

(1981) 10 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8277 of 1979

State of U.P. and Another

APPELLANT

Vs

Srimati Bittan Rani and Others

RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 27, 4, 4(11), 5(3)
Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 27, 4, 4(11), 5(3)
Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 27, 4, 4(11), 5(3)

Citation : (1982) AWC 72

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : V.D. Singh, for the Appellant; K.G. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—for Respondents.

M. P. Mehrotra, J. : This petition under Article 226 of the Constitution of India arises out of the proceedings under the Urban Land (Ceiling and Regulation) Act. There are two Petitioners State of Uttar Pradesh and the Competent Authority, Urban Land Ceiling, Allahabad.

2. The facts, in brief, are these. Respondents Nos. 1 and 2 applied for permission u/s 27 of the Act to sell House No. 1,000 Khushal Parbat, Allahabad measuring 30 sq. meters, in favour of one Sri Niranjana Lal. This application was rejected by the Competent Authority by his order dated 8-2-79, a true copy of which is Annexure I to the petition. Thereafter Respondents Nos. 1 and 2 filed an appeal before the appellate authority and the same was allowed by the said authority by its order dated 16th July, 1979, a true copy of which is Annexure II to the writ petition.

3. Feeling aggrieved, the Petitioners have now come up in the instant petition and in support thereof, I have heard the learned Standing Counsel. Sri K. G. Srivastava, learned Counsel for the opposite party, has made his submissions. In this case it should be seen that the permission was refused by the Competent Authority on the ground that the case was covered u/s 5(3) of the Act. It seems that the statement u/s 6(1) has been filed by Respondents Nos. 1 and 2 and the same is under consideration. It is admitted that no notification has been published u/s 10(1) of the Act. Therefore, apparently, the case would look to be governed by Section 5(3) of the Act. However, it should be borne in mind that the said Respondents were seeking permission to sell a building only and such building can, in no case, be declared as excess vacant land under the Ceiling Act in view of the provisions contained in Sub-section (ii) of Section 4 of the said Act. Section 5(3) refers to transfer of vacant land in excess of the ceiling limit. Obviously, Section 5(3) cannot apply to the case of a building simpliciter whose site, in no case can be declared as excess vacant land in view of the provision contained in Section 4(11). In this view of the matter, the Competent Authority was wrong in thinking that Section 5(3) of the Act was attracted to this case. It is made clear that in case the Respondent Nos. 1 and 2 are ultimately found to have no excess vacant land immediately before the commencement of this Act in the proceedings under Sections 8 and 9 of the Act, then, in view of the Supreme Court pronouncement in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, it will have to be held that no permission was really needed. However, in case it is ultimately found that the said Respondents did hold any excess vacant land in the aforesaid proceedings under Sections 8 and 9 of the Act, then the permission which has been granted by the appellate authority by the impugned order shall be deemed to be a good and valid permission u/s 27 of the Act.

4. This petition is accordingly dismissed, but there will be no order as to costs.