

(1982) 04 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3435 of 1980

State of U.P. and Others

APPELLANT

Vs

Smt. Krishna Murti and Others

RESPONDENT

Date of Decision : 14-04-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 27, 27(2), 4, 6

Citation : (1982) AWC 392

Hon'ble Judges : A. Banerji, J

Bench : Single Bench

Advocate : V.B. Upadhya, for the Appellant; P.D. Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

A. Banerji, J.—This writ petition is filed by the State and is directed against an order passed by the District Judge, Meerut in Urban Land Ceiling Appeal No. 103 of 1977 dated 30th January, 1980. The appeal was allowed and the Competent Authority was directed to take steps u/s 27 of the Urban (Land Ceiling and Regulation) Act, 1976 within sixty days from the date of order.

2. Smt. Krishna Murti, Respondent No. 1, and six of her children arrayed as Respondents 2 to 7 made an application u/s 27(2) of the Act to the effect that they wanted to sell their house situated on plot No. 44-A Saket, Meerut in favour of one Shailendra Kumar Tyagi and Satyendra Kumar Tyagi. The Prescribed Authority found that Smt. Krishna Murti had a lease dated 8-3-1965 for 2,000 square yards of land in plot No. 44-A Saket, Meerut in her favour executed by Meerut Housing Society. He also held that her sons and daughters had no interest in the property and she had land in excess of the ceiling area. However, as she had not submitted a statement u/s 6 of the Act, the Competent Authority therefore decided to issue a notice u/s 6(2) of the Act to her and indicated that permission could be given only after the determination of the surplus land.

3. Respondents 1 to 7 filed an appeal before the Appellate Authority. The appeal was heard by the District Judge who held that Smt. Krishna Murti had only one plot of land in her name. It measured 1975.04 square metres of land over which the construed area amounted to only 57.78 square metres. The construction had been made in accordance with sanctioned plan although it appeared that the entire sanctioned plan had not been built upon. The District Judge further held that the Respondents would be entitled to a total area of 57.78 square metres (as the built to total) plus 500 square metres as land appurtenant thereto besides 1500 square metres of vacant land. If the total of the first two figures were deducted from the total area held by her, the balance would be less than the ceiling limit permissible in the urban agglomeration of Meerut. The controversy that Smt. Krishna Murti held another plot in 901 Brahmpuri, Meerut City was negatived. The contention that 57.78 square metres of land was built upon after the coming in force of the Act was also negatived. The Appellate Authority held that she had no surplus land. Consequently the appeal was allowed and the Competent Authority was entitled to take necessary action u/s 27 of the Act within sixty days.

4. In this writ petition learned Standing Counsel argued that the Respondent Mo. 1 possessed land in excess of the ceiling limit in Meerut and as such she was not entitled to the grant of any permission for the transfer or sale of the land in dispute. It was further contended that she would not be entitled to the appurtenant land of 500 square metres because the construction had been raised after the coming in force of the Act. It is also argued that the quantum of appurtenant land varied according to the extent and nature of the built up area. Having heard the learned Counsel for the parties and perused the material on record, I find no merits in any of the contentions raised. The reasons are as follows.

5. Meerut Urban Agglomeration belongs to category C in Schedule I to the Act, The ceiling limit for vacant land in category C is 1500 square metres vide Section 4. The Petitioner No. 1 had one plot of land 44-A Saket, Meerut measuring 1975.04 square metres and the constructed area measured 57.78 square metres. It has come in evidence that the land originally stood in the name of the husband of Smt. Krishna Murti and in 1961 the building plan of the house was passed by the authority concerned and the finding of the Appellate Authority is that only this much area had been built upon in the year 1961. According to Section 2(q)(ii) of the Act "vacant land" does not include the land which has been built upon with the approval of the appropriate authority. Such land would not be vacant land. Further, the land appurtenant to such building would also not be vacant land. The words "land appurtenant" has been defined in Section 2(g) of the Act. This includes land which is required to be kept as open space for the enjoyment of such building under the Building Regulations prevalent in the area but not exceeding 500 square metres in the case of any building constructed before the appointed date with a dwelling unit therein and additional extent not exceeding 500 square metres of land, if any, contiguous to the minimum extent

referred to above. Thus, in a case where there is a building with a dwelling unit constructed over the land with requisite permission from the appropriate authority prior to the appointed date the land contiguous to that building to a maximum extent of 500 square metres of vacant land would be appurtenant land. It is imperative in such a case that there must be a building constructed before the appointed date with a dwelling unit therein. In other words, if there is a dwelling unit then it will qualify 500 square metres of appurtenant land as contiguous to the building. In the present case the existence of a building according to the sanctioned plan is established. It also shows that there is a dwelling unit. Consequently, the Respondent No. 1 would be entitled to appurtenant land contiguous to the building not exceeding 500 square metres of land.

6. The contention of the learned Counsel that if the entire sanctioned area had not been built up and a smaller area had been constructed the Respondent No. 1 would not be entitled to the full extent of 500 square metres of land as appurtenant land. His contention was that this ought to be a lessor area. A perusal of Section 2(g) does not indicate anywhere that this area is to be calculated at a variable scale and there is nothing in the provisions to indicate that it would go on increasing or decreasing according to the extent of the built up area. The maximum area permissible as appurtenant land is 500 square metres. It is available only if there is a dwelling unit constructed upon the land in accordance with the sanctioned plan. The fact that there is a sanctioned plan and that a part of the sanctioned plan was built up before the appointed date fulfils the requirement of the provisions of Section 2(g) and the Respondent No. 1 would be entitled to a maximum of 500 square metres as appurtenant land.

7. The contention that the Respondent No. 1 had another land or interest in plot No. 901 Brahmpuri, Meerut has been negated by the Appellate Authority. This is a question of fact. This Court in exercise of its powers under Article 226 of the Constitution will not go into questions of fact. In any event no manifest error of law could be pointed out in the finding arrived at by the Appellate Authority in this regard.

8. In the result, therefore, the Respondent No. 1 would be entitled to an area of 57.78 square metres as built up plus 510 square metres of land as appurtenant land. The total of these two items is 567.78 square metres. Deducting 557.58 square metres, the balance area of the Petitioner is only 10.20 square metres. Consequently, the Respondent No. 1 held less vacant land than the ceiling limit. As such the Respondent No. 1 is entitled to the permission as prayed for by her. Thus, the view taken by the Appellate Authority is in accordance with law and calls for no interference.

9. The writ petition fails and is accordingly dismissed with costs.