

(2001) 07 JH CK 0045
In the Jharkhand High Court
Case No : CWJC No. 2116 of 1999 (R)

Thamni Devi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 6, 6(1), 8

Citation : (2002) 50 BLJR 308

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Debi Prasad and L.K. Lal, for the Appellant; R.K. Merathia, G.P. 2, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioners are aggrieved by the order passed by the Deputy Commissioner-cum-Competent Authority where he has declared 12,449.64 square meters of land of the petitioners as surplus land in a proceeding under Urban Land (Ceiling & Regulation) Act, 1976 (in short "the said Act"). The petitioners are also aggrieved by the order dated 20.4.99 passed by respondent No. 2, the Commissioner. South Chotanagpur Division, Ranchi whereby he has affirmed the order passed by the Deputy Commissioner and dismissed the appeal.

2. Petitioners' case is that the land of Khata No. 12 of village Lowadih, Namkum. Ranchi measuring total area of 12.77 acres have been recorded in R.S. records of right as agricultural land in the name of Karma Teli and Gopi Teli. both sons of Puran Teli. Said Karma Teli filed return u/s 6(1) of the said Act giving details of the lands held and possessed by him and his family members. Karma Teli died during the pendency of the ceiling proceeding in 1984-85 leaving behind him his five sons and three grand sons. All the five sons and three grand sons had attained majority before the appointed date and. as such, they were entitled to one separate unit. Petitioners' further case is that respondent No. 4, the Kanungo, submitted his verification report stating that the petitioners have total

2.168 karis equivalent to 8602 sq. meters residential lands and 15436 sq. meters agricultural lands and thus the petitioners have total 24038 sq. meters land. It is contended that as per the report of the Kanungo, the respondent No. 3 ought to have dropped the proceeding against the petitioners holding that they do not have any excess land. However, another verification report was submitted by respondent No. 4 wherein he has shown 848.54 sq. meters as constructed area and recommended for exclusion of 10000 sq. meters of land. On the basis of the said report a draft statement was published by respondent No. 3 inviting objections u/s 8(i) and (ii) of the said Act. showing 14284.15 sq. meters of land as excess vacant lands. The petitioners filed their objection contending, inter alia, that there are 9 major members in the joint family of the petitioners and they attained majority before the appointed date and, as such, they are entitled to one unit each. The respondent No. 3, after hearing the objection, declared 12449.64 sq. meters of land to be excess land in the hands of the petitioners. The said order was affirmed in appeal before respondent No. 2 in U.L.C. Case No. 77/98.

3. A counter affidavit has been filed by the respondents stating, inter alia, that the land in question falls within the purview of Master Plan of Ranch! town and, therefore, the lands are vacant lands within the meaning of the said Act. The respondents denied and disputed the fact that some of the members of the family attained majority before the appointed date and, therefore, they are entitled to altogether nine units. Respondents' further case is that although report was submitted by the Kanungo in the year 1983 but the same suffered from several factual and legal inaccuracy and then the matter was again enquired and a report was called for from the Kanungo who submitted his report on 4.8.92. It is further stated that in the return filed by the land holder. Karma Teli, he has claimed five units on the basis of five adult members of the family and there is no mention of three grand sons as major.

4. Mr. Debi Prasad, learned senior counsel appearing on behalf of the petitioners has made two-fold submissions: firstly that the petitioners are entitled to eight units and not five units for the reason that there were eight adult members in the family of Karma Teli on the appointed dated i.e., in 1976 when the Act came into force; and secondly that the lands in question have been recorded as agricultural lands in the revenue records of rights and, therefore, the lands in question cannot and shall not be treated as vacant lands within the meaning of the Act. Learned counsel lastly submitted that even assuming that the petitioners are entitled to five units only, if the agricultural lands are excluded then there shall be no excess lands left in the hands of the petitioners. Learned counsel, in this context, put heavy reliance on a decision of the Supreme Court in the case of Atia Mohammadi Begum v. State of U.P. AIR 1993 SC 2265.

