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(2007) 04 MP CK 0067

In the Madhya Pradesh High Court

Smt. Fatema Bai and Others — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 11, 12, 13, 14

Citation : (2007) 3 MPHT 513 : (2008) 2 MPLJ 147

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Judgement

Abhay M. Naik, J.

The land in question in area 21 acres comprised in Survey No. 41/2 situated at Village Rausalli, Tehsil Huzur, District Bhopal was agreed to be purchased by respondent No. 2 for a consideration of Rs. 2,20,500/-. An agreement was duly entered into which is on record as Annexure P-1. The vendor at the time of agreement received a sum of Rs. 42,000/- on 4-3-1977. Since the subject land was in excess of the land prescribed under the Urban Land (Ceiling and Regulation) Act, 1976, a provision was made in the agreement (Annexure P-I) that the vendor would apply to the Collector under the provisions of the aforesaid Act to enable him to sell the land in question to the petitioner. Accordingly, an application u/s 20(1) was made for seeking permission from the Competent Authority for sale of the subject land to the M.P. Housing Board for the consideration mentioned in the agreement. This application was duly entertained with the result that the respondent No. 1 granted permission vide order dated 13-1-2000 (Annexure P-2) subject to the condition that the vendor would not have a right to receive consideration in excess of Rs. 2 lacs.

Shri Imtiyaz Hussain, learned Counsel appearing for the petitioner contended that the State Government has no power or jurisdiction to put a ceiling on money which the petitioner would be entitled as consideration of the property in question.

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Shri Vinod Mehta, learned Govt. Advocate appearing for respondent Nos. 1 and 3 has opposed the writ petition and has further submitted that the impugned order contained in Annexure P-2 is well justified and the petitioner has been rightly held to be entitled to money not exceeding Rs. 2 lacs.

It is an admitted position that the agreement contained in Annexure P-I was executed for a consideration of Rs. 2,20,500/-. It is further admitted that the petitioner is already in receipt of Rs. 1,98,450/- in lieu of consideration of the land in question.

Relying upon the decision of Hon''ble Supreme Court of India in the case of T.R. Thandur Vs. Union of India (UOI) and Others, , Shri Imtiyaz Husain, learned Counsel for the petitioner has contended that non-obstante clause contained in Section 20 excludes the applicability of preceding provisions and in view of the same the criteria prescribed u/s 11 for compensation cannot be made applicable in the present case.

Per contra, Shri Vinod Mehta, learned Govt. Advocate, it has been contended that the word "subject to such conditions" occurring in Sub-section (1) of Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 would obviously empower the State Government to impose the condition about ceiling on the sale value.

For the purpose of this writ petition, I am reproducing below Sub-section (6) of Section 11 and Section 20 of the said Act:

Section 11(6) Notwithstanding anything contained in Sub-section (1) or Sub-section (5), the amount payable under either of the said sub-sections shall, in no case, exceed two lakhs of rupees.

Section 20. Power to exempt.-

(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,-

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

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Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) ....

From perusal of Sub-section (6) of Section 11, it is clear that irrespective of contents of Sub-section (1) and Sub-section (5) of Section 11, a ceiling has been put on the amount payable under either of the aforesaid Sub-sections to Rs. 2 lacs. However, Section 20 of the Act begins with a non-obstante Clause which would clearly mean that the applicability of Section 11(6) of the Act stood excluded and the criteria prescribed thereunder for putting an upper ceiling on the price of the land cannot be invoked by the State Government and no condition about upper ceiling on the price can be imposed legally while granting exemption u/s 20. Putting such a condition would clearly amount to making violence to the non-obstante clause contained in Section 20. My this view is strengthened by the decision in the case of T.R. Thandur (supra), wherein it has been held:

