

Atma Ram Aggarwal and Others

Vs

State of U. P. and Others

Hari Ram Kamani and Others

Vs

State of U. P. and Others

Civil Appeal Nos. 2496-2497

(L.M. Sharma, S.P. Bharucha JJ)

03.11.1992

JUDGMENT

BHARUCHA, J. –

1. These appeals are directed against the judgment and order of the High Court at Allahabad dated December 10, 1984.
2. Each of the appellants Hari Ram Kamani and Atma Ram Aggarwal, owned a one-half share in lands bearing Plot Nos. 129, 130 and 131 in Gorakhpur. They were served by the Competent Authority with draft statements under Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called "the Act") after the same came into effect on February 21, 1976, the "appointed day" therein being January 28, 1976. The appellants and their respective sons filed objections to the draft statements. It was, inter alia, contended that the said lands were held by the appellants as 'kartas' of their respective Hindu undivided families. The Competent Authority rejected the contention. He held that the appellant Kamani held a total area of 8302.75 sq. metres; that the area of 3576.93 sq. metres thereout was land under construction and land appurtenant to it and that, therefore, the excess area required to be surrendered was 4725.82 sq. metres. The Competent Authority held that the appellant Aggarwal held a total area of 9969.56 sq. metres; that the area of 4874.07 sq. metres thereout was land under construction and land appurtenant to it and that, therefore, the excess area required to be surrendered was 5095.49 sq. metres.
3. The appellants and their sons filed appeals before the District Judge, Gorakhpur and applied for leave to rely upon additional evidence in support of their contention that the said lands were owned by the respective Hindu undivided families of which the appellants were 'kartas'. The applications were rejected. The District Judge, upon the appeals, held that the appellants were entitled to retain an additional area of 2000 sq. metres each upon an interpretation of Section 4(9) and Section 2(q) of the Act (read with Schedule I, Gorakhpur having placed in Category D therein). The appellants and their sons on the one hand and the State Government on the other filed writ petitions impugning the decision of the District Judge before the High Court. The High Court rejected the contentions as to ownership of the lands by the aforementioned Hindu undivided families and the application to lead additional evidence. It held that the District Judge was in error in reducing the area of the excess

land held by the appellants by 2000 sq. metres each and, in so doing, it placed reliance upon this Court's judgment in State of U.P. v. L.J. Johnson [(1983) 4 SCC 110]. Accordingly, the writ petitions filed by the appellants and their sons were dismissed and those filed by the State Government were allowed.

4. Special leave to appeal against the judgment of the High Court was granted save and except in regard to the contention that the lands belonged to the joint families of the appellants. In view of the fact that leave to appeal was so restricted, we have not permitted counsel on behalf of the appellants to raise before us the contention that the lands belonged to the joint families of the appellants.

5. It was contended on behalf of the appellants that the law that was applicable to their case was that laid down by this Court in Meera Gupta (Smt) v. State of W.B. [(1992) 2 SCC 494]. This judgment has analysed the relevant provisions of the Act and has distinguished the judgment in L.J. Johnson [(1983) 4 SCC 110]. To understand the distinction, Section 2(q) of the Act which defines 'vacant land' must be quoted in so far as it is relevant :

"2. (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 a 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

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6. This Court on Meera Gupta [(1992) 2 SCC 494] found that the facts placed Johnson [(1983) 4 SCC 110] within sub-clause (i) of Section 2(q) and the law laid down therein was applicable only to matters which fell under that sub-clause. The facts of Meera Gupta [(1992) 2 SCC 494] as also of the case before us, fell within sub-clause (ii) of Section 2(q). It was held in Meera Gupta [(1992) 2 SCC 494] that land built upon prior to the appointed day was outside the purview of 'vacant land' within the meaning of the Act and was not to be reckoned in calculating the extent of 'vacant land' that was held by its owner. Upon the authority of Meera Gupta [(1992) 2 SCC 494] therefore, we must hold that each of the appellants are entitled to a deduction of the maximum permissible area of 2000 sq. metres in this behalf.

7. Learned counsel for the respondents did not dispute the applicability of Meera Gupta [(1992) 2 SCC 494] but he submitted that the matter should be remanded to the Competent Authority to decide upon the basis thereof what excess lands were held by the appellants. He, however, fairly stated that all the necessary measurements were already upon the record and were not in dispute. We do not, therefore, think it necessary to remand the matter but to give to each of the appellants the benefit of retaining the additional permissible area of 2000 sq. metres.

8. The judgment and order under appeals is set aside to the extent that it requires the appellants Kamani and Aggarwal to surrender the excess areas of 4725.82 and 5095.49 sq. metres respectively. We find that the appellant Kamani is in possession of an excess area of 2725,82 sq. metres and direct him to surrender the same. We find that the appellant Aggarwal is in possession of an excess

area of 3095.49 sq. metres and direct him to surrender the same. The appeals are allowed accordingly.

9. There shall be no order as to costs.

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