(1989) 04 CAL CK 0053

Calcutta High Court

Case No: Civil Order No. 2279 of 1985

Pratima Paul and Others		APPELLANT
	Vs	
The Competent Authority and Others		RESPONDENT

Date of Decision: April 12, 1989

Acts Referred:

- Constitution of India, 1950 - Article 14, 15(1), 227
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 2, 2(0)(A), 2(a), 2(f), 2(i)

Citation: AIR 1990 Cal 185 : 93 CWN 1146

Hon'ble Judges: A.M. Bhattacharjee, J; A.K. Nandi, J

Bench: Division Bench

Advocate: S.P. Roy Chowdhury and Mr. Jyotirmoy Bhattacharjee, for the Appellant;Tapan Kumar Sengupta, Debnarayan Bera and Mr. Prafulla Kumar Ghosh Mr. Swadesh Bhushan Bhunia, for the Respondent

Judgement

A.M. Bhattacharjee, J.

I have had the advantage of going through the Judgment prepared by my learned brother, A. K. Nandi, J, and I agree that for the reasons stated by him we must make the Rule absolute and quash the impugned Order passed by the Competent Authority and affirmed by the Appellate Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short ''the Act''). But in view of the importance of the two questions involved herein, I have thought it fit to add a few words, my concurrence with the view of my Lord Nandi, J., notwithstanding.

2. The first question arises thus. What vests under the Act is Urban vacant land and the expressions ''Urban Land'' as in Section 2(q) and the expression ''Vacant Land'' as in Section 2(q) have been expressly defined not, "to include any land which is mainly used for the purpose of agriculture". The Explanation (B) to Section 2(a), however, goes to show that a land, notwithstanding its actual user mainly for

agricultural purposes, "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". The reason behind this provision is patently obvious, the object being to forestall attempted exclusion of lands from the purview of the Act by putting the same to some sort of agricultural use in anticipation of the apprehended operation of the Act. As I had occasion to point out, speaking for a Division Bench of this Court, in Birajananda Das Gupta (deceased by LRs) Vs. Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 and Others, referred to by Nandi, J., in order to warrant exclusion from the operation of the Act, the land must not only be used mainly for the purpose of agriculture at the commencement of the Act, it must also be recorded as such in the relevant land-records.

3. In the case at hard, it is not disputed that the lands in question have not only been recorded as agricultural in the relevant land-records, the same have also been used for the purpose of agriculture till 1975. From 1979, the lands have not been used for the purpose of agriculture or, for the matter of that, for any purpose and the case of the petitioners is that they could not do so because of want of fund and want of helping hand as a result of the last male-holder having died m indigent circumstances and without any adult male member to look after the lands. The respondents have held that the lands, as a result of such non-user, have become vacant land for the purpose of the Act. The Learned Counsel for the respondents has already relied on Explanation (ii) to Section 6 which provides that -

where any land, not being vacant land.. has become vacant land by any reason whatsoever.

the Act shall commerce to operate in respect of such land from

the data on which such land becomes vacant land.

4. A piece of land used mainly for the purpose of agriculture, and as such out of the reach of the Act, may cease to be so used as a result of conversion, change of user and the like and may thus become a. vacant land for the purpose of the Act. But would it become so by mere non-user alone and even where, as here, such cessation of user is due to circumstances beyond the control of the land-owner? The Respondents have sought to return an affirmative answer and placing strongest possible reliance on the words "by any reason whatsoever" in Explanation (ii) to Section 6, it has been urged that if a piece of land used for the purpose of agriculture, ceases to be so used for "any reason whatsoever", including poverty or any other circumstances beyond control of the land-holder, it would cease to be agricultural land and would become Vacant land.

