

M/S. Shantistar Builders vs Narayan Khimalal Totame And Others on 31 January, 1990

Equivalent citations: AIR1990SC630, (1990)92BOMLR145, JT1990(1)SC106, 1990(1)SCALE86, (1990)1SCC520, 1990(1)UJ379(SC), AIR 1990 SUPREME COURT 630, 1990 (1) SCC 520, (1990) 1 JT 106 (SC), 1990 ALL CJ 215, (1991) CIVILCOURTC 5, (1990) 1 MAHLR 926, (1990) 2 CIVLJ 123, (1990) 16 ALL LR 173, (1990) 1 CURCC 384, (1990) 1 LJR 577, (1990) 1 RRR 253, 1990 UJ(SC) 1 379, 1990 (1) JT 106, (1990) 1 RENCJ 247, (1990) 1 RENTLR 439, (1990) 2 GUJ LR 865, (1990) 19 DRJ 272, 1990 (1) SCC 252, (1990) 1 RRR 518, (1990) 1 RENCJ 289, (1990) 1 RENCJ 645, 1990 BOM LR 92 145

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Bench: Ranganath Misra, P.B. Sawant, K. Ramaswamy

ORDER

Ranganath Misra, J.

1. Respondents filed a writ petition under Article 226 of the Constitution in the Bombay High Court challenging permission to the builders to escalate the rates in respect of construction permitted on exempted land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter 'Act' for short). The respondents made an application (Civil application No. 5748/89) for amendment of the averments in that writ petition but by order dated 12th of December, 1988, the High Court rejected the civil application and refused leave to amend. By a subsequent order dated 16th of December, 1988, in the writ petition, the High Court held:

The Writ Petition as filed does not survive. It has become infructuous by changed government policy and the resolutions and letters already referred to in our order under the Civil Application. Hence, the same is dismissed.

We propose to give some directions regarding future monitoring of the scheme. These directions are restricted to this particular project only and although detailed monitoring is desirable with regard to all schemes sanctioned under Section 20, this should be considered by the Government and no directions by the Court can be given generally without considering the difficulties of the Government. However, this one scheme is capable of proper monitoring and we propose to give certain additional directions to the competent authority for monitoring the same....

The direction of the High Court in regard to monitoring has been challenged by the builder in this appeal by special leave.

2. At the initial stage of hearing of this appeal we had been told that the State of Maharashtra was considering the formulation of certain guidelines in respect of constructions over exempted lands covered under Section 20 of the Act and at the close of the hearing the formulation of the State Government has been placed for our consideration.
3. A Constitution Bench of this Court in *Union of India v. Valluri Basavaca Choudhary* , while dealing with a dispute relating to the vires of the Act stated:

The primary object and purpose of the Urban Land (Ceiling and Regulation) Act, 1979, as the long title and the preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings in such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the Directive Principles of Article 89(b) and (c).

4. Under the scheme of the Act, urban agglomerations have been divided into four classes and a ceiling has been prescribed for each classification. The vacant land in excess of the ceiling under the provisions of Section 10 of the Act vests in the State by way of acquisition and the vacant sites thus acquired by the State are intended to be utilised for purposes of housing and Sections 23 and 24 of the Act provide for disposal of vacant land. The Act, therefore, purports to take away the excess land from the holders thereof and utilise the same for purposes of housing and other public purposes. Chapter IV of the Act provides for regulation of transfer as also use of urban property. Section 20 empowers the State to exempt lands from the purview of the Act by providing:

20. Power to exempt.

(1). Notwithstanding anything contained in any of the foregoing provisions of this chapter, -

(a) Where any person holds land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being used or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter....

And Section 21 provides:

21 Excess vacant land not to be treated as excess in certain cases.

(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the Competent Authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the Competent Authority may, after making such inquiry as it deems fit, declare such land, not to be excess land for the purposes for this chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time-limit within which such buildings are to be constructed.

5. Both Sub-sections 20 and 21 contain provisions that if Government or the competent authority, as the case may be, is satisfied that any of the conditions subject to which exemption was granted is not complied with, it shall be competent for it to withdraw the order under Section 20 or declare such land to be excess land under Section 21 and bring it within the mischief of the statute.

6. In the instant case on January 11, 1978, on the basis of an application made on 24th October, 1987, the State Government made an order of exemption, the salient portions of which are extracted for convenience:

GOVERNMENT OF MAHARASHTRA NO. HWE-1077/XXXV GENERAL
ADMINISTRATION DEPARTMENT, MANTRALAYA, BOMBAY-400032.

11TH JANUARY, 1978.

