

(1991) 09 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3313 of 1989

Shakti Kumar Roy and Another

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(4), 27, 27(1), 38, 38(1)

Citation : (1992) 1 AWC 35

Hon'ble Judges : S.K. Dhaon, J;D.S. Sinha, J

Bench : Division Bench

Advocate : R.P. Shastri and Chandra Prakash Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

D.S. Sinha, J.—This petition, under Article 226 of the Constitution of India, is directed against the notice dated 2nd February, 1989 issued to the Petitioners by the Competent Authority, Urban Land Ceiling, Allahabad, the Respondent No. 2, calling upon them to show cause as to why steps for getting them punished u/s 38 of the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter called the "Act", be not taken.

2. Brief facts, as pleaded in the petition, are as follows:

On 23rd January, 1987 Shakti Kumar Roy, the Petitioner No. 1, moved an application u/s 27 of the Act seeking permission of the Respondent No. 2 for transfer by way of sale of his share in House No. 57/109, Mahatma Gandhi Marg, Allahabad along with the land measuring about 350 Sq. yards (about.294 Sq. metres), in favour of Smt. Sadhna Srivastava, the Petitioner No. 2. By means of his order dated 3rd February. 1987 the Respondent No. 2 accorded the permission sought by the Petitioner No. 1 and issued "no objection certificate". The Petitioner No. 1 executed the sale-deed in favour of the Petitioner No. 2 on 12th March. 1987. Sri Surendra Nath Roy, one of the several brothers of the

Petitioner, and his son Sri Amit Roy were not in favour of this sale. They, therefore, filed a civil suit No. 271 of 1987 which was eventually compromised on 11th May, 1987. Lateron, Sri Amit Roy, aforesaid, filed a complaint before the Respondent No. 2 alleging that the Petitioner No. 1 had violated the provisions of the Act in as much as he had transferred by way of sale in favour of the Petitioner No. 2 an area of land measuring about 377.13 Sq. metres whereas the permission sought for by and accorded to the Petitioner No. 1 was for an area of about 294 Sq. metres. Thus, according to Sri Amit Roy, there was no permission for sale in respect of an area of about 84 Sq metres which forms part of the sale by the Petitioner No. 1 in favour of the Petitioner No. 2. Acting upon the complaint of Sri Amit Roy, the Respondent No. 2 issued to the Petitioners the impugned notice dated 2nd February, 1989.

3. A counter affidavit on behalf of the Respondent No. 2 has been filed. The assertion in the counter-affidavit is that the area of land transferred by the Petitioner No. 1 by way of sale in favour of Respondent No. 2 was more than the area of land for which permission was sought for by and "no objection" was granted to the Petitioner No. 1. Counter-affidavit further discloses that the "no objection certificate" dated 13th February, 1987 had been withdrawn and proceedings u/s 38 of the Act have been started against the Petitioners.

4. Sri C.P. Srivastava, learned Counsel for the Petitioners, and Sri G.L. Tripathi, learned Standing Counsel, appearing for the Respondents No. 1 and 2, jointly prayed and agreed upon that the petition be heard and decided finally even though it had not been admitted formally. We, therefore, heard the learned Counsel accordingly.

5. The impugned notice dated 2nd February, 1989 is appended to the petition as Annexure-4. We read and re-read the impugned notice carefully but could not discover as to which particular provision of the Act, according to the Respondent No. 2, was violated by the Petitioners. The impugned notice states only this much that the Petitioners had violated the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. With reference to the context, the avowed object of the notice was to notify to the addressees their omission rendering them liable for punishment. Such a notice ought to be exact and precise spelling out unambiguously the ingredients constituting the omission. A notice which does not satisfy this requirement would be invalid. Viewed from this perspective, we find that the impugned notice is blissfully vague and liable to be struck down on this ground alone. Learned Standing Counsel, however, made an attempt to save the impugned notice by taking the stand that on the facts and circumstances stated therein the notice should be deemed to charge the Petitioners for violation of Section 27(1) of the Act.

6. Section 38 of the Act stipulates offences and punishments therefore. Sub-section (1) of Section 38 provides that if any person who is under an obligation to file a statement under the Act fails, without reasonable cause or excuse, to file the statement within the time specified therefore he shall be punishable with

imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both. Sub-section (2) contemplates that if the person who, having been convicted under Sub-section (2) continues to fail, without reasonable cause or excuse, to file the statement, he shall be punishable with fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention. Filing of a statement, by any person who is under an obligation to file a statement under the Act, which he knows or has reasonable belief to be false, has been made punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both under Sub-section (3) of the Act. Sub-section (4) of the Act, which is general and residuary in nature, stipulates that if any person contravenes any of the provisions of the Act for which no penalty has been expressly provided for, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

7. In the instant case, the Petitioners are not alleged to have failed to file any statement which they were obliged to file under the Act. They are neither charged with the lack of filing a false statement nor the charge against the Petitioners is that there has been continued failure on their part to file any statement under the Act after their conviction. The only provision which can be pressed into service by the Respondent No. 2, if at all, is Sub-section (4) of Section 38 of the Act. According to this provision, contravention of any of the provisions of the Act for which no penalty has been expressly provided for is punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. Violation of the provisions of Sub-section (1) of Section 27 of the Act may fall within the purview of Sub-section (4) of Section 38 of the Act.

8. Undoubtedly, if the Petitioners are held to have violated Section 27(1) of the Act, as suggested by the learned Standing Counsel, they can validly be prosecuted u/s 38 of the Act. The question for consideration, therefore, is whether any of the Petitioners has violated the provisions of Section 27(1) of the Act. Section 27(1) reads thus:

27(1). Notwithstanding anything contained in any other law for the time being in force but subject to the provisions of Sub-section (3) of Section 5 and Sub-section (4) of Section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority. (N.B. Emphasis supplied).

A bare reading of the above provisions indicates that Sub-section (1) of Section 27 applies to a transferor and has no application to a transferee. Indisputably,

the Petitioner No. 2 is the transferee. She, therefore, cannot be held to be guilty of violation of Sub-section (1) of Section 27 of the Act in any manner. She has not been shown to be guilty of any other provision of the Act. In this view of the matter, the impugned notice threatening prosecution of the Petitioner No. 2 cannot be sustained.

9. Now we come to the impugned notice qua the Petitioner No. 1. Out of total area of the land measuring 377.13 Sq. metres transferred by the Petitioner No. 1 in favour of the Petitioner No. 2, indisputably, there was permission to transfer an area of about 294 Sq. metres. The charge of transfer without permission under Sub-section (1) of Section 27 is, thus, confined to an area of about 84 Sq. metres only. Over a decade back Hon'ble Supreme Court of India, while rendering its decision in the case of Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, declared the provisions of Section 27(1) of the Act to be constitutionally infirm and invalid in so far as it forbids transfer of any urban or unbanisable land with a building or a portion only of such building, which is within the ceiling area and firmly ruled that such property could be transferred without the constraints of Sub-section (1) of Section 27 of the Act. In view of this legal position the Petitioner No. 1 was not legally obliged to seek any permission u/s 27(1) of the Act for effecting the impugned transfer in favour of the Petitioner No. 2. Inescapable conclusion, therefore, is that the Petitioner No. 1 cannot be held guilty of violating the provisions of Section 27(1) of the Act. His prosecution u/s 38 of the Act is contrary to law. The impugned notice and proceedings emanating there from must perish.

10. For the foregoing reasons, the petition succeeds and is allowed. The impugned notice dated 2nd February, 1989 (Annexure-4 to the petition) and proceedings flowing there from are quashed. Parties to bear their own costs.