

(1997) 11 AHC CK 0052

Allahabad High Court

Case No: C.M.W.P. No. 485 of 1984

State of U.P.

APPELLANT

Vs

District Judge, Agra and another

RESPONDENT

Date of Decision: Nov. 18, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10(1), 2, 6, 6(1)

Citation: (1998) 1 AWC 375

Hon'ble Judges: D.C. Srivastava, J

Bench: Single Bench

Advocate: S.V. Goswami and S.C, for the Appellant; Murli Dhar and Pradeep Kumar, for the Respondent

Final Decision: Allowed

Judgement

D.C. Srivastava, J.

In the revised list, none appears for the respondent No. 2.

2. Heard the learned standing counsel and perused the materials on record.

3. The prayer in this writ petition is for quashing the judgment and order dated 21.9.1983. Annexure No. 4 to the writ petition passed by the respondent No. 1.

4. The brief facts giving rise to this writ petition are that firm Akash Deep Pvt. Ltd. submitted a return u/s 6(1) of Urban Land (Ceiling and Regulation) Act, 1976. After necessary enquiries, notices were issued. Objections were filed on 17.3.1977 by P. N. Jasuria on behalf of the said firm. After considering the objections, the competent authority determined 3449 square metres vacant land. Notice was directed to be issued for publication in the Gazette as provided u/s 10(1) of the Act. Annexure 1 to the writ petition is the order dated 24.6.1977 of the competent authority. An other application was moved by P. N. Jasuria on 25.10.1982 raising certain objections to

the aforesaid determination of surplus vacant land. After considering the objections and the provisions of the Act and rules, the competent authority modified its earlier order and determined 325.63 square metres surplus land. Still feeling aggrieved, an appeal was filed by M/s. Akash Deep Pvt. Ltd. which was allowed by the appellate authority on 21.9.1983 vide Annexure 4 to the writ petition. It declared that there is no surplus land with the appellants. These two orders contained in Annexures 3 and 4 were assailed by the learned standing counsel in this writ petition, though the prayer in this writ petition is for quashing the order of the appellate authority contained in Annexure 4.

5. The learned standing counsel vehemently argued that the competent authority as well as appellate authority committed manifest error of law in interpreting Section 2(g)(i) of the Act of 1976. The order of the appellate authority was also vehemently assailed by the learned standing counsel.

6. The judgment of the competent authority shows that bifurcation was made in respect of hotel and constructions which are the part of hotel premises and there was a boundary wall as well as a room constructed for agricultural purposes. The competent authority granted concession of 500 square metres for the constructions in the first category and similar concession for the second category at the rate of 500 square metres. In this way, surplus land was reduced considerably and was ultimately determined to be 325.63 square metres. The appellate authority made certain observations in its short judgment and ultimately declared that there was no surplus land inasmuch as U. P. Regulation of Building Operation Directions, 1960 issued under Act No. 34 of 1958 provides maximum covered area for any building site in urban areas to be 25% covered area in respect of the premises planned for the business or commercial undertakings. The appellate authority in view of this further reduced 25% land and in this way calculated that there was no surplus land.

7. Having heard the learned standing counsel and perusing the provisions of Section 2(g)(i) of the Act. It is apparent that the competent authority as well as the appellate authority manifestly misinterpreted the aforesaid provision.

8. Section 2(g)(i) provides that the land appurtenant in relation to any building means 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 metres.

9. This Explanation is quite clear and hardly requires any interpretation. The Legislature while making this provision intended that where there are building regulations, the minimum extent of land required under such regulations to be kept open space for enjoyment of such building shall in no case exceed 500 square metres. The minimum extent of land required in building regulations was to be considered by the competent authority as well as by the appellate authority. The competent authority extracted a formula from the aforesaid Explanation that for the

different types of constructions, holder of land is entitled to concession of 500 square metres, This approach and interpretation is wholly erroneous on the part of the two authorities. The two authorities should have diverted their attention to determine surplus land considering the nature of the building existing at the spot and the building regulations permitting open space for the enjoyment of such building. If building regulations in the context of a particular building permit leaving open land or open space for enjoyment of such building which is less than 500 square metres, then the holder of land cannot as of right claim exemption to the maximum limit of 500 square metres. It is at this juncture that the competent authority as well as the appellate authority committed error and granted remission at the rate of 500 square metres for two types of constructions. Needless to say that the authority also considered septic tank to be part of the said building and also granted exemption to the extent of 500 square metres. Similar other structures in hotel premises were given exemption to the extent of 500 square metres without applying mind about the nature of the said constructions and permissible limit under the building regulations.

10. The second category of construction is in the shape of boundary wall and a room constructed for agricultural purposes. For this also, same formula was applied little caring whether the building operation regulations apply for such construction or not.

11. Similarly, the competent authority committed manifest error in granting concession to dwelling unit as defined u/s 2(e) of the Act in respect of second category of the structure without recording any specific finding whether this provision applies or not. Likewise, the appellate authority has committed error in giving remission of 25% under the U. P. Regulation of Building Operation Directions, 1960 given under Act No. 34 of 1958. The appellate authority has not discussed the minimum limit to which the land-holder is entitled to hold the appurtenant land.

12. These factual matters and the matters of calculation cannot be determined in exercise of the jurisdiction under Article 226 of the Constitution of India. However, two orders contained in Annexures 3 and 4 to the writ petition being patently erroneous are liable to be quashed under relief (i) and residuary relief, (ii) contained in the writ petition, The writ petition, therefore, succeeds and the orders dated 14.12.1982 and 21.9.1983 contained in Annexure 3 and 4 respectively to the writ petition are accordingly quashed. The matter is remanded to the competent authority under the Urban Land (Ceiling and Regulation) Act, Agra for redetermination of surplus land in the light of the observations made in the body of the judgment and also in the light of the provisions contained in Section 2(e) and (g) (i) of the Act, who shall also take into consideration the permissible limit of open land under the U. P. Regulation of Buildings Operations Directions issued under the Act in 1960 after affording opportunity of hearing to the parties. In the circumstances of the case, there shall be no orders as to costs.