

(1981) 11 AHC CK 0007
In the Allahabad High Court
Case No : Civil Misc. Writ No. 8262 of 1978

State of U.P. and Another	Vs	APPELLANT
Salvation Army and Another		RESPONDENT

Date of Decision : 13-11-1981

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 19, 19(1), 8

Citation : (1981) AWC 827

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : R.N. Bhalla and G.N. Gohani, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition has been filed by the State of U.P. against the judgment of Sri Murli Dhar, District Judge, Lucknow dated 16-5-1978 in M.C.A. No. 98 of 1977 The Salvation Army, Bareilly v. State of U.P.

2. The competent authority through its judgment dated 21-4-1977 had declared 18055"31 Sq. meter vacant land held and possessed by opposite party No. 1 in the present writ petition in a proceeding u/s 8 of the Urban Land (Ceiling and Regulation) Act, 1976. Aggrieved by the judgment of the Competent Authority opposite party No. 1 had preferred an appeal which was decided through the impugned judgment.

3. The learned Counsel for the contesting opposite party No. 1 in the present writ petition had raised a preliminary objection that the writ petition was filed on 23-9-1978 against the impugned order dated 16-5-1978, hence it was much beyond 90 days and should be dismissed on that ground alone.

4. The learned Counsel for the Petitioners suggested that in filing the present writ petition the Petitioners needed sanction of the authority for incurring expenses etc. hence some time was spent in obtaining necessary instructions and the delay is not such as may stand in the way of the Petitioners and should

be condoned in the circumstances of the present case. It was also stressed that the writ petition was admitted by a Division Bench on 22-11-1978, hence the writ petition should not be dismissed on the ground of delay.

5. I have considered the contentions raised on behalf of the parties. Since the Petitioners are State of U.P. and the Competent Authority which needed sanction and necessary expenses for filing the present writ petition and ordinarily the writ petition could be filed by the end of August, 1978, hence the delay of three weeks in preferring the writ petition is not such that the writ petition should be dismissed on the ground of limitation or laches. I am satisfied that the delay in filing the present writ petition is not such as may stand as a bar in the hearing of the writ petition on merits. More than three weeks were spent in obtaining sanction and money for filing this writ petition (see paragraph 26 of the writ petition.)

6. The learned Counsel for the Petitioners has contended before me that the appellate authority has patently erred in construing the provisions of Section 19 sub-clause (1)(vii) of the above mentioned Act. According to the learned Counsel for the Petitioners the contesting opposite party was not a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other corresponding law for the time being in force, hence the appellate authority acted illegally in applying the provisions of Section 19 sub-clause (1)(vii) of the above mentioned Act to the facts of the present case.

7. Secondly he has contended that according to the provisions of Section 19(1)(iv) it was incumbent upon the contesting opposite party in the present writ petition to prove that the vacant land was in use for public charitable and religious purposes. In the present case according to the learned Counsel for the Petitioners there was no evidence and that the appellate authority did not record any categorical finding on the aforesaid point, hence its judgment should be quashed.

8. The learned Counsel for the contesting opposite party has tried to support the impugned judgment on the reasonings given in it. He has emphasised that opposite party No. 1 was registered under the Bombay Trust Act and under the provisions of Indian Companies Act, hence the appellate authority was fully justified in exempting the disputed land of opposite party No. 1 under the provisions of Section 19 sub-clause (1)(vii) of the above mentioned Act. He has also emphasised that in view of certificate of registration (Annexure "A-1" attached with the counter affidavit) and the Memorandum of Association (Annexure A-3 attached with the counter-affidavit) and also in view of the licence (Annexure A-2 attached with the counter-affidavit) there is enough evidence on the record to prove that the disputed land was used for religious and charitable purposes and the provisions of sub-clauses (1)(iv) and (vii) of Section 19 of the above mentioned Act were fully attracted to the facts and circumstances of the present case.

9. According to the learned Counsel for the contesting opposite party the registration of opposite party No. 1 under the Indian Companies Act was enough to attract the provisions of sub-section (1)(vii) of Section 19 of the Act.

10. It would be proper to quote the provisions of Section 19 sub-clause (1)(vii) of the Urban Land (Ceiling and Regulation) Act which reads as below :

Subject to the provisions of sub-section (2), nothing in this chapter shall apply to any vacant land held by any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other corresponding law for the time being in force and used for any non-profit and non-commercial purpose".

