Supreme Court of India
Smt. Angoori Devi vs State Of U.P. & Ors on 22 January, 1997
Author: Sen
Bench: Faizan Uddin, Suhas C. Sen

PETITIONER:
SMT. ANGOORI DEVI

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 22/01/1997

BENCH:
FAIZAN UDDIN, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SEN, J.

This is a case under Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter described as `the Act) which involves interpretation of the provisions of the Act on which there are two conflicting judgments of this Court.

One Gopichand filed a statement under Section 6 (1) of the Act in the office of the Competent Authority, Meerut, on 24.10.76 in respect of two properties:-

1. Khasra No. 1685 measuring 1545 square metres situated at Beri Pura Road, Meerut City.

2. Khasra Nos. 1969 and 1970 measuring 1630 square metres situated on Delhi Road, Meerut City. In this plot stood a factory having 493 square metres of covered area and 1156 square metres of open land.

The Competent Authority, after examination of the facts, held that an area measuring 910.50 square metres was vacant land of Gopi Chand.

An objection under Section 8 (3) of the said Act was field on 26.9.77 by the legal heirs of Gopi Chand who had died in the meantime. Their contention was that there was no vacant surplus land and the order of the Competent Authority was not in accordance with the provisions of the said Act.

The District Judge, Meerut, who heard the appeal, held that the Competent Authority had wrongly construed Section 4(9) of the Act. That provision, according to the District Judge, came into play only when there was vacant land and other land having a building with a dwelling unit thereon. In the instant case, there was no dwelling unit but a factory. Therefore, the covered area on which factory stood could not be taken into account in computation of vacant land. The District Judge also pointed out that no constructions were permissible on an area measuring 1358 square metres of land held by Gopi Chand. However, construction was permissible on an area measuring 1384 square metres permissible on an area measuring 1384 square metres which was well within the ceiling limit prescribed by the Act.

The decision of the District Judge was challenged before the High Court at Allahabad by the State of U.P. It held by the High Court that interpretation of Section 2(g)(i) made by the District Judge was not correct. The controversy was concluded by a judgment of that Court in the case of Prem Nath Duggal v. State of U.P., which had been decided on 16.8.1984.

In the appeal before us, a point was sought to be raised about the ownership of the factory. That point, however, was not gone into and decided by the High Court. Therefore, this question cannot be raised at this stage. The only question that falls for determination in this appeal is whether Gopi Chand at the material time held vacant land in excess of ceiling limit fixed by the Act?

`Dwelling unit', `land appurtenant' and `vacant land' have been defined by Section 2:-

> "2. Definitions. - In this Act, unless the context otherwise requires, ...
>
> (e) `dwelling unit', in relation to a building or a portion of a building, means a unit of accommodation, in such building or portion, used solely for the purpose of residence;
>
> ... ...
>
> (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 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 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;

... ...

(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 there venue records), then, so much extent of the land as has been orinarily 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 of the Act lays down that 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. Ceiling limit has been defined in Section 4 to mean:

"4. Ceiling limit. - (1) Subject to the other provisions of this section, in the case of every person, the ceiling limit shall be,-

(a) where the vacant land is situated in an urban agglomeration falling within category A specified in Schedule I, five hundred square metres;

(b) where such land is situated in an urban agglomeration falling within category B specified in Schedule I, one thousand square metres;

(c) where such land is situated in an urban agglomeration falling within category C specified in Schedule I, one thousand five hundred square metres;

(d) where such land is situated in an urban agglomeration falling within category D specified in Schedule I, two thousand square metres.

x x x x x x x
x

(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 extent of such other land occupied by the building 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 dispute in this case turns round the interpretation of sub-section (9) of Section 4 read with sub-section (q) of Section 2 which defines "Vacant land".

The controversy in this case is as to the object of the Act and how that object has been achieved by various provisions and, in particular, sub-section (9) of Section 4 of the Act. If has been contended on behalf of the appellant that the question of law raised in this case is not res integra any more. Section 4(9) has been examined in several decisions of this Court and there is no scope for any further debate on this issue.

On behalf of the respondents, it has been pointed out that the object of the Act is to prevent the concentration of urban land in the hands of a few persons. If a person owns several houses in an urban area and a plot of vacant land of less than 2000 square metres falling within category `D', to allow such a person to continue to use and enjoy the vacant plot of land regardless of the other lands occupied by buildings owned by him, will not subserve the object of the Act and the Act should not e construed in a manner to defeat the object. Any land occupied by buildings cannot be treated as vacant land as defined in Section 2 (q). There cannot be any dispute about that proposition. But what Section 4(9) has done is to introduce a rule of computation of vacant land by which is if a person who owns vacant land also holds another plot of land on which there is a building, then the vacant land held by such a person has to be computed after taking into account the land occupied by building and also the land appurtenant thereto. In other words, although any land occupied by building and the land appurtenant thereto will not otherwise come within the mischief of the definition of vacant land as given in Section 2(q), by virtue of the provisions of sub-section (9) of Section 4 of the Act, such land will have to bed taken into reckoning for the purpose of computation of vacant land under sub-section (9) of Section 4.

