Srila Mitra Vs State of West Bengal and Others

None

Court: Calcutta High Court

Date of Decision: Dec. 16, 1980

Acts Referred:
Constitution of India, 1950 â€" Article 226, 340#Urban Land (Ceiling and Regulation) Act, 1976 â€" Section 10, 11, 2, 26, 3

Citation: 85 CWN 219

Hon'ble Judges: M.M. Dutt, J; A.K. Sarkar, J

Bench: Division Bench

Advocate: Balai Chandra Roy and Manick Chandra Das, for the Appellant;Amaresh Chakraborty for Respondent Nos. 1 and 2, Sadhan Gupta, A.A.G. for Respondents, Manotosh Mukherjee and Sunil Kanti Barua for Added Respondents, for the Respondent

Final Decision: Allowed

Judgement

1. In this appeal, the appellant Sm. Srila Moitra has challenged the propriety of the judgment of a learned single Judge of this Court whereby the

learned Judge has discharged the Rule Nisi obtained by the appellant on her application under Article 226 of the Constitution of India.

2. The appellant is admittedly the owner of premises No. 6B, Ironside Road, Calcutta which is within the limits of the Corporation of Calcutta. The

land comprised in the said premises measures 1542.625 sq. meters consisting of a building covering 233.500 Sq. meters, a tank measuring

1162.124 Sq. meters and 147.0017 Sq. meters of land appertaining to the building. On September 27, 1976, the appellant duly submitted a return

under the provisions of the Urban Land (Ceiling and Regulations) Act 1976, hereinafter referred to as the Act, before the Respondent No. 2, the

Competent Authority, Calcutta. On August 19, 1979, the appellant gave a notice to the Respondent No. 2 u/s 26 of the Act for transfer of an area

of 500 Sq. meters of the said tank by way of sale in favour of Purbarag Samabaya Abasan Ltd., a Housing Co-operative Society, registered under

the Co-operative Societies Act. In reply to the said notice, the Respondent No. 2 by his letter dated October 16, 1979 informed the appellant that

as she was holding vacant land in excess of ceiling limit, the notice u/s 26 was not valid and the transfer of the portion of the disputed tank could be

allowed. Being aggrieved by the refusal by the Respondent No. 2 to grant to the appellant permission to sell the said portion of the disputed tank

on the ground that tank was vacant land and the appellant was holding vacant land in excess of the ceiling limit as contained in his said letter dated

October 16, 1979 (Annexure "C" to the writ petition), the appellant moved this Court under Article 226 of the Constitution whereupon the Rule

Nisi, out of which this appeal arises, was issued.

3. At the hearing of the Rule Nisi it was contended on behalf of the appellant that the disputed tank wa not "vacant land" within the meaning of

section 2 (q) of the Act and, as such, the appellant was not in possession of any excess vacant land. The learned Judge, however, came to the

finding that tank should be construed as vacant land within the meaning of section 2 (q) of the Act. In that view of the matter, the learned Judge

discharged the Rule Nisi. Hence this appeal.

4. The only question that is involved in this appeal is whether a tank is vacant land within the meaning of section 2 (q) of the Act. Before we come

to the question, we may refer to the scheme of the Act. The preamble of the Act shows that it is an Act to provide for the imposition of a ceiling on

vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such

land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation

and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.

Section 3 of the Act provides that except as otherwise provided in the Act, on and from the commencement of the Act, no person shall be entitled

to hold any vacant land in excess of the ceiling limit. Section 4 provides for the ceiling limit. Section 10 is a provision for acquisition of vacant land

in excess of ceiling limit. u/s 26 notice is required to be given before transfer of vacant land. Sub-section (1) of section 26 provides that

notwithstanding anything contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer

such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the Competent Authority.

The object of giving a notice is contained in sub-section (2) of section 26. Under sub-section (2), where the notice is for the transfer of land by

way of sale the Competent Authority shall have the first option to purchase such land on behalf of the State Government at a price to be calculated

in the manner as provided in that sub-section; such option has to be exercised within the period of sixty days from the receipt of the notice and if

no such option is exercised within the said period it shall be lawful for the person giving the notice to transfer the land.

