

(2003) 07 JH CK 0092
In the Jharkhand High Court
Case No : CWJC No. 61 of 1999 (R)

Sheo Shankar Lall and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(2), 8, 8(4)

Citation : (2003) 3 BLJR 2183 : (2004) 2 JCR 375

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : N.K. Prasad and P.K. Prasad, for the Appellant; Rupesh Kumar, J.C. to S.C. I, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard the parties.

2. The only reason why this Writ Application must succeed is because while deciding an objection filed by the Petitioners u/s 10(2), the Deputy Commissioner, Ranchi relied solely and wholly on the Order dated 10-03-1987 which was passed on the objection filed by the land holders u/s 8 of the Urban Land (Ceiling, and Regulation) Act, 1976.

3. In the instant case, Mr. N.K. Prasad, Senior Advocate appearing for the Petitioners has pointed out that while the land holders filed their objections, their specific case was that they were entitled to at least two Units in relation to exemption and those two Units were specifically pleaded by them in the statutory Form-I which has been brought on record through the Supplementary Affidavit filed in the instant case on 11-07-2003 (the relevant portion whereof is to be found at running page-76 of the instant Writ Application).

4. Through the aforementioned Form-I, the land holder claimed that he along with his wife Mrs. Pushpa Tuli along with two minor children i.e. Miss. Nutan Tulsi and Miss. Komal Tuli constituted one Unit of the family while Anil Kumar Tuli, his

major son would constitute another Unit comprising of himself. In this context, the definition of the word "Family" as given in Section 2(f) of the Urban Land (Ceiling and Regulation) Act, 1976 is as follows:--

"2 (f) "family", in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children.

Explanation:-- For the purpose of this clause, "minor" means a person who has not completed his or her age of eighteen years;".

5. Thus, upon bare perusal of the definition of the word "family", the aforementioned fact in relation to two Units are very clearly, demonstrated. However, for better appreciation, the content of Form-I is quoted below:--

Form 1

Sl. No. Name Date of Birth Age Remarks

(1) Ram Prakash Tuli 15-03-1919 57 yrs. 5 months "KARTA" of the UHF undivided Hindu Family

(2) Mrs. Tuli Pushpa 15-1-1926 50 yrs. 7 Months Wife of applicant.

(3) Anil Kumar Tuli 22-12-1950 25 yrs. 8 Months Son eldest son of the applicant

(4) Miss Rita Tuli 18-3-53 23 yrs. 5 Months Eldest daughter of the applicant

(5) Arun Tuli Kumar 7-7-57 19 yrs. 1 Month Younger son of the applicant

(6) Miss Nutan Tuli 7-6-1959 17 yrs. 2 Months Daughter of applicant

(7) Miss Komal Tuli 9-2-1965 11 yrs. 6 Months Youngest daughter of the applicant

6. According to Mr. Prasad, every landholder whose land is situated in an urban agglomeration falling within Category-D is entitled to 2000 Sq. M. per Unit. According to him, Ranchi falls under Category-D and therefore, every Unit/family is accordingly entitled to 2000 Sq. M. This is to be found in Section 4(1)(d). Section 4 reads as follows:--

"4. Ceiling limit.--(1) Subject to the other provisions of this Section, in the case of every person, the ceiling limit shall be, :--

(a) where the vacant land is situated in an urban agglomeration falling within category A specified in Schedule I, five hundred square metres;

(b) where such land is situated in an urban agglomeration falling within category B specified in Schedule B, one thousand square metres;

(c) where such land is situated in an urban agglomeration falling within category C specified in Schedule I, one thousand five hundred square metres;

(d) where such land is situated in an urban agglomeration falling within category

D specified in Schedule I, two thousand square metres."

7. The aforementioned Section 4 has to be read with Schedule-I and upon reading Schedule-I, it is apparent that Ranchi has been shown as Category-D.

8. Apart from the aforesaid, the definition of the "Vacant Land" is to be found in Section 2(q) and the relevant portion thereof specifies that the vacant land as per Section 2(q)(ii) does not include land occupied by any building or the land appurtenant to such building. For better appreciation, Section 2(q) is also quoted below:--

"2 (q) "vacant land" 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:--

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purpose of this clause".

(Underlining by Court).

9. The words "land appurtenant" has been defined in Section 2(g) and it means that in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square metres and in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land occupied by such building. Additionally, from reading Section 2(g)(ii), it is further apparent that such land shall include an additional extent not exceeding five hundred square metre of land if the building was constructed prior to appointed day i.e. 01-04-1976. Section 2(g) reads as follows:--

"2 (g) "land appurtenant", in relation to any building, means,--

(i) in an area where there are building-regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of

such building, which in no case shall exceed five hundred square metres; or

(ii) in an area where there are no building regulations, an extent of five hundred square meters contiguous to the land occupied by such building,

and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in Sub-clause (i) or the extent referred to in Sub-clause (ii), as the case may be;

10. Mr. Prasad, therefore, argue that while dealing with the land holder's objection u/s 8, the concerned authority was required to deal with these issues and then come to a conclusion but instead of doing so, the Deputy Commissioner, Ranchi by his Order dated 10-03-1987 did not take these into consideration and instead straight away came to a conclusion that an area measuring 3317.24 Square Meters of land was held as surplus by the land holders. This order i.e. the order dated 10-03-1987 has been brought on record through the Supplementary Affidavit filed by the Petitioner vide Annexure-8 thereto.

11. There appears to be sufficient substance and force in what Mr. Prasad has argued. From the order dated 10-03-1987, it appears that the Deputy Commissioner, Ranchi while dealing with the objection u/s 8(4) filed by the land holders did not at all take into consideration the aforesaid points as has been argued by Mr. Prasad.

12. Consequently, while dealing with the objection of the Petitioners u/s 10(2), the Deputy Commissioner relying upon the aforementioned Order dated 10-03-1987 must, therefore, be said to have acted with a complete non-application of mind. The appellate order which is the other order impugned in this Writ Application also proceeded to consider what was recorded in the Order dated 10-03-1987 i.e. to the extent of holding of the land in surplus to the extent of 3317.23 Sq. M. It appears, therefore, that both the authorities have not at all applied their mind in the facts and circumstances of this case.

13. Consequently, both the impugned orders i.e. Orders dated 19-02-1992/24-02-1992 passed by the Deputy Commissioner, Ranchi in ULC Case No. 70/76 as contained at Annexure-2 and the Order dated 20-10-1993 passed by the Commissioner, South Chhotanagpur, Ranchi in Urban Land Ceiling Appeal No. 373/ 93 are hereby set aside and quashed and the matter is remanded to the competent authority for a fresh consideration in accordance with law after giving opportunity to the Petitioners. Since this matter has been pending for such a long time, it will be only appropriate to direct the competent authority to consider and dispose off the matter as expeditiously as possible but not beyond the period of six months from the date of receipt of a copy of this order. It goes without saying that the competent authority must ensure that all the parties are given adequate opportunity of hearing.

With the aforesaid observations and directions, this Writ Petition is allowed.
There shall however be no order as to costs.