

(2009) 07 DEL CK 0405

In the Delhi High Court

Case No : Writ Petition (C) No. 2455 of 1992

Tej Pratap Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

General Clauses Act, 1897 — Section 6

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 11, 12, 13

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 3(1), 4

Citation : (2009) 07 DEL CK 0405

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Ravi Gupta and Ankit Jain, for the Appellant; Sanjay Pathak, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order passed by the competent authority under the erstwhile Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the ULCR Act). By virtue of the impugned order dated 02.07.1992, the petitioner was granted exemption in respect of the excess vacant land at 23, Barakhamba Road, New Delhi u/s 20(1) (a) and 22 of the ULCR Act subject to, inter alia, the condition that the petitioner would make a payment of Rs. 18,37,74,528/- to the Land and Building Department, Delhi Administration within 45 days. Aggrieved by this condition, the petitioner filed this writ petition. In the meanwhile, the ULCR Act has been repealed by virtue of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as the Repealing Act).

2. The facts leading up to the present petition are as under:

3. On 13.08.1976, the petitioner filed a statement/return u/s 6 of the ULCR Act which included the property at 23, Barakhamba Road, New Delhi. On 13.08.1976, the petitioner applied for construction upon the said land. On 10.03.1988, the order was passed by the competent authority u/s 8(4) of the

ULCR Act and along with it the final statement u/s 9 of the said Act was also enclosed. The total excess vacant land of the petitioner after considering all the properties of the petitioner was found to be to the extent of 4373.6 sq. mts. However, the said order dated 10.03.1988 also indicated that so far as the property at 23, Barakhamba Road, New Delhi was concerned, the total permissible area was 3909.5 sq. mts. and as the permissible land was more than the net area of the plot over which building activities were allowed, there was no excess land in respect of this property.

4. On 25.03.1988, the petitioner made an application under Sections 20 and 22 of the ULCR Act for construction of a multi-storey building. On 02.11.1989, the Delhi Administration issued a letter which pertained to the grant of exemption under Sections 20 and 22 of the ULCR Act. In this regard, the Delhi Administration indicated that they have been unable to process the case of the petitioner for want of, inter alia, a certificate from the L&DO (the lessor) saying that they had no objection to the said exemption under Sections 20 and 22 of the ULCR Act. Since the exemption sought by the petitioner was not forthcoming, the petitioner filed a writ petition W.P.(C) No. 3274/1991 entitled Tej Pratap Singh v. U.O.I. and Ors. In that petition, the main direction sought for was that the respondents be directed to consider the application of the petitioner for grant of exemption under Sections 20 and 22 of the ULCR Act for the purpose of re-development of the property bearing No. 23, Barakhamba Road, New Delhi. On 16.01.1992, the Division Bench hearing the said writ petition (W.P.(C) No. 3274/1991) took the view that as the uniform Building Bye-Laws, 1983 were silent on the authority of imposing a condition while granting sanction to a building plan, vis-?-vis the ULCR Act, such a condition as was sought to be imposed by the NDMC prior to sanctioning of the plans could not be imposed. According to the Division Bench, which was taking a prima facie view of the matter at that stage, such a condition appeared to be without authority of law or any bye-law. The said Division Bench also noted that the petitioner was willing to proceed with the construction at the site according to the sanctioned plan at his own risk subject to the final outcome of the writ petition. The petitioner was permitted to do so.

5. Being aggrieved by this interim order, the NDMC preferred a SLP being SLP(C) No. 6608/1992 before the Supreme Court. The Supreme Court passed an order on 14.05.1992 whereby it directed the competent authority to decide the application of the petitioner under Sections 20 and 22 of the ULCR Act within five weeks. It was also directed that during the period of five weeks, the petitioner would not construct above the plinth level and that in case the competent authority declined to grant permission then no construction would be permitted till further orders.

6. On 02.07.1992, the Lieutenant Governor being the competent authority passed the impugned order granting exemption to the petitioner but subject to the condition of payment of Rs. 18,37,74,528/- within a period of 45 days. Being

aggrieved by the condition which was imposed, by the impugned order dated 02.07.1992, the petitioner filed the present petition.

7. During the pendency of the present petition as well as the earlier petition being W.P.(C) No. 3274/1991, the ULCR Act was repealed by the Repealing Act.

