
(1988) 03 AHC CK 0042

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 6329 and 6344 of 1983

State of U.P.

APPELLANT

Vs

Manoj Kumar Mukherji and Others

RESPONDENT

Date of Decision : 14-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 39

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 26, 4(9), 8(3)

Citation : (1988) 1 AWC 718 : (1989) RD 187

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : S.P. Pandey, B.S. Nischal, for the Appellant; V.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Dubey, J.—In these writ petitions, the State of Uttar Pradesh has questioned the correctness of the orders dated 28-2-1983 of the District Judge, Allahabad passed in two connected ceiling appeals.

2. The facts of the case are that Respondents Nos. 1, 2 and predecessor-in-interest of Respondent Nos. 3 to 5 were served with a notice u/s 8(3) of the Urban Land (Ceiling and Regulation) Act (hereinafter referred to as the Act) showing 4104.61 square metres land of their bungalow No. 23, Thornhill Road, Allahabad as excess vacant land. They filed objection challenging the correctness of the statement prepared by Ceiling Authorities and claimed that on correct calculation there was no excess vacant land. They also served the Competent Authority with a notice u/s 26 of the Act about their intention to transfer the vacant land. The Competent Authority after considering the case of the parties declared 1445.86 square metres as excess vacant land by his order dated 30-5-1981. Earlier on 6-3-1981 he had declared that Respondents were not entitled to give any notice u/s 26 in view of the fact that the area of the bungalow was beyond the ceiling limits. Respondents filed two separate appeals

against the aforesaid orders of the Competent Authority which were allowed by the District Judge on 28-2-1983 by two separate orders. Feeling aggrieved the petitioner has approached this Court for relief under Article 226 of the Constitution.

3. Heard the learned Counsel for the parties and perused the record.

4. The District Judge has set aside the orders of the Competent Authority on the ground that provisions of Section 4(9) of the Act are not applicable in the present case. In *State of U.P. v. L.J. Johnson* 1983 AWC 798 the Supreme Court has held that provisions of Section 4(9) of the Act are applicable to such cases. Thus, the sole point on which the appeals of the contesting Respondents have been allowed by the District Judge disappears.

5. Learned Counsel for the contesting Respondents contended that even if provisions of Section 4(9) of the Act are applicable this Court should refuse to exercise its jurisdiction under Article 226 of the Constitution in view of the fact that from the own record of the petitioner it is established that there was no excess vacant land. According to him, the property in dispute consists of four dwelling units as would appear from the site plan supplied to the Respondents by the Competent Authority but the excess vacant land has been calculated treating it to be consisting of only three dwelling units. Further, there exists four soak pits and septic tanks in the bungalow which have not been taken into consideration while preparing the ceiling statement. The contesting Respondents are entitled to the benefit of these constructions under law and if that is done there will be no excess vacant land. On the other hand, the learned Standing Counsel without disputing the existence of fourth dwelling unit, four soak pits and septic tanks contended that the contesting Respondents did not raise these points in their objection before the Competent Authority and as such cannot be permitted to contest the writ petition on these grounds. He further contended that the sanctioned plan for fourth dwelling unit filed by the Respondents did not bear the seal of the sanctioning authority while the soak pits and septic tanks were not constructed in accordance with the sanctioned plan.

6. Generally courts are reluctant to frustrate an action on technical grounds. The Supreme Court has time and again said that courts should apply the law in a meaningful manner which sub-serves the ends of justice that being the life purpose for the existence of the institution of Courts.

7. In *State of Uttar Pradesh v. Mrs. Rakesh Murthy* 1984 AWC 715 a Division Bench of this Court held-

It is obvious that the conduct of the case on behalf of both the parties before the competent authority and before the appellate authority was far from satisfactory. That is, however, not a civil suit and we do not think it proper to rest the decision in a matter like this on the basis of technicalities as raised before us on both sides. We are dealing with a legislation designed to ensure social justice in pursuance of the directive principles laid down in Article 39 (b) and (c) of the

Constitution. From the point of view of the individual landowner it is an expropriatory legislation, which from the point of view of the general public it is a legislation meant to help the weaker sections. We have, therefore, to strike a golden mean and to see that nothing more is taken away from the individual citizen than is really required to be taken away and also that nothing less is taken away from him for redistribution etc, than is required to be taken away. We are, therefore, of the opinion that it will not be proper to bind down either party to its pleadings or to its failure to raise objections in proper forum or at that appropriate stage as urged before us. The factual position is really far from clear. Even if the objection claimed less than she could have objected then she need not be denied the benefit of the law, nor the State be bound down to its failure to raise objections against the Commissioner's report or the appointment of the Commissioner.

This view of the Division Bench finds support from a series of decisions of Supreme Court. In Ramanbhai Ashabhai Patel Vs. Dabhi Ajitkumar Fulsinji and Others, the Supreme Court said that in the interest of justice Court should in appropriate cases permit the Respondent to support the judgment in his favour even upon grounds which were negatived in that judgment. This decision was followed by the Supreme Court in Bhanu Kumar Shastri Vs. Mohan Lal Sukhadia and Others, , in Shri Thepfulo Nakhro Angani Vs. Smt. Ravaluei alias Rano M. Shaiza, and in several other cases.