5. Based upon the submissions of the learned counsel the following two points emerge for decision in this case :--

(i) Whether the petitioners are entitled to five units as held by the authority or

eight units as claimed by them.

(ii) Whether the lands in question are liable to be excluded on the ground of the nature of the lands shown in the records of rights as agricultural lands ?

6. Re : (i) As noticed above, the land holder, namely, Karma Teli. filed return u/s 6(i) of the said Act giving details of the lands held and possessed by the family members. No where in the writ petition the petitioners have claimed that in their return so filed by Karma Teli, he had claimed eight units on the ground that there were eight adult members in the family on the appointed date. On the contrary, in the return filed by Karma Teli, he had claimed five units on the ground that there were five adult members in the family on the appointed date. It is, therefore, clear that the petitioners are now claiming eight units as because during the pendency of the ceiling proceeding, three grand sons of Karma Teli attained majority. In the aforesaid circumstance. I fully agree with the view taken by the competent authority in the impugned orders that the petitioners are entitled to five units as claimed by them in the return filed u/s 6(i) of the said Act.

7. Re : (ii) Admittedly the lands of Khata No. 12 of village Lowadih, situated in Ranchi Police Station (now Namkum) in the town of Ranchi. The said land also falls within the Urban agglomeration. It also falls within Ranchi Municipality, now Ranchi Municipal Corporation. From perusal of the report submitted by the Kanungo it appears that there are ten plots under Khata No. 12. Out of these plots, over two plots 135 and 136, there are two dwelling units and wells. The existence of dwelling units and wells over two plots 135 and 136 is also not disputed by the petitioners.

8. In the light of the aforesaid admitted facts, now I shall deal with the question whether the lands of Khata No. 12 can be treated as agricultural land on the ground that the said land has been shown as agricultural land in the records of rights. The word "Urban land" has been defined in clause 2(o) of the said Act. Explanations (B) and (C) of Section 2(o) are worth to be quoted hereinbelow :--

"(B) Land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture;

Provided that where on any land which is entered in the revenue or land records before the appointed day, as for the purpose of agriculture, there is a building which is not in the nature of a farm house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture :

Provided further that if any question arises whether any building is in the nature of a farm house, such question shall be referred to the State Government and the decision of the State Government thereto shall be final :

(C) Notwithstanding anything contained in Clause (B) of this explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land

has been specified in the master plan for a purpose other than agriculture."

The term "Vacant land" has also been defined in Section 2(q) of the said Act. The definition reads as under :--

(q) "Vacant land" means lands, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include,--

(i) Land on which construction of a building is not permissible under the Building Regulation 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.

(iii) In an Area where there are no building regulation 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 the village within an urban agglomeration (described as a village in the revenue records) then, so much extent of the land 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 purpose of this clause."

9. On reading both the definitions of "Urban land" and "vacant land" together, it is manifest that Urban land means any land situated within the limit of urban agglomeration and referred to as such in the master plan. If there is no master plan, then the land which is within the limit of urban agglomeration and situated in any area including within the local limit of municipality, shall be treated as urban land. However, urban land does not include any such land which is mainly used for the purpose of agriculture. Explanation (B) provides that such land which is mainly used for the purpose of agriculture and is recorded as such in the revenue records, shall not be treated as urban land. Proviso to Explanation (B) clarifies that if such land which is entered in the record as agricultural land and there is a building which is not in the nature of farm house, then so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture. Similarly, "vacant land" means such land which is not used for the purpose of agriculture. It includes also such land on which construction of building is permissible under the Building Regulation in force in the area. In absence of any Building Regulation, the land occupied by any building which has been or was being constructed on the appointed day and the land appurtenant to such building shall also be treated as vacant land.

10. Admittedly, building/dwelling unit and well exists on the land in question. It is not the case of the petitioners that such building standing on Plot Nos. 135 and 136 are in the nature of farm house. It is also not the case of the petitioners that

the land in question does not fall within the municipal area or construction of building was not permissible, or at any point of time was prohibited over the land in question by any regulation.