8. W.P.(C) No. 3274/1991 came up for hearing before a learned Single Judge on 14.10.2004 when the following order was passed:

Petitioner was being denied the benefits to construct under the sanctioned building plans as sanctioned by the NDMC, since there was a rider requiring exemption to be obtained u/s 20 & 22 of the Urban Land (Ceiling and Regulation) Act, 1976.

By an interim order dated 16.1.92, petitioner was permitted to construct at his own risk and peril.

Urban Land (Ceiling and Regulation) Act, 1976 has since been repealed. Issue raised requires no adjudication because with repealing of the Ceiling Act, rider put while sanctioned (sic) the plan automatically comes to an end.

Noting the legal position aforesaid, writ petition stands disposed of.

9. According to the learned Counsel for the petitioner after the repeal of the ULCR Act, there is no question of grant of exemption or imposition of any condition in respect of the grant of exemption inasmuch as the ceiling limits are no longer applicable. The learned Counsel also submitted that the order dated 14.10.2004 passed in W.P.(C) No. 3274/1991 categorically held that the issue raised requires no adjudication because, with the repeal of the ULCR Act, the rider put while sanctioning the plan automatically came to an end. The learned Counsel submitted that this order has attained finality as no appeal therefrom has been preferred. Apart from this, the learned Counsel also submitted that the ULCR Act having been repealed, there is no question of any exemption being sought any further and therefore the question of any conditional exemption also does not arise. He also submitted that in any event, at the highest, if the condition of payment is not satisfied, then the State Government could, by virtue of Section 20(2) of the ULCR Act, when the said Act was in force, have withdrawn the exemption so granted which meant that the excess vacant land would now have to be acquired under the provisions of the Chapter III and proceedings thereunder would have to be undertaken. But since the ULCR Act has been repealed, that is no longer possible. Thus, according to the learned Counsel for the petitioner, whichever way the matter is looked at, the petitioner has to be absolved of the condition of payment.

10. The learned Counsel for the respondent, on the other hand, contended that although the ULCR Act has been repealed by the Repealing Act, Section 3 thereof specifically saves various actions under the repealed act. Sections 3 and 4 of the Repealing Act are material and they read as under:

3. Savings. - (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment, of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

2. Where-

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings. ? All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

Provided that this Section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

11. The learned Counsel for the respondent Nos. 2 to 4 submitted that Section 3(1)(b) of the Repealing Act would apply in this case whereby the exemption order has been specifically saved. Therefore, according to the learned Counsel, the repeal of the ULCR Act would not affect the conditional exemption granted by virtue of the order dated 02.07.1992. The learned Counsel for the respondent Nos. 2 to 4 also submitted that the repeal is prospective and not retrospective. He also referred to Section 6 of the General Clauses Act, 1897 which deals with the effect of repeal. The said Section stipulates that repeal of an enactment by a Repealing Act, unless a different intention appears, shall not, inter alia, affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Consequently, it was submitted that the right of the petitioner to get an exemption u/s 20(1)(a) was subject to the liability of making

the said payment and other conditions which were imposed by the exemption order. According to him, by virtue of Section 6 of the General Clauses Act, 1897, the said liability, which had been incurred by the petitioner to make the said payment and to comply with the other conditions for the grant of exemption, was specifically saved by the Repealing Act.

12. We have considered the arguments advanced by the Counsel for the parties. One thing is clear that the ULCR Act has been repealed by the said Repealing Act. We have already quoted Sections 3 and 4 of the Repealing Act. Section 4 deals with abatement of legal proceedings and stipulates that all proceedings leading to any order made or purported to be made under the principal Act pending immediately before the commencement of the Repealing Act before any court, tribunal or other authority shall abate. In other words, all such proceedings shall abate on and from the coming into force of the Repealing Act. There is a proviso to this Section which stipulates that it would not apply to proceedings relating to Sections 11, 12, 13 and 14 of the ULCR Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority. From a reading of the entire Section 4 of the Repealing Act, it is clear that all proceedings for declaring excess vacant land and acquisition of the said excess vacant land come to a halt except the proceedings pertaining to Sections 11, 12, 13 and 14 of the ULCR Act provided possession of the land in question has not been taken over by the State Government. In other words, those lands which had not been taken into possession by the State Government are excluded even in respect of the proceedings relating to Sections 11, 12, 13 and 14. It is clear that the intent of the Legislature was not to implement the provisions of the ULCR Act any further if they had not already resulted in the taking over of possession of the lands in question. This is the general intent which is discernable from a plain reading of Section 4 of the Repealing Act. In the present case, it is an admitted position that the land in question, which is situated at 23, Barakhamba Road, New Delhi, has not been taken into possession by the State Government. In fact, the stage of the present case is that an order u/s 8(4) of the ULCR Act has been passed and a final statement has also been prepared u/s 9 of the same Act. The matter has not proceeded to the stage of Section 10 which relates to acquisition of excess land and vesting of the said excess land in the State Government. There is, therefore, no question of the case having proceeded to any stage beyond Section 9 of the ULCR Act.

