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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6257 OF 2014

M/s. Kewal Court Pvt. Ltd. and Anr. ..... Appellants

VERSUS

The State of West Bengal and Ors. ..... Respondents

JUDGEMENT

Surya Kant, J.

1. The issue that falls for consideration in this case revolves around the true construction, meaning and import of the expression 'vacant land' contained in Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976 (in short, the 'Ceiling Act'), especially with reference to sub-clause (i) thereof.

2. Notwithstanding the fact that 'urban land' or any regulatory measures in relation thereto fall within the exclusive domain of a State Legislature in terms of Entry 18 of List II—State List under the

Seventh Schedule of the Constitution, the Ceiling Act was enacted by Parliament, in exercise of its powers under Article 252 of the Constitution for which as many as 11 States passed a Resolution authorising the Parliament to enact a law imposing a ceiling on urban property, more so after the imposition of a ceiling on agricultural lands in most of the States. The Ceiling Act was, consequently, enacted to provide, *inter alia*, imposition of a ceiling on 'vacant land' in urban agglomeration, the acquisition for such lands in excess of the ceiling limit, to regulate the construction of buildings on such lands and also to prevent the concentration of urban land in the hands of a person etc.

Legislative Scheme of the Ceiling Act:

3. Section 3 provides that '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 the Act applies under Section 1(2) thereof. Section 4 provides distinct ceiling limits for different urban agglomerations falling within categories A to D in Schedule I. Section 6 of the Ceiling Act obligates the

person holding 'vacant land' in excess of ceiling limit to file statement whereupon the Competent Authority would prepare a draft statement under Section 8 of the Act and after considering any objection received against it, Section 9 contemplates a final statement determining the vacant land held by the person concerned. Such 'vacant land' shall then be notified under Section 10 of the Act and would be acquired by the State Government. Once, the 'vacant land' is notified as excess land, the competent authority under sub-Section (3) would issue a declaration whereupon the 'vacant land' shall be deemed to have vested absolutely in the State Government free from all encumbrances. The person in possession of the 'vacant land' on receipt of the notice in writing under sub-section (5) must surrender or deliver possession thereof to the State Government and in the event of his refusal or failure to comply with such order, the Competent Authority is authorised under sub-section (6) to take possession of the vacant land by use of force as may be necessary.

4. The land owner who has been expropriated of the 'vacant land' would receive `payment' as may be determined on receipt of his claim in accordance with Section 11 of the Ceiling Act.

5. Section 20 nevertheless empowers the State Government either on its own motion or otherwise to exempt such 'vacant land' from the provisions of the Ceiling Act if it is found to be necessary or expedient in the public interest and/or when the State Government is satisfied that the applicability of the provisions of taking away the land would cause undue hardship to such person.

6. In the context of the facts on record which are discussed succinctly hereinafter, Section 2(b),(g),(o) and (q) of the Ceiling Act have some bearing and the same are reproduced below:

> "2. **Definition.—**In this Act, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (b) "building regulations" means the regulations contained in the master plan, or the law in force governing the construction of buildings;
>
> xxx xxx xxx

(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 contiguous to the land occupied by such building,

And includes, in the case of any building 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;

xxx xxx xxx

(o) "urban land" 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 clause (*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 clause (*B*) of the 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;

xxx xxx xxx

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."

FACTS:

7. The appellants purchased premises no. 24/7, Raja Santosh Road, Alipore, Kolkata, measuring 3429 sq.m. by way of Registered Conveyance Deed on 11th July, 1974. They applied to the Calcutta Municipal Corporation [in short, 'CMC'] for sanction of the building plan for which CMC issued notice dated 23rd August, 1974 requiring them, to comply with certain requisitions. The appellants claimed to have furnished the requisite information on 17th October, 1974 but the CMC neither did sanction nor reject their building plan within the stipulated period.

8. Meanwhile, the Ceiling Act came into force on 17th October, 1976. West Bengal is placed amongst the States where the Act was applied by virtue of Section 1(2) thereof. Kolkata City admittedly falls within category 'A' specified in Schedule I of Section 4(1) of the Ceiling Act with the Ceiling Limit of 500 sq.m. The appellants filed a statement under Section 6(1) of the Ceiling Act. They also applied for

exemption in terms of Section 4(3) and Section 20 of the Ceiling Act for construction of a Group Housing Scheme.

9. The Competent Authority issued a draft statement [Section 8] on 30th April, 1979 in which the retainable land was shown as 699 sq.m. and 3115.50 sq.m. was determined as `vacant land'. A Notification under Section 10(1) was issued on 7th November, 1979 followed by a declaratory Notification under Section 10(3) on 5th January, 1980 whereby land measuring 2929 sq.m. was held to be 'excess vacant land' with effect from 16th January, 1980 and which was deemed to have been acquired by the State Government.

10. The State Government, thereafter, issued a notice under Section 10(5) of the Ceiling Act on 4th March, 1980 asking the appellants to deliver possession of the 'vacant land'.