There is considerable force in this argument and the case of State of U.P. and Others v. L.J. Johnson and others, (1983) 4 SCC 110, lends support to this contention., On behalf of the appellant, however, it has been contended that the points decided by this Court in Johnson's Case were examined further by a larger Bench of this Court in the case of Meera Gupta (Smt.) v. State of West Bengal and Others, (1992) SCC 494, where the scope and effect of various provision of Section 4 including sub-section (9) were closely examined with reference to the meaning attributed to vacant land by Section 2(q)(ii) and (iii). It has been emphasised in that judgment that-

> "The interpretation we have put to the provisions pertinently relate to sub-clauses (ii) and (iii) of clause (q) of Section 2. Johnson's Case as said before, is a case under sub-clause (i) of clause (q) of Section 2."

On behalf of the respondents, it has been pointed out that it will not be right to regard Johnson's Case (supra) as a case dealing with Section 2(q) (i) of the Act only. As many as 200 and odd appeals were disposed of by the judgment in Johnson's Case. The Court interpreted Section 4(9) with reference to Section 2(q) generally. There is no reason to presume that the case was confined only to sub-clause (i) of Section 2(q). Specific reference has been made to Section 2(q) (ii) and (iii) of the Act in paragraph 24 in the following words:

> "In the ultimate analysis the position is quite clear that Section 4(9) contemplates that if a person holds vacant land as also other portion of land on which there is a building with a dwelling unit, the extent of land occupied by the building and the land appurtenant thereto shall be taken into account in calculating the extent of the vacant land. This sub-section has to be read in conjunction with Section 2(q)(ii) and (iii). A combined reading of these two statutory provisions would lead to the irresistible inference that in cases which fall within the third category mentioned above, the-
>
> (1) total area of the land of a landholder is first to be determined and if the total area, built or unbuilt, falls below 2000 sq. metres in category D area, there would be no question of any excess land, (2) Where, however, there is a building and a dwelling unit then the area beneath the building and the dwelling unit would have to be excluded while computing the ceiling. Further, if there are any bylaws requiring a portion of the land to be kept vacant, the landholder would be allowed to set apart the said land to the maximum extent of 500 sq. metres. He would also be allowed to retain an additional area of 500 sq. metres for the beneficial use of the building so that he may enjoy the use of a little compound also for various purposes."

After discussing the matter further in para 25, it was concluded in para 26:-

> "The argument that once a plot contains a building, the whole of the plot would be exempt from the ceiling area cannot be countenanced on a plain and simple interpretation of Section 2(q)(ii) read with Section 4(9). In fact Section 4(9) itself puts the matter beyond controversy by qualifying the words `other land occupied by the building and the land appurtenant thereto'. The expression ` thereto' manifestly shows that the intention of the legislature was to refer to the land on which the building or the dwelling unit stands. In other words, the vacant land which contains a building would include appurtenant land or any other land situated in that particular plot."

In Meera Gupta's case (supra) a larger Bench considered Johnson's case. Presumably this Court's attention was not drawn to the aforesaid analysis of Section 4(9) read with Section 2(q)(ii) and (iii) made by Fazal Ali, J. in Johnson's case. Johnson's case was distinguished in para 11 of the case in

the following words:-

> "In these appeals, we are mainly concerned with the interpretation of Section 4(9) and the allied construction of Sections 2(g) and 2(q)(ii) and (iii) of the Act and their impact on Section 4(9). It follows, therefore, that once the view taken in Johnson's case in regard to this question is reversed all the matters will have to go back to the competent authority for a decision in the light of the view taken by this Court. This will be the ultimate outcome because in all the allied matters there is only a cryptic order disposing of the concerned matter in accordance with the view taken by the High Court in Johnson's case in regard to the interpretation of Section 4(9). The remaining questions raised by the landholders will have to be resolved and the actual computation of excess land, if any, would have to be undertaken by the competent authority on remand."

It has been contended that Johnson's Case had specifically dealt with the definition of vacant land as given in Section 2(q) (ii) and (iii). It will not be right to say that the Johnson's Case was confined to Section 2(q)

(i) of the Act.

There is some force in this contention. The principle laid down in Meera Gupta's case has been applied in the case of Atma Ram Aggarwal v. State of U.P., (1993) Supp. 1 SCC 1. Since Meera Gupta's case was decided by a Bench of three Judges, the contention raised by the respondents should be considered by a larger Bench. This case may be placed before the Hon'ble the Chief Justice of India for appropriate direction.