabandi land in the proceeding stood recorded in the name of Bishnu Kant Khemka alone, but it was reported that the said land was amicably partitioned as shown in the memorandum of partition dated 31.3.1975 and 1509 square meters land out of the total 1.87 acres was left for Rasta. The memorandum of partition, Annexure 2 shows that 1555.75 square meters land was kept for the purpose of roads for ingress and egress from the aforesaid three portions of the said land.

11. No step for mutation of the names of two others pursuant to the alleged partition in Register II was taken till the year 1990. As such it is clear that the Halka Karmachari as well as the Circle Inspector made reference of the alleged partition and allotments in their reports only on the basis of the memorandum of partition shown to them and it was not based on their Independent enquiry/ investigation about the factum of partition.

12. It is pertinent to note that the memorandum of partition (Annexure 2) was exclusively in respect of the land in the proceeding. The other properties, if any, of the joint family were not shown to have been partitioned.

13. It appears that during pendency of the proceeding under the Act, some time in the year 1990-91, on the basis of the aforesaid memorandum of partition, Annexure 2 the names of land holder's father and elder brother were also mutated and the Jamabandi standing in the name of the land-holder alone, was bifurcated into three parts and consequently the rent receipts, Annexures 9 and 9/1 were issued to both of them on 8.2.1991.

14. Issuance of the aforesaid rent receipts and or the mutation of their names in the Register II, on the basis of the memorandum of partition, Annexure 2, the father and brother of the land-holder cannot acquire title over the land in the proceeding, unless it was established that they had also interest therein, along with the land-holder, Vishnu Kant Khemka.

15. In my opinion, the land-holder failed to establish that in the vacant land of the proceeding, his father and brother had also interest and the authorities under the Act on the basis of the materials brought on record rightly held that the entire vacant land in the proceeding belonged to the land-holder, Vishnu Kant Khemka exclusively and under the provisions of the Act, 5405.20 square meters

land was surplus.

16. I, therefore, find no reason to interfere with the impugned orders, as contained in Annexures 11 and 12. This Writ application is dismissed, but without costs.