
(1992) 01 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Petition No. 3274 of 1991 and Civil Miscellaneous Appeal No. 5474 of 1991

Tej Pratap Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 22

Citation : (1992) 46 DLT 303 : (1992) RLR 90

Hon'ble Judges : Mahinder Narain, J; A.B. Saharya, J

Bench : Division Bench

Advocate : Arun Jaitley, A.C. Jain, Anil Mittal and Jagdish Vats, for the Appellant;

Judgement

Mahinder Narain, J.

(1) By this application, the petitioner seeks permission to start construction on the premises No. 23, Barakhamba Road, New Delhi in accordance with the sanctioned plans.

(2) The New Delhi Municipal Committee has taken a stand that the construction cannot be started by the petitioner according to the sanctioned building plans as while sanctioning the building plans, a condition has been imposed by the New Delhi Municipal Committee that the sanction is granted subject to permission of the Competent Authority u/s 22 of the Urban Land (Ceiling and Regulation) Act, 1976.

(3) On 14th January, 1992, we asked the Counsel for the New Delhi Municipal Committee to bring to our notice bye-laws under which the New Delhi Municipal Committee is permitted to impose such a condition.

(4) Today, Counsel for the New Delhi Municipal Committee has brought to our notice Bye-law 6.2.9 This bye-law reads as under :

" DOCUMENTS. Application for building permit shall be accompanied by the following documents :- (a) ownership documents. Lease-deed, sale-deed etc. duly accompanied by an annexed site plan giving the physical description of the plot/property. In such a case where lease-deed has not been executed, no objection certificate from the Competent Authority shall be submitted. (b) Documents under Urban Land (Ceiling and Regulations Act, 1976. (c) Undertaking for non-stacking of building material on public property/road In case of plot measuring more than 418 sq. mtr. in area to be submitted in the proforma as given in Appendix "M". (d) In case of any deviation from the terms and conditions stipulated in the lease-deed/ownership document, necessary clearance from the competent Authority; (e) No objection Certificate from the Competent authority regarding land use as per Master/Zonal Plan, if required. (f) Approval from the Chief Inspector of Factories in case of Industrial Buildings. (g) Approval from Chief Controller of Explosives, Nagpur and Chief Fire Officer, Delhi, in case of hazardous buildings. (h) Indemnity Bond in case of proposal for the construction of a basement as given in Appendix "N"."

(5) This Bye-law requires production of an ownership document and the documents under the Urban Land (Ceiling and Regulations) Act, 1976.

(6) We are informed by Mr. Jaiticy, learned Counsel for the petitioner that the order giving clearance under the said Act, being order dated 10th March, 1988 has already been given to the New Delhi Municipal committee. A clearance order granted by the Competent Authority establishes that lie plot in question has no vacant land within the meaning of the Urban land (Ceiling and Regulations) Act at the relevant time. It is not the case of any party before us that there is an alteration in the status of the existing structure since 10th March, 1988. The said clearance order dated 10th March, 1988 will, Therefore, be still effective.

(7) Counsel for the New Delhi Municipal Committee has brought to our notice Section 22 of the Urban Land (Ceiling and Regulations) Act, 1976. This Section reads as under :

"RETENTION of vacant land under certain circumstances.-(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where any person demolishes any building on any land held by him or any such building is destroyed or demolished solely due to natural causes and beyond the control of human agency and as a consequence thereof. In either case, the land on which such building has been constructed becomes vacant land and the aggregate of the extent of such land and the extent of any other vacant land held by him exceeds the ceiling limit then, he shall, within three months from the date of such demolition or destruction file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed of all the vacant lands held by him. (2) Where on receipt of a statement under sub-Section (1) and after such Inquiry as the competent authority may deem fit to make, the competent authority is satisfied that the land which has become vacant land is required by the holder for the purpose of

redevelopment in accordance with the master plan, such authority may, subject to such conditions and restrictions as it may deem fit to impose, permit the holder to retain such land in excess of the ceiling limit for such purpose and where the competent authority is not so satisfied and does not so permit, the provisions of Sections 6 to 14 (both inclusive) shall so far as may be, apply to the statement filed under sub-Section (1) and to the vacant land held by such person in excess of the ceiling limit."

(8) A bare perusal of the said provision indicates that the said provision comes into operation upon demolition of a building by the owner or by a destruction thereof and as a consequence of non-existence of any building on the plot, "vacant land" comes into being.

(9) It is not contended by either of the parties before us that any part of the building has been demolished by the owner or any destruction of the building has taken place within the meaning of this provision since 10th March, 1988, As a consequences whereof, there is vacant land in 23, Barakhamba Road, New Delhi.

(10) In this view of the matter, as the Uniform Building Bye-laws, 1983 are silent on the Authority imposing a condition while granting sanction to a building plan vis-a-vis the Urban Land (Ceiling and Regulations) Act. 1976, except in the manner postulated thereby, which has already been dealt with, such a condition cannot be imposed while sanctioning the building plans. The said condition appears to be without authority of any law or bye-law and the same is, Therefore, non-est in the eyes of law.

(11) The petitioner says that he will proceed to do construction at the site according to the sanctioned building plans at his own risk, subject to the final outcome of the writ petition. He can proceed to do so.

(12) C.M. is accordingly disposed of.

(13) In view of the order passed in C.M. 5474/91, we issue Rule.

(14) COUNTER-AFFIDAVIT has not been filed. Let the same be filed within three weeks. Advance copy be given to the petitioner. Rejoinder be filed within three weeks thereafter. Order accordingly.