SUPREME COURT OF INDIA

State of Maharashtra

Vs.

B. E. Billimoria

C.A.No.10461 of 1983

(V. N. Khare, C.J.I., S. B. Sinha and G. P. Mathur, JJ.)

14.08.2003

JUDGEMENT

G. P. MATHUR, J.:-

1. The State of Maharashtra has preferred this appeal by special leave against the judgment and order dated 31-1-1983 of the High Court of Bombay by which the writ petition filed by respondent Nos. 1 and 2 was allowed and the orders passed by the Competent Authority and the Appellate Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') were set aside and it was declared that the respondents do not hold any land in excess of the ceiling limit of Pune Agglomeration. The notification issued under Section 10(3) of the Act was also set aside.

2. B. E. Billimoria (respondent No. 1) and Laxmidas Kalyanji Kapadia (respondent No. 2) together owned a plot bearing CTS No. 82, Koregaon Park, Pune having an area of 5428.09 sq. meters. In the statement filed under S. 6 of the Act respondent No. 1 disclosed that besides above he owned a flat having an area of 297.28 sq. meters in a building owned by a Co-operative Housing Society in Bombay. Respondent No. 2 disclosed that besides CTS No. 82, Koregaon Park, Pune he owned a

residential flat having an area of 111.11 sq. meters in a building owned by a Co-operative Society in Bombay. His wife was also in possession of a part of an industrial building and the area of the same was 235.78 sq. meters. The Competent Authority held that respondent No. 1 owned half of CTS No. 82, Koregaon Park, Pune the area whereof came to 2714.05 sq. meters. He further held that the flat being in Bombay which is in Category A of Schedule I of the Act, for calculating the area thereof in terms of Category B in which Pune is situate, the area had to be doubled and therefore the area of the flat occupied by him in Bombay should be taken to be 594.56 sq. meters. It was thus held that respondent No. 1 held 3308.61 sq. meters of land and as the ceiling limit in Pune was 1,000 sq. meters, he was holding 2308.61 meters of excess land. With regard to respondent No. 1 the area of the flat held in Bombay was doubled to 222.22 sq. meters and after adding the area of the part of the industrial building in possession of his wife, namely, 235.78 sq. meters and 2714.05 sq. meters in CTS No. 82, Koregaon Park, Pune, he was held to be holding 3172.05 sq. meters of land. The excess area held by respondent No. 2 was thus determined as 2172.05 sq. meters. Feeling aggrieved by the orders of the Competent Authority the respondents preferred appeals which were dismissed by a common judgment and order dated 20-1-1979 by the Appellate Authority, Pune and the findings recorded by the Competent Authority were affirmed.

3. Thereafter the respondents preferred a writ petition under Art. 227 of the Constitution before the High Court of Bombay. The High Court held that each of the respondent should be taken to be holding an area of 2714.07 sq. meters in CTS No. 82, Koregaon Park, Pune. The building regulations in the aforesaid area did not permit construction on more than one-third of the total area of the plot and as such construction was not possible on an area of 1809 sq. meters and therefore the same could not be treated as "vacant land" within the meaning of S. 2(q) of the Act. The High Court further held that the area of the flats owned by the respondents in Bombay could not be taken into consideration as no vacant land had been allotted to them by the co-operative society. The "vacant land" held by each of the respondents thus came to 905 sq. meters which was well within the ceiling limits of 1000 sq. meters for Pune. On these findings the writ petition was allowed and the orders passed by the Competent Authority and the Appellate Authority were set aside and it was declared that the respondents do not hold any land in excess of the ceiling limit of Pune agglomeration.

