

Lala Jeetmal Kapoor Trust

Vs

State of U. P. and Another

Civil Appeal No. 2559 of 1985

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

08.12.1992

JUDGMENT

MOHAN J. –

1. This appeal by special leave is directed against the judgment dated November 12, 1984 passed by the Allahabad High Court in Civil Miscellaneous Writ Petition No. 7160 of 1980.

2. The short facts leading to this appeal are as follows :

The appellant-Trust was started in the year 1917 for the benefit of poor Khattrey girls. Kanpur Southern City Extension Scheme No. II was notified on January 17, 1921. Under the said notification the land belonging to the Trust was sought to be acquired. On April 25, 1928 a trust deed was executed whereby Jeet Mal Kapoor, the founder of that Trust, dedicated his properties for the benefit of the public.

3. Devi Das Kapoor, the Manager of the said Trust, filed a statement under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) to the effect that the Trust was the owner of plot No. 64, Govind Nagar, Kanpur. On inspection, the Assistant Director found that the Trust owned 2071.10 sq. metres in plot No. 64 which was a vacant land. As per the master plan it was sought to be acquired for residential purposes. On the basis of this inspection a draft statement under Section 8(3) of the Act was issued proposing to acquire 1071.10 sq. metres of vacant land.

4. To the above proposal, objections were filed on behalf of that Trust that the layout as proposed had been sanctioned by the controlling authority. Provisions for construction of road and park meant for general public use had also been provided. To this effect, an agreement dated April 12, 1975 was entered into between Kanpur Development Authority and the Trust, on which orders had come to be passed on October 13, 1977. Besides, an application under Section 20 of the Act for exemption has also been made to the Government.

5. These objections were considered by the competent authority by an order dated September 21, 1978. The objections were overruled and the direction was given to prepare a final statement under Section 9 of the Act.

6. Aggrieved by the same, an appeal was preferred to the District Judge of Kanpur who allowed the appeal in part holding that the competent authority should have excluded the area meant for roads and the part in view of sub-clause (i) of clause (q) of Section 2 of the Act. Accordingly he held that

the surplus land in the hands of the appellant was only 131.10 sq. metres. Challenging the correctness of this order a writ petition was preferred which came to be dismissed by the impugned judgment dated November 12, 1984. Hence, this appeal by special leave.

7. Learned counsel for the appellant would urge that as on today the application for exemption under Section 20 is pending before the Government, should that be decided in his favour there would be no necessity to go into the other questions. Even otherwise, the interpretation of Section 2(q)(i) by the High Court is not correct. That calls for interference by this Court.

8. Learned counsel for the respondents would submit that the High Court was right in its interpretation. Section 2(q)(i) talks of a building not being permissible; in other words, where no construction at all can be made. That is not the case here. No doubt, the application of the appellant for exemption is pending but that does not mean that the High Court is barred from going into the merits.

9. On a careful consideration of the submissions it appears to us that the interest of justice would be met by issuing the following directions :

(1) It is open to the appellant to pursue his application for exemption under Section 20 of the Act.

(2) Should the appellant succeed in getting the exemption, no further question arises.

(3) In the event of the appellant being denied the benefit of exemption it would be open to him to challenge the order. While so challenging, the appellant will be at liberty to canvass the correctness of the finding of the High Court with regard to interpretation of Section 2(q)(i) of the Act.

10. The civil appeal is disposed of in the above terms with no order as to costs.

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