

Smt. Atia Mohammadi Begum vs State Of U.P. And Ors on 15 March, 1993

Equivalent citations: 1993 AIR 2465, 1993 SCR (2) 295, AIR 1993 SUPREME COURT 2465, 1993 (2) SCC 546, 1993 AIR SCW 2740, 1993 ALL. L. J. 1132, 1994 () LACC 159, 1993 (2) UJ (SC) 142, 1993 () JT (SUPP) 544, (1993) 2 SCR 295 (SC), 1993 UJ(SC) 2 142, (1993) 2 CIVLJ 356, (1995) 1 LANDLR 86, (1993) 1 RENTLR 517

Author: Jagdish Saran Verma

Bench: Jagdish Saran Verma, N.M. Kasliwal

PETITIONER:

SMT. ATIA MOHAMMADI BEGUM

Vs.

RESPONDENT:

STATE OF U.P. AND ORS.

DATE OF JUDGMENT 15/03/1993

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

KASLIWAL, N.M. (J)

CITATION:

1993 AIR 2465

1993 SCR (2) 295

1993 SCC (2) 546

JT 1993 Supl. 544

1993 SCALE (2) 167

ACT:

Urban Land (Ceiling and Regulation) Act, 1976: Section 2(o), Explanation (C)--Urban Land--Determination of--Land specified in master plan for a purpose other than agriculture--Whether means land so specified in the master plan which was in existence at the time of the commencement of the Act--Vacant land entered into revenue or land records as for purpose of agriculture before commencement of the Act and prior to declaration of the masterplan--whether could be excluded from the ambir of 'urban land'.

HEADNOTE:

The Urban Land (Ceiling and Regulation) Act, 1976, came into force in the respondent-State on 17.2.1976. The appellant claimed exclusion of vacant land owned by her, from the ambit of 'urban land' on the ground that it was mainly used for the purpose of agriculture, as defined in Section 2(o) of the Act. The land in question was entered in the revenue or land records before the commencement of the Act as for the purpose of agriculture. At the time when the Act came into force there was no master plan for the city in which the appellant's land was situated. However, a master plan for the city was made on 24.2.1980, wherein the land in dispute was shown.

The competent authority declared that the appellant had 19813.83 sq. mts. of vacant land in excess of the ceiling limit, but the District Judge reduced the area of the excess land to 6738.23 sq. mts. Against the order of the District Judge, both sides filed writ petitions. The High Court dismissed appellant's writ petition and partly allowed the writ petition of the State Government. It held that the appellant's land could not be treated as mainly used for the purpose of agriculture by virtue of Explanation (C) because it was shown in the master plan made on 24.2.1980.

In the appeals before this Court the correctness of the High Court's view was challenged by the appellant and restoration of the District Judge's order was sought.

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Allowing the appeals, this Court,

HELD:1.1. Explanation (C) in Section 2(o) of the Urban Land (Ceiling & Regulation) Act, 1976 means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land should not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a master plan prepared after the commencement of the Act. The plain language of Explanation (C) bears this construction and requires it to be so construed in order to harmonise it with the other provisions and scheme of the Act, eg. Sections 3 and 5. The master plan defined in Section 2(h) and referred in the definition of 'urban land' in Section 2(o), including Explanation (C) therein, is a master plan prepared and in existence at the time of commencement of the Act when by virtue of Section 3 of the Act, rights of the holder of the land under the Act get 'crystallised' and extinguish his right to hold any vacant land in excess of the ceiling limit. The proceedings for determining the vacant land in excess of the ceiling limit according to the machinery provisions in the Act is merely for quantification, and to effectuate the rights and liabilities which have crystallised at the time of commencement of the Act. Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling

limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action. [298G-H, 299A-C]

1.2.The construction made of these provisions by the High Court cannot, therefore, be accepted. Accordingly, the order passed by the District Judge determining the area of 6738.23 sq. mts. only as the vacant land in excess of the ceiling limit is restored. [299D-E]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 297 & 298 of 1993.

From the Judgment and Order dated 12.11.1984 of the Allahabad High Court in Civil Appeal Nos. 4018/80 and 5174 of 1980.

R.K. Khanna, Ms. Abha R. Sharma, Manoj Goel and Pankaj Kalra for the Appellant.

Ms. Alka Aggrawal, R.C. Verma, Ashok K. Srivastava for the Respondents.

