

State of U.P.

Vs

Nand Kumar Aggarwal

(Sujata V. Manohar, D. P. Wadhwa JJ)

19.11.1997

JUDGEMENT

D.P.WADHWA, J.

1.This appeal is against the judgment of the Allahabad High Court allowing the writ petition filed by the 1st respondent holding that the agricultural land comprised in village Para falling within the boundary of Lucknow Mahapalika was exempt under the Urban Land (Ceiling & Regulations) Act, 1976 (for short 'the Act').

2.Issue involved in this appeal is very narrow. After the enforcement of the Act on February 17, 1976 1st respondent filed return under Section 6(1) of the Act before the Competent Authority constituted under the Act.First respondent gave details of his properties and one such property was land measuring 16 Bighas 1 Biswa 7 Biswansis in village Para. The Competent Authority after examining the return sent a draft statement to the 1st respondent showing the land in village Para as agricultural land. However, he proposed this land to be surplus land after applying the parameters fixed under the act other properties of the 1st respondent.

3.Against the order of the Competent Authority 1st respondent filed an appeal before the District Judge, Lucknow under Section 33 of the Act who dismissed the appeal. Feeling aggrieved the 1st respondent filed writ petition in the High Court. By the impugned judgment the High Court held that the agricultural land in village Para could not be declared as surplus land and could not be taken into account while determining the ceiling limit. The decisions of the Competent Authority and the District Court were set aside and the matter was remanded back by the High Court to the Competent Authority for determining of surplus land, if any, in the light of the observations and findings recorded in the judgment.4.The question that arises for consideration is: was the land in village Para which is subject matter of the proceeding used mainly for agricultural purposes at the relevant time, being the date when the Act came into force? To answer this question we may have to refer to various definitions as contained in Section 2 of the Act relating to master plan (clause h), urban agglomeration (clause n), urban land (clause o) urbanisable land (clause p) and vacant land (clause q).But before that we may refer to an affidavit dated August 13, 1976 filed by the 1st respondent before the Secretary, Local Self Government, Lucknow for the purpose of seeking exclusion of the land in village Para from the "ceiling operations". In this affidavit the 1st respondent stated that he was doing brick kiln business and had his "Bhatta" at village Para, tehsil and district Lucknow and that the brick kiln was covering an area of 16 Bighas 1 Biswa 7 Biswansis out of which brick was actually operating in about 7 to 8 Bighas with brick kiln structure in 2 Bighas and 8 Bighas of land was still available for earth digging for the purpose of brick kiln.1st respondent further said in this affidavit that the business of brick kiln had been carried out in his family from the time of his father

and was one of the chief sources of his livelihood. He said under the Act the area covered by the brick kiln business was not specifically excluded but the Government had power to exempt the same. He further explained that brick kiln business could not be done unless substantial area for digging the earth and for drying of the manufactured 'Kachcha' bricks was available and area was also required for huts of the brick-layers for their residences. Area was also needed for stacking the manufactured bricks. 1st respondent, therefore, prayed that his 'Bhatta' land which was in Chak No.1341 in village Para be ordered to be excluded from the ceiling area. This affidavit of 1st respondent showed that the land in question was being used mainly for the purpose of brick kiln business. Master plan of Lucknow prepared under the Uttar Pradesh Urban Planning and Development Act, 1973 inclusive of the village Para has been brought to the record. It shows that the land in question is falling within the limits of Lucknow Nagar Mahapalika. 5. Coming back to the definitions as contained in Section 2 of the Act, which are as under: "(h) "master plan", in relation to an 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; (n) "urban agglomeration", (A) in relation to any State or Union territory specified in Col.(1) of Sch.1, means, -(i) the urban agglomeration specified in the corresponding entry in Col.(2) thereof and includes the peripheral area specified in the corresponding entry in Col.(3) thereof; and (ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declared to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefor shall be one kilometre; (B) in relation to any other State or Union Territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Sch.1 and peripheral area therefor shall be one kilometre; (o) "urban land" means, -(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture. Explanation-For the purpose of this clause and Cl.(o), -(A) "agriculture" includes horticulture, but does not include, raising of grass, (ii) dairy farming, (iii) poultry farming, (iv) breeding of live-stock, and (v) such cultivation, or the growing of such plant, as may be prescribed; (B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture: Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture: Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final; (C) notwithstanding anything contained in Cl.(B) of this explanation, land shall not be deemed to be mainly used for the

purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;(p) "urbanisable land" means land situated within an urban agglomeration, but not being urban land;(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 (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 live-stock, 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 purpose of this clause."6.In the master plan the area in question is no doubt shown as agriculture. If we refer to the Schedule mentioned in the definition of urban agglomeration it could be seen that area in question fall within urban agglomeration as it is situated within the peripheral area of the Municipal Corporation of Lucknow (Lucknow Nagar Mahapalika).The land in question will not be urban land if though situated within the limits of an urban agglomeration, it is mainly used for the purpose of agriculture. Operating of a Bhatta cannot certainly be an agriculture purpose. Mr.Rohtagi, learned counsel for the 1st respondent submitted that Explanation to clause (o) shows as what is not included in agriculture and since Bhatta is not one of the entries therein would mean that operating Bhatta would be an agriculture purpose. We do not find any substance in the submission. It is correct that the land in question is entered in the revenue record but at the same time the record shows that the land is being used for Bhatta. The foremost question is: if the land in question though agricultural was being mainly used for the purpose of agriculture on the appointed day? Seeing the definitions as set out above and the affidavit of the 1st respondent dated August 13,1976 the answer is obvious take the land in question is not being mainly used for the purpose of agriculture. Agriculture under the explanation to clause (o) has limited meaning.It includes horticulture but does include cultivation of every type of vegetation or rearing of animals or birds.That apart to hold that land is mainly used for the purpose of agriculture it is not enough even if the land is entered in the revenue records before the appointed day used for the purpose of agriculture or even if so entered the master plan gives purpose of the land other than agriculture. In the present case though (B) and (C) to the explanation are satisfied but (A) is not as the purpose to which the land, though agriculture and so entered in the revenue records, was being used for running of brick-kiln. High Court was not, therefore, correct in holding that the land was being mainly used for the purpose of agriculture merely on the strength of the purpose in master plan which is specified as agriculture (Krishi Bhumi) and that the land is entered in the revenue records. High Court has wrongly applied Explanation B to clause (o) of Section 2 of the Act. Simply because land is entered in the revenue record would not mean that it is being used mainly for the purpose of agriculture. Here the land is mainly for the purpose of brick kiln business of the 1st respondent. It is not material if a small portion of the land was being used for the purpose of agriculture as well.7.Accordingly, the appeal is allowed, the impugned judgment of the High Court is set aside and that of Competent Authority and the District Judge restored to the extent that the land in village Para is not exempt from the provisions of the Act and could be taken into account while determining the ceiling limit under the act. There will be no order as to costs.