

PETITIONER:
SMT.DAROTHI CLARE PARREIRA & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 25/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIAK (J)

CITATION:
JT 1996 (7) 113 1996 SCALE (5)539

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment of the Division Bench of the Bombay High Court made on September 24, 1982 in W.P. No.877/79.

The undisputed facts are that the appellants were the erstwhile owners of G.T.S. Nos.13/1, 13/2 and 13/3 in Pune on land of an extent of 20,948.40 sq. meters. After the Urban Land (Ceiling & Regulation) Act, 1976 (33 of 1976) [for short, the "Act"] had come into force, the appellants filed their return under Section 6 of the Act. The competent authority had issued notice on September 20, 1977. The appellants had filed their objections on December 7, 1977. They also filed application under Section 20 for exemption. By proceedings dated December 22, 1977, the objections on final statement were over-ruled and the appellants were found to be in possession of surplus land admeasuring 13,410.88 sq. meters. Then the objection on final statement came to be called and the same was under Section 10(2) of the Act considered and rejected. Notification under Section 10(3) of the Act was published vesting the excess land in the Government w.e.f. March 12, 1979 and the same came to be published in the State Gazette on February 16, 1978. Thereafter the appellants have filed an appeal which came to be dismissed on the ground of laches. The appellants filed the writ petition challenging the validity of the notification under Section 10(3) which was upheld.

From the record, it would appear that the application filed under Section 20 was disposed of on January 22, 1979 and thereafter the publication under Section 10(3) came to be made. It also now turns out that on March 29, 1979, the appellants made an application under Section 21 and simultaneously, they filed writ petition in the High Court challenging the notification issued under Section 10(3). The Division Bench held that the procedure followed by the competent authority was not vitiated by any error of law. Since the land had already been vested in the State on March

12, 1979 pursuant to the notification published under Section 10(3), the question of further opportunity to the appellants did not arise. When the matter was heard by this Court on November 21, 1995, Shri Bhimrao Naik, learned senior counsel, had drawn our attention to the fact that his application made under Section 21 as pending consideration. The appellants had not mentioned the fact of their filing application under Section 20 and rejection thereof before the publication of the notification under Section 10(3). Since it was contended that the application was pending, we directed the counsel for the State to find out as to the stage of the matter. In furtherance thereof, we were informed that the application was pending. An affidavit was filed by Mr. P.A. Mane, Additional Collector in this Court that the application was pending consideration and sought permission of its disposal. Accordingly, by order dated February 22, 1996, time was granted to the Government to consider and dispose of the application within six weeks from the date of the receipt of the said order. An order dated 8.7.1996 disposing of the application under Section 21 has been placed before us.

Shri Naik, learned senior counsel for the appellants, has contended that until the application under Section 21 of the Act was considered and disposed of, the competent authority had no power to have the notification under Section 10(3) published. What all the competent authority could do under the Act was to finalise the determination of the excess land and then await the decision of the authority under Section 21 and thereafter notification under Section 10(3) could be published. In support thereof, he placed reliance on the instruction issued by the Government of India dated September 15, 1976 under Section 36 of the Act as well as the direction issued by the Government of Maharashtra dated May 22, 1989 following the decision of another Division Bench of the Bombay High Court as to the manner of the disposal of application under Sections 20 and 21 and the action to be taken thereon by the competent authority. In that light, the publication of the notification under Section 10(3) was illegal. He also contended that the manner of the disposal of the application under Section 21 is not correct in law. He points out paragraphs 17 and 18 of the order dated July 3, 1996 disposing of the application under Section 21 contending that since the Government have already taken the decision for allotment of the land to Pune Housing & Area Development Board and received the money from it, the rejection of the application on that ground is illegal. He contends that the appellants have valuable right under Section 91 to formulate the scheme which was required to be considered. The scheme was already drawn and approved by the MHRDA and the validity of the scheme was not scrutinized. Therefore, the rejection was not valid in law. Shri Bobde, learned senior counsel for some of them, further contended that by operation of Section 3 of the Act, operation of Sections 10 [3] and 21 should be read together. If so read, the consequence would be that until the application under Section 21 is disposed of, the notification under Section 10(3) should not be published. He further points out that since the issue had already been pre-judged, namely, allotment of the land to the Pune Housing & Area Development Board, this is not a valid consideration. Therefore, the direction may be given either to the State or to the competent authority to reconsider the matter. It is contended by Mr. R.P.Bhatt, learned senior counsel for the Board and Dr. R.B. Masodkar, learned counsel for the