5. It is true that the expression "by any reason whatsoever" may appear to be words of very wide amplitude. But gone are the days of interpreting a statute with a Lexicon in one hand and a Grammar in the other and "literal approach" to

legislations is now being steadily discarded in favour of "purposive approach". We do not know that is precisely what our ancient Indian Jurist Brihospati directed us to do thousands or years ago by pointing out that "Revolt Shastramashritya Na Kartyavyo Hi Nirnaya, Yuktiheene Vichare Tu Dharmahanih Prajayate" -decisions must not be made solely by the letters of the Code, for if decisions are not made according to reasons, there would be failure of justice. But since we do not take, and do not know how to take, the judicial principles from our Jurists, but take them glibly from the Westerners, we may refer to an eminent American Judge, Justice Frankfurter who said that there is no surer way to misread a document or instrument than to read it literally. We must try to import a little bit of common-sense in laws, whenever we find them to apparently have a trend which would shock our concept of reasonableness, equity, justice and good conscience. Whether the Maneka-dictum of "reasonable, right, just and fair" would apply not only to adjectival laws, but to substantive laws as well, is a different matter, even though in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, a unanimous five-Judge Constitution-Bench of the Supreme Court has ruled that "unreasonable vitiates law and procedure alike". But there can be no manner of doubt that if a legislation or any expression therein is capable of more interpretations than one, the one which is, or which is more, "reasonable, right, just and fair" must be accepted.

6. There is a decision of Sabyasachi Mukharji, J., (as his Lordship then was), sitting singly referred to by my learned brother Nandi, J., being Bishnu Kumar vs. Sub-Divisional Officer, Howrah (1979 1 Cal LJ 38 at 50), where the learned Judge appears to have ruled that the fact that a land is lying fallow at a particular year or period "owing to certain adverse seasonal condition or to some other reason, would not make the land, which is used for agricultural purposes, not agricultural land". While I may not record my dissent from the view that if the land is one "which is used for agricultural purposes", it would not cease to be so on the ground of its not being cultivated in any particular year or period due to adverse seasonal conditions or other causes of like nature, I have my doubts, and this I say with great respect to the learned Judge, as to whether a person can keep his agricultural land uncultivated or fallow for any reasons and that too, for years and years, and yet claim that the land is still one "which is used mainly for the purpose of agriculture" within the meaning of the Act and, therefore, outside the ambit of its operation. It is difficult to understand as to how a land, which the owner does not use for the purpose of agriculture for years and years, can still be treated as land "mainly used for the purpose of agriculture" for the purpose of the Act. As I have already noted, it is not merely the character of the land, but its user for the purpose of agriculture and its record as such that go to make a land "agricultural" for the purpose of the Act.

7. But the contention sought to be treated of the Respondents that agricultural land would cease to be treated as such if it has ceased to be so used for any reason

whatsoever, even including circumstances which may make such user absolutely impossible, must be rejected as extremely unreasonable, unjust and unfair. For in that case, even if the owner is not at all in a position to cultivate the land for the time being due to circumstances beyond his control, like floor, draught, requisition by the Government or illness or indigence, the land would cease to be agricultural and would become vacant land liable to be vested under the Act. I have no doubt that the expression "by any reason whatsoever" in Explanation (ii) Section 6(1) cannot include cessation of cultivation due to such circumstances as aforesaid and that mere non-cultivation cannot make agricultural land a vacant one, unless it can be shown that the owner could, but still did not cultivate. That being so, the case of the petitioners that they could not and did not cultivate the lands due to indigence and want of adult male member as a result of the sudden death of their predecessor, the last holder, not having been disputed or controverted by the Respondents, I must hold that the land in question have not become vacant land. In our country, with half the population under the broad-line and much more than that under the poverty-line and with our resolve and pledge in the National Charter to secure Social and Economic Justice, i.e., justice to the poor and the weak, it would be a sacrilege to construe law in a manner which would go to penalise poverty and other economic disability.

8. The second question that arises for determination is that whether members of a Hindu Undivided family consisting of a mother and her minor sons, inheriting the land in question from their husband and father respectively, are to be treated as one ''person'' or unit for the purpose of the Act or would have separate ceiling limits u/s 4(7) of the Act. The word ''person'' has been defined in Section 2(i) as to include "an individual" as well as a "family" and "family" has been defined as to mean "the individual, the wife or husband as the case may be, of such individual and their unmarried minor children". Prima facie, therefore, a husband and wife and their minor children constituting a "family" as defined in Section 2(f), are a "person" as defined in Section 2(i). Section 4, however, in fixing the ceiling, provides in Sub-Section (7) that "where a person is a member of a Hindu Undivided Family, so much of the vacant land as would have fallen to his share had the entire vacant land... held by the Hindu Undivided family been partitioned amongst its members at the commencement of this Act, shall also be taken into account in calculating the extent of vacant land held by such person."

