

SUPREME COURT OF INDIA

Nargis Jal Haradhvala

Vs.

State of Maharashtra

C.A.No.5989 of 2007

(M.Y. Eqbal and Abhay Manohar Sapre JJ.)

06.01.2015

JUDGMENT

M.Y. EQBAL, J.:

1. This appeal by special leave is directed against judgment and order dated 16.8.2007 of the High Court of Judicature at Bombay whereby Division Bench of the High Court dismissed the writ petition preferred by the appellant challenging orders issued by the respondents.

2. The factual matrix of the case is that the appellant applied for an exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (in short, 'the Act') in respect of land bearing CTS No.1310 of village Versova in Andheri Taluka of Mumbai Suburban District, measuring 5892.5 sq.mt. (in short, "suit property"), out of which exemption in respect of 3491.5 sq.mt. was granted by Respondent No.1 in August, 1987. The balance 2401 sq.mt. did not need exemption being reserved for road and garden and was duly handed over to the Municipal Corporation by the appellant. 500 sq.mt. was "retainable land" that the landowner is entitled to retain. Exemption order tentatively specified 30% of the permissible floor space of the exempted land to be sold to Government Nominees. It was clarified that the percentage will be prescribed by the Government as per the extent of the land to be exempted.

3. On 31.1.1990, this Court in the case of Shantistar Builders vs. N.K. Toitame, (1990) 1 SCC 520, dealing with the issue of constructions over exempted lands covered under Section 20 of the Act laid down that the number of the government nominees should not exceed 5% of the total accommodation available in any scheme. The case of the appellant is that after the aforesaid decision, on

23.11.1990, by a subsequent corrigendum, Respondent No.1 amended the area to be surrendered to the Government nominees and finally prescribed it as 20% of the floor space of the first 2000 sq.mt. of the net permissible F.S.I. of the land exempted and 30% of the balance sq.mt. permissible.

4. The appellant's further case is that being unaware of aforesaid decision of this Court, appellant initially offered 26 flats (1036.39 sq.mt.) by her letters and subsequent reminders in the years 1990 and 1991, but the respondents neither took up the flats offered nor did they respond in any way to appellant's letters. However, respondents moved an application for modification of the judgment in the case of Shantistar Builders (supra) and maintained the quota of flats for Government nominees at 10% by its Resolution dated 22.10.1992. Accordingly, appellant requested the respondents to take over 10% of the net permissible area of the exempted land viz. 296.73 sq.mt and offered 7 flats (having area of 303.73 sq.mt.), in reply to which, respondents acknowledged that only 10% of the area needed to be surrendered for the Government nominees but claimed that this 10% worked out to be 414.92 sq.mt. and not 296.73 sq.mt. However, in May, 1993, respondents took up only 4 of the 7 flats offered by the appellant, whose area was 5.86% of the net permissible FSI of the exempted land. Upon being asked by the appellant for the issuance of the certificate to the effect that required number of flats have been surrendered to the Government, Respondent no.3 asked the appellant to hand over 21 flats in addition to the 7 flats already offered. On this, appellant pointed out that only 5% flats could be claimed in view of Apex Court's judgment in Shantistar Builders (supra) and the same had already been handed over. On 17.11.1995, this Court rejected the Government request to allow 10% quota for Government nominees and restricted the quota to 5% only.

5. The appellant, therefore, reiterated in her subsequent letters to the respondent that only 5% flats could be claimed in view of aforesaid judgment of the Apex Court, and on 30.9.1998, three more flats were handed over to secure the Occupation Certificates that were being withheld by the respondents. It is the case of the appellant that several representations were made to the Government to limit the area to be surrendered to the Government as per aforesaid judgment of the Apex Court, but her requests were rejected and Respondent No.3, vide letters dated 18.6.2002 and 23.7.2004, asked the appellant to surrender 805.58 sq.mt. of area in addition to 303.73 sq.mt. already surrendered by her. The appellant was also served with notices dated 16.10.2004 and 3.1.2005, in reply to which, appellant pointed out jurisdiction of Respondent No.3 and the fact about the wrong calculation of area to be handed over to Government nominees.

6. By letter dated 18.10.2005, Respondent no.3 informed appellant that since the appellant has failed to surrender in all 1109.31 sq.mt. built up area to the Government in the form of 28 flats from the subject scheme, a criminal case is being filed against the appellant with the Versova Police Station. An appeal preferred by the appellant against this was dismissed by Respondent No.2 by its order dated 25.7.2006, stating inter alia that the Competent Authority is very much in his powers to hear and act on matters regarding Section 20 and is in no way exercising any authority outside his jurisdiction or outside the letter and spirit of the Act.