5. The Respondent No. 2, the Competent Authority, took the view that as the disputed tank was vacant land and as the appellant held vacant land

in excess of the ceiling limit, the provision of section 26 was not applicable. The consequence of this finding of the Competent Authority is that the

State Government will be entitled to acquire the disputed tank which is alleged to be excess vacant land. Mr. Balai Chandra Roy, learned Counsel

appearing on behalf of the appellant submits that a tank is not vacant land within the meaning of section 2(q) of the Act. Section 2(q) provides as

follows :

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

(i) land on which construction of building is not permissible under the building regulations 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 : and

(iii) in an area where there are no building regulations, the land occupied by any building which has been 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 a village within an urban agglomeration, (described as a village in the revenue records), then, no much extent of the land as

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

purposes of this clauses.

6. It is submitted on behalf of the appellant that a tank comes under the exception as provided in clause (i) of section 2(q). The real question,

therefore, is whether the construction of a building is permissible on a tank under the building regulations in force in the area in which the tank is

situated. It is not disputed that in the instant case, the building regulations as contained in the Calcutta Municipal Act, 1951 will apply for the

purposes of clause (i). Section 376 of the Calcutta Municipal Act provides as follows :

376. No piece of land shall be used as a site for the erection of anew building and no new building shall be erected, otherwise than in accordance

with -

(a) the provisions of this Chapter and of Schedule XVI, and

(b) any orders, rules or by laws made under this Act, relating to the use of building-sites or the erection of new buildings, as the case may be.

Rule 1 of Part I of Schedule XVI is as follows :

1. No piece of land shall be used as a site for the erection of a building -

(1) If the building is to abut on a street, unless the site is of such a shape that the face of the building can be made parallel to the line of the street, or

as nearly parallel to the said line as the Commissioner may consider practicable ; and

(2) if the site is within ten meters of a tank, unless the owner takes, or satisfies the Commissioner that he will take such action as will prevent any

risk of the drainage of the building passing into the tank ; and

(3) if the site is a filled-up tank, or has been filled up with or used for depositing rubbish, offensive matter or sewage, unless the Commissioner has

caused the site to be examined and granted a certificate to the effect that it is, from sanitary and engineering points of view, fit to be built upon ; and

(4) if the building to be erected is a public building, a dwelling-house or a but intended for human habitation unless the site is certified by the

Commissioner to be dry and well-drained or unless the commissioner is satisfied that it is capable of being well-drained and that the owner will

take the necessary steps to drain it ;

(5) if the frontage of the site is less than five meters, unless it is certified by the Commissioner that the site can be sued for the construction of a

building and while granting the certificate the Commissioner May fix the height of the building to be erected.

7. Rule 1 starts with a prohibition against the erection of a building on five classes of building sites unless certain conditions are fulfilled. Apart from

the building sites mentioned in clauses (1) to (5) of Rule 1 there is no other building sites under the other provisions of Schedule XVI except the

site on which a building has been previously existing as provided in Rule 2 of Part 1. Neither under Rule 1 nor under Rule 2, a tank is considered

to be a building site. It is apparent from Rules 1 and 2 that the said site which is not put to any use. A tank is constructed for the purpose of

storage of water by excavating earth from solid land. A tank contains an embankment, the under ground land and the bed of the tank. A tank is no

doubt land, but it is not solid land. A building, either under Rule 1 or under Rule 2, is permissible to be constructed on solid land which is vacant,

that is not put to any use. Apart from the fact that tank land is not solid land, it cannot also be considered as vacant land for the purpose of

construction of a building. Indeed, clause (3) of Rule 1 provides for the erection of a building on the site of a filled-up tank. A filled-up tank is not a

tank, but it is solid land and a vacant land too in the sense that after the tank is filled-up, the land is no longer used for storage of water. Under

clause (2) of Rule 1, a building is not permissible to be erected within 10 meters of a tank unless certain conditions are fulfilled.

8. It is contended by the learned Additional Advocate-General, appearing for the respondents, that clause (1) of section 2(q) of the Act postulates

an absolute prohibition against the construction of a building under the building regulations. He submits that Rule 1 of Part I of Schedule XVI to the

Calcutta Municipal Act does not provide for an absolute prohibition against erection of building on the sites referred to in clauses (1) to (5) of Rule

1, for, on the fulfillment of certain conditions, the initial bar against construction on the sites will be removed. He frankly concedes that no

permission can be granted for construction on a tank and indeed, the building rules under the Calcutta Municipal Act does not provide for the grant

of any such permission. But he submits that if a tank is filled up in the manner laid down in clause (3) of Rule (1), such permission can be granted. It

is submitted by him that considered from that point of view, it should be held that as construction of a building is permissible on a tank after it is

filled up, tank does not come within the exception of the definition of "vacant land" under clause (1) of section 2(q).

