

The State of Uttar Pradesh and Others

Vs

Anghalia Housing (P) Ltd., and Others

Civil Appeal No. 2046 of 1974

(CJI A.N. Ray, K.K. Mathew, N.L. Untwalia JJ)

11.11.1975

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave from the judgment and order of the Allahabad High Court quashing the order dated March 26, 1970 of the Collector, Dehra Dun made in respect of the land measuring about 951 acres situated in village Guljawari near the town of Dehra Dun. The said land belonged to and was in possession of one Lala Joti Prasad. On March 30, 1949 Joti Prasad entered into an agreement with the Delhi Land and Finance Ltd., for the development of the land under a housing scheme. The said company was given possession of the land, which as per the agreement, was to be sold to it. The company took some steps for the furtherance of the housing scheme. A layout plan was prepared and some plots were booked by some intending purchasers. A major portion of the land was covered by forest which, because of certain restrictions under the Forest Act, could not be cut. Hence no substantial progress was made in the execution of the housing scheme by the Delhi Land and Finance Ltd. This company transferred its rights to another company known as the Delhi Land Finance Housing and Construction (P) Ltd. Most of the events which will be narrated hereinafter happened when this company was in possession of the land. Respondent No. 1 Anghalia Housing (P) Ltd. was incorporated on January 22, 1970 and the land was transferred to this company on March 22, 1970. Hereinafter in this judgment by the company would be meant the company which was in possession of the land at the relevant time.

2. The U. P. Zamindari Abolition and Land Reforms Act, 1950 - hereinafter called the Act - came into force on July 1, 1951. Under the scheme of the Act on the issuance of a notification under Section 4 all estates of the intermediaries and the land comprised therein vested in the State of Uttar Pradesh. But because of certain exceptions and exemptions provided in the Act, the land in question remained outside its operation. Section 1 (3) of the Act says :

It shall come into force at once except in the areas mentioned in clauses (a) to (f) sub-section (1) of Section 2 where it shall, subject to any exception or modification under sub-section (1) of Section 2, come into force on such date as the State Government may by notification published in the Gazette appoint, and different dates may be appointed for different areas and different provisions of this Act.

We may now read the relevant provisions of Section 2 :

(1) The State Government may by notification in the Gazette apply the whole or any provision of this Act to any of the following areas or estates subject to such

exceptions or modifications not affecting the substance, as the circumstances of the case may require -

* * * *

(c) areas held and occupied for a public purpose or a work of public utility and declared as such by the State Government or acquired under the Land Acquisition Act, 1894; the United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948, the United Provinces Acquisition of Property (Flood Relief) (Temporary Powers) Act, 1948, or any other enactment other than this Act. Relating to acquisition of land for a public purpose :

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(2) The declaration of the State Government under clause (c) of sub-section (1) shall be conclusive evidence that the land is held and occupied for a public purpose or a work of public utility.

Explanation. - Any area held on the seventh day of July 1949, for the purposes of a housing scheme by a cooperative society registered under the Co-operative Societies Act. 1912 or a society registered under the Societies Registration Act. 1860, or a limited liability company under the Indian Companies Act, 1913, shall be deemed to be held for a work of public utility.

3. Although under the explanation aforesaid the land would have been deemed to be held for a public utility, a specific declaration was also made by the State Government in exercise of its power under sub-section (2) of Section 2 declaring that the areas of land held on July 7, 1949 for the purpose of a housing scheme by a limited liability company were exempted as areas held and acquired for public purpose or works of public utility within the meaning of clause (c) of sub-section (1) of Section 2 of the Act. Since the area in question was not specifically including in the declaration made on July 1, 1952 under Section 2(1) the company applied to the Government to make a specific declaration in respect of this area, i.e. 951 acres. Eventually it was found by the Collector, Dehra Dun that this was an area to which the provisions of the Act were not applicable. As already stated a large part of the land constituted a reserve forest under Section 4 of the U. P. Private Forest Act, 1949, and therefore, could not be cleared without the specific permission of the authority concerned.

