

# ALLAHABAD HIGH COURT

State

Vs.

Radha Raman Agarwal

Civil Misc. Writ Petn. No. 3122 of 1980

( K.J. Shetty, C.J., B.N. Sapru and A.N. Varma, JJ.)

23.02.1987

## JUDGMENT

### **K.J. Shetty, C.J.**

1. In view of the importance of the question raised in the Writ Petition, the matter has been placed before us for decision.
2. The question relates to the scope and ambit of Cl. (b) of Section 2(q), Urban Land (Ceiling and Regulation) Act, 1976 (Act 33 of 1976) (shortly called 'the Act').
3. The matter arises in this way :

Respondent 1, Radha Raman Agarwal is the owner of the four plots of land measuring 1420, 125, 300, and 100 sq. metres respectively. In all it measures 1945 sq. metres. The plots are located in Bareilly city which is a category C of the urban agglomeration in Schedule I of the Act. The maximum ceiling prescribed for such cities is 1500 sq. metres. The competent authority initiated proceedings under the Act for determining the excess land held by respondent 1. By order dated April 30, 1977 it was held that an extent of 445 sq. metres is surplus which respondent 1 is not entitled to hold. Respondent 1 preferred an appeal to the District Judge, Lucknow who allowed the appeal and held that no part of the land held by respondent 1 is in surplus. He has observed that under the Building Regulations or Direction 20-C, 1176 sq. metres of the land in respect of which no construction of building is permissible and, therefore, liable to be excluded from the ceiling limit under Cl. (i) of Section 2(q). He has stated

thus :

"It is not disputed that the Regulation of Buildings Operations Act 1958 was applied to Bareilly in November, 1971. Direction 20(c) of the R.B.O. Act lays down that depending upon the area of the plot, certain portion of the land is not to be built upon. The area on which construction is prohibited under the R.B.O. Act is not to be taken into account while calculating the 'vacant land' under Section 2(q) of the Ceiling Act. In the light of the above Direction 20(c) of the R.B.O. Act, an area of 1176 sq. metres is not to be constructed upon and hence this area is to be excluded from the total area (1945 sq. metres) of the four plots. The vacant land with the appellant is, thus, 769 sq. metres only and this is far less than the vacant land he is entitled to retain. I must, therefore, accept the contention of the appellant that there is no surplus land with him."

4. The State has challenged the decision of the learned District Judge in this petition under Article 226 of the Constitution.

5. In order to appreciate the contentions raised before us, it is necessary to refer to a few provisions of the Act. Under Section 3 of the Act it is provided 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.

6. Section 4 prescribes the ceiling limit with reference to four categories of urban agglomeration.

7. Section 2(q) defines 'vacant land' to mean 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 :

xx xx xx

Proviso is omitted as unnecessary.

"Land appurtenant has been defined under Section 2(q) as follows :

"2(q) 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....."

8. The vacant land has thus been defined to include all land not being mainly used for agriculture in an urban agglomeration, but excludes from it, three categories of land specified under cls. (i) to (iii) of Section 2(q), cl. (i) covers 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. Clause (ii) takes within its fold the land occupied by a building and the land appurtenant thereto.

9. Section 2(b) defines building regulations to mean the regulations contained in the master plan or the law in force governing the construction of buildings.

10. Section 2(h) defines 'master plan' to mean, in relation to an area within an urban agglomeration or any part thereof, the plan 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.

11. To regulate the construction of buildings, we have got what is termed as U.P. (Regulation of Building Operations) Directions, 1960. These directions have been framed in exercise of the powers conferred under Section 14, U.P. (Regulation of Building Operation) Act, 1958. Direction 10-A refers to Master plan.

12. Direction 15 provides for utilization of open space. It provides :

"Area provided for open spaces shall not be built upon in any way/or used for purposes other than parks, playgrounds or other recreations. These may, however, be permitted by the Prescribed Authority to be used for purposes of public entertainment for a period not exceeding 90 days unless, for special reasons to be recorded the Prescribed Authority may grant a further extension not exceeding 30 days. In lieu of this permission, no permanent structures shall be built upon the land and any structures built during the period shall be removed at the end of the period to which the permission relates. All structures temporarily built upon the land shall conform to such restrictions as the Prescribed Authority may deem fit to impose."

13. Direction 16 prohibits construction on certain site - It reads :

"No building shall be erected on a site liable to flood or on a slope forming an angle of more than 45 degrees with the horizontal plane or on soil unsuitable for percolation or in sandy beds, or on site which comprises or includes a pit, a quarry or other excavation or on damp site or filled up site, unless in the case of filled up site, the foundations are laid on firm soil."

Direction 20 provides for site coverage - It reads :

"The maximum covered area of different classes of buildings shall be governed by the following conditions :

(a) In business or commercial premises The covered area, may extend to a maximum of 75 per cent of the total area of the plot, provided that there is arrangement for sufficient of street facilities for parking, loading and unloading of vehicles on the same plot or building.

(b) In industrial premises :-

The covered area may extend to a maximum of 60 per cent of the total area of the plot provided that the remaining area is sufficient for the facilities of parking, loading and unloading.

(c) Residential premises :-

The covered area shall be as under :

up to 250 Sq. yds.      65 per cent of the plot area

From 251 to 500 sq. yds.      First 250 Sq. yds. at 66 per cent of the total area of plot or a fraction thereof.

