

(1979) 11 DEL CK 0044

In the Delhi High Court

Case No : Civil Writ Appeal No. 466 of 1979

Shanti Devi

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Citation : AIR 1980 Delhi 106 : (1980) 17 DLT 136 : (1980) RLR 402

Hon'ble Judges : Prakash Narain, J; Charanjit Talwar, J

Bench : Division Bench

Judgement

Prakash Narain, J.

(1) This petition under Article 226 of the Constitution of India highlights the desirability of social legislation to be brought about after careful consideration and not in a hurry. The social objective sought to be achieved by the Urban Land (Ceiling and Regulation) Act, 1976 may be laudable but its implementation has been found difficult. This is primarily because of the legislation has made.

(2) The petitioner is the owner of two plots of land each measuring about 224 sq. metres in Khasra No. 189/150, Garhi Extension, in the locality known as Sant Nagar in the Union Territory of Delhi. The Sant Nagar colony, it is common ground, is an unapproved colony where building activity is still not permissible. The petitioner also has a one-half share as an owner along with her husband in land measuring 526 sq. metres situated in Block "E", Street No. 8, Vasant Vihar, New Delhi. This plot bears No. 10 and a dwelling unit is constructed on it. The Vasant Vihar Colony is a colony approved for building activity by the Municipal Corporation of Delhi and the dwelling unit on the said plot No. 10 has been constructed after the building plans have been duly sanctioned by the Municipal Corporation of Delhi.

(3) The land situate in Sant Nagar has been duly notified for acquisition by issue of a notification u/s 4 of the Land Acquisition Act 1894 bearing No. F(15)/7/61-L&H(1) dated December 12, 1968.

(4) On June 1, 1978 the petitioner gave notice to the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the Act, of her intention to sell the said two plots which she owns in Sant Nagar. The Competent Authority by an order dated July 21, 1978 purported to have been passed an *ex parte*, declined to give permission to sell as prayed by the petitioner in her notice of 1.6.1978. The petitioner thereupon filed an appeal u/s 33 of the Act to the appellate authority. This appeal has also been dismissed by an order dated December 26, 1978. Both the Competent Authority and the Appellate Authority have relied on the provisions of Section 4(9) of the Act read with Section 2(q) thereof. Aggrieved by the the said orders the petitioner has filed the present petition and has prayed for issue of a writ of certiorari and/or mandamus quashing the orders of the Competent Authority and the Appellate Authority and a mandamus directing the respondents to grant the petitioner's application for permission to sell the said two plots in Sant Nagar.

(5) Rule nisi returnable before a Division Bench was issued by a Bench of this Court on April 11, 1979 as no return was filed nor appearance put in, another bench of this court, before whom the matter came up on July 31, 1979, directed that actual date notices be issued for September 10, 1979 to the respondents. These were duly issued but no appearance was put in nor a return filed. The petitioner moved C.M. 2804 of 1979 which came up before a Bench of this Court on September 24, 1979. By this application the petitioner prayed that she be allowed to urge some additional grounds in support of her writ petition. Notice was ordered and was accepted by the Standing Counsel for Delhi Administration, respondent No. 3. No reply was filed. Indeed, the matter had to be heard ultimately without there being any return filed on behalf of the respondents. We, however, had the benefit of hearing arguments on behalf of the respondents.

(6) The social objective sought to be achieved by Parliament is passing a legislation such as the Act is obviously to prevent concentration of wealth in a few hands. As the Preamble of the Act itself shows the Act proposes to put a ceiling on the ownership and possession of vacant urban land varying from 500 sq. metres to 2000 sq. metres, depending upon in which urban agglomeration land is situate. The ceiling sought to be imposed is on vacant land as distinguished from built-up land. Therefore, it is necessary first to be clear in one mind as to what is the meaning of the term "vacant land" for the purposes of the Act. Clause (q) of Section 2 of the Act defines vacant land and according to it the term means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated; (ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land

appurtenant to such building. There is a proviso to clause (q) but that is not relevant for our purposes. Section 3 of the Act lays down that except as otherwise provided in the Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land, in excess of the ceiling limit. Section 4 makes provision for the ceiling limit and it is not disputed that in the Union Territory of Delhi the ceiling limit for owning and possessing vacant land is 500 sq. metres. Sub-Section (9) of Section reads as under:

"WHEREA person holds vacant land and also holds any other land on which there is a building with a dwelling unit therein, the extent of such other land occupied by the building and the land appurtenant thereto shall also be taken into account in calculating the extent of vacant land held by such person."

Section 6 to Section 9 provide for filing and preparation of statement with regard to excess land held by persons. Section 10 gives the power of acquisition to the State Government to acquire excess land mentioned in the statement prepared u/s 9. Section 11 provides for compensation for acquisition of the excess land.

(7) In order to ensure proper working of the Act for the attainment of the social objective that was there before the Parliament, transfer and use of the urban property was also required to be regulated. This was sought to be done by the provisions of Chapter Iv of the Act. Section 26 postulates that no person holding vacant land within the ceiling limit shall transfer by way of sale, mortgage gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority. Sub Section (2) of Section 26 lays down that where a notice under Sub-Section (1) of S. 26 of intention to alienate has been given to the competent authority it will give first option to purchase such land on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 or any other corresponding law for the time being inforce. But if the option is not exercised within a period of 60 days from the date of receipt of the notice, it shall be presumed that the competent authority has no intention to purchase such land on behalf of the State Government and it shall be lawful for such person to transfer the land to whomsoever he may like. Provision is made that if the option to purchase is exercised by the competent authority the purchase shall be completed within the stipulated time by payment of a price to be calculated as provided in the Act. S. 27 deals with prohibition on transfer of urban property. It prohibits sale, mortgage, gift, lease etc. of any urban or urbanisable land with building, whether constructed before or after the commencement of the Act, or a portion only of such building for a period of 10 years from the commencement of the Act or from the date on which the building is constructed whichever is later, except with the previous permission in writing of the competent authority. Sub-section (2) of Section 27 postulates an application in writing to the competent authority where a transfer is intended of land as mentioned in Sub-section (1) of Section 27. Sub-Section (3) empowers the competent authority after making such enquiry as it deems fit by an order in writing to grant or refuse to grant the permission applied for. Sub-Section (5)

