

The State Of A.P. & Ors vs N. Audikesava Reddy & Ors on 6 November, 2001

Equivalent citations: AIR 2002 SUPREME COURT 5, 2002 (1) SCC 227, 2001 AIR SCW 4498, 2001 (8) SCALE 79, (2001) 10 JT 31 (SC), (2001) 5 SCJ 315, (2002) 1 ALL WC 248, (2002) 1 CIVLJ 543, (2002) 1 LACC 563, (2002) 1 ANDHLD 31, (2001) 8 SUPREME 158, (2001) 8 SCALE 79, (2002) 1 UC 112, (2002) 46 ALL LR 368, (2001) 6 ANDH LT 1

Bench: S.P.Bharucha, Brijesh Kumar

CASE NO.:

Appeal (civil) 3813 of 1996

PETITIONER:

THE STATE OF A.P. & ORS.

Vs.

RESPONDENT:

N. AUDIKESAVA REDDY & ORS.

DATE OF JUDGMENT: 06/11/2001

BENCH:

S.P.Bharucha, Y.K.Sabharwal, Brijesh Kumar

JUDGMENT:

Y.K.Sabharwal, J.

The question for determination in these appeals is whether it is the master plan that was in existence when the Urban Land (Ceiling & Regulations) Act, 1976 (for short, 'the Act') was enforced, and not the plan prepared subsequently, that has to be taken into consideration to determine if land is vacant land held in excess of the ceiling limit fixed under the Act.

The High Court, by the impugned judgment and order, relying upon the decision of a Bench of two Judges in *Atia Mohammadi Begum (Smt.) v. State of U.P. & Ors.* [(1993) 2 SCC 546], has held that when the land was not vacant land on the date of the commencement of the Act, the authorities cannot convert that land into vacant land by their unilateral act by including it in the master plan for a purpose other than agriculture. On this view, the proceedings taken under the Act have been

declared null and void by the High Court.

Since reconsideration of the decision in Atia Begum's case was sought, it was directed by a Bench of Two Judges that these matters be placed before a three judges' Bench. Therefore, these appeals have been placed before us.

Atia Begum's case also came to be considered in *Her Highness Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel & Ors.* [(2001) 5 SCC 101] before a three Judges' Bench of which two of us (Bharucha, CJ and Sabharwal, J.) were members. Since, in the said case, the matter was not concerning quantification of excess vacant land, the question whether, for purpose of quantification of vacant land, the master plan as in existence on enforcement of the Act, namely, 17th February, 1976, would be applicable or the master plan prepared subsequent thereto could be taken note of for quantifying the vacant land was not examined and was left open to be decided in an appropriate case. In *Shantidevi Gaikwad's* case it was, however, observed that Atia Begum's case did not hold that planning and development, which is a State subject, would stand frozen on 17th February, 1976 and that the said decision cannot be read as laying down the law that for all and every purpose, the master plan as in existence on 17th February, 1976 will freeze and also that the definition of 'master plan' does not contemplate a 'static master plan'. On the facts of *Shantidevi Gaikwad's* case, it was concluded that the High Court, erroneously relying on Atia Begum's case, held that the user as provided in the master plan as in existence on 17th February, 1976 alone is to be seen and the subsequent change in the master plan reserving the land for open space is of no consequence. The view of the competent authority that the land would permanently remain in the residential zone was held to be erroneous.

The primary object of the Act was to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and to bring about an equitable distribution of land in urban agglomerations to sub-serve the common good. Section 1 refers to the short title, application and commencement of the Act. It applies in the first instance to the whole of the States of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal and to all the Union Territories and it shall also apply to such other State which adopts this Act. Thus, in these States including Andhra Pradesh from which many of these appeals arise, the Act came into force on 17th February, 1976. Section 2 deals with definitions. Section 2(c) defines 'ceiling limit' as the ceiling limit specified in Section 4. Section 2 (n) defines 'urban agglomeration' as under :

"2(n) 'urban agglomeration',-

(A) in relation to any State or Union territory specified in Col.(1) of Schedule I, means,-

(i) the urban agglomeration specified in the corresponding entry in Col.(2) thereof and includes the peripheral area specified in the corresponding entry in Col.(3) thereof; and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette declared to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefor shall be one kilometer;

(B) in relation to any other State or Union territory, means, any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Schedule I and peripheral area therefor shall be one kilometer."

"urban land" as defined under Section 2(o) means, -

"(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.- For the purpose of this clause and Cl.(q),-

(A) 'agriculture' includes horticulture, but does not include,-

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breeding of live-stock, and

(v) such cultivation or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture :

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture :

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in Cl.(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."

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

"2.(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 3 provides ceiling on vacant land. It reads as under :

"3. Persons not entitled to hold vacant land in excess of the ceiling limit.- Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of Section 1."