4. Shri S. K. Dholakia, learned senior counsel, appearing for the appellant has submitted that S. 3 of the Act lays down that except as otherwise provided in the Act, on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies. In terms of S. 2(1) "person" includes an individual, a family, a firm, a company or an association, or body of individuals whether incorporated or not and therefore a body of individuals would come within the meaning of the word "person" and the said body of individuals is not entitled to hold any vacant land in excess of ceiling limit in view of S. 3 of the Act. The contention is that as respondents Nos. 1 and 2 together own CTS No. 82, Koregaon Park, Pune the said land should be treated as a single unit and the High Court should not have proceeded on the basis that the land held by each of the respondents was half of the total area namely, 2714.05 sq. meters and thereafter determined the ceiling area which each of the respondents was entitled to hold. We are unable to accept the contention raised. It is true that in view of S. 2(1) of the Act, "body of individuals whether incorporated or not" will be deemed to be a person, but this provision has to be read in the light of S. 4 which prescribes the ceiling limit for every person in each categories namely, A, B, C and D of Urban Agglomeration. Sub-section (5) of S. 4 of the Act reads

as under :

"Section 4. Ceiling Limit -

(1) to (4) xxx xxx xxx

(5) Where any firm or unincorporated association or body of individuals holds vacant land or holds any other land on which there is a building with a dwelling unit therein or holds both vacant land and such other land, then, the right or interest of any person in the vacant land or such other land or both, as the case may be, on the basis of his share in such firm or association or body shall also be taken into account in calculating the extent of vacant land held by such person.

This provision makes it absolutely clear that where any firm or incorporated association or body of individuals holds vacant land, then the right or interest of any person in such vacant land shall be taken into account on the basis of his share in such firm or association or body. In view of this specific provision only the share of respondents Nos. 1 and 2 had to be taken into consideration in CTS No. 82, Koregaon Park, Pune, as both of them together hold the said plot. Section 45 of the Transfer of Property Act deals with joint transfer for consideration and it lays down that where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced. The second paragraph of this Section lays down that in the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property. In view of this specific provision both the respondents shall be presumed to be owners of equal shares in the plot as there was no evidence to the contrary. Therefore, the High Court rightly held that each of the respondents held half area of the aforesaid plot, namely, 2714.05 sq. meters.

5. Shri Dholakia has next submitted that the High Court has erred in excluding two-third area of CTS No. 82, Koregaon Park, Pune, while determining the ceiling area applicable to each of the respondents. Learned counsel has urged that as no construction had been made on the plot and the same was totally vacant, it could not be ascertained as to on which portion of the plot the building would be constructed and which portion had to be left vacant under the building regulations and therefore the respondents could not contend that while determining the vacant land only one-third of their share in the plot should be taken into consideration. Section 2(q) of the Act defines "vacant land" and clause (i) thereof which is relevant is being reproduced below:-

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."

A plain reading of the provision would show that any land on which construction is not permissible under the building regulations in force in the area would not come within the ambit of "vacant land". Sub-rule (9) of Rule 2 of the Building Rules framed by the Collector of Poona for Koregaon Park lays down that not more than one-third of the total area of any building plot shall be built upon and in calculating the area covered by a building the plinth area of the building and other structures excepting compound walls, shall be taken into account. It further provides that any area covered by staircase and projections of any kind shall be considered as built over. The appellant does not dispute the applicability of this Building Rule to Koregaon Park area where plot of land CTS No. 82 is situate. The definition of "vacant land" as given in S. 2(q) clearly provides that land on which construction of a building is not permissible under the building regulations in force in the area has to be excluded. As under the relevant rules in force in the area construction was not permissible on two-third of the area of the plot, the High Court was perfectly justified in holding that for determining the vacant land in CTS No. 82, Koregaon Park, Pune, two-third portion of each of the respondents had to be excluded and thus the vacant land held by each one of them in the said area was only 905 sq. meters. In fact, on the plain language of the Statute and the prohibition contained in the Building Rules in Koregaon Park area, which are in operation, it is not possible to take any other view.

5A. Learned counsel for the appellant has also assailed the finding of the High Court that the area of the flats held by the respondents in Bombay should be excluded and has submitted that there is no legal basis for doing so. In our opinion, the contention raised has no substance. The relevant provisions in this regard are sub-sections (8) and (9) of Section 4 and Explanation appended to the said Section which are being reproduced below :

(8) Where a person, being a member of a housing co-operative society registered or deemed to be registered under any law for the time being in force, holds vacant land allotted to him by such society, then the extent of land so held shall also be taken into account in calculating the extent of vacant land held by such person.

(9) Where a person holds vacant land and also holds any other land on which there is a building with a dwelling unit therein, the extent of such other land occupied by the building and the land appurtenant thereto shall also be taken into account in calculating the extent of vacant land held by such person.