9. Apparently, the word "person" in Section 4(7) should not mean a "family" as defined in Section 2(i) and Section 2(f), for that would make the opening words of Section 4(7) to read "where a family is a member of a Hindu Undivided family". Since the definition of the terms in Section 2 would, as is always usual, apply, "unless the context otherwise requires", and since in the context of Section 4(7), extracted hereinabove, the construction of the word "person" to mean family would be obviously incongruous, it would appear that "family" as a "person" as defined in Section 2(i) was not contemplated to come within the purview of Section 4(7), nor a

Hindu Undivided family as referred to in Section 4(7) was within the contemplation of the words "family" and "person" as defined in Section 2(f) and Section 2(i).

10. Realising that difficulties may arise in giving effect to the provisions of the Act, Section 47 of the Act vests the Central Government with the power to issue orders removing such difficulties. Our attention has been drawn to the Circulars letters issued by the Government of India, Ministry of Works & Housing, being No. 1/266/76-UCU, dated 16.11.76 and No. 1/132/76-UCU, dated 29.12.76, wherein it has been clarified that the word "family" in Section 2(i) "will not include HUF" and that the definition of ''person" in Section 2(i) "read with Sub-Section (7) of Section 4 of the Act would make it clear beyond doubt that Hindu Undivided Family is not treated as a "person" for the purpose of the Act and that only shares of individual members of the Hindu Undivided Family are to be aggregated for the purpose of calculating the extent of land held by the individual members."

11. These circulars are not obviously laws to govern us, but since, as stated hereinbefore, we also find reasons to come to the same conclusion and since the Act has been administered during all these 12 years or more according to such construction, we would also hold that a Hindu Undivided Family is not a person as defined in Section 2(i) of the Act and is not to be treated as a single unit for the purpose of ceiling limit, but that u/s 4(7) of the Act, each individual member of such Family, major or minor, having a share in the vacant land belonging to such family, shall have their respective separate ceiling.

12. Does Section 4(7) then contain provisions favouring Hindu Undivided Family and discriminatory against the Undivided Family of the Muslims or the Christians or other non-Hindus and thus violates Article 15(1) of the Constitution which invalidates all discrimination on the ground of religion? I do not think so for the reasons stated hereunder.

13. Joint or Undivided Family in Hindu Law, though not a Juristic person, is nevertheless a Juristic concept having no counter-part in the other Personal Laws. Even if some Muslims or Christians or other non-Hindus are members of a Family and, being undivided, are members of an Undivided Family and have acquired common properties by succession or otherwise, the properties would belong to them individually in defined shares and not to the Undivided Family in any sense as understood in Hindu Law. And all such co-sharers or co-owners would obviously be treated as separate person and unit and to have separate ceilings. But as throughout all the ages, there had been some amount of obfuscation about the Juristic personality or entity of Hindu Joint or Undivided Family, and in case of Mitakashara Family, the co-perceners are held not to have any distinct or definite shares until partition and ancestral properties are treated to be held by the Family, and not the members, care was taken in Section 4(7) to provide that all such members of a Hindu Undivided Family would be deemed to have such shares as would have been available to them on partition at the commencement of the Act

and would be treated as separate persons having separate ceilings. Even in Section 4(7), the expression used is "land.. held by the Hindu Undivided Family", as if as a legal entity, and not land held by the members of such a Family. In the case of the Muslims, Christians or other non-Hindus, the same result would follow even without the aid of any provision like Section 4(7), as in their case, an Undivided Family, though having a factual existence, had or have never any existence in law and, therefore, has no rural complication. In the decision of the Supreme Court in Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, A. P. Sen, J., in his separate but concurring judgment (at 265-267, paragraph 90, 91) has also observed to the effect that "by the exclusion of a Joint Hindu Family, whether governed by the Mitakashara School or the Dayabhaga School", the members thereof were "brought at per with others", like the Muslims, the Christians and other non-Hindus. It may be noted that this question in this forum was not adverted to by Chandrachud, C.J., Bhagwati, J. and Krishna Iyer, J. in their judgments, and there is also nothing in these judgments to the contrary.

A.K. Nandi, J.

14. A lady and her children seek to take refuge under Article 227 of the Constitution of India. They seek to impress upon us that the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 has illegally ordered on 31.1.84 that as much as 6785.10 sq. mts. of land appertaining to plot Nos. 2201, 2205, 2193 and 2195 being excess vacant land have vested. Their appeal to the Appellate Authority went in vain.

