State Of Maharashtra & Anr vs B.E. Billimora And Ors on 14 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4368, 2003 (7) SCC 336, 2003 AIR SCW 5167, 2003 (6) SCALE 441, 2003 (7) ACE 240, 2003 (9) SRJ 250, 2004 (1) UJ (SC) 35, 2003 (5) SLT 473, (2003) 10 ALLINDCAS 747 (SC), (2004) 1 ALLMR 98 (SC), (2003) 7 JT 257 (SC), 2004 UJ(SC) 1 35, (2003) 4 JCR 15 (SC), (2003) 10 INDLD 45, (2004) 1 LANDLR 62, (2003) 2 LACC 611, (2003) 5 ANDHLD 68, (2003) 5 SUPREME 580, (2003) 4 RECCIVR 87, (2003) 6 SCALE 441, (2004) 1 GCD 560 (SC), (2004) 54 ALL LR 148, (2004) 2 CIVLJ 486, (2003) 3 CURCC 180, (2004) 1 BOM CR 694, 2004 (3) BOM LR 205, 2004 BOM LR 3 205

Author: S.B. Sinha

Bench: S.B. Sinha

CASE NO.:
Appeal (civil) 10461 of 1983

PETITIONER:
State of Maharashtra & Anr.

RESPONDENT:
Vs.

B.E. Billimora and Ors.

DATE OF JUDGMENT: 14/08/2003

BENCH:
S.B. Sinha

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Interpretation of provision of Section 2(q) vis-à-vis sub- section (9) of Section 4 of the Urban Land (Ceiling & Regulations) Act, 1976 (for short 'the Act') is the primal question in this appeal. Two ancillary questions have also been raised by Mr. Dholakia, 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 Section 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.

The facts are not in dispute.

The respondents being strangers acquired land bearing C.T.S. No.82 measuring 5428.09 sq. metres 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.

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."

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

In the said area, as it appears from a letter dated 27.02.1979 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.

Our attention has been drawn to a decision of the Bombay High Court in Meherbai Karl Khandalawala and Others vs. The Competent Authority under Urban Land Ceiling and Regulation Act, 1976 and Others [1988 Mh. L.J.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.

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.

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 Section 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.

So far as the submission of Mr. Dholakia to the effect that as on the appointed day, no construction had been made on the land in question and only a building plan therefor 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 Section 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.

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.

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.

The said Act being expropriatory legislation is required to be construed strictly. [See M/s D.L.F. Qutab Enclave Complex Educational Charitable Trust vs. State of Haryana and Ors. [2003 (2) SCALE 145 para 41].

In Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and Others [(2003) 2 SCC 111], this Court held:

> "An owner of a 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."

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.

The exclusionary clauses contained in the definition of 'vacant land' must, therefore, receive a liberal construction. 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. 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 vs. Secretary for State for the Environment (1990 (1) All. E.R. 780 at 785].

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

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.

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. 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.) vs. State of West Bengal and Others [(1992) 2 SCC 494] commends to us in preference of the decision of this Court in State of U.P. and Others vs. 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 vs. State of U.P. and Others [(1993) Supp. (1) SCC 1] and Kunj Behari Lal vs. District Judge, Gorakhpur and Others [(1997) 6 SCC 257].

We are not unmindful of the observations made by a two-Judge Bench of this Court in Angoori Devi (Smt.) vs. 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 was made by a three-Judge Bench in Angoori Devi (Smt.) vs. State of U.P. and Others (1997) 7 SCC 757].

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.

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