13. This takes us to the consideration of the Savings Clause provided in Section 3 of the Repealing Act. Section 3(1)(a) clearly stipulates that the repeal of the ULCR Act shall not affect the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority. We have noted above that the possession of the property in question is still with the petitioners and, therefore, this Clause is clearly

inapplicable. Section 3(1)(b) stipulates that the repeal shall not affect the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary. Section 3(1)(c) provides that the repeal shall not affect any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20. Reading Sub-sections 3(1)(a), (b) and (c) together, it appears to us that the intention of the Legislature is that where an exemption has been granted in favour of a land holder, that is not to be disturbed notwithstanding any judgment of any court to the contrary. The further intention that can be discerned from the said provisions is that the payment made to the State Government as a part of a condition for granting exemption u/s 20(1) is also saved. From this, it can be understood that had it not been specifically provided that the payment made to the State Government as a condition for grant of exemption will not be affected by the repeal, the same would have been affected by the repeal. In other words, what this provision intends to save is the actual payment, if any, made to the State Government as a condition for granting exemption u/s 20(1) of ULCR Act and not the condition itself. In the context of Section 6 of the General Clauses Act, 1897, the petitioner's right to exemption u/s 20(1) of the ULCR Act is specifically saved, but, not the "liability" to make the payment, unless the payment had already been made prior to the repeal. The General Clauses Act, 1897 would, therefore, apply subject to this intention. And, the intention of Parliament appears to be that: (1) if any payments are made to the State Government, that is not to be disturbed and (2) if any exemption has been granted, that is also not to be disturbed. It does appear to us that after the repeal, the conditions of exemption which remain unimplemented cannot now be implemented because they are not specifically saved. The reason behind this being that ceiling in respect of urban lands by itself has been repealed altogether.

14. It would be instructive to also have a look at the Statement of Objects and Reasons behind the Repealing Act. The relevant portion is extracted below:

4. The proposed repeal, along with some other incentives and simplification of administrative procedures, is expected to revive the stagnant housing industry. The repeal will facilitate construction of dwelling units both in the public and private sector and help achievement of targets contemplated under National Agenda for Governance. The repeal will not, however, affect vesting of any vacant land under Sub-section (3) of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 the possession of which has been taken over by the State Governments. It will not affect payments made to the State Governments for exemptions. The exemptions granted u/s 20 of the Act will continue to be operative. The amounts paid out by the State Governments will become refundable before restoration of the land to the former owners.

This also makes it clear that the repeal will not affect payments already made to the State Governments. The exemptions granted u/s 20 of the repealed Act

would also continue to be operative. So, while the exemptions granted under the ULCR Act are saved, only those conditions for payment survive where payments have, in fact, been made to the concerned Government. It follows that where the condition for payment has not materialised into payment, such a condition would cease to be operative after the repeal.

15. We also note that the learned Single Judge dealing with W.P.(C) No. 3274/1991 passed the said order dated 14.10.2004 in which he had specifically indicated that the issue with regard to the Urban Land (Ceiling and Regulation) Act, 1976 required no adjudication because, with the repealing of the said Act, the condition (rider) put while sanctioning the plan automatically came to an end. This finding/conclusion of the learned Single Judge has not been challenged by the respondents. We are in agreement with the learned Counsel for the petitioner that insofar as his case is concerned, this finding has become final.

16. The result of this discussion is that the condition of payment imposed by the impugned order dated 02.07.1992 passed by competent authority would no longer apply in the circumstances of this case. The "exemption" would hold good, not the condition.

The writ petition is allowed to the aforesaid extent. The parties shall bear their own respective costs.