(10) and (11) xxx xxx xxx

Explanation - For the purposes of this Section and Sections 6, 8 and 18 a person shall be deemed to hold any land on which there is a building (whether or not with a dwelling unit therein) if he -

(i) owns such land and the building; or

(ii) owns such land but possesses the building or possesses such land and the building, the possession, in either case, being as a tenant under a lease, the unexpired period of which is not less than ten years at the commencement of this Act, or as a mortgagee or under an irrevocable power of attorney or a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities; or

(iii) possesses such land but owns the building, the possession being as a tenant under a lease or as a mortgagee or under an irrevocable power of attorney or a hire-purchase agreement or partly in one of the said capacities or partly in any other of the said capacity or capacities."

6. What is important to note here is that for the applicability of sub-section (8) it is necessary that a person should have been allotted a vacant land by a housing co-operative society. Similarly, to come within the purview of sub-section (9) the person must hold vacant land and also any other land on which there is a building with a dwelling unit. The meaning of the expression "any other land on which there is a building" has been given in the Explanation to Section 4 and this shows that the person must either own the land and the building or own the land and possess the building or possess the land and the building or possess the land but own the building. Therefore, the ownership or possession of the land over which the building stands is a necessary condition for applicability of anyone of the sub-sections of Section 4. The respondents have merely been allotted flats in a building owned by a co-operative society. There is absolutely no material on record to show that they are either owners of any land or they are in possession of any land. It is the housing co-operative society which is the owner of the land over which the building has been constructed and the respondents are merely allottees of one of the flats in the building. Therefore they cannot be held to be either owners of any land or in possession of any land and consequently sub-section (8) or (9) of Section 4 would not apply. In these circumstances, the view taken by the Competent Authority and the Appellate Authority that the area of the flats in Bombay had to be clubbed with the vacant land held by the respondents in Pune was patently wrong and the High Court has rightly set aside the same.

In view of the discussion made above, the appeal lacks merit and is hereby dismissed with costs.

7. **S. B. SINHA, J.:-**

Interpretation of provision of Section 2(q) vis-a-vis sub-section (9) of Section 4 of the Urban Land (Ceiling and Regulations) Act, 1976 (for short 'the Act') is the primal question in this appeal. Two ancillary questions have also been raised by Mr. Dholkia, learned senior counsel appearing on behalf of the appellants, namely, (i) as to whether two strangers acquiring property jointly would come within the definition of 'person' as contained in S. 2(i) of the Act; and (ii) whether clause (i) of Section 2(q) would be applicable in a case where the building did not exist on the appointed date.

8. The facts are not in dispute.

The respondents being strangers acquired land bearing C. T. S. No. 82 measuring 5428.09 sq. meters situated at Koregaon Park, Pune. They individually also owned one flat each in Bombay. The permissible ceiling limit of vacant land in terms of Section 4 of the Act would be 1000 sq. metres.

9. In terms of the Building Rules applicable in Koregaon Park, two-third of the area is statutorily required to be kept vacant. The relevant provisions of the Building Rules framed by the Collector of Poona for Koregaon Park are as under :

"1. The minimum area of a building plot shall be as mentioned in the lay-out. No building plot as shown in the lay-out shall be sub-divided.

3. Only one main building together with such outhouses as are reasonably required for the bona fide use and enjoyment by its occupants and their domestic servants shall be permitted to be erected in any building plot.

Provided that this restriction shall not prevent the erection of two or more buildings on the same plot, if the plot admeasures at least twice or thrice as the case may be (according to the number of buildings) the minimum size required. Provided also that the same open space shall be required around each main building as if each of these were in a separate building plot.

9. Not more than one-third of the total area of any building plot shall be built upon. In calculating the area covered by buildings the plinth area of the buildings and other structures excepting compound walls, steps, open ottas and open houds or wells with parapet walls not more than 4 feet high or chajja and weather sheds shall be taken into account. Area covered by a staircase and projection of any kind shall be considered as built over,

Provided a balcony or gallery which

(a) is open on three sides;

(b) has no structure underneath on ground floor;

(c) projects not more than 4 feet from the wall; and

(d) length of which measured in a straight line does not exceed the length of the wall to which it is attached;

shall not be counted in calculating the built over area.