From 501 to 1000 Sq. yds      First 250 Sq. yds. at 66 per cent of the total area

of plot.

Next 250 Sq. yds. or fraction thereof at 40 per cent of the total area of plot.

More than 1000 sq. yds. First 250 Sq. yds. at 66 per cent of the total area of plot.

Next 250 Sq. yds. at 50 per cent of the total area of plot.

Next 500 sq. yds. at 40 per cent of the total area of plot.

Above 1000 sq. yds. or fraction thereof at 33 per cent of the total area of plot."

14. The question herein to be considered is whether cl. (i) of Section 2(q) deals with only such plot of land in respect of which there is total prohibition for construction in the entire extent or it covers also such plots where maximum building area is permitted under building regulations in force in that area. Mr. Dubey, learned standing counsel, urged for the former construction of cl. (i), while Sri Agarwal, learned counsel for opposite party urged for the latter view.

15. It seems to us that there is not much scope left for us to take the latter view. The decision of the Supreme Court in State of U.P. v. L.J. Jhonson, AIR 1983 SC 1303 : (1983 All LJ 1261) indicates clearly in favour of the former view. There it was observed at page 1306 (para 17).

"Clause (i) gives a blanket exemption to any land situated in an urban area where the entire area is covered by land on which it is not permissible to raise a building which will not be deemed to be vacant land within the meaning of Section 2(q). This is because such land in an urban area cannot be used for building purposes but being vacant falls beyond the purview of the Act."

(Underlining is ours)

16. In the same para the Supreme Court has also explained the scope of Cl. (ii) in the following terms :-

"Clause (ii) postulates that where a land is occupied by any building constructed before or on the appointed day (appointed day has been defined in Section 2 (a) of the Act) and there is some vacant land appurtenant to the said building, land which is built upon and any area which is left out in accordance with the

building regulations would not be included in the ceiling area."

17. From these observations, it is clear that Cls. (i) and (ii) of Section 2(q) are not overlapping. They are mutually exclusive. They deal with the different categories of land. Clause (i) refers to land on which construction of a building is not permissible at all either under the building regulations or order the Master Plan. The prohibition as to construction must, however, be absolute, like the land covered by green belt area or plot preserved for green park or play ground. It may also be such other land like the one dealt with under Direction 16 of the U. P. (Regulation of Building Operations) Directions, 1960 all that is required is that it is impermissible to construct any building in that land. In other words, cl. (i) does not cover a plot of land where construction of building is regulated by the building regulations. To be more specific, it does not cover a land which is regulated by Direction 20 of the U. P. (Regulation of Building Operation) Directions, 1960.

18. This view is to the scope of cl. (i) has also the support by the terms of guidelines issued by the Central Government, Ministry of Construction and Residence (Urban Ceiling Unit) New Delhi in the letter No. 1/243/76 U.C.U. dated 19, November 1976. It reads :

Subject : Urban Land (Ceiling and Regulation Act 1976 Clarifications regarding Section 2(q) and Section 4(9).

Under Section 2(q)(i), what is really excluded from the definition of the term vacant land relates to areas which are to be maintained as open space like green park, play ground etc. In other words, the reference is to lands where no construction is permissible under any regulations contained in the Master Plan of the law in force governing the construction of building."

19. That means, the land required to be preserved as open space, green park or play ground etc. under the building regulations or master plan should be excluded from determining the surplus land of persons.

20. This takes us to the facts of the present case. The vacant land has to be determined with reference to the appointed day i.e. January 28, 1976. Respondent 1 admittedly has four vacant plots measuring in all 1945 sq. meters. These plots are situated in Bareilly city which falls under category C of the urban agglomeration in Schedule I of the Act. They are not the type of land covered by cl. (i) of Section 2(q) of the Act.

They are vacant in the sense that they do not contain any construction or building. For such vacant land, clause (ii) of Section 2(q) is also not attracted. The entire extent of land covered by the four plots has to be taken into consideration for determining the ceiling limit. That has been again made clear by the Supreme Court in Jhonson's case, (AIR 1983 SC 1303), under paras 14 and 15 of the judgement. For immediate reference it is set out below :

"para 14 `` the statute fixes the ceiling limit in various urban areas of all the States where the Court has to determine the extent of the ceiling. It is clear that there can be only three categories of urban lands :

- (1) land which is entirely open in the sense that it does not contain any construction or building.
- (2) where the entire land is covered by building or dwelling house, and
- (3) land on a part of which there is building with or without a dwelling unit thereon and the rest of the land is vacant.

Para 15 : So far as the first category is concerned no complexity is involved because any open area in excess of 2000 Sq. meters in category D States will be taken over by the Government. For instance if an open land without construction consists of 6000 Sq. meters, the computation of the ceiling area would present no difficulty because 4000 sq. meters will be taken over by the Government and 2000 Sq. meters will be left to the land holder. XX XX XX."

21. The maximum ceiling limit allowed in Bareilly City is 1500 sq. meters. The total extent of land held by the petitioner is 1945 sq. meters. It is a simple mathematical calculation. Surplus land, therefore, is 445 sq. meters. The Competent Authority has correctly reached this conclusion, but not the learned District Judge.

22. In the result, we allow the petition and quash the impugned order of learned District Judge (Annexure-2) and restore the order of the Competent Authority.

23. In the circumstances of the case, however, there will be no order as to costs.

Petition allowed.