The Judgment of the Court was delivered by VERMA, J. These appeals by special leave are against the judgment and order dated 12.11.1984 of the Allahabad High Court in Writ Petition Nos. 4018 of 1980 and 5174 of 1980 which were filed by the appellant and the State of Uttar Pradesh against the Judgment dated 12.2.1980 of the District Judge, Aligarh in Land Ceiling Appeal No.24 of 1978. The competent authority declared that the appellant had 19813.83 sq. mts. of vacant land in Aligarh in excess of the ceiling limit but the District Judge reduced the area of the excess land to 6738.23 sq. mts. Against the order of the District Judge, both sides filed writ petitions. The High Court dismissed appellant's writ petition and partly allowed the writ petition of the State Government. This has led to the filing of these appeals against the High Court's order made in these two writ petitions against the appellant. Learned counsel for the appellant argued for restoration of the District Judge's order whereby an area of 6738.23 sq. mts. was declared to be in excess of the ceiling limit as against 19813.83 sq. mts. declared by the competent authority. The High Court set aside the District Judge's order on the construction it made of Explanation (C) in Section 2(o) defining 'urban land' in the Urban Land (Ceiling and Regulation) Act, 1976. The definition of 'urban land' in Section 2(o) excludes from its ambit, land which is mainly used for the purpose of agriculture. Thereafter, the Explanation for the purpose of clause (o) defining 'urban land' and clause (q) defining 'vacant land' is given. Clause (A) of the Explanation defines 'agriculture'. There is no dispute that the vacant land of which exclusion is claimed by the appellant on the ground that it is mainly used for the purpose of agriculture is so used according to the definition of 'agriculture'. There is also no dispute that clause (B) of the Explanation is satisfied by the appellant since the land was entered in the revenue or land records before the appointed day as for the purpose of agriculture. The only dispute is with regard to clause (C) of the Explanation which reads as under:-

"(C) Notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;"

There is no dispute that the Act came into force in the State of Uttar Pradesh on 17.2.1976 and there was no master plan for that area in Aligarh at that time. However, a master plan for Aligarh was made on 24.2.1980 wherein the land in dispute was shown. The High Court has taken the view that the appellant's land could not be treated as mainly used for the purpose of agriculture by virtue of Explanation (C) because it was shown in the master plan made on 24.2.1980. The correctness of this view has been challenged in these appeals.

Some other provisions of the Act which are material for deciding this question may now be referred. Section 2 enacts 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. Accordingly, the right of the person to hold any vacant land in excess of the ceiling limit ceased on the date of commencement of the Act even though determination of the excess area had to be made under the machinery provisions, thereafter, in accordance with the prescribed procedure. The area of vacant land in excess of the ceiling limit held by the appellant has, therefore, to be determined as on 17.2.1976 when the Act came into force in the State of Uttar Pradesh. Clause (a) of Section 2 defines 'appointed day' to mean the date of introduction of the Bill in Parliament in relation to any State to which this Act applies in the first instance like the State of Uttar Pradesh and that date to 28.1.1976. Section 5 of the Act provides that any transfer made of vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act shall be ineffective and the land so transferred shall be taken into account in calculating the extent of vacant land held by such person. This is a further indication that determination of the area of vacant land in excess of the ceiling limit under the Act is to be made with reference to the date of commencement of the Act and the right and liability of the holder of the land for this purpose under the Act crystallises on the date of commencement of the Act unaffected by any subsequent events. The scheme of the Act supports the construction that the aforesaid Explanation (C) means that if the land has been specified in the master plan existing at the time of commencement of the the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a master plan prepared after the commencement of the Act. The plain language of Explanation (C) bears this construction and requires it to be so construed in order to harmonise it with the other provisions and scheme of the Act. Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling limit the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action. The 'master plan' defined in Section 2(h) and referred in the definition of 'urban land' in Section 2(o), including Explanation (C) therein, is obviously a master plan prepared and in existence at the time of commencement of the Act when by virtue of Section 2 of the Act, rights of the holder of the land under the Act get 'crystallised and extinguish his right to hold any vacant land in excess of the ceiling limit. The proceedings for determining the vacant land in excess of the ceiling limit according to the machinery provisions in the Act is merely for quantification, and to effectuate the rights and liabilities which have crystallised at the time of commencement of the Act. The contrary view taken

on the construction made of these provisions by the High Court cannot, therefore, be accepted. On the above conclusion, there is no dispute that the order made by the District Judge has to be restored. Consequently, the impugned orders made by the High Court in the two writ petitions before it are set aside and the order dated 12.2.1980 passed by the District Judge determining the area of 6738.23 sq. mts. only as the vacant land in excess of the ceiling limit is restored. The appeals are, accordingly, allowed in this manner, to this extent. No costs.

N.P.V. Appeals allowed.