11. According to the learned Counsel for the Petitioners corresponding law" would be Societies Registration Act passed by different States in this country, such as Andhra Pradesh (Telengana Area) Public Societies Registration Act, 1950, Madhya Pradesh Societies Registrkaran Adhiniyam, 1973; Mysore Societies Registration Act, 1960 ; Rajasthan Societies Registration Act, 1958 ; Tamil Nadu Societies Registration Act, 1975 ; West Bengal Societies Registration Act, 1961, and so on, and not under the Indian Companies Act. I think that the contention raised on behalf of the Petitioners has force. The appellate authority has patently erred in making the following observation :

..... The memorandum and Articles of Association on record also bring out the fact which is indeed well known that this is mainly religious and charitable institution which is obviously covered by Section 19 clause (vii) which on its wordings would cover even an institution registered under the Indian Companies Act, 1913".

12. The term corresponding law" in Section 19 sub-clause (1)(vii) of the above mentioned Act cannot be stretched to include Indian Companies Act. To my mind the term corresponding law" would include only Societies Registration Acts passed by different States. The registration under the Indian Companies Act is not contemplated by the provisions of Section 19 sub-clause (1)(vii) of the above mentioned Ceiling Act, hence there is an error apparent on the face of the record in the impugned judgment so far as it has relied upon the provisions of Section 19 sub-clause (1)(vii) to give benefit to the contesting opposite party No. 1 in the present writ petition.

13. Section 19 sub-clause (1)(iv) of the above Ceiling Act reads as below : Subject to the provisions of sub-section (2), nothing in this Chapter shall apply to any vacant land held by any public charitable or religious trust (including waqf) and required and used for any public charitable or religious purpose :

Provided that the exemption under this clause shall apply only so long as such land continues to be required and used for such purposes by such trust.

14. The learned Counsel for the Petitioners has contended that there was no evidence on record to apply the provisions of Section 19 sub-clause (1)(iv) quoted above to the facts and circumstances of the present case, and the

appellate authority without applying its mind to the evidence on record and without recording any categorical finding that the disputed land was in use for public charitable and religious purposes it has given benefit of the provisions of Section 19 sub-clause (1)(iv) to the contesting opposite party in the present case.

15. The learned Counsel for the contesting opposite party has contended in this regard that no such attack in the writ petition has been made and that in view of the documents on record it was fully established that there was evidence to the effect that the disputed land was in use for public and charitable purposes.

16. The perusal of the impugned judgment does not indicate that the appellate authority has recorded any categorical finding to the effect that on the materials on record the disputed land was in use for public and charitable purposes.

17. In the above provisions of Section 19 sub-clause (1)(iv) of the above Ceiling Act one of the essential ingredients is that the vacant land held by any public charitable or religious trust should also be in use by the Trust for religious and charitable purposes unless there is a finding on the above point by the appellate authority it could not give benefit to opposite party No. 1 in the present writ petition under sub-clause (1)(iv) of Section 19 of the Act. The appellate authority has given benefit to opposite party No. 1 u/s 19 sub-clause (1)(iv) of the Act in the following words :

... Differing from the Competent Authority I would hold that the Appellant is exempted from the provisions of the Act u/s 19(iv).

18. The above observation is too cryptic and does not disclose that the appellate authority had addressed itself to the ingredients of the provisions of Section 19(iv) of the above mentioned Ceiling Act. In my opinion the appellate authority has not approached the problem from correct angle. The question of fact that the vacant land held by public charitable or religious trust should also be in use for such purposes on the date when the above Ceiling Act was applied on the disputed land should be examined and categorically determined by the appellate authority. I think that the appellate authority has failed to record necessary finding in this regard, hence its judgment cannot be sustained.

19. In the result, the writ petition succeeds and the impugned judgment of the appellate authority dated 16-5-78 in M.C.A. No. 98 of 1911 The Salvation Army Bareilly v. State of U.P. is hereby quashed and the appellate authority is directed to decide the claim of the Salvation Army, Bareilly afresh in the light of the observations made by me above and strictly in accordance with law. Parties are directed to bear their own costs.