

**(1989) 07 CAL CK 0005**

**Calcutta High Court**

**Case No:** C. R. No. 8784 (W) of 1980

Sudhanshu Kr. Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** July 17, 1989

**Acts Referred:**

- Bengal General Clauses Act, 1899 - Section 22
- Constitution of India, 1950 - Article 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 18, 2, 2(g), 20, 20(i)

**Citation:** 94 CWN 56

**Hon'ble Judges:** Kalyanmoy Ganguly, J

**Bench:** Single Bench

**Advocate:** Santosh Nath Sen and Sitaram Bhattacharjee, for the Appellant; Pranab Chatterjee and Geeta Gupta for State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Kalyanmoy Ganguly, J.

This application under Article 226 of the Constitution of India challenging three orders, one dated 22nd June, 1978 passed by the Deputy Secretary to the Government of West Bengal, respondent No. 3, which is annexure "C" to the writ petition, the second is the order passed on 25th July, 1978 by the same respondent which is annexure "D" to the writ petition and the third is the order passed by the same respondent on 20/25th June, 1980 which is annexure "F" to the writ petition. The admitted position seems to be as follows The petitioner owns an open plot being premises No. 32, Kalimuddin Sarkar Lane, Beliaghata, Calcutta-10 measuring about 523 Sq. Meters. The petitioner also owns premises No. 50B, Haldarpara Road, Calcutta - 26 whereupon stands more than 126 years old ancestral residential house. The total land at the latter measures approximately 385 Sq. Meters out of which the built up area is 276 Sq. Meters and the land appurtenant, which is required

under the municipal laws not to be built upon is 109 Sq. Meters

2. It may be recalled here that so far as the premises at 50B, Haldarpara Road, Kalighat, Calcutta-26 is concerned there is no vacant land and the only vacant land measuring about 523 Sq. Meters is situated at 32, Kalimuddin Sarkar Lane, Calcutta-10.

3. The plot at Kalimuddin Sarkar Lane is a vacant land measuring about 523 Sq. Meters in excess of the ceiling permissible under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the said Act).

4. It appears that when the petitioner filed a return u/s 6(1), he has omitted to mention the premises situated at 50B, Haldarpara Road, Kalighat, Calcutta-26 but mentioned only the vacant land situated at 32, Kalimuddin Sarkar Lane.

5. The petitioner prayed for retention of 23 Sq. Meters of land situated at 32, Kalimuddin Sarkar Lane which was in excess of the permissible ceiling of retainable vacant land.

6. There was due enquiry into the matter of prayer for exemption and after such enquiry the petitioner was allowed to retain the said excess land of 23 Sq. Meters by order No. 7471-U.L./II-544/76 dated 5th October, 1977 of respondent No. 3 which was communicated to the petitioner. A copy of the said order has been annexed to the writ petition marked with the letter "A" The reason for such exemption, as given in the said order, runs as follows:

The area of 23 Sq. Meters of vacant land is too small to serve any useful public purpose and its acquisition will cause undue hardship to the applicant.

7. Thereafter the petitioner applied for necessary permission u/s 26 of the said Act to effect transfer of the land in premises No. 32, Kalimuddin Sarkar Lane, Calcutta-10 wherein for the first time the petitioner voluntarily mentioned about his dwelling house situated at premises No. 50B, Haldarpara Road, Kalighat, Calcutta-26.

8. On receipt of the said application the petitioner was asked to show cause as to why for non-disclosure of the existence of premises No. 50B, Haldarpara Road, in his statement u/s 6(i) of the said Act, the aforesaid order of exemption should not be withdrawn, A copy of the said memo dated 31st March, 1978 has been annexed to the writ petition marked with the letter "B".

9. Before proceeding further into the matter it is necessary to state that both the expression "Land Appurtenant" and the expression "Vacant Land" have been defined in section 2 of the said Act. Section 2(g) of the said Act defines land appurtenant whereas section 2(g) defines vacant land. The definition of vacant land, inter alia, states in sub-clause (ii) of Clause (q) of section 2 that the expression "Vacant Land" does not include, 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. Sub-clause (i) of Clause (g) of section 2 of the said Act, inter alia, defines land "Appurtenant" to mean "In an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open spaces for the enjoyment of such building which in no case shall exceed 500 Sq. Meters "

10. The admitted position seems to be that the petitioner had no other vacant land than the land at premises No. 32, Kalimuddin Sarkar Lane and that it was excess of the permissible ceiling only by 23 Sq. Meters.