9. It is not necessary for us to decide finally whether or not the provision of clause (1) of section 2(q) provides for an absolute prohibition, but

assuming that it does, let us consider whether a tank is a vacant land or not. The underground of the tank is undoubtedly land. The municipal

authorities will not surely permit anybody to construct on the under ground land of a tank, nor will anybody wish to construct on tank-land. There

can be no doubt that if the water of the tank is drained out and the excavation is filled up in the manner provided in clause (3) of Rule 1, the

permission to construct will be granted. As soon as, however, the tank is filled up, there will be no existence of the tank, and the site will be a

different site. The filled-up tank is solid land like any other building site. We are, however, not concerned with filled-up tank, but with the land of

the tank with water on it. In our opinion, clause (1) of section 2(q) of the Act postulates the existing state of the land and not its altered state or

improved state. Any land, which comes within the prohibitions under clauses (1) to (5) of Rule 1 of Part 1 of Schedule XVI to the Calcutta

Municipal Act, can be converted in to a building site by altering its condition. A piece of land with a building thereon is not a building site, but it will

become so if the building is demolished and removed. Clauses (ii) and (iii) of section 2(q) of the Act have excluded lands with buildings from the

category of vacant land. This also indicates that the existing condition for the purpose of the definition of vacant land. In this connection, we may

refer to the provision of section 11 (3) (b) of the Act under which the State Government has to fix the rate per square meter of vacant land in each

zone acquired u/s 10(2) of the Act for calculation of payment to the persons interested. The rate that may be fixed will be applicable to all vacant

land in the zone. In our opinion, it the legislature had intended to include tank as vacant land, it would not have surely prescribed one uniform rate

for solid land and for tank which is undoubtedly of lesser value than solid land. Section 11(3)(b) also indicates that tank is not included within the

definition of vacant land.

10. The learned Additional Advocate-General has placed reliance on a certain observation of the Supreme Court in The Anant Mills Co. Ltd. Vs.

State of Gujarat and Others, . In that case, it has been observed by the Supreme Court that the word "land" includes not only the face of the earth,

but everything under or over it, and has in its legal signification an indefinite extent upward and downward. He has also relied on a statement in

Halsbury''s Laws of England, 3rd Ed., Vol. 32, Art. 340, page 248, inter alia, that land includes buildings, tanks etc. There can be no doubt that

tank includes land and, in ordinary sense, tank is land. We are, however, concerned with the question whether "tank" is a vacant land within the

meaning of section 2(q) of the Act. So the observation of the Supreme Court and the statement in Halsbury''s Laws of England referred to above,

do not help in solving the question.

11. It is, however, contended by the learned Additional Advocate-General that the object of the Act being to subserve the common good, which is

expressly stated in the preamble referred to above, the provision f section 2(q) of the Act and, for the matter of that, the building regulations too

should be construed in a manner consistent with the object of the Act. It is true that a beneficial statute should be construed with an eye to the

object sought to be achieved by it. At the same time, it is a well established principle of law that an exproprietory legislation should be strictly

construed. The Act with which we are concerned is admittedly an exproprietory statute, for, it has been earlier noticed, the Government will

acquire the vacant lands in excess of the ceiling limit. Generally, all such legislations are enacted for public good. No doubt, the Court should see

that the object that is sought to be achieved is not frustrated. At the same time, the Court should not lose sight of the citizens who are being

divested of their properties. In other words, the rule of strict construction is not to be given the go-by on the ground that the statute, though it is

exproprietory, yet it is for public good.

12. For the reasons stated above, we regret, we are unable to accept the view of the learned Judge that clause (i) of section 2(q) of the Act is

applicable only in respect of land whereupon construction of a building is expressly prohibited by the building regulations in force in the area in

which such land is situated, and that as the building rules of the Calcutta Municipal Act does not expressly bar construction of a building on a land

which is a tank, the appellant cannot avail himself of the exclusive clause (i) of section 2(q) of the Act.

13. In the circumstances, the judgment appealed from is set aside and the order dated October 16, 1979 (Annexure "C" to the writ petition) is

quashed and the respondents are directed not to give any effect to the same. Let appropriate writ or writs issue in that regard.

14. The appeal is allowed to the extent indicated above. There will, however, be no order for costs.

15. As prayed for by the learned Additional Advocate General, there will be a stay of the operation of the judgment till three weeks after the

Christmas Holidays.

A.K. Sarkar, J.

16. I agree.