WHEREAS (1) Shri Kumarpal Vadilal Shah (2) Shri Navinchandra Vadilal Shah (3) Smt. Champaoen w/o Vadilal Shah (4) Shri Vasantlal Vadilal Shah (5) Shri Babulal Vadilal Shah (6) Smt. Pushpa Maugaldas Shah (7) Smt. Nirmala Hiralal Shah (8) Smt. Shakuntala Tansukhlal Parekh and (9) Smt. Madhuabala Vadilal Shah (persons at Sr. Nos 2 to 9 by their Constituted Attorney Shri Kumarpal Vadilal Shah), 26, Suneel Shopping center, Opp. Navrang Talkies, Andheri (West), Bombay - 400 058, hold vacant lands in excess of the Ceiling Limit in the Greater Bombay Urban Agglomeration, details of which are given in the Schedule 'A' herein:

AND WHEREAS the said persons have applied for exemption under Section 20 of the Urban Land (C.& Sub-section) Act, 1976 (33 of 1976).

AND WHEREAS, the said persons have mentioned in their application, that their Scheme of construction of houses for Weaker Section will be executed by them,

through Messers STAR BUILDERS, 302, Sharda Chambers, 15 New Marine Lines, Bombay - 20.

NOW THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 20 of the said Act, after having recorded in writing the reasons for making this Order, the Government of Maharashtra hereby exempts the said vacant lands, from the provisions of Chapter III of the said Act, subject to the following conditions viz.:

1) The lands exempted under this exemption order shall be used by the said persons for the purpose of housing for weaker section comprising 17,000 (seventeen thousand) tenements consisting of 3,000 (three thousand) tenements of plinth area, not exceeding 20.00 sq. metrs., 10,000 (ten thousand) tenements of plinth area, not exceeding 30.00 sq. metrs., 3,000 (three thousand) tenements of plinth area, not exceeding 44.00 sq. mtrs. and 1,000 (one thousand) tenements of plinth area, not exceeding 57.00 sq. mtrs. Any change made in the user of the land shall amount to a breach of this condition.

2) The said persons shall make full utilization of the land so exempted for the purpose aforesaid, by constructing on the land the 17,000 tenements as specified in the condition No. 2 above. The said persons shall commence construction of the tenements within a period of one year from the date of this exemption order and shall complete the construction work within a period of five years from that date, failing which the exemption shall stand withdrawn. If only a part of land is utilized and a part remains vacant at the end of period of five years, exemption shall be deemed to have been withdrawn.

3) The final selling price, all inclusive of each of the dwelling units shall not exceed Rs. 50/- (Rs. fifty only) per sq. of plinth area. Each tenement is to be provided with all the amenities as mentioned in the Schedule 'B' attached to this Order and as mentioned in the State Government Scheme, announced on 2nd October, 1977 for construction of houses for Weaker Sections of Society on surplus vacant land by the land holder. The details of construction shall not be inferior to those already mentioned in the application. The acutely construction and the quality of construction shall not be inferior to those already mentioned in the application. The actual construction and the quality of construction, will be subject to the building regulations of the local authorities, and subject to such other conditions as may be imposed, by the Collector of Thane, Town Planning Authority and the B.M.R.D.A and other Statutory Regulation.

4)

5)

6)

7) The said persons shall not transfer the exempted lands (with or without buildings thereon) or any part thereof to any other persons, except for the purpose of mortgage in favour of any financial institution, specified in Sub-section (1) of Section 19 of the said Act, for raising finances for the purposes of construction or any one of the tenements mentioned above. Breach of this condition shall mean that the exemption granted under this Order stands withdrawn.

8)

9)

10) The construction work under the scheme, will be further subject to all other conditions incorporated in the Scheme of Weaker Section Housing announced by the State, Government on 2nd October, 1977 and subject to such other conditions as may be imposed by the local authorities, Collector of Thane, Town Planning Authorities and the B.M.R.D.A.

11) If at any time, the State Government is satisfied that there is a breach of any of the condition mentioned in this Order, it shall be competent for the State Government by order to withdraw the exemption from the date specified in the Order:

7. Respondents contended before the High Court that the builder had violated the conditions imposed in the order of exemption; that need of the Weaker Sections of the society was not being attended to and a big racket had been formed by real estate speculators to eliminate the economically weaker sections and persons genuinely in need of housing accommodation and to make unauthorised and illegal profit out of such transactions. They had also challenged the sanction of escalation following the demand of the builder and alleged that the legislative purpose of according exemption and even as contemplated in the original order of exemption have been departed from in allowing escalation beyond reasonable limits. It had been further alleged that applications from genuine persons belonging to the economically weaker sections have been overlooked and persons not entitled to the benefit have been registered by the builders and even allotted apartments and the builders are in collusion with racketeers.

