

A

STATE OF MADHYA PRADESH

v.

SURENDRA KUMAR AND ANR.

JANUARY 18, 1995

B

[K.RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Urban Land (Ceiling and Regulation) Act, 1976—Sections 27(1), 25(2)(a), 5(3) and 10(4)—Application seeking permission to alienate land—Competent Authority exercising its option to purchase property—Legality of—Whether State could purchase property though declaration was not finalised—Held, yes—Intending purchaser cannot complain against exercise of option by State.

D

An application was submitted before the competent authority seeking permission to alienate land to respondent. The competent authority exercised option to purchase the property. The owner executed the sale deed in favour of the State in respect of the property which was agreed to be sold to the first respondent. The first respondent filed a writ petition in the High Court impugning the legality of the purchase made by the government. The High Court held that until the ceiling proceedings were completed in accordance with law and the surplus area was determined, the owner was not entitled to sell the land and thus purchase of the land by the government was not valid in law. Hence this appeal by the State.

E

F

The respondent submitted that sub s.(3) of section 5 of Urban Land (Ceiling and Regulation) Act, 1976 prohibited a person from alienating any vacant land by way of sale, etc., until he had furnished the statement u/s 6 and a notification regarding the excess vacant land held by him had been published and any such transfer made in contravention thereof shall be deemed to be null and void. It was next contended that since the land proposed to be sold was within the ceiling limit, no permission u/s 27(1) was needed. It was alleged that since the owner died and the legal representatives had not been brought on record, the appeal stood abated.

G

Allowing the appeal, this Court

H

HELD : 1.1. After the application seeking permission to alienate the land by a person has been made, two options are open to the competent

authority. In a case where the State intends to purchase the property exercising its option, there is no prohibition for the State to purchase the property, though the declaration has not been finalised and exercise of option as envisaged under sub-s. (5)(a) of s.27 and complete the sale transaction in the manner contemplated therein. Thereafter they can finalise the excess area include the area purchased by it while as calculating excess land as the total holding of the person and accept only other excess area held by the person and deduct the land or building purchased by it from the ceiling area which the person is entitled to retain under the Act. [400-A, B]

The second option is that since the proceedings have not been finalised, either to return the application, the draft declared should be taken up and declaration should be finalised and thereafter the option can be exercised to purchase the land and building or to permit the sale of the land to the third parties. [400-C]

In the instant case, the State exercised the first option and purchased the property. There was no illegality in the exercise of the option by the State to purchase the property sought to be sold by the owner. The respondent, being only an intending purchaser, could not complain that until the draft proceedings were finalised and the declaration under sub-s.(3) of Section 10 had been published, the State could not exercise the option to purchase the property. [400-D, E]

1.2. The proposed vendor had not objected to the exercise of the option. She had already sold the land to the State Government and only the intending purchaser had objected to it. Therefore, on the death of owner even when her legal representatives were not brought on record, the appeal had not been abated. [400-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4452 of 1984.

From the Judgment and Order dated 22.9.81 of the Madhya Pradesh High Court in Misc. P.No. 271 of 1980.

U.N. Bachawat, Sakesh Kumar and S.K. Agnihotri for the Appellants.

S.V. Deshpande for the Respondents.

A. The following Order of the Court was delivered :

This appeal by special leave arises from the order of the Division Bench of the Madhya Pradesh High Court in Misc. Petition No. 271/80 dated September 22, 1981. One Km. Leila Violet Manorama Laxamanan, daughter of Dr. P.N. Laxamanan, submitted an application before the competent authority (Annex 1 filed in this court on October 31, 1979) seeking permission to alienate 16,500 sq. feet of the land together with 4,141 sq. ft. built up area situated in Plot No. 7/1, Block No. 32 of Jabalpur city bearing Municipal No. 578, South Civil Line, Jabalpur to the respondent. On receipt thereof, the competent authority on December 29, 1979 exercised option to purchase the property. In furtherance thereof the owner executed the sale deed on May 16, 1980 in favour of the State of Madhya Pradesh of the property which was agreed to be sold to the first respondent. The first respondent thereafter approached the High Court by way of above writ petition impugning the legality of the purchase made by the government. The High Court in the judgment held that the sale was not legal. In reaching this conclusion, the High Court held that until the ceiling proceedings are completed in accordance with law and the surplus area is determined, the owner is not entitled to sell the land and thus purchase of the land by the government is not valid in law. Thus this appeal by special leave.