respondents, that in the writ petition before the High Court, no objection have been taken as regards the omission on the part of the competent authority to take action under Section 21. Only the legality of the procedure adopted under the Act for determination of the surplus land was canvassed. The High Court answered the questions against them and the correctness thereof is not canvassed before this Court. The action taken by the competent authority is in accordance with law. It is further pointed out that the rejection of the application under Section 21 was valid because the Government had taken decision to allot the land to the Housing & Area Development Board equally for public purpose. Therefore, the rejection cannot be considered to be invalid.

Having considered the respective contentions, the question that arises for consideration is: whether publication of the notification under Section 10(3) of the Act in the Gazette is in accordance with law? No doubt, this question was not squarely put in issue before the High Court in the manner in which Shri Naik and Shri Bobde have posed before us. Having considered the scheme of the Act, we find that there is no force in their contentions. It is true that Section 3 postulates 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 in the territories to which the Act applies under sub-section (2) of Section 1. Sections 6 to 10 prescribe the procedure for determination of the excess urban land. Admittedly after filing of statement, opportunity had been given, they had been heard and excess land over the ceiling limit had been determined. Pursuant to the decision taken under Section 10(1) of the Act, objections came to be filed under Section 10(2) and objections also were considered and an opportunity was given before their consideration and objections came to be rejected. The question then is: whether the competent authority had to await the decision under Section 20 and 21 before declaring and publishing the excess and under Section 10(3) by a notification in the Gazette. The scheme of the Act does indicate that until the date of the publication in the Gazette prescribing a date on and from which the excess land stands vested in the State, the owner continues to be the owner of the excess land and entitled to remain in possession thereof. On publication of the notification under Section 10(3) and after putting a date from which the land stands vested in the State and after publication of the notification in the Gazette and on the from the date mentioned therein, the excess vacant land stands vested in the State free from all encumbrances, subject to the decision in appeal, if any, filed according to law.

The previous owner stands divested of right, title and interest in the land subject to the right to make application provided under Sections 20 and 21. It is difficult to accept the contention of the learned counsel for the appellants that the competent authority has no power to have the notification under Section 10(3) published in the Gazette until the application either under Section 20 or 21 is disposed of. The very language of Sections 20 and 21 and the exercise of the power thereunder would arise only when the land stands vested in the Government. The power of examination and exemption would arise only when the Government becomes the owner and the erstwhile owner seeks to obviate the hardships under Section 20 or to subserve the housing scheme for weaker sections under Section 21 as envisaged thereunder. Thereat, the Government is required to consider whether the proposals made by the erstwhile owner

for undertaking the scheme as envisaged under Section 21 or hardships as envisaged under Section 20 for exemption would merit consideration. In this case, admittedly, the application under Section 20 came to be filed though that was suppressed before the High Court and this Court and came to be dismissed before notification under Section 10(3) of the Act was published. It also appears, as stated earlier, that application under Section 21 was filed on March 29, 1979, the date on which the appellants had filed the writ petition in the High Court. It would, therefore, be seen that the application came to be filed much after the date of the vesting and publication of the notification under Section 10(3) of the Act. The effect of the vesting is not contingent upon filing an application for disposal under either Section 20 or 21. We do not go into the correctness of the order passed by the Government under Section 21 for the reason that it would be open to the Government and the Government have stated in their order that they have already decided to allot the land for another equally efficacious public purpose. Therefore, we cannot sit over the decision taken by the Government holding it illegal.

Considered from this perspective, there is no merit in the appeal. It is accordingly dismissed. No costs.