Section 4 prescribes the ceiling limit. Under Section 6 every person holding vacant land in excess of ceiling limit at the commencement of the Act is required to file a statement before the competent authority within the prescribed time. Section 7 deals with filing of statement in cases where vacant land held by a person is situated within the jurisdiction of two or more competent authorities. Section 8 deals with the preparation of draft statement as regards vacant land held in excess of ceiling limit. Section 9 provides for preparation of final statement. After filing the statements and after such enquiry as laid down, if there is any land in excess of the ceiling limit, such land would be acquired under Section 10 of the Act. Section 15, inter alia, provides that if, on or after commencement of this Act, any person acquires by inheritance, settlement etc. any vacant land the extent of which together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then he shall, within three months of the date of such acquisition, file a statement before the competent authority also specifying the vacant lands within the ceiling limits which he desires to retain. Sub-section (2) of Section 15 provides that the provisions of Sections 6 to 14 (both inclusive) shall apply to the statement filed under Section 15(1) and to the vacant land held by such person in excess of the ceiling limit.

Section 16 also stipulates filing of statement where a person holds vacant land in excess of ceiling limit in view of adoption of the Act by a different State in which he was having vacant land. Sub-section (2) of Section 16 also applies Sections 6 to 14 (both inclusive) to the statements filed under Section 16(1).

Now we will briefly notice the facts of Atia Begum's case and the question involved therein. In that case the question was regarding the quantification of vacant land. The competent authority had 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. The order of the District Judge was challenged by both, i.e., the owner and the State by filing writ petitions in the High Court. The owner's writ petition was dismissed and that of the State was partly allowed. In appeal before this Court, the owner sought restoration of the order of the District Judge which had been set aside by the High Court on the interpretation of the provisions of the Act. The Act came into force in the State of Uttar Pradesh on 17th February, 1976. At that time, there was no master plan for the area of Aligarh. The master plan for Aligarh was made on 24th February, 1980. In that master plan, the land in dispute was shown. The High Court took the view that by virtue of explanation (c) of Section 2(o) defining 'urban land', the land of the appellant could not be treated as mainly used for the purpose of agriculture because it was shown in the master plan made on 24th February, 1980. The correctness of this view was in issue in Atia Begum's case. The decision, though it notices that determination of the area of vacant land in excess of ceiling limit under the Act is to be made with reference to the date of commencement of the Act, fails to notice the explanation to Section 6 which provides the meaning of the expression "commencement of this Act". Section 6(1) and the explanation read as under :

"6. Persons holding vacant land in excess of ceiling limit to file statement.-(1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and

such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain :

Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words 'Every person holding vacant land in excess of the ceiling limit at the commencement of this Act', the words, figures and letters 'Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement' had been substituted.

Explanation.-In this section, 'commencement of this Act' means

- (i) the date on which this Act comes into force in any State ;
- (ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;
- (iii) where any notification has been issued under Cl.(n) of Section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification."

If the expression "commencement of the Act" is read with reference to the aforesaid explanation, the area of doubt about the correctness of the decision of Atia Begum's case becomes very narrow, e.g., few observations therein which are these :

"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 observations that the authorities by their subsequent action after 17th February, 1976 cannot alter or introduce the master plan which has the effect of increasing the area of excess vacant land do not represent the correct view of law. The aforesaid explanation to Section 6(1), inter alia, provides that where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land would be the date of the commencement of the Act as regards such land.

Development and town planning are ongoing processes and they go on changing from time to time depending upon the local needs. That apart, the definition of the "master plan" in Section 2(h) is very significant. It reads as under :

"2(h) 'master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) 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 out."

The above provision, inter alia, contemplates the master plan prepared under any law for the time being in force for development of an area. The plan shall also provide for the stages by which such development shall be carried out. It is evident from the aforesaid definition of master plan that it takes in view any plan prepared even subsequent to the coming into force of the Act. Further, the explanation to Section 6(1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under clause (2) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17th February, 1976. Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17th February, 1976. It would all depend on the facts and circumstances of each case.

Accordingly, we hold that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, *Atia Begum* is not correctly decided.

In these matters, however, we are not concerned with the question as to the consequences of filing of a statement by a person under a wrong impression that the vacant land held by him is in excess of ceiling limit if it was not so when he filed a statement. This aspect is left open to be decided in an appropriate case.

Before concluding, we wish to place on record our deep appreciation for the able assistance rendered by Mr. Raju Ramachandran, Senior Advocate, who on our request very readily agreed to assist the Court as *amicus curiae*.

For the aforesaid reasons, C.A. Nos.3813/1996, 7238/2001 and 7239/2001 are allowed and C.A. Nos.1149/1985 and 10851/1996 are dismissed. The parties are left to bear their own costs.