8. In Raj Narain Vs. Indira Nehru Gandhi and Another, the Supreme Court while permitting amendment of a pending election petition observed-

The allegations made by the Appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the Appellant should be refused an opportunity to prove his allegations ? Should the court refuse to enquire into those allegations merely because the Appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative. The implications of the rule of law are manifold.

It was further observed-

Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies juristic principle. It is the duty of the Court to ascertain that principle and implement it.

9. Similarly in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, the Supreme Court has said-

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

....

It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

10. I am, therefore, of the opinion that it will not be proper to bind down the parties to their original pleadings.

11. In normal course after permitting the contesting Respondents to raise aforesaid new points I would have remanded the case to the District Judge for deciding it afresh in accordance with law but as the petitioner has not disputed the existence of fourth dwelling unit and four soak pits and septic tanks it will not be proper to do so. In *Baijnath v. The General Manager, N.R. Railway Gorakhpur* 1986 Lab.IC 178 a Division Bench of this Court in a similar situation instead of remanding the case decided the matter finally on the basis of the materials on record. This decision squarely applies to the present case. As a matter of fact the present case stands on much better footing inasmuch as in the aforesaid case after recording a finding of fact in favour of the petitioner this Court had allowed the writ petition which is not necessary here. This Court may refuse to exercise discretion in favour of the petitioner if it is satisfied that the substantial justice has been done between the parties.

12. In *Prabhu v. Deputy Director of Consolidation U.P., at Gorakhpur* 1964 AWR 155 a Division Bench of this Court held that even if the order under challenge is without jurisdiction it should not be set aside by this Court in its extraordinary writ jurisdiction if it was a proper, equitable and just order.

13. In order to ascertain the correct factual position I had not only permitted the parties to file supplementary affidavits but had also directed the learned Standing Counsel to produce the record of the competent authority which he did. As stated above the petitioner has not denied the existence of fourth dwelling unit and four soak-pits and septic tanks in the bungalow in dispute, even then in order to satisfy myself about the factual position I have gone through the entire record including the record of the competent authority produced by the learned Standing Counsel and I am satisfied that the existence of fourth dwelling unit and four soak-pits and septic tanks are established beyond doubt.

14. Now, it has to be seen whether the contesting Respondents are entitled to some benefit on the basis of fourth dwelling unit and four soak-pits and septic tanks. According to the learned standing counsel copy of the sanctioned plan filed by the contesting Respondents did not bear seal of the sanctioning authority and that soak-pits and septic tanks were not constructed according to the sanctioned plan. Learned Counsel for the contesting Respondents contended that the sanctioned plan contained seal of the sanctioning authority on the reverse side which could not be noticed at the time of obtaining the photostat copy of the document. He produced original sanctioned plan in support of his contention and also filed a fresh photostat copy of it for being kept on the record. After looking

into the original sanctioned plan learned Standing Counsel conceded that this objection was not available to him. In my opinion, the objection of the learned Standing Counsel that soak-pits and septic tanks were not constructed according to the sanctioned plan is also of no legal consequence inasmuch as the contesting Respondents are entitled to get benefit on this count even if the soak-pits and septic tanks were not constructed according to the sanctioned plan.

15. In *M/s. Agra Concrete Pipe Co. v. Competent Authority, Agra, 1987 AWC 643* a Full Bench of this Court held-

It is not in dispute that the building regulations are in force in the area in which the tanks are located. That is sufficient for entitlement of appurtenant land. It is not necessary to consider whether the tanks have been constructed in accordance with the building regulations. The entitlement of appurtenant land does not depend upon the conformity of the structure with building regulations. All that is required is that there should be building regulations in force in the area where the structure or building has been constructed. Petitioner, therefore, would be entitled to 500 square metres as appurtenant land in respect of each tanks.

16. In *State of U.P. v. L.J. Johnson (supra)* the Supreme Court held-

The scheme of the Act seems to be that if there is a constructed building with a dwelling unit, the structure thereon cannot be treated as open land for the purpose of declaring it as an excess land beyond the ceiling limit. Similarly, the land kept open under the municipal regulations (upto 500 sq. metres) and an additional 500 sq. metres appurtenant to the land would not be available for being declared as excess land beyond the ceiling limit.

17. Similarly in *State of U.P. v. Mrs. Rakesh Murthy (supra)* a Division Bench of this Court held-

It will be seen that as per provisions contained in Section 2(g) of the Act, any building constructed before the appointed day with a dwelling unit therein is entitled to an additional extent of 500 sq. metres of land. Therefore, any building constructed before the appointed day which contains a dwelling unit (or more dwelling units) whether it is in the nature of a servant quarter or , put house even if it is situated in the same plot of land as the main building, is entitled to the additional extent of 500 sq. meteres of land. If there are more buildings constructed before the appointed day, each building containing a dwelling unit (or more dwelling units), then every such building is entitled to the additional extent of 500 sq. metres of land. If a building contains more than one dwelling unit, then it is entitled only to the additional extent of 500 sq. metres of contiguous land.

18. In view of the above the contesting Respondents are entitled for 3000 sq. metres additional land on the basis of fourth dwelling unit and four soak-pits and septic tanks as against 1445.86 sq. metres land declared as excess vacant land by the competent authority. Therefore, on the correct calculation there is no

excess vacant land in the bungalow in dispute. The writ petitions are devoid of merit and are liable to be dismissed.

19. In the result, both the writ petitions fail and are dismissed but I make no order as to costs.