10. No building shall contain more than two storeys including the ground floor.

15. No building shall exceed 100 feet in length in any direction."

10. The two-third of the area which is to be left vacant in the instant case would be about 3600 sq. metres.

11. In the said area, as it appears from a letter dated 27-2-1979 issued from the Office of the Assistant Engineer (Dev. Plan), Pune Municipal Corporation to Shri A. D. Aroskar, Chartered Architect, that housing for weaker sections is not permitted in Koregaon Park area in terms of the decision of the Construction Committee of Pune Urban Agglomeration, under the Act.

12. Our attention has been drawn to a decision of the Bombay High Court in Meherbai Karl Khandalawala and others v. The Competent Authority under Urban Land Ceiling and Regulation Act, 1976 and others (1988 Mah LJ 543), from a perusal whereof it appears that Koregaon Park which was formed in the year 1920 as a model colony was to be divided into 122 plots given to various parties on lease in perpetuity. The area of Koregaon Park has been treated differently and has been given special attention having regard to the fact that it was to be nurtured as a green area.

13. The land in question is situated within a green colony. The plots cannot be sub-divided nor, thus, can be given to any other person. The lands in question are, therefore, not available for distribution, equitable or otherwise.

14. The respondents being tenants in common, their right, title and interest in the land would be half and half. The definition of the word 'person' as contained in S. 2(i) although merits liberal construction, but the respondents would not come within the purview thereof. It would, therefore, be not correct to contend that they together would be entitled only to one unit.

15. So far as the submission of Mr. Dholkia to the effect that as on the appointed day, no construction had been made on the land in question and only a building plan therefore has been sanctioned, the exception contained in Section 2(q) of the Act would not be applicable is concerned, we may notice that clause (i) of Section 2(q) excludes the 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 from the definition of 'vacant land'. The 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 is also excluded. A plain and literal meaning attributed to clause (i) of Section 2(q) leaves no manner of doubt that for the purpose of applicability thereof, it is not necessary that constructions must exist on the appointed day. What is necessary is as to whether construction of a building is permissible or not. The scheme of the Act particularly S. 29 thereof clearly shows that regulation of construction of building with dwelling units was contemplated by the makers of the legislation. As regard the space which is to be left vacant for the purpose of construction of building, a restriction of construction of building with dwelling units having been provided for in the Act, it is idle to suggest that for the purpose of exclusion of land in terms of clause (i) of Section 2(q), constructions must have existed on the land on the appointed day. Had the intention of the Parliament been to exclude only such lands which have been directed to be left vacant only on the constructed buildings in terms of the building regulations, the same would have been stated expressly.

16. Indisputably the respondents had applied for sanction of the building plan and the same had been granted. They, thus, on the appointed day in terms of the building regulations having regard to the purport and object of the Act were, thus, in our opinion entitled to get the vacant land required to be kept in terms of the building plan excluded.

17. The only question which survives for our consideration is as to whether for the purpose of determination of ceiling area, the land over which the flats of the respondents situated at Bombay were required to be taken into consideration for the purpose of sub-section (9) of Section 4 of the Act. So far as those flats in Bombay are concerned, the respondents did not hold any vacant land appurtenant thereto. They were entitled, as a matter of right, to exclusively possess and own the structures alone. No land appurtenant to the said structure exclusively belongs to them.

18. The said Act being expropriatory legislation is required to be constructed strictly. (See M/s. D. L. F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and others (2003 (2) Scale 145 para 41). AIR 2003 SC 1648 : 2003 AIR SCW 1046

19. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others ((2003) 2 SCC 111), this Court held : AIR 2003 SC 511 : 2002 AIR SCW 4939 paras 27 and 40

"An owner of property, subject to reasonable restrictions which may be imposed by the Legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under statute would not be presumed.

The statutory interdict of use and enjoyment of the property must be strictly construed. It is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four-corners thereof."

