

(1992) 02 CAL CK 0026

Calcutta High Court

Case No: C.O. No. 8611 (W) of 1987

Sm. Mira Rani Das

APPELLANT

Vs

State Of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 14, 1992

Acts Referred:

- Urban Land (Ceiling and Regulation) Act, 1976 - Section 6(1), 9

Citation: 96 CWN 823

Hon'ble Judges: N.K. Mitra, J

Bench: Single Bench

Advocate: P.K. Mukherjee, for the Appellant;

Judgement

N.K. Mitra, J.

The short question involved in this case is whether tank is a vacant land for the purpose of calculating the quantum of vacant land to be retained by a person under the Urban Land (Ceiling and Regulation) Act, 1976. Admittedly, the petitioner is the owner of the disputed plot No. 703 having an area of about 2.46 acres which originally belonged to one Sitanath Mukherjee and it was also recorded in his name in the R.S. Record of Rights prepared under the West Bengal Estate Acquisition Act, 1953," as a non-agricultural tenant, and in the said record of rights, it was also remarked that the said tank was being used for agricultural purpose for the public in general under the Kortrung Municipality, District Hooghly. Admittedly, the petitioner"s husband holds 2 plots of land within Mouza Kotrung being Plot Nos. 1094 and 1096 measuring about 2 decimals and 6 decimals respectively, the nature and character of which are Bastu and there are residential houses on the same. The petitioner had purchased a portion, measuring about 1 acre, of the aforesaid tank from the recorded owner Sitanath Mukherjee by a registered Deed dated 21st January, 1959. Subsequently, by the acquisition case No. 42 of 1962, 2 decimals of the said tank was acquired by the Railway authorities for the purpose of establishing Hindmotor halt station. Later on, as the Uttarpara Kotrung Municipality stated

discharging dirty sullage and soil water into the said tank, the petitioner filed Title Suit No. 379 of 1964 in the Second Court of learned munsif at Serampore against the said Municipality inter alia for permanent injunction and obtained a decree on 8th June, 1977. Against the said judgment and decree, the Municipality tiled Title Appeal No. 217 of 1977 before the learned District Judge of Hooghly and during the pendency of the said appeal, a compromise was made between the parties to the said appeal, namely, the petitioner and the said Municipality, and as a result of such compromise the petitioner made a gift of 4" feet wide portion on the Western boundary of the said tank, measuring about 8 decimals, to the said Municipality for construction of a drain. Thus the remaining 90 decimals of the purchased portion of the aforesaid tank, remained with the petitioner over which she is still now enjoying possession.

2. The respondent No. 2, however, in the Return Case No. 630. started consequent to the petitioner's filing a return under the Urban Land (Ceiling and Regulation) Act, 1956. relying upon an ex parte enquiry report of the local KGO dated 27th August, 1984 held, that the petitioner was in occupation of 3309.13 sq. metres as excess vacant land being the said 90 decimals of the said tank, holding the tank as a vacant land, observing Inter alia, that since the nature of the land was non-agricultural, there was no bar in holding such tank as vacant land and issued the necessary draft statement u/s 6(1) and also subsequently, made the final statement u/s 9 of the aforesaid Act. The said statements of the respondent no. 2 have been challenged by the writ petitioner in the present Civil Order.

3. It is submitted by Mr. Mukherjee, learned Advocate appearing on behalf of the writ petitioner, that since the tank cannot be held to be a vacant land, inasmuch as, in order to be a vacant land under the aforesaid Act. the land must be of such nature so that construction is possible on such land, and as no construction is possible on a tank as it is without filling it up, a tank cannot be termed as a vacant land with in the meaning of the aforesaid Act.

4. None appears for the respondents to controvert the statements made in the writ application, as well as the contentions of Mr. Mukherjee, which thus go uncontroverted.

5. Considering the facts and circumstances of the case. I find there is much substance in the contentions of Mr. Mukherjee. A land in order to be termed as vacant land within the meaning of the Urban Land (Ceiling and Regulation) Act. 1976. must be a land as it is, on which building can be raised and/or construction can be made under the relevant Building Regulations. A tank is a water reservoir, either natural or excavated, and no such tank as it is, under any Building Rules, without filling it up and as such, a tank as it is, cannot be brought within the purview of the aforesaid Act of 1976 and also cannot be termed as vacant land. The moment a tank is filled up, it losses the character of tank and land and/ or building site, inasmuch as, it no longer remains as a water reservoir. Admittedly,.90 decimals of

the disputed plot no. 703 which is under the ownership and occupation of the writ petitioner, still remains as a tank and as such, because of the reasons as aforesaid, it cannot be termed as vacant land and hence the impugned statement made by the respondent no. 2 either u/s 6(1) or under Sections 9 and 10(1) of the aforesaid Act, and cannot be sustained in law and are bound to be quashed.

6. Accordingly, the entire Return Case No. 630 and all orders passed therein by the respondent no. 2 u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (Annexure-"C) as well as the final statement prepared by the respondent no. 2 u/s 9 of the said Act being Annexure - "D", cannot be sustained in law in view of the reasons as aforesaid, and are quashed. It is also to be noted here that if the disputed tank is excluded from the purview of the aforesaid Act, then the petitioner or her family cannot be held for holding any excess vacant land under the said Act, inasmuch as, the other 2 plots of land held by the petitioner's husband as mentioned in paragraph 3 are lands on which there were residential houses and structures, and therefore, cannot be termed as vacant land. The Civil Order is thus allowed to the extent as indicated above without any order as to costs.

Civil Order allowed in part.