15. The plots originally belonged to one Pranballav Saha and he submitted a statement u/s 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called ''the Act'') on 13.8.76. He, however, died on 6.9.76. On his death the Competent Authority issued a notice upon the widow Pratima Paul u/s 6(2) of the Act on 11.2.82 asking her to file a statement u/s 6(1) of the Act. Pratima did not prefer to ale a statement. On the contrary she relied upon the statement filed by her deceased husband on 13.8.76. The Competent Authority caused two enquiries, one on 5.2.82 without any notice to Pratima and another on 30 6.82 with notice to her. The Kanungo held the enquiry and submitted his report on 13.1.83. He heard Pratima Paul who claimed that the land was cultivated till 1978 and thereafter it could not be cultivated due to her financial inabilities. In course of enquiry the Kanungo heard one Rahim Bux also who said that he cultivated the land on behalf of Pratima till 1978. The Competent Authority thereafter prepared a draft statement u/s 8(3) of the Act and issued notice upon Pratima on 3.2.83 asking her to Ale objection, if any, Objection was filed on 1.3.83.

16. The Competent Authority overruled the objection by its order, dated 31.1.84. It held that the widow together with her four children constituted a ''person'' within the meaning of Section 2(i) since they come within the definition of ''family'' as contemplated u/s 2(f) of the Act. Accordingly the widow together with her minor

children constituted one unit for the purpose of retention of vacant land. He also overruled the objection that the land was not vacant land. According to him the total area of the disputed plots 2201, 2205, 2193 and 2195 of Mouja Digla under Dum Dum P.S. measured 8198.40 sq. mts. The lady was allowed to retain 1713.30 sq. mts. of vacant land and the balance of 6785.10 sq. mts. was vested as it was in excess of ceiling limit.

17. An appeal was preferred u/s 33 of the Act. The Appellate Authority dismissed the appeal by an order, dated 20.7.65.

18. Admittedly the disputed plots 2201, 2205, 2193 and 2195 originally belonged to one Pranballav Pal, the predecessor-interest of the present petitioners who died on 6.9.76 leaving behind him widow Pratima and four minor children. There is no dispute either that the plots were agricultural during the life time of Pranballav and therefore, no part of it could vest in the State. The plots have been recorded as agricultural lands and they were used as such during the life time of Pranballav. In order to exclude a piece of land from the purview of the definition of vacant land as envisaged in Section 2(q) of the Act the record of right showing land to be agricultural is not sufficient. It must be shown to be in use as such. We may refer to "Explanation" appended to Section 2(0) (A) to find that agriculture includes horticulture. In the record of right plot Nos. 2201 and 2205 have been recorded as sali and, 2193 and 2195 as danga. So all the four plots come within the definition of agricultural land. Chittatosh Mukharji, J. (as his Lordship then was) held, sitting singly, in lshta Prasad vs. District Registrar (1979 2 CLJ 191 , Para 10) that a mere record of right recording a land as agricultural or a mere use of land for agricultural purpose by itself is not sufficient to call agricultural land. Two together are necessary under the Act. Speaking for a Division Bench in a later decision A. M. Bhattacharjee, J., has also ruled in Birajananda Das Gupta (deceased by LRs) Vs. Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 and Others, that in order to justify exclusion from operation of the Act on the ground of its being "agricultural", the land must satisfy two tests, viz., it must in fact be used mainly for the purpose of agriculture and, it must also be entered as such in the relevant record. Either of them in exclusion of another is not decisive.

19. There is no dispute that the disputed plots are lying fallow since 1979. The question is as to whether the plots can now be taken to be vacant for not having been used for the purpose of agriculture since 1979. The ceiling limit of vacant land has been prescribed in Section 4. So the petitioners cannot retain the entirety of the disputed land if not entitled otherwise once we find it at a vacant land. Vacant land has been defined in Section 2(q) of the Act. Vacant land is one which is not being used for the purpose of agriculture. The Act is, however, silent as to the period of cessation of agricultural use in terms of agricultural year or season which will attract the definition. We do not propose to fill up this legislative lacuna although we have been addressed to do so.

