

MADHYA PRADESH HIGH COURT

Eastern Oxygen

Vs.

State

Misc. Petn. No. 702 of 1979
(G.P. Singh, C.J. and Faizanuddin, J.)

21.04.1980

JUDGMENT

G. P. Singh, C. J.

1. By this petition under Article 226 of the Constitution, the petitioner challenges the order dated 26th October 1977 passed by the Competent Authority under the Urban Land (Ceiling Authority Regulation) Act, 1976. The petitioner also challenges the order of the Appellate Authority dated 30th June 1978 and the order dated 22nd September, 1978, passed by the same Authority rejecting the review application.

2. The petitioner is the owner of urban property bearing municipal Number 851, Nazul block No. 5, plot No. 23, within the corporation limits of Jabalpur city. The said property consists of residential building and one outhouse with vacant land around the construction. The total area of plot No. 23 is 26,535 sq.ft. The area covered by the constructions is 2650 sq. ft. The proceedings before the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976, started on issuance of six notices by the petitioner under Section 26 of the Act to the Competent Authority of the intended transfer of the said urban property in six parts to six purchasers. By the order dated 26th October, 1977, the Competent Authority held that the petitioner was in possession of vacant land in excess of ceiling limit and the petitioner cannot transfer any part of his property until he furnishes a statement under Section 6 and proceedings are completed under that section. This order was maintained in appeal by the Appellate Authority by its order dated 30th June 1978. The review application against the order of the Appellate Authority was dismissed by it by order dated 22nd September, 1978.

3. The Appellate Authority in its order dated 30th June, 1978, came to the conclusion that the residential building was a dwelling unit as it was admitted by the petitioner in the written argument filed on 25th October, 1977, that it was being used for temporary stay of customers. The Appellate Authority also came to the conclusion that the building bye-laws in force allowed construction on 1/3rd of the total compound area and having regard to the regulation the land appurtenant under Section 2(g) would be as follows :

- (i) Land on which building has been constructed 2650 sq. ft.
 - (ii) Appurtenant land under S.(2)(g)(i) subject to a maximum of 500 sq. Metres. 5300 sq. ft
 - (iii) Additional appurtenant land under Section 2(g)(i) because the building was constructed before the appointed day with a dwelling unit therein, subject to a maximum of 500 sq. metres. The present property is being used by the company as dwelling unit, therefore, the benefit of the provision has been given. 5300 sq. ft.
- Total 13,250 sq. ft.

4. The ceiling limit for Jabalpur urban agglomeration which falls under Category C in Schedule I is 1500 sq. metres as provided in Section 4(1)(c), 1500 sq. metres is equal to 16146 sq. ft. sub-section (9) of Section 4 reads as follows:

"(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."

Section 2(e) defines "dwelling unit" in relation to a building or a portion of a building to mean a unit of accommodation in such building or portion used solely for the purpose of residence. Section 2(g) defines "land appurtenant" as follows:

"(g) '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."

Section 2(q) defines "vacant land" as follows:

"(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 purposes of this clause."

Section 5(3) of the Act provides that no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void. Section 10 provides for the acquisition of vacant land in excess of ceiling limit. The first step under Section 10 is to issue a preliminary notification under sub-section (1) giving the particulars of the vacant land in excess of the ceiling limit and inviting claims and objections from persons interested. The claims and objections are determined under sub-section (2). The final notification is issued under sub-section (3) declaring that the excess vacant land shall, with effect from the date as may be specified, be deemed to have been acquired by the State Government. Sub-section (4)

provides that during the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3), no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision should be deemed to be null and void. Section 26 requires a notice to be given to the Competent Authority of the intended transfer by a person holding vacant land within the ceiling limit. The Competent Authority has the first option to purchase such land on behalf of the State Government. Section 27 of the Act contains a prohibition for transfer of any urban or urban sable land with a building except with the previous permission of the Competent Authority in writing. When an application for permission is made under this section, the Competent Authority has the first option to purchase such land or a portion of such building on behalf of the State Government.