We would first Construe Section 20 of the Act to ascertain its meaning. It is obvious that there being no question of the constitutional validity of the provision, an attempt has to be made to ascertain the true meaning of every part of Section 20. Section 20 contains the power to exempt. It has two sub-sections. Sub-section (1) begins with the non-obstante clause "Notwithstanding anything contained in any of the foregoing provisions of this Chapter", after which occur Clauses (a) and (b) therein which provide for exemption, "subject to such condition, if any, as may be specified in the order", of "such vacant land from the provisions of this Chapter". The non-obstante clause clearly indicates that Section 20 overrides the foregoing provisions of Chapter III, that is, Sections 3 to 19 of the Act. This is reaffirmed in Clauses (a) and (b) wherein the concluding part in each is "Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter". The effect of the non-obstante clause at the beginning of Sub-section (1) and the concluding words in Clauses (a) and (b) undoubtedly is that on exemption being granted subject to the conditions specified in the order granting the exemption, such vacant land is exempted from the provisions of Chapter III which contains Sections 3 to 24, in spite, of the provisions in Sections 3 to 19. There is no ambiguity in this behalf in Sub-section (1). The plain language of the provision leaves no room for any ambiguity. Thus, if the logical outcome of the exemption granted subject to the specified conditions, is to lift the restriction on transfer of the exempted land, then it has to be accepted. However, the imposition of conditions attached to the exemption and the power of withdrawal of the exemption under Sub-section (2) is intended to control the transfer in such cases. It has to be seen whether this plain construction of Section 20 must be abandoned on any settled rule of construction.

The condition precedent for granting exemption under Clause (a) or Clause (b) must, however, exist but on the exemption being granted thereunder, the logical

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consequence of the exemption as indicated must follow. It must follow that if the restriction on transfer of the vacant land in excess of the ceiling limit is only because of any provision contained in Chapter III in Sections 3 to 24, then the effect of the Exemption u/s 20 is to lift even that embargo. Sub-section (2) gives to the State Government power to withdraw the exemption under Clause (a) or Clause (b) of Sub-section (1) if it is satisfied in the manner indicated that any of the conditions subject to which the exemption has been granted is not complied with. The power of withdrawal of exemption in Sub-section (2) is to ensure full compliance of the conditions subject to which the exemption is granted. The restriction on transfer may be imposed by such a condition. In that event, the restriction is by virtue of the condition imposed and not because of any statutory prohibition in Chapter III of the Act.

Section 3 contains the restriction against holding any land in excess of the ceiling limit prescribed in Section 4, "except as otherwise provided in this Act". Section 20 is a provision in the Act which provides otherwise. It also begins with a non-obstante clause and, therefore, the restriction in Section 3 is subject to Section 20. Section 5 relates to transfer of vacant land in excess of the ceiling limit. Sub-section (3) of the Section 5 contains the prohibition against transfer of the excess vacant land indicating that any such transfer made in contravention of the provision shall be deemed to be null and void. For the reason stated, because of the provision made in Section 20, an order of exemption made u/s 20 exempts the vacant land in excess of the ceiling limit from this restriction of transfer because the order of exemption exempts the excess vacant land from the provisions of Chapter III. Chapter IV containing Sections 25 to 30 relates to "Regulation of Transfer and Use of Urban Property" and is not attracted to determine the meaning of Section 20 and the consequence of the exemption granted thereunder to the excess vacant lands. Section 10 relates to acquisition of vacant land in excess of ceiling limit. Sub-section (4) therein prohibits transfer of any excess vacant land during the period specified therein. Section 5(3) and Section 10(4) are to be read together as they relate to restrictions on transfer of vacant land in excess of the ceiling limit. However, both these provisions cease to apply on exemption being granted to vacant land in excess of the ceiling limit u/s 20 of the Act. The restriction, if any, on transfer of the exempted excess vacant land has now to be examined with reference to Section 20 itself.

Thus, in view of the aforesaid, I am-of the considered opinion that the ceiling on price imposed by the respondent No. 1 vide Annexure P-2 is totally illegal and arbitrary and the same is therefore quashed. Consequently, respondent No. 2 is hereby directed to make the payment of the of the balance money as per the agreement of sale contained in Annexure P-1 at the time of execution of the registered purchase deed in its favour by the petitioners who are the legal heirs of the proposed vendor described in Annexure P-l. Since, respondent No. 2 is in possession of the subject property since 1977, it is further held that the petitioners would be entitled to simple interest @ 6% per annum on the defaulted amount from the date of default until payment. No order as to costs.

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