4. A phased plan for the implementation of the housing scheme within a period of six years was mentioned in the Government's letter dated July 9, 1956 written to the Collector, Dehra Dun. But since nothing substantial towards the implementation of the housing scheme was done by the company, a show-cause notice was issued on November 29, 1958 asking it to show cause as to why the exemption of the land from the operation of the Act be not withdrawn. The company showed cause and nothing happened. Eventually an agreement was entered into between the company and the Government on September 28, 1964 under which the restrictions of clearing the forests under the Forest Act were to be withdrawn so that the housing scheme could be fully implemented. As a matter of fact such a restriction was withdrawn on January 18, 1966 and a licence was issued to the company on May 21, 1966 for felling the trees. The licence was valid for a period of two years but the time was extended by another two years. The company cleared the jungle well within the extended time under the licence, yet a notification under Section 1(3) read with Section 2(1) of the Act was issued by the Government on September 1, 1969 withdrawing the exemption granted

earlier in the year 1952 and applying the provisions of the Act to all areas in respect of which the exemption had been granted except a few described in the said notification. The Collector of Dehra Dun held by his order dated March 26, 1970 that the land in question was not such as was exempted from the operation of the Act and that it was covered by the notification dated September 1, 1969 under which the provisions of the Act were made applicable. The respondents filed a writ application in the High Court to challenge the said order.

5. Substantially only two points were urged before the High Court :

(1) That the company had taken several steps in execution of the housing scheme and hence the land was not covered by the notification dated September 1, 1969 and subjected to the operation of the Act.

(2) That in view of the agreement dated September 28, 1964 and several other representations on the part of the Government it was estopped from withdrawing the exemption of the operation of the Act in relation to the land in question and the action of the Government or the Collector was bad, on the principle of promissory estoppel.

6. There was a difference of opinion on both the points between the two learned Judges of the High Court constituting the Division Bench which heard the writ petition. One of them rejected both the points and directed the dismissal of the writ petition while both found favour with the other. The case was referred to a third learned Judge who in agreement with one of the judges, allowed the writ application accepting both the contentions put forward on behalf of the respondents. Hence this appeal by the State.

7. We do not propose to enter into the question of estoppel in this case, as in our opinion, the judgment of the High Court is sustainable on the first ground alone.

8. It is not in dispute that in view of the provisions of the Act engrafted in Sections 1(3) and 2(1) and the notification and the order issued earlier, the Act did not apply to the land in question. Then came the notification on September 1, 1969 seeking to apply the Act to the lands of the housing scheme but providing the certain exceptions. In the preamble of the notification there was a specific mention of the land in Chandanbani estate with which we are not concerned in this appeal but the general preamble was in the following terms :

AND WHEREAS THE Governor is further satisfied that it will not be in public interest to show continuance of the said exemption in respect of such of the other areas of the State covered by the said notification of 1.7.52, as have not till now been utilized for purposes of housing scheme;.

The operative portion of the notification said :

NOW, THEREFORE, in exercise of the powers conferred by sub-section (3) of Section 1, read with sub-section (1) of Section 2 of the said Act, and Section 21 of the U. P. General Clauses Act, 1904, the Governor is pleased to appoint September 1, 1969 as the date with effect from which the whole of the said Act shall apply

* * * *

(ii) to all such other areas of the State as were declared under clause (c) of sub-

section (1) of Section 2 of the said Act as areas held and occupied for a public purpose or a work of public utility by clause (6) of Revenue (A) Department Notification No. 4098/1A-450/1951, dated July 1, 1952 other than areas or parts thereof which have actually been utilized in execution of a housing scheme before the date of this notification.

9. The findings of primary facts recorded in the judgment of the third learned Judge, and which could not be materially challenged before us are the following :

(i) It had prepared (not submitted) the layout plan long ago. On December 31, 1965, it had submitted a working plan which was approved by the U. P. Government on December 25, 1968.

(ii) It had entered into agreements with several persons for the sale of plots in the colony.

