

(1987) 02 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 1601 of 1981

Surinder Nath Malhotra

APPELLANT

Vs

S.C. Jain and Others

RESPONDENT

Date of Decision : 06-02-1987

Acts Referred:

Citation : AIR 1988 Delhi 60 : (1987) 32 DLT 59 : (1987) 12 DRJ 326

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : G.S. Vohra, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this writ petition is to the orders passed by the Authorities under Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the said Act) whereby they have held that the petitioner was holding 84.44 Sq. Meters of land in excess of the permissible limit

(2) Briefly stated, the facts are that the father of the petitioner was the owner of plot No. A-35 Friends Colony, New Delhi. The area of that plot is 584.44 sq. Meters.

(3) According to the averments in the writ petition, and there is no specific denial to the same in the counter-affidavit filed by the respondents, a building plan for construction on the said plot of land was sanctioned on 22/7/1975. Construction commenced on the said land and as on 17/2/1976 the building was still incomplete. This land was inherited by the petitioner from his father, after the father's death, and subsequently a lease deed was executed in the name of the petitioner. It is also an admitted fact that, though the building was incomplete, on the relevant date, namely 17/2/1976, the covered area on the land was 79.92 sq. meters.

(4) The petitioner received a notice dated 4/4/1978 u/s 8(3) of the said Act,

along with a draft statement, and objections were invited to the same. As per the draft statement the extent of vacant land which was required to be surrendered was stated to be 88.44 sq. meters. In response to the said notice, the petitioner filed his statement u/s 6(1) of the said Act.

(5) By order dated 12/6/1980 the competent Authority held that t plot was under construction on 17/2/1976 and that there was an excess vacant land to the extent of 84.44 sq. meters after taking into consideration the guidelines of the Central Government contained in the Ministry of the Works & Housing letter dated 29/12/1976. The Competent Authority did not deal with the objection of the petitioner to the effect that the portion of land on which construction was being raised was not to be taken into consideration in computing the extent of vacant land.

(6) Being aggrieved, ? appeal was filed against the said order. The Appellate Authority by its decision dated 13/5/1981 reiterated the decision of the Competent Authority. The Appellate Authority held that by virtue of the provisions of Section 2(g) of the said Act the benefit of additional contiguous land of 500 sq. meters was admissible only in those cases in which building had already been constructed before the appointed date.

(7) The aforesaid decisions of the Competent Authority and the Appellate Authority have been challenged in the present writ petition under Article 226 of the Constitution of India.

(8) In order to appreciate the contentions of the petitioner, it is necessary to refer to the relevant provisions of the said Act. Sections of the Act, provides that on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit which is provided in the different territories by the said Act. Section 4, inter alia,. provides that the ceiling limit in respect of vacant land situated in urban agglomeration falling within category. A specified in Schedule I, to the Act shall be 500 sq. meters. It is an admitted fact that land in Delhi falls under this category and, Therefore, the ceiling limit for vacant land in Delhi is 500 sq. meters. Vacant land has been defined by section 2(q) and the same reads as follows :

2(Q)"vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but docs not include:-

(I)land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated ;

(II)in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building ; and

(III)in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the

appointed day and the land appurtenant to such building ;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

The last relevant provision is Section 2(g), on which reliance has been placed by the respondents, which defined the expression "land appurtenant" in the following words:

"(G)"land appurtenant", in relation to any building means (i) in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square meters; or (ii) in an area where there are no building regulations, an extent of five hundred square meters contiguous to the land occupied by such building, and includes, in the case of any building constructed before the appointed day with a dwelling, unit there in, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in Sub-clause (i) or the extent referred to in Sub-clause (ii) as the case may be.

(9) As I read the aforesaid provisions of the said Act, the inescapable conclusion seems to be that the decision of the Authorities is not correct. The Act is concerned with vacant land. Section 3 of the Act states that no one is to hold vacant land in excess of the ceiling.

(10) What is, Therefore, to be determined is as to "what is the vacant land. Vacant land has been defined by Section 2(q). The said definition is comprehensive and it is specifically provided that vacant land would not include land on which building is under construction on the appointed day, with the approval of the appropriate authority, and the land appurtenant to such building. The provisions of Section 2(q)(ii) have been clearly over-looked by the Authorities. By virtue of Section 2(q)(ii) an area of 79.92 sq. meters plus land appurtenant thereto is not to be regarded as vacant land. It is only in order to determine as to what is land appurtenant that it becomes necessary to refer to Section 2(g). The said Section 2(g) no doubt uses the expression "any building constructed before the appointed day" but the said provision has to be read in consonance and in harmony with the provisions. of Section 2(q). The only way in which the same can be read together is to regard not only the building already constructed but also the building in the process of construction as being covered in Section 2(g). In any event, the petitioner's case would be covered by Section 2(g)(i) which defined land appurtenant, is meaning an area which, as per the building regulations, is required to be kept as open space for enjoyment of such building which is not to be in excess of 500 sq. meters. As per the building

regulations 60% of the area, namely 60 per cent of 584.44 sq meters had to be kept vacant. In the present case, as per the building plans which had been passed, 504.52 sq. meters of land would have been unbuilt and vacant. This land was contiguous to a building which was under construction. By virtue of the provisions of Section 2(q) read with Section 2(g), the area which could not be regarded as vacant land would be 79.92 sq. meters, on which the building was being constructed plus 500 sq. meters being land contiguous thereto. The area of vacant land which the petitioner would be holding would, Therefore, be only 4.52 meters.

(11) The next question which arises is whether this area of 4.52 meters is within the permissible limit or not. Section 3, as already noted, specifies that no person shall be entitled to hold vacant land in excess of the ceiling limit. The ceiling limit of vacant land is 500 sq. meters. If 579.92 sq. metres is not to be regarded as vacant land by virtue of the provisions, of Section 2(q)" then the extent of vacant land which is held by the petitioner is only 4.52 sq. metres. This vacant land is well within the ceiling limit of 500 sq. meters. To put it differently, for the purpose of computing vacant land u/s 3" the land which is not deemed to be vacant land by virtue of the provisions of Section 2(q) is to be excluded. It if the balance while applying the ceiling which is held by an owner of land. By fiction of law, may be by virtue of the provisions of Section 2(q), a building plus land appurtenant thereto, not the land appurtenant in excess of 500 sq. meters, is not to be regarded as vacant land at all. This being so, it is only the balance amount of land which is held by a person in excess of what is excluded u/s 2(q) which is to be regarded as vacant land and if that balance land is less than the permissible ceiling limit then the other provisions of the Act with regard to the surrendering of the same would not apply. In the present case, as already observed, the extent of vacant land held by the petitioner came to only 4.52 sq. metres. This is well within the ceiling limit of 500 sq. meters prescribed by Section 4 of the Act and, Therefore, the question of surrendering this did not arise.

(12) For the aforesaid reasons, this writ petition is allowed and the impugned orders dated 12/6/1980 and 13/5/1981 are quashed. The petitioner shall be entitled to costs. Counsel's fee Rs. 500.00