20. In terms of the provisions of the Act, land in excess of the ceiling area was to vest in the State Government. By reason of the provisions contained in Section 2(q) of the Act, the Parliament has defined the term 'vacant land'. Strict meaning has to be attributed to the said words as expression 'means' has been used. From the definition of 'vacant land', land which is not mainly used for the purpose of agriculture has been excluded. Further thereto, what is required to be excluded would be those lands as are specified in clauses (i), (ii) and (iii) thereof.

21. The exclusionary clauses contained in the definition of 'vacant land' must, therefore, receive a liberal construction.

22. Section 2(q) of the Act keeping in view the fact that expression 'means' has been used would be prima facie restrictive and exhaustive. The said provision is neither vague nor ambiguous. It cannot also be said that sub-section (9) of Section 4 provides a contrary context.

23. It is trite that when a statutory enactment defines its terms, the same should govern what is proposed, authorised or done under or by reference to that enactment. (See Wyre Forest District Council v. Secretary for State for the Environment (1990 (1) All ER 780 at 785).

24. It is also trite that all statutory definitions have to be read subject to the qualification variously expressed in the interpretation clause which created them particularly when the definition is exhaustive. The only exception to the aforementioned rule would be where there exist provisions, the meaning therefor is required to be determined in the context in which the word has been used.

25. The words 'vacant land' have been defined as land subject to certain exception.

26. Those exclusionary clauses must be interpreted liberally. The charging section is Section 3 which provides that persons shall not be entitled to hold any vacant land in excess of the ceiling limit in the territory to which it applies. Ceiling limit has been provided in terms of Section 4 but the same is subject to other provisions contained therein. The scheme of the Act in general and the purport and object thereof in particular do not lead to a conclusion that what has been excluded from the definition of 'vacant land' should be included for another purpose. There does not exist any reason as to why the plain and unequivocal meaning cannot be given to the said definition.

27. For the purpose of determination of the ceiling limit as stated in sub-section (9) of Section 4 of the Act, a person must not only hold a vacant land but also must hold any other land on which there is a building with a dwelling unit therein which clearly goes to show that such other land on which there is a building for the purpose of sub-section (9) of Section 4 must be a land other than a vacant land.

28. It is well-settled that the provisions of the statute are to be read in the text and context in which they have been enacted. It is well-settled that in construction of a statute an effort should be made to give effect to all the provisions contained therein. It is equally well-settled that a statute should be interpreted equitably so as to avoid hardship. So interpreted the decision of this Court in Meera Gupta (Smt.) v. State of West Bengal and others ((1992) 2 SCC 494) comments to us in preference of the decision of this Court in State of U. P. and others v. L. J. Johnson and others ((1983) 4 SCC 110). Meera Gupta's case (supra) has been followed by this Court in Atma Ram Aggarwal and others v. State of U. P. and others ((1993) Supp (1) SCC 1) and Kunj Behari Lal v. District Judge, Gorakhpur and others ((1997) 6 SCC 257). AIR 1992 SC 1567 : 1992 AIR SCW 1665

AIR 1983 SC 1303

29. We are not unmindful of the observations made by a two-Judge Bench of this Court in Angoori Devi (Smt.) v. State of U. P. and others ((1997) 2 SCC 434) stating that the decisions of this Court in Johnson's case (supra) and Meera Gupta's case (supra) are in conflict with each other and Johnson's case should hold the field. However, in Angoori Devi's case (supra), the conflict was not resolved by the Constitution Bench to which a reference AIR 1997 SC 875 : 1997 AIR SCW 753 : 1997 All LJ 418 ,AIR 1983 SC 1303, AIR 1992 SC 1567 : 1992 AIR SCW 1665 was made by a three-Judge Bench in Angoori Devi (Smt.) v. State of U. P. and others ((1997) 7 SCC 757).

30. In view of our discussions aforementioned, it must be held that -

(1) that the respondents having independent title to the property in question, are entitled to the two separate units under the said Act;

(2) despite the fact that no construction had been raised on appointed day, they are entitled to the benefit under sub-clause (i) of clause (q) of sub-section (2) of the Act; and

(3) for the purpose of determination of ceiling limit, the area of the flats belonging to the respondents in Bombay would not be taken into consideration. I, thus, agree with the conclusion arrived by the High Court.

31. With these additionals reasons, I respectfully agree with the opinion of Hon'ble Mathur, J.

Order accordingly.