E The relevant provisions, which require mention for rendering the controversy, are ss.27(1), 25(2)(a), 3(5) and 10(4) of the Urban Land (Ceiling and Regulation) Act, 1976, (for short, 'the Act'). Section 27(1) postulates that "notwithstanding anything contained in any other law for the time, being in force, but subject to the provisions of sub-s.(3) of S.5 and sub-s.(4) of s.10, no person shall transfer by way of sale any urban or urbanishable land with a building or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, *except with the previous permission in writing of the competent authority*. On receipt of such an application seeking permission by the person, sub-s.5(a) gets attracted which envisages that the competent authority shall have the first option to purchase such land with building or a portion only of such building, on behalf of the State Government at such price as may be agreed upon between the competent authority and the applicant. In case such option has not been exercised within 60 days from the date of the receipt of the

application, clause (b) gives power to the person of that building or a portion only of such building that it shall be lawful for such person to transfer the land to whomsoever he may like, provided that where the competent authority exercises within the period aforesaid the option to purchase such land with building or a portion only of such building, the execution of the sale deed shall be completed and the payment of the purchase price thereof shall be made within a period of three months from the date on which such option is exercised. It would thus be clear that subject to the provisions of sub-s.(3) of s.5 and sub-s.(4) of Sec.10 and notwithstanding anything contained in any law for the time being in force, the person holding land in excess of ceiling area shall not alienate such area except with the previous permission in writing by the competent authority.

It is true, as rightly contended by Sri Deshpande, the learned counsel for the respondent that sub-s.(3) of s.5 prohibits a person from alienating any vacant land by way of sale, etc. until he has furnished the statement under s.6 and a notification regarding the excess vacant land held by him has been published under sub-s.(1) of s.10 and any such transfer made in contravention thereof shall be deemed to be null and void. Equally under sub-s.(4) of s.10 during the period commencing on the date of publication of the notification under sub-s.(1) and ending with the date specified in the declaration made under sub-s.(3) the person holding excess of vacant land including any portion thereof specified in the notification has sold the land by way of sale or transfer, etc. in contravention of the Act, such transfer shall be deemed to be null and void and no person shall alter or cause to be altered the use of such excess vacant land during that period. Sub-section (1) of s.5 gives power to the competent authority in calculating the excess land that any land so transferred shall also be taken into account in calculating the extent of vacant land held by such person and the excess vacant land in relation to such person shall, for the purposes of the Chapter, be selected out of the vacant land held by him after such transfer and in case the entire excess vacant land has been sold or cannot be so selected, the balance, or, where no vacant land is held by him after the transfer, the entire excess vacant land, shall be selected out of the vacant land held by the transferee. Thus, it could be seen that during the pendency of the proceeding an application could be made under sub-s.(1) of s.27 of the Act for seeking permission for transfer.

A After the application has been made, two options are open to the competent authority. In a case where the State intends to purchase the property exercising its option, there is no prohibition for the state to purchase the property though the declaration has not been finalised and exercise option as envisaged under sub-s.(5)(a) of s.27 and complete the sale transaction in the manner contemplated therein. Thereafter they can

B finalise the excess area include the area purchased by it while as calculating excess land as the total holding of the person and accept only other excess area held by the person and deduct the land or building purchased by it from the ceiling area which the person is entitled to retain under the Act. The person in this case is entitled to 15,000 sq.meters as ceiling area.

C The second option is that since the proceedings have not been finalised, either to return the application, the draft declaration should be taken up and declaration should be finalised and thereafter the option can be exercised to purchase the land and building or to permit the sale of the land to the third parties. In this situation, the State appears to have

D exercised the first option and purchased the property. Therefore, we find that there is no illegality in the exercise of the option by the State to purchase the property sought to be sold by the owner. The respondent, being an intending purchaser, cannot complain that until the draft proceedings have been finalised and the declaration under sub-s.(3) of s.10 has

E been published, the State cannot exercise the option to purchase the property. It is next contended that since the land proposed to be sold is within the ceiling limit, no permission under s.27(1) is needed. There is no substance in the contention on the statement made by the person she was admittedly in possession of more than the ceiling area. So permission under s.27(1) is mandatory and she had rightly filed the application.

F It is next contended that since the owner died and the legal representatives have not been brought on record, the appeal stands abated. We find no force in the contention. The proposed vendor had not objected to the exercise of the option. She had already sold the land to the State Government and only the intending purchaser has objected to it.

G Therefore, the appeal has not been abated. The appeal is accordingly, allowed. The order of the High Court is reversed. The writ petition stands dismissed. In the circumstances, the parties are directed to bear their own costs throughout.