11. In Atia Mohammadi Begum's case (supra), there was no dispute that the vacant land of which exclusion is claimed by the land holder on the ground that it is mainly used for the purpose of agriculture is so used according to the definition of "agriculture". It was also not in dispute in that case, that the land was recorded as agricultural land in the revenue records. It was only after the appointed day, the Master Plan came into existence in which the land was shown other than agriculture purposes. For better appreciation, para 2 of the decision of the Apex Court is reproduced hereinbelow :--

"Learned counsel for the appellant argue for restoration of the District Judge's order whereby an area of 6738.23 sq. meters was declared to be in excess of the ceiling limit as against 19813.83 sq. meters declared by the competent authority. The High Court set aside the District Judge's order on the construction it made of Explanation (C) in Section 2(o) defining "urban land" in the Urban Land (Ceiling and Regulation) Act, 1976. The definition of "urban land" in Section 2(o) excludes from its ambit, land which is mainly used for the purpose of agriculture. Thereafter, the explanation for the purpose of clause (o) defining "urban land" and clause (q) defining Vacant land" is given. Clause (A) of the explanation defines "agriculture". There is no dispute that the vacant land of which exclusion is claimed by the appellant on the ground that it is mainly used for the purpose of agriculture is so used, according to the definition of "agriculture". There is also no dispute that clause (B) of the explanation is satisfied by the appellant since the land was entered in the revenue or land records before the appointed day as for the purpose of agriculture. The only dispute is with regard to clause (c) of the explanation.

12. Their Lordships then observed as follows :--

"The scheme of the Act supports the construction that the aforesaid Explanation (C) means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the explanation and not if the land is specified in a master plan prepared after the commencement of the Act. The plain language of Explanation (C) bears this construction and require it to be so construed in order to harmonise it with the other provision and scheme of the Act. Just as the holder of the land cannot by his subsequent action reduce the area of vacant land in excess of the ceiling limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action. The "master plan" defined in Section 2(h) and referred in the definition of "urban land" in Section 2(o), including Explanation (C) therein is obviously a master plan prepared and in existence at the time of commencement of the Act when by virtue of Section 2 of the Act rights of the holder of the land under the Act get

"crystallised" and extinguish his right to hold any vacant land in excess of the ceiling limit. The proceedings for determining the vacant land in excess of the ceiling limit according to the machinery provision in the Act is merely for quantification, and to effectuate the rights and liabilities which have crystallised at the time of commencement of the Act. The contrary view taken on the construction made of these provisions by the High Court, cannot therefore, be accepted."

13. Mr. R.K. Merathia, learned G.P. 2 has very fairly conceded that there was no Master Plan in force on the appointed day when the Act came into force. Learned counsel further submitted that subsequent to the enforcement of the Act a Master plan was prepared in which the land in question has been shown as for residential purposes. The Commissioner, on the basis of the Master plan wherein the land has been mentioned as for residential purposes", has rejected the claim of the petitioner. In the light of the ratio decided by the Apex Court in the case of Atia Mohammadi Begum (supra), the conclusion arrived at by the Commissioner cannot be sustained in law. However, admittedly two dwelling units exist on the plot in question which is claimed by the petitioner as agricultural land.

14. As noticed above, It is not the case of the petitioner that the land occupied by the building or dwelling units is used for farm house. In such circumstance, the area covered by building and the dwelling units standing on the plot in question shall have to be taken as Vacant land* for coming to a conclusion whether the petitioners hold excess land. The matter needs consideration by the Commissioner.

15. This writ application is, therefore, allowed in part and the impugned order passed by the Commissioner so far it held that on the basis of Master plan the plots in question are not agricultural lands, is set aside. The matter is remitted back to him for reconsideration and for disposing of the revision in the light of the directions/observations made hereinabove.

16. Writ application allowed.