makes it clear that the prohibition on transfer of urban property postulated by S. 27 is with regard to land which has a building on it or of the building only or a portion of the building. It is further clarified that where the permission sought is for sale of the building or part of the building an option may be exercised on behalf of the State Government to purchase the same but if the option is not exercised within 60 days from the date of the receipt of the application it shall be lawful for the person making the application to transfer the land to whomsoever he may like.

(8) Section 33 provides that any person aggrieved by an order of the competent authority may appeal within 30 days to the appellate authority constituted under the Act and the order of the appellate authority shall be final. On a reading of the provisions of the Act it is apparent that except as in Section 27 there is no absolute power conferred on any authority to refuse permission to sell. If there is a refusal of permission to sell it has to be accompanied with an option to purchase on a price to be calculated in accordance with the provisions of the Act. If the option to purchase is not exercised by the competent authority within sixty days, then the impediment to sale stands removed. On the face of it, Therefore, the impugned orders of the Competent Authority and the Appellate Authority are illegal.

(9) Even otherwise on a pure construction of the provisions of Section 2(q) and Section 4(9) we are of the view that the orders of the Competent Authority and the Appellate Authority cannot be upheld. Sub-clause (i) of clause (q) of Section 2 has to be read as a whole to understand what is "vacant land". When it is said by the Legislature that the land on which construction of a building is permissible, what is obviously meant is not permissible at the time when the land is sought to be dealt with and not at any future time. Both the Competent Authority and the Appellate Authority have taken the view that construction activity in Sant Nagar, though not permissible in the absence of zonal plans prepared under the Delhi Development Act at the moment, may be permissible in future and so, the inability to construct is not a permanent disability. No doubt, there are a large number of unauthorised constructions around Delhi but when a law abiding citizen says that under the Act read with the provisions of the Delhi Development Act and the Delhi Municipal Corporation Act, today the land in Sant Nagar cannot be built upon, the Competent Authority and the Appellate Authority, who concede this proposition, should have not gone on expectations but on the actual state of things. Therefore, the land in Sant Nagar is not "vacant land" within the meaning of the Act. It was urged on behalf of the respondents that the Delhi Municipal Corporation Act only requires building plans to be sanctioned but there is no prohibition as such to construction in an unapproved colony. The provisions of the Delhi Development Act were referred to and it was urged that there is no prohibition to construct or at least no permanent prohibition to construct. There is an obvious fallacy in the contention. If a person raises unauthorised construction, be it unauthorised for violation of the requirements of the Municipal Corporation Act to get building plans sanctioned or

constructing without clear indication as to the land use in zonal plans, the person constructing the building is not only liable to have the building demolished but also suffer other penalties. To a law abiding citizen this would be a deterrent and for all intents and purposes the law operates qua him in such a way that he can rightly say that construction of a building is not permissible under the building regulations in force. This is the only intelligible way of construing the various enactments which operate. We, Therefore, hold that Sant Nagar land is land which falls within sub-clause (i) of clause (q) of Section 2 of the Act. If that be so, then the petitioner does not hold any excess vacant land.

(10) SUB-SECTION (9) of Section 4 has already been read earlier. It provides for adding up of various holdings, and built-up holding is to be added up to "vacant land". The area of the built-up holding cannot be added to any other type of land. This is obvious from a plain reading of the section. We have already held that the petitioner's plots in Sant Nagar are not vacant land within the meaning of the Act. Therefore, the Vasant Vihar plot could not be added to arrive at what has been held to be excess land. The exercise as done by the Competent Authority and the Appellate Authority, is, Therefore, wholly illegal and without jurisdiction. Furthermore, we find that the fact of the petitioner being only an owner of the property at Vasant Vihar has not been clearly kept in mind. Assuming that the Sant Nagar land can be added with the Vasant Vihar land, each plot of Sant Nagar had to be added up separately and after deleting 500 sq. metres only the balance was to be declared as excess land. To refuse permission for sale of both the plots in Sant Nagar, even if permission was at all necessary, is wholly unjustified, illegal and without jurisdiction.

(11) IT-IS pertinent to note that the land in Sant Nagar is under threat of acquisition by issue of Section 4 notification of the Land Acquisition Act, 1894. This is not denied by the respondents. In this view of the matter also building activity would not be permissible as no prudent person would construct on land already notified u/s 4 of the said Act because he will get no compensation for it unless the construction is made with the permission of the Land Acquisition Collector. For all intents and purposes the effect of Section 4 notification, Therefore, is that building activity is not permissible in Sant Nagar. This would also result in excluding the Sant Nagar plots from the total holding of the petitioner for the purposes of computing vacant land under the Act.

(12) Accordingly, we quash the orders of the Competent Authority and the Appellate Authority respectively dated July 21, 1978 and December 26, 1978 and direct the Competent Authority to issue an order according formal permission to the petitioner to sell the two plots of land in Sant Nagar. In the circumstances of the case there will be no order as to costs.