
(1998) 09 AHC CK 0151
In the Allahabad High Court
Case No : C.M.W.P. No. 25105 of 1998

Shibban

APPELLANT

Vs

Competent Authority, Urban Ceiling Town Hall, Meerut and
others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(5), 12, 30

Citation : (1998) 3 AWC 2117

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : O.P. Agarwal and R. Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioner seeks writ of certiorari quashing the notice dated 31.3.1998 issued by the Competent Authority. Urban Ceiling, Meerut. asking the petitioner to deliver the possession of the land which has been declared as excess vacant land.

2. The facts in brief are that a notice was issued to the petitioner by the competent authority under sub-section (3) of Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"), indicating that the petitioner has excess vacant land. The petitioner filed objection stating that the disputed land was agricultural land. The competent authority rejected the objection vide order dated 5.11.1983 declaring 10850. 77 sq. mtrs. surplus land. The petitioner preferred an appeal before the District Judge u/s 33 of the Act. The District Judge dismissed the appeal on 5.11.1983. It was found that in the Master Plan, plot Nos. 246 and 354 were shown for residential purpose and other non-agricultural purpose. The petitioner filed Writ Petition No. 15190 of 1988. The writ petition was dismissed on 18th September, 1995.

3. The State Government issued a notification under sub-section (1) of Section 10 of the Act intimating that the vacant land held in excess with the petitioner is sought to be acquired. The petitioner did not file any objection to such notification. Another notification was published in the Gazette on 8.10.1988 under sub-section (3) of Section 10 of the Act declaring 10850.77 sq. mtrs. as excess vacant land of the petitioner. The acquisition of the excess vacant land became final. The petitioner was issued a notice on 30.3.1988 under sub-section (5) of Section 10 of the Act by the Competent Authority asking the petitioner to deliver possession of the land in question. The petitioner has challenged this notice in the present writ petition.

4. Learned counsel for the petitioner contended that the petitioner is owner of plot Nos. 246 and 354 situated in village Khadauli, Tehsil and district Meerut. These plots are agricultural land and cannot be acquired under subsection (3) of Section 10 of the Act. The petitioner had raised this very question before the competent authority. It was held that the land in dispute was shown for residential purpose in the Master Plan. This order was affirmed by the District Judge in appeal and by the High Court in the writ petition filed by the petitioner. It is contended that these decisions are erroneous. The Master Plan came into existence after the commencement of the Act, He has placed reliance upon Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], , wherein it was held that if the land has been specified in the Master Plan existing at the time of commencement of the Act for a purpose other than agricultural, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of Explanation (c) and if the Sand is not specified in a Master Plan prepared after the commencement of the Act. the land shall be treated for the purpose for which it was being used at the time of commencement of the Act.

5. The decision of the appellate authority under sub-section (3) of Section 33 of the Act is treated as final. The petitioner had preferred an appeal against the order of the competent authority before the appellate authority u/s 33 of the Act. This order became final. The petitioner approached this Court under Article 226 of the Constitution of India. The writ petition was dismissed on 18.9.1995. After the competent authority decides the matter which is subject-matter in appeal, the final statement is issued u/s 9 of the Act. The draft statement is prepared under sub-section (4) of Section 8 of the Act. This draft statement is to be altered in accordance with the final decision taken by the competent authority subject to any decision in appeal or other appropriate authority/Court. Once the statement has been prepared u/s 9, the Notification is published in the Gazette under sub-section (1) of Section 10 of the Act notifying that the excess vacant land is to be acquired by the State Government. If any interested person claims right over the land, the competent authority is to determine the nature and extent of such claims. In case no objection is filed by any person claiming interest in the properly, the notification is published in the Official Gazette under sub-section (3) of Section 10 of the Act declaring that the excess vacant land, referred to in the notification published under sub-section (1) of Section 10 shall

with effect from such date as may be specified in the declaration may be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified in the notification. If any person is in possession of such excess vacant land, the competent authority may by notice in writing order such person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf under sub-section (5) of Section 10 of the Act.

6. The person to whom a notice has been given for delivery of possession cannot raise the same objection which he had taken in his objection in pursuance of the notice Issued to him under sub-section (3) of Section 8 of the Act. The petitioner having raised the objection before the competent authority that the land in dispute is an agricultural land and should not be taken into consideration as excess vacant land was repelled by the competent authority. The decision has been affirmed by this Court. The correctness of the decision cannot now be challenged by filing a second writ petition when he has received the notice under sub-section (5) of Section 10 of the Act.

7. Learned counsel for the petitioner has referred to a letter of the Secretary deciding the revision of one Kishan Pal Singh and others in pursuance of the order of this Court in Writ Petition No. 39574 of 1994, wherein following the decision of the Supreme Court in Smt. Atia Mohammadi Begum [supra]. It was held that the land used is to be taken into consideration as it was on the date of commencement of the Act in case the Master Plan was not in existence on such date. This order was passed in pursuance of the direction given by this Court in the said writ petition. The order will not affect the decision passed in Writ Petition No. 15190 of 1988, which was dismissed by this Court on 18th September, 1995. It is contended by learned counsel for the petitioner that the State Government should examine the matter afresh u/s 34 of the Act. This section is applicable when no appeal has been preferred by the person concerned u/s 12 or Section 30 or Section 33 of the Act. The appeal having been filed against the order of the competent authority and the said order having been affirmed in appeal, the State Government has no power to revise the decision of the competent authority u/s 34 of the Act.

8. in view of the above discussion, the writ petition is dismissed.