8. We have already indicated that the High Court did not examine the factual aspects involved in the dispute when it dismissed the writ petition but proceeded to lay down the guidelines. The respondents have alleged that their claims for allotment of premises have been overlooked though they came earlier in point of time. There is also a serious dispute raised by them before us that the escalation permitted by the State Government to the builder is excessive and not warranted.

9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable

accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.

10. With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are feature which are mainly responsible for increase in the homeless urban population, Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.

11. The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and acquisition of vacant sites for purposes of housing. Considerable attention has been given in recent years to increasing accommodation though whatever has been done is not at all adequate. The quick growth of urban population overshadows all attempts of increasing accommodation. Sections 20 and 21 of the Act vest power in the State Governments to exempt vacant sites from vesting under the Act for purposes of being taken over if housing schemes are undertaken by owners of vacant urban lands. Section 21 specifically emphasises upon weaker sections of the people. That term finds place in Article 46 of the Constitution and Section 21 uses the same language. 'Weaker sections' have, however, not been defined either in the Constitution or in the Act itself. An attempt was made in the Constitution Assembly to provide a definition but was given up. Attempts have thereafter been made from time to time to provide such definition but on account of controversies which arise once the exercise is undertaken, there has been no success. A suggestion for introducing economic criterion for explaining the term was made in the approach to the Seventh Five Year Plan (1985-1990) brought out by the Planning Commission and approved by the National Development Council and the Union Government. A lot of controversy was raised in Parliament and the attempt, was dropped. In the absence of a definition perhaps a proper guideline could be indicated but no serious attention has been devoted to this aspect

12. Members of the Scheduled Castes and Scheduled Tribes have ordinarily been accepted as belonging to the weaker section. Attempt to bring in the test of economic means has often been tried but no guideline has been evolved. Undoubtedly, apart from the members of the Scheduled Castes and Scheduled Tribes, there would be millions of other citizens who would also belong to the weaker sections. The Constitution maker intended all citizens of Indian belonging to the weaker sections to be benefited when Article 46 was incorporated in the Constitution. Parliament in adopting the same language in Section 21 of the Act also intended people of all weaker sections to have the advantage. It is, therefore, appropriate that the Central Government should come forward with an appropriate guideline to indicate who would be included within weaker sections of the society.

13. In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere and much less in urban areas. Since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21, greater social control is called for and exemptions granted under Sections 20 and 21 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation. We, therefore, command to the Central Government to prescribe appropriate guidelines laying down the true scope of the term 'weaker sections of the society' so that everyone charged with administering the statute would find it convenient to implement the same.

14. Respondents who claim to belong to weaker sections of the society maintain that they are entitled to allotment of 862 plus 558 flats. It is true that initially the claim was for a smaller number but the number has gone up when further petitions were filed before the High Court. There is, perhaps, some basis in the objection of the builders as also the stand taken by the State Government before us that the respondents' claim should undergo in depth scrutiny. We direct that the genuineness of the claim should be scrutinised in accordance with the guidelines which shall now be indicated but in the event of the claims being found tenable, the builders shall have a direction to provide accommodation in terms of the scheme for those who are found to be acceptable. To ensure implementation of this direction the builders are called upon not to make any commitment or allotments for flats until the claims of the 1420 applicants are scrutinised and allotment of accommodation for such number of persons as are found entitled is provided.

15. We shall now proceed to deal with the guidelines. The Government of Maharashtra by the Resolution No. ULC-1090/3'422(D- XIII) in the Housing and Special Assistance Department have laid down the guidelines. We shall refer to the preamble and some of the provisions thereof. The preamble indicates:

Close and effective monitoring of the implementation of weaker sections housing schemes sanctioned under Sections 20 and 21 of the Urban Land (Ceiling & Regulation) Act, 1976, is one of the most important duties of the competent authorities who have been entrusted with the task of implementing the Urban Land Ceiling Act, 1976, in the nine urban agglomerations in Maharashtra, viz. Bombay, Pune, Thane, Ulhasnagar, Kolhapur, Solapur, Sangli, Nasik and Nagpur. Competent authorities are required to ensure that construction of flats for the weaker sections of the society on land exempted under Sections 20 and 21 is completed within the time-frame stipulated in the exemption order. They are also required to ensure that the terms and conditions of the exemption order such as issue of advertisements, giving particulars of the schemes, sale of flats at the prices approved by government, sizes of flats, non-eligibility of persons who already own a dwelling unit in the same urban agglomeration to purchase a flat from such schemes, handing over of land affected by development plan, reservations to the planning authority etc. are all complied with. Physical implementation of Weaker sections housing schemes in Maharashtra is one of the important issues on the agenda at the meetings of

competent authorities convened by the Housing Department periodically. General and special instructions regarding effective monitoring of implementation of the housing schemes are given to competent authorities in such meetings. Government of Maharashtra have carefully considered the importance attaching to close and effective monitoring of the implementation of weaker sections housing schemes and is now pleased to direct by way of codification of earlier instructions on the subject that competent authorities should ensure that the following instructions are scrupulously complied with....