(iii) It had written to the appropriate authorities and actually obtained sanction for water and electricity connections.

(iv) It had got the land surveyed in accordance with the agreement entered into with the Government in 1964.

(v) It had taken the soil conservation measures, as contemplated by the 1964 agreement.

(vi) It had constructed roads in the colony.

10. The question for consideration is whether the land in question had "actually been utilized in execution of a housing scheme" within the meaning of the expression used in the notification dated September 1, 1969. Facts mentioned in items (i), (ii) and (iii) above were the steps taken by the company long before the agreement dated September 28, 1964. Perhaps the construction of roads, if any, was also done before. But facts in items (iv) and (v) were the steps taken pursuant to the agreement aforesaid. One major step taken after removal of the ban under the Forest Act was the felling of trees and the clearing of the jungle well within the extended time allowed under the licence. The point for consideration is whether by the acts aforesaid the land had been actually utilized in execution of the housing scheme. If the answer be in the affirmative then the land remained outside the operation of the Act and was not covered by the notification dated September 1, 1969. On the other hand, if the answer be in the negative then the land was so covered.

11. It was pointed out on behalf of the Government that the company had applied on September 20, 1966 to the prescribed authority under Section 6 of the U. P. (Regulation of Building Operations) Act, 1958 for undertaking or carrying out the development of the site in the area which was regulated area under this Act. The prescribed authority had asked the company to do certain things in its letter dated December 16, 1966. The company slept over the matter and did not resubmit anything until December 26, 1969, three months after the issuance of the notification withdrawing the exemption. On the other hand Counsel for the company submitted that it had taken several steps before, it was still prepared to stick to the agreements entered with various persons for allotment and sale of plots in the colony, before the clearing of the jungle, no further development of the site was possible and permission under Section 6 of the U. P. Act of 1958 became necessary only after the clearance of the jungle. It was, therefore, contended on behalf of the respondents that whatever was

possible to be done in execution of housing scheme until the notification dated September 1, 1969 was issued had been done and land had been actually utilized in execution of such a scheme. In our opinion the contentions put forward on behalf of the respondents is well-founded and must be accepted as correct.

12. Until the ban in the way of the clearing of the forest was removed and the land was made free from it, no further development such as laying out plan, carving out plots etc. etc. was possible to be done. It seems that the company had not undertaken the construction of any building or house. The business of the company was to make the land fit for building purposes, carve out plots, construct roads, sell the plots to various allottees or intending purchasers who were to build their own houses on the plots. The questions of taking sanction under the U. P. Act of 1958 arose only after the clearing of the jungle. The act of clearing the forest by felling the tree from the land and some other acts done by the company before September 1, 1969 were the only acts which were possible to be done in order to make the land useful for the purpose of the housing scheme. In our opinion, therefore, the land had been actually utilized in execution of a housing scheme. According to Shorter Oxford English Dictionary, 3rd edition, the word 'utilize' means "to make useful". Viewed in the light of the said meaning it is clear to us that the land was made useful in execution of the housing scheme, that is to say in the process of the execution of the housing scheme. The question of further development of the land arose only after clearance of the forest. The Collector of Dehra Dun by the impugned order held that the provisions of the Act were applicable to the land. The company could not, therefore take permission under the U. P. Act of 1958 from the prescribed authority nor could any further act for fully implementing the housing scheme be done. The felling of the trees was complete within the time allowed and, therefore, actual utilization of the land in the process of the housing scheme was made, in the sense of utilizing the land to the extent it was possible to utilize it. In our judgment the High Court was right in holding that the land in question is not covered by the notification dated September 1, 1969 and in quashing the order of the Collector dated March 22, 1970. We may, however observe that of the housing scheme is not fully implemented within a reasonable time for today and actual utilization of the land by full and complete implementation of the housing scheme is unnecessarily delayed then it will be open to the Government to take further steps for the application of provisions of the Act to the land in question or any portion thereof in accordance with law.

13. For the reasons stated above, we dismiss this appeal with costs.

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