

Brij Mohan Suri (Dead) By Lrs.

Vs

District Judge, Kanpur and Others

Civil Appeal No. 1526 of 1985

(K. Ramaswamy, S. Saghir Ahmed, G. B. Pattanaik JJ)

23.01.1996

ORDER

1. This appeal has come up on reference dated 28-11-1995 to this Bench for considering the question of law raised in this case.
2. This appeal by special leave arises from the order of the learned Single Judge of the High Court of Allahabad dismissing the writ petition filed by the appellant who is the owner of vacant land in Kanpur Urban Agglomeration and disputes the computation of ceiling. Three plots of land, one bearing Plot No. 113/41, Swarup Nagar to the extent of 501.64 square metres on which he had built up dwelling unit over 246.48 square metres, Plot No. 123/430 to the extent of 2675.20 square metres situated in Fazalpur, Kanpur over which he had constructed a factory admeasuring 898.90 square metres; and a Plot No. 123/35 in a total extent of 3251.10 square metres on which he had construction over 1905.75 square metres of the land occupied by the factory belonging to the appellant. On a statement filed by the appellant under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"), the Ceiling authority after notice to the appellant after filing statement by the appellant under Section 7 of the Act prepared draft statement under Section 8 and issued final statement under Section 9 declaring that the appellant is having urban excess vacant land to the extent of 2121.65 square metres. On appeal the appellant authority held the appellant held 1603.25 square metres as surplus vacant land. As stated earlier when the decision of the appellate authority was questioned in the writ petition, the High Court upheld the appellate order. Thus this appeal by special leave.
3. Smt Sheil Seth, learned counsel for the appellant, contended that under Section 2(b) read with Section 2(h) of the Act, read with Section 2(g), when the appellant had constructed factories in accordance with the master plan and the building regulations, entire area occupied by the factory as per the building regulations shall be excluded in computing the ceiling limit of the urban land held by the appellant. If that is excluded, indisputably there is no excess land held by the appellant. The view of the High Court is wrong in law. Shri Chauhan, the learned counsel appearing for the State, contended that Section 2(c) defines "ceiling limit" and as per Section 4(1)(c) in relation to its application the Kanpur ceiling limit is 1500 square metres. Section 2(o) read with Section 2(q) defines "urban land" and "vacant land" respectively. Section 2(q) excludes certain land. The land occupied by the factory is not one of the lands exempted under Section 2(q). Consequentially, in computing the vacant land in the final statement under Section 2(g), the authorities are required to compute only that land which stands excluded from the purview of the Act. Therefore, appellant's, excess vacant land would need to be surrendered.
4. Having given our consideration to the respective contentions, the question that arises for

consideration is whether the appellant has "in possession of excess urban land". Section 2(b) defines "building regulations", to mean regulations contained in the master plan or the law in force governing the construction of buildings. Section 2(c) defines "ceiling limit", to mean the ceiling specified in Section 4. "Land appurtenant" defined in Section 2(g) in relation to any building, means in an area where there are building regulations, the minimum extent of land required under such regulation to be kept as open space for the enjoyment of such building, which in no case shall exceed 500 square metres or in an area where there are no building regulations, an extent of 500 square metres contiguous to the and occupied by such building and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii), as the case may be.

5. Section 2(h) defines "master plan", in relation to an area where there are building regulations, to mean the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed 500 square metres; or an area where there are no building regulations, an extent of 500 square metres contiguous to the land occupied by such building. "Urban land" has been defined in Section 2(o), to mean "any land situated within the limits of urban agglomeration and referred to as such area in the master plan and" "Vacant land" has been defined in Section 2(q) and reads thus :

"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

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being 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 livestock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records). Then, so 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 clause."

6. In Section 4 "ceiling limits" have been prescribed in sub-section (i) clause (c) where such land is situated in an urban agglomeration falling within Category C specified in Schedule I, 1500 square metres. It is an admitted position that in relation to application of the Act to the Kanpur Urban Agglomeration, Section 4(1)(c) is the result of ceiling limit by which the holder is entitled to hold 1500 square metres of land. When the master plan is in operation, the area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the

development of such area or part thereof and providing for the stages by which such development shall be carried out. The construction shall be in accordance with Section 2(g) of the Act.

7. Section 2(g) envisages as under :

"Land appurtenant', in relation to any building, means -

(i) in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square metres; or

(ii) in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land occupied by such building,

and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii), as the case may be"

8. Therefore, no person shall construct any building with dwelling unit having plinth area, if the land falls in any category of Schedule I. Sub-clause (ii) of Section 2(g) says that no person shall construct any building with dwelling unit in excess of 500 square metres. In other words the total extent of the land to which he is entitled to construct within the vacant land would not be exceeding 500 square metres. In addition, he is entitled to the land to be set apart as per the building regulations and the master plan, as appurtenant land envisaged under Section 2(g) of the Act. Any building constructed prior to the Act came into force, the holder is entitled to the extent of 500 square metres of land as appurtenant land and in any case not exceeding 500 square metres. This is referable to dwelling unit. "Dwelling unit" has been defined in the Act in clause (e) and would mean in relation to a building or a portion of a building, a unit of accommodation in such building or portion used solely for the purpose of residence. In order words, the exemption sought to be given for the land appurtenant is for the building used for residential purposes of the said building and the holder of the land is entitled to retain the appurtenant land either as per building regulations or in any case not exceeding 500 square metres as appurtenant land.

9. Section 2(q) defines "vacant land" to mean (i) only 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, (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day an the land appurtenant to such building. In other words, the vacant land is used for the building through definition of the building occupied for residential purposes as dwelling units.

10. Therefore, the building used for industrial purpose appears to have not been included. Thereby the vacant land occupied by such industrial units needs to be included within the meaning of vacant and under the Act. The authorities have, therefore, excluded the area occupied by the buildings in the factories and rest of the land was included as vacant land. However, with regard to Plot No. 113/41, Swarup Nagar, though the actual land is 501.64 square metres, land occupied is 246.48

square metres. The appurtenant land as per the master plan and the building regulations required to be excluded in any case not exceeding 500 square metres. Since the total land is 501.64 square metres, the entire land under the building regulations required to be excluded, since admittedly it is a dwelling unit. With regard to the other two plots on which industrial units are built up, the actual land used for factory purposes were also excluded. Consequently, the other land remains to be vacant land. Therefore, the said land becomes vacant land for the purpose of the Act and thus requires to be computed under Section 2(g) of the Act. In the final report, the authorities are, therefore, directed to compute unit limit accordingly.

11. The learned counsel for the appellant had applied for exemption and the same was rejected. It is stated that review petition has been filed. We need not express any opinion about that.

12. The appeal is accordingly disposed of. No costs.