7. Thereafter, the appellant, challenged the order passed by the respondents by way of writ petition in the Bombay High Court. The Division Bench of the High Court rejected the appellant's writ petition holding that the present case is not covered by the decision in Shantistar Builders (supra) as the same does not have retrospective effect and that the document dated 18.10.2005 was not an order but a letter/intimation by the competent authority to the appellant that the conditions of the exemption order were not complied with. Hence, this appeal by special leave under Article 136 of the Constitution of India is preferred by the appellant raising issue what percentage (5%, 10% or higher) of area in any scheme is to be surrendered under the Urban Land (Ceiling and Regulation) Act, 1976.

8. Mr. C.A. Sundaram, learned senior counsel appearing for the appellant in course of argument fairly submitted that since the decision rendered by this Court in Shantistar Builders's case was prospective in its operation, the same will not apply in the facts of the present case. However, admittedly, the respondents issued a corrigendum dated 23.11.1990 amending the area to be surrendered to the Government nominee and finally prescribed it as 20% of the floor space of the first 2000 sq.mt. of the net permissible FSI of the land exempted. Learned counsel submitted that by another circular dated 22.10.1992 issued under the signature of Joint Secretary to the Government, the quota for the Government nominee was reduced from 20% to 10%. According to the learned counsel the appellant already handed over 10% of the total accommodation. Mr. Sundaram then submitted that at the initial stage after completion of construction 30% of the permissible floor space was offered for sale to the Government nominee, but it was neither acknowledged nor accepted by the Government, hence the respondent is stopped from claiming the same on the principle of waiver. Learned counsel drawn our attention to the relevant document and submitted that the flats which were surrendered by the appellant have been sold by the respondent to VIPs and not to the weaker section of the society. Learned counsel lastly contended that on the basis of subsequent corrigendum dated 23.11.1990 read with the circular dated 22.10.1992 the

appellant is not liable to surrender more than 10% of the quota as fixed in the circular.

9. Per contra, Mr. Rahul Chitnis, learned counsel appearing for the State, submitted that in support of the above referred corrigendum and the circular, the appellant executed indemnity bond on 12.10.1998 and agreed to give 30% of the permissible floor space to the Government nominee. The appellant further agreed to surrender the remaining tenements within five years from the date of execution of indemnity bond. Learned counsel submitted that as against 30% (28 flats) and 20% (18 flats), the appellant has given only seven flats to the respondent till date.

10. We have considered the entire facts of the case and the argument advanced by the learned counsel appearing for the parties.

11. Indisputably exemption under Section 20 of the Act was granted on 17.8.1987 with the condition to surrender 30% of the permissible floor space to the allottees nominated by the Government. It was clarified that the percentage will be prescribed by the Government as per the extent of the land to be exempted. It is also not in dispute that subsequent corrigendum was issued by the Government on 23.11.1990 wherein the extent of 30% was agreed as 20% of the floor space of the first 2,000 sq.mt. of the net permissible FSI of the land exempted under the order and 30% of the 2364.37 sq. mt. balance permissible area. However, we do not find any authenticity in the circular dated 22.10.1992, copy of which has been produced before us in support of the contentions made by the appellant that the 20% quota fixed by the corrigendum was further reduced to 10% of the floor space. Further, admittedly, the appellant executed an indemnity bond on 12.10.1998 wherein it was agreed that the balance built up area would be surrendered to the Government within a period of five years i.e. up to 2003.

12. In the background of all these facts, in our considered opinion, the appellant is bound to surrender to the Government a total 20% of the permissible floor space in the light of the corrigendum dated 23.11.1990 issued by the Government. As noticed above, till date, the appellant has given only seven flats to the allottees nominated by the Government. Calculating 20% of the floor space, the appellant is bound to sell 11 more flats to the persons that may be nominated by the Government.

13. We, therefore, allow this appeal and set aside the order passed by the High Court. Consequently, we modify the order dated 25th July, 2006, passed by the Additional Commissioner, Konkan Division, Mumbai and direct the appellant to

sell eleven more flats to the allottees, who shall be nominated by the Government. Taking note of the fact that seven flats so surrendered by the appellant have been sold to the Government nominee in gross violation of the Act and the Scheme framed by the Government, we do not wish to issue any direction in this matter. However, we make it clear that the remaining eleven flats that shall be handed over by the appellant to the Government shall be sold to the Government nominees, who must belong to the weaker section of the society. We also direct the appellant to hand over and sell remaining eleven flats to the Government within four months from today.