5. The Appellate Authority was of the opinion that in determining the extent of vacant land held by the petitioner, sub-section (9) of Section 4 was applicable and that the land covered by the building and the land appurtenant to it, as shown in paragraph 3 above, had to be taken into account in finding whether the petitioner was in possession of vacant land in excess of the ceiling limit. We have already stated that the total area of the plot is 26,525 sq. ft. The ceiling limit, as also noted earlier, is 16,146 sq. ft. If the land covered by the building and the land appurtenant to it are not taken into account in finding the extent of vacant land in possession of the petitioner, the vacant land in his possession would be less than the ceiling limit. It is, therefore, contended by the learned counsel for the petitioner that sub-section (9) of Section 4 was not applicable to the petitioner. Vacant land, as defined in Section 2(q), does not include land occupied by any building and the land appurtenant to such building. This definition of vacant land in Section 2(q) is subject to the special provision made in sub-section (9) of Section 4. Sub-section(9) of Section 4 says that 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. The condition for applicability of sub-section (9) is that a person should have vacant land and also any other land on which there is a building with a dwelling unit. The learned counsel submits that for applicability of sub-section (9) the vacant land and any other land on which there is a building with a dwelling unit held by the same person should not be forming part of the same plot, and

the building with a dwelling unit must be on a separate piece of land which is not contiguous to the vacant land. In our opinion, there is no merit in this contention. This construction which the learned counsel for the petitioner submits for our acceptance will require reading the words "not contiguous to the vacant land" or some such other words after the word "any other land" in sub-section (9). There is no such qualification of "any other land" in sub-section (9) and such a qualification cannot be read in by implication. All that sub-section (9) requires is that the person concerned must hold vacant land and he should also hold any other land on which there is a building with a dwelling unit. The section does not require that the vacant land and the land over which there is a building with a dwelling unit should not be contiguous or that they should be separate from each other and constitute separate plots. The learned counsel for the petitioner in this context referred to us a Division Bench Judgment of the Allahabad High Court in the case of *State of Uttar Pradesh v. L.J. Johnson*¹ The decision does support the submission of the learned counsel for the petitioner but for the reasons given above, we are respectfully unable to agree with the view taken in it.

6. It was also submitted by the learned counsel for the petitioner that there was no dwelling unit in the petitioner's building and, therefore, sub-section (9) of Section 4 was not attracted. On this point the finding of the Appellate Authority is that the petitioner admitted in the written argument submitted before the Competent Authority that the building was being used for temporary stay of customers. The building is described to be a residential building in the petition before us (see para 2). The finding that the building has a dwelling unit has not been specifically challenged in the petition. In these circumstances, we are not prepared to go into the question whether the finding that the building has a dwelling unit was in any way erroneous.

7. It was then contended by the learned counsel for the petitioner that in calculating land appurtenant to the building under Section 2(g), appurtenant land should be taken to be 2/3rd of the entire plot irrespective of the size of the building. It is not disputed before us that there are building regulations in the shape of bye-laws which are in force in the area. Bye-law No. 9(a) insofar as relevant provides that not more than 1/3rd of the total compound area shall be allowed as the total of plinth area of all buildings erected thereon. Properly understood, this bye-law means that the construction can be on 1/3rd of a plot and 2/3rd of the plot has to be left as open space for the enjoyment of the building. Land appurtenant in relation to a building under clause (i) of Section 2(g) is defined to mean the minimum extent of land required

under the building regulations to be kept as open space for the enjoyment of such building, which in no case should exceed five hundred square metres. The petitioner's building (including the outhouse) covers an area of 2650 sq. ft. Under bye-law No. 9(a) mentioned above, construction is allowed only on 1/3rd of a plot and 2/3rd of it is required to be left as open space. In the context of this bye-law, the open space which the petitioner was bound to leave in respect of his building covering 2650 sq. ft. is an area of 5300 sq. ft. as determined by the Appellate Authority. The learned counsel for the petitioner is not right in contending that the appurtenant land under clause (i) of Section 2(g) must mean 2/3rd of the entire plot irrespective of the size of the building. The petitioner was also entitled to 5300 sq. ft. of open land under sub-clause (ii) of Section 2(g) which has further been allowed by the Appellate Authority. In our opinion, the Appellate Authority committed no mistake in calculating the area of appurtenant land in the light of Section 2(g) of the Act.

8. It was lastly submitted by the learned counsel for the petitioner that the area covered by the building and the land appurtenant to it can in no case amount to excess vacant land as specifically provided in sub-section (ii) of Section 4 and, therefore, the Competent Authority should have permitted the sale of the building together with the appurtenant land under Section 27. The short answer for this contention is that no application was ever made under Section 27. The proceedings before the Competent Authority, as earlier stated by us, were started by six notices given by the petitioner under Section 26. As the petitioner did not make any application under Section 27, it is not necessary for us to consider the scope of that section and to decide whether, if an application had been made, the Competent Authority ought to have given permission to the petitioner to sell the building and the land appurtenant to it.

9. The petition fails and is dismissed. There shall, however, be no order as to costs. Security amount be refunded to the petitioner.

Petition dismissed.

Cases Referred.

1. Civil Misc. Writ No. 5217 of 1977, decided on 30-10-1978