11. The appellants challenged the action of the State declaring the land 'vacant' before the High Court in a writ petition wherein the parties were directed to maintain the status quo on 15th April,

1980. The writ petition was dismissed by a learned Single Judge on 25th June, 1987. The appellants then filed an intra-court appeal in which *ad interim* order was allowed to continue. The said appeal was finally dismissed on 19th May, 2011. The appellants then approached this Court and on 21st November, 2011 the parties were directed to maintain the status quo and not to create 3rd party rights or change the nature and character of the property.

12. The precise contention raised before the High Court and reiterated before us on behalf of the appellants is that the procedure of calculating 'excess vacant land' adopted by the Competent Authority is derogatory to Section 2(q)(i) and 2(q)(ii) read with Clause 20(2) of Building Regulations notified under the Calcutta Municipal Corporation Act, 1951.

13. It is broadly an admitted fact that the appellants in their statement under Section 6(1) of the Ceiling Act declared the entire piece of land measuring 3429 sq.m. as 'vacant land'. They, however, in their objection against the draft statement claimed existence of a structure, the area

of which was liable to be excluded from 'vacant land' in view of Section 2(q)(ii) of the Ceiling Act. Such an objection did not find favour with the Competent Authority, which after excluding retainable area measuring 500 sq.m. as per Section 4(1)(a), declared the remaining land measuring 2929 sq.m. as 'vacant land'.

14. As of now, we need not consider the question whether there existed any `building' within the meaning of sub-clause (ii) of Section 2(q) of the Ceiling Act on the subject land which could qualify for exclusion from the permeates of a 'vacant land'. This is largely a question of fact and will be determined at the time of final hearing.

15. The arguments of Shri Jaideep Gupta, learned Senior Counsel for the appellants are predominantly restricted to the interpretation and scope of sub-clause (i) of Section 2(q) of the Ceiling Act. His precise case is that as per the statutory Building Regulations in force, construction of a building is permissible only up to 50% area of the subject land and the remaining 50% is required to be kept open. The half of the land, which is unconstructable, is

liable to be excluded from the total area of 'vacant land'. In this manner, land measuring 1714.50 sq.m. will stand excluded under Section 2(q)(i). Out of the remaining 'vacant land' measuring 1714.50 sq.m., the appellants are entitled to retain 500 sq.m. as per the ceiling limit [***see* Section 4(1)(a)**] and in this manner the 'excess vacant land' that can be acquired from them comes to 1214.50 sq.m. only and not 2929 sq.m. Further, if the appellants' plea to exclude the area covered under an existing building is accepted, in that case, the area of `vacant land' gets further reduced in view of sub-clause (ii) of Section 2(q) of the Ceiling Act.

16. Shri Rakesh Dwivedi, learned Senior Counsel for the respondents contrarily urged that under the Building Regulations, 2/3rd area of the 'vacant land' can be utilized for construction and not 50% as claimed by the appellants. Secondly, the lands which are to be excluded under sub-clause (i) of Section 2(q) are such lands where no construction is permissible at all under the Building Regulations. He illustratively refers to the lands notified as 'green belt', 'forest land', 'playground' or for such other

public purposes as may have been described in the Town Planning Scheme whereunder construction of a building is prohibited in an area. Shri Dwivedi maintains that entire land measuring 3429 sq.m. has been rightly treated as 'vacant land', out of which the appellants are entitled to retain 500 sq.m. only. Hence, the Competent Authority is right in determining the surplus 'vacant land' in the hands of the appellants.

17. We, thus, revert back to the question formulated at the outset, namely, what should be the true interpretation of the meaning of Section 2(q)(i) and (ii) of the Ceiling Act for determination of `vacant land'?

18. ***State of U.P. and Others*** vs. ***L.J. Jhonson and Others***[1] is the first holding by a two-Judge Bench of this Court to throw light on the provisions of the Ceiling Act. That was a case where the respondent (Jhonson) had a parcel of land admeasuring 2530 sq.m. in Dehradun city on which there stood a building. He wanted to sell some portion of the open land in his possession but the

[1] (1983) 4 SCC 110

Competent Authority refused permission on the ground that the total area in his possession was exceeding the ceiling limit. The District Judge as well as the High Court held that Jhonson was entitled to retain 500 sq.m. as the permissible area and another 500 sq. m. for the benefit and convenient enjoyment of the building to satisfy the requirement of town planning and environmental purposes. After excluding 1000 sq.m. area, there was no `vacant land' left with Jhonson. The High Court, in this regard, relied upon Section 4(9) read with Section 2(q)(ii) of the Ceiling Act. On an appeal, this Court consciously resolved to construe the nature, character, spirit and entire scheme of the Act. Clauses (i) to (iii) of Section 2(q) were appropriately paraphrased [***See* para 14**]. Though the controversy did not relate to sub-clause (i) of Section 2(q), this Court made an endeavour to opine on all the sub-clauses of that provision as may be seen from paragraphs 15 and 17 of the Report reproduced below:

> **"15.** So far as the first category is concerned, no complexity is involved because any open area in excess of 2000 sq

metres in Category D States will be taken over by the Government. For instance, if an open land without construction consists of 6000 sq metres, the computation of the ceiling area would present no difficulty because 4000 sq metres will be taken over by the Government and 2000 sq metres will be left to the landholder. Secondly, if the entire land is covered by a building, such an area would completely fall outside the ambit of the Act and no question of computation would arise. Thirdly, a question arises as to what would happen if there is a land on a part of which there is a building with a dwelling unit and an area (open land) which is appurtenant thereto is vacant. This category of land would doubtless present some difficulty in making the computation and the principles on which such computation is to be made. Section 4(9) is designedly and artistically drafted to meet such a contingency which may be extracted thus:

> "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 building and the land appurtenant thereto *shall also be taken into account in calculating the extent of vacant land held by such person.*"
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> (emphasis supplied)

17. Clause (*i*) gives a blanket exemption to any land situated in an urban area where the entire area is covered by land on which it is not permissible to raise a building

which will not be deemed to be vacant land within the meaning of Section 2(*q*). This is because such land in an urban area cannot be used for building purposes but being vacant falls beyond the purview of the Act. Clause (*ii*) postulates that where a land is occupied by any building constructed before or on the appointed day ['appointed day' has been defined in Section 2(*a*) of the Act] and there is some vacant land appurtenant to the said building, land which is built upon and any area which is left out in accordance with the building regulations would not be included in the ceiling area. The term 'land appurtenant to such building' would mean the contiguous land which remains after giving full allowance for the area left out under the municipal or building regulations subject to a maximum of 500 sq metres and another 500 sq metres which may be left for the beneficial use of the owner. The words 'land appurtenant' used in Section 4(9) takes us to its connotation as defined in Section 2(*g*)(*i*) and (*ii*) which may be extracted thus:

> "(*g*) 'land appurtenant', in relation to any building, means—
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> (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 contiguous to the land occupied by such building,
>
> and includes, in the case of any building 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;"

19. Thus, according to ***Jhonson[1]***, Section 2(q)(i) gives a blanket exemption to any land situated in an urban area where the entire area is covered by land on which it is not permissible to raise a building. Such land will not be deemed to be 'vacant land' because the same cannot be used for building purposes and thus falls beyond the purview of the Act. As per ***Jhonson[1]*** the `blanket exemption' connotes an `entire area' of an urban agglomeration where no construction is permissible at all. In essence, ***Jhonson[1]*** while explicitly dealing with a situation falling under Section 2(q)(ii) also deemed it necessary to interpret each and every sub-clause of

Section 2(q) of the Ceiling Act. It was surely not an *obiter-dicta*.

20. In ***Meera Gupta (Smt.) vs. State of West Bengal and Others***[2], a three-Judge Bench of this Court noticed that Smt. Probhavati Poddar (Proforma Respondent) was owner of two properties, one comprising 414.56 sq.m. of land of which 321 sq.m. was covered by a building and the other comprising 339.65 sq.m. vacant plot. She entered into an Agreement to Sell with Smt. Meera Gupta—the Appellant. A notice was served by the Competent Authority on the proposed vendor and vendee under Section 6(1) of the Ceiling Act directing the vendor to file the statement in Form No. 1 as she was holding 'vacant land' within the Calcutta Urban Area in excess of the ceiling limit of 500 sq.m. Eventually, a draft statement was prepared depicting 254.21 sq.m. of 'vacant land', against which objections raised by Smt. Poddar were rejected and the same was notified as 'excess vacant land' in the hands of Smt. Poddar. There also, this Court considered the expression 'vacant land' as defined under sub-

[2] (1992) 2 SCC 494

clauses (i) to (iii) of Section 2(q) of the Ceiling Act and laid down as follows:

> "**11.** To begin with "vacant land" as per the definition given in clause (*q*) of Section 2 means land as such, not being land mainly used for the purpose of agriculture, but situated in an urban agglomeration. "Vacant land", however, does not include, as per the definition, land of three categories. The first category is 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. But this is a category with which we are not concerned in the instant case. *Johnson case*[3] is of this category. The second category is of land occupied by any building in an area, where there are building regulations, which has been constructed upon, or is under construction on the appointed day, with the approval of the appropriate authority, and the land appurtenant to such building. This means that if the building stood constructed on the land prior to January 28, 1976, the land occupied under the building is not vacant land. It also covers the land on which any building was in the process of construction on January 28, 1976 with the approval of the appropriate authority. That too is not "vacant land". Additionally, the land appurtenant to these two kinds of buildings is also not "vacant land". The third category likewise conditioned is of land occupied by any building in an area where there are no building regulations,

> which has been constructed before January 28, 1976 or is in the process of construction on such date, and the land appurtenant to these two kinds of buildings."

21. The three-Judge Bench in ***Meera Gupta***[2], with utmost respect, misconstrued ***