16. After this preamble, 16 paragraphs in what has been named as the Code - and a copy of this Code is appended to the judgment as annexure for convenience - indicate the guidelines.

17. We are of the view that allotment shall be on the basis of 'one family - one flat' and the family shall include husband, wife and dependent children. A family which has one flat in any urban agglomeration within the State shall not be entitled to allotment or acquisition by transfer of a flat under this Code.

18. Government nominees contemplated under the Code must belong to weaker sections of the society and shall also be subjected to the rule of one family - one flat. The number of Government nominees should not exceed 5% of the total accommodation available in any scheme.

19. Every builder shall maintain a register of applicants chronologically registering them on the basis of the date of receipt of the applications. The register should be up-to-date and available for inspection by the authorities. As and when an application is received by the builder an appropriate receipt acknowledging acceptance of such application shall be issued to the applicant and in such receipt, the number in the Application Register shall be clearly indicated. Simultaneously, a copy of the application with its number shall be sent by the builder to the Committee for its record.

20. As a working guideline we direct that a 'means test' for identifying 'weaker sections of the society shall be adopted and for the present income of the family of the applicant must not exceed Rs. 18,000/-(eighteen thousand) to come within the meaning of the term to qualify for allotment The applicant shall be called upon to satisfy the Committee about the limit of income and the present prescription of Rs. 18,000/- may be varied from time to time by the State Government taking into consideration the fall of the value of the rupee, general improvement in the income of the people now within the annual income limit or Rs. 18,000/- and other relevant factOrs. It shall be open to the State Government to prescribe appropriate guideline in the matter of identifying the 'weaker sections of the society'.

21. 'Competent authority' has been defined in Section 2(9) of the Act. From the Code it appears that he is an officer subordinate to the Collector of the District so far as the State of Maharashtra is concerned as an appeal is contemplated from his orders to the Collector. The duties and responsibilities and powers vested in the competent authority under the Code are wide and considerable. We are of the opinion (without in any way casting any aspersion) that it would be difficult for the competent authority to exercise efficiently and to the satisfaction of everyone the

duties cast upon him under the Code. In the matter of implementation of the scheme and with a view to providing satisfactory execution thereof and fulfilling the laudable purpose stipulated under the Act and undertaken by the scheme, it is necessary that there should be a committee in respect of the schemes in every urban agglomeration for weaker sections sanctioned under Sections 20 and 21 of the Act for overseeing the implementation of every scheme, particularly in the matter of due compliance of the conditions under which exemption is granted, timely construction of the flats, appropriate advertisement as contemplated, registration of the applications in response to advertisements in a systematic manner, appropriate allotment of flats including priorities on the basis of registration, ensuring legitimate charges only being demanded and monitoring strict compliance to avoid underhand dealing or any unjust treatment. It should be handled by the competent authority in a committee consisting of himself, a judicial officer not below the rank of an Additional District Judge and a Government engineer not below the rank of Superintending Engineer. In the committee, the judicial officer shall function as the Chairman.

22. This Committee shall have powers to scrutinise all relevant documents and give appropriate directions to the builders and applicants keeping the requirements of the schemes and the Code in view. To the extent we have indicated the powers conferred on the competent authority in terms of the State Code shall stand vested in the committee. The Bombay High Court shall take steps to ensure that in respect of schemes in every agglomeration undertaken and which the State Government may in future undertake, the services of an efficient judicial officer not below the rank of an Additional District Judge on such terms as the State Government and the High Court consider appropriate shall be made available for discharging the duties indicated and/or as may be provided. We would like to impress upon every Committee that fulfilment of the laudable purpose of the providing a home to the poor homeless depends upon its commitment to the goal and every effort should be made by it to ensure that the builder does not succeed in frustrating the purpose. The State Government shall suitably modify its Code in the light of this judgment and recirculate the same to all concerned within four weeks from today.

23. At present we have confined the directions to the State of Maharashtra. Liberty is given to members of the weaker sections residing in other States, builders and the respective State Governments to ask for extension of the Code with such modifications as may be necessary for other parts of the country.