20. The question is whether the provision is absolute in application or it admits of exception. There may be draught, inundation, earthquake or temporary requisition by Government rendering it impossible to cultivate for a certain period. There may be erosion on account of change of course of river and thereafter reformation in situ. We are referred to Section 6 Explanation (ii) which reads as follows:

Where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land.

21. Emphasis is laid on "by any reason whatsoever". The expression must be interpreted with a pragmatic view. It is far from the intention of the legislature to forfeit the property of an agriculturist who is unable to cultivate his land on account of a factor beyond his control. On the contrary, the legislative intent is to seize the land of one who has deliberately kept a land fallow or rather does not cultivate without any good reason. We intend to draw a distinction between an intentional cessation of agricultural use and an unintentional cessation. In our opinion, the law seeks to forfeit the land of the former. The law seeks to penalize the diversion of purpose or rather conversion for use. Our view may find support from Section 2(O) Explanation (A). A piece of agricultural land will cease to be so if it is used for the purpose of "raising grass", "dairy farming", etc. So conversion of an agricultural land for purpose other than agriculture will bring the land within the definition of vacant land. Therefore an agricultural land does not necessarily become vacant on account of its remaining fallow for a certain period of time. The question is whether it was possible to cultivate and it was not cultivated, and whether it was not cultivated for a factor which rendered it impossible to cultivate. We are in respectful agreement with the observation of Sabyasachi Mukharji, J., (as his Lordship then was), made in Bishnu Kumar Misra vs. S.D.O., Howrah (1979 1 CLJ 38 at 50) and Krishna Narayan Mukherji vs. State of West Bengal (1979 1 CLJ 427 at 439). His Lordship held that "the fact that a land is left fallow say a particular year or a particular period owing to certain adverse seasonal condition or to some other reason would not make the land which is used for agricultural purpose, not agricultural land". In our opinion the expression "some other reason" must be a reason over which the agriculturist has no control. An intentional abandonment of cultivation or for the matter of that cessation of cultivation negligently cannot escape the operation of the provision. In the instant case financial difficulty accounts for cessation of agriculture. This fact remains undisputed. There is, therefore, no deliberate cessation of agriculture. The legislators do not surely intend to forfeit the land of a poor agriculturist. A contrary intention will not be in consonance with the Directive Principles enshrined in our Constitution. We therefore find that the cessation of agriculture since 1979 in the facts of the case does not make the land vacant, and therefore the vesting on this account cannot be upheld.

22. The finding of the two Authorities has been challenged on a different ground also. The Authorities have taken the widow and her children as one unit having regard to the de5nitions of ''family'' in Section 2(i) and ''person'' in Section 2(i) of the Act. Section 4 prescribes the ceiling limit of a person. According to Section 2(f) a person includes family which again, according to Section 2(f) means an individual, the wife or husband, as the case may be, of such individual and their unmarried minor children. The finding cannot be supported for more reasons than one. The husband having died the mother and her children together cannot constitute a family. The children become members of "Hindu Undivided Family". On the death of Pranballav the widow and children inherit distinct and defined shares in the property of the deceased. Section 4(7) of the Act permits each members of H.U.F. retention of permissible ceiling of vacant land as would have fallen in their respective shares on partition regardless of the minority of the sharers. If we interpret this provision to mean that the minor children cannot reap the benefit of this provision for having been constituted one unit by being members of a family together with mother as envisaged in Section 2(f) of the Act we discriminate between minor children and major children. And in that event the provision offends Article 14 of the Constitution. Therefore each survivor of the deceased would be treated as one unit for the purpose of retention of vacant land irrespective of their minority.

23. The petitioners cannot be treated as one unit for another reason. The definition of person in Section 2(i) of the Act does not include H.U.F. Our view finds favour with the decision of the Supreme Court in Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, at page 222 para 90). All the heirs of the deceased will get one unit each. All the heirs of the deceased together cannot constitute a family within the meaning of Section 2(f) for the purpose of being treated as one unit. Our attention has been drawn to the Government of India Law Ministry''s note in GIM of W & H Circular letter No. 1/266/76-UCU, dated 16.11.76. We find that the circular is in accord with our view. In any view of the matter therefore the order of the Competent Authority and that of Appellate Authority are unsustainable.

24. We accordingly make the Rule absolute, quash the impugned orders of the Competent Authority and the Appellate Authority. Let a copy of our order, along with the records, if any, go down to the Competent Authority at once.