11. It is true while filing a return u/s 6(i), a person is required to include in such return, lands, or properties which do not come under the purview of the definition of vacant land.

12. Sub-section (9) of Section 4 of the Act provides that where a person holds vacant land and holds any other land on which there is a building with a dwelling unit therein, the extent of such other land occupied by the building and the land appurtenant thereto shall also be taken into account in calculating the extent of vacant land held by Si person. Sub-section (11) of Section 4, however, adds that nothing in Subsection (5), (6), (7), (9) and (10) shall be construed as empowering the competent authority to declare any land referred to in Sub-Clause (M) or. Sub-Clause (iii) of Clause (q) of Section 2 as excess vacant land under this chapter.

13. That by an order of the respondent No. 3 dated 28th June, 1978, a copy of which has been annexed to the writ petition marked with the letter "C, the petitioner was intimated that the order granting him exemption was cancelled.

14. The application for reconsideration of such order of cancellation was also rejected by order dated 25th July, 1978, a copy of which has been annexed to the writ petition marked with the letter "D". The petitioner filed an application for review which was also rejected by order dated 20th/25th June, 1980. a copy of which was also been annexed to the writ petition marked with the letter "F".

15. Section 20(i) of the said Act empowers the appropriate authority to grant exemption in respect of excess vacant land. The section provides that before any such exemption can be granted enquiry will have to be made into the matter and the reasons for such exemption must be recorded, which in fact has been done in the instant case as would appear from Annexure "A"..

16. Sub-section (2) of Section 20 of the said Act provides that if exemption was granted subject to some conditions and if such conditions are not complied with then such exemption may be cancelled or withdrawn. In the instant case grant of exemption was unconditional and as such the question of violation or non-compliance of any such condition does not arise. I have not been able to find any other decision in the said Act which empowers the authorities to cancel any

order of exemption. The authorities, of course are entitled to proceed u/s 18 and or section 45 of the said Act for concealment the particulars of vacant land and/or for correction for clerical or arithmetical errors. It may be mentioned here that in the instant case there was neither any concealment of any "Vacant Land" nor any clerical and/or arithmetical errors but there was an omission to mention the residential house with its land appurtenant.

17. Further the order withdrawing such exemption, which is annexure "C to the writ petition, records the reasons for such withdrawal as nondisclosure of the existence of the other property at 50B, Haldarpara Road, Kalighat. In my opinion that is not a reason for such withdrawal of exemption either with the meaning of Sub-section (2) of Section 20 or section 45 of the said Act.

18. Even if the petitioner has contravened any of the provisions of the said Act either in the matter of filing of the return under Subsection (1) of Section 6 or in the other respect the appropriate authority can proceed against the petitioner under some other provisions of law if any such provisions available to the authority.

19. Further the reasons given for the withdrawal of such exemption as would appear from annexure "C to the petition is not reconcilable with the reason for grant of such exemption as would appear form annexure "A. The reason for the grant of such exemption remains the same namely, that "The area of 23 Sq. Meters of vacant land is too small to serve any useful purpose

Even for nor disclosure of the existence of the property situate at 50B, Haldarpara Road, the area of 23 Sq. Meters will still remain too small to serve any useful purpose.

20. Mr. Pranab Chatterjee appearing for the respondent with Mrs. Geeta Gupta sought to argue that if the existence of the property at 50B, Haldarpara Road, Kalighat was known to the authorities, the authorities would not have granted the exemption in respect of the 23 Sq. Meters of land in excess of the permissible limits regarding the land at 32, Kalimuddin Sarkar Lane because of the provisions of Sub-section (9) of Section 4 of the said Act. To be very frank, the argument of M. Chatterjee was not intelligible to me because sub-section(11) of section 4 clearly states that the competent authority cannot take into consideration any property not included in sub-section(9) of section 4, in computing the quantum of excess vacant land under chapter 3 of the said Act.

21. I am further of the opinion that even if the exemption granted is allowed to be withdrawn nobody's purpose will be served as the said excess land cannot be utilised by the competent authority for any purpose whatsoever conceivable.

22. In the circumstances stated above, the provisions of section 22 of the Bengal General Clauses Act 1899 is also of no help to the respondent. For reasons stated hereinbefore, this application succeeds. The rule is made absolute. Let a writ in the

nature of mandamus issue commanding the respondents to cancel the orders impugned in the writ petition namely, annexure "C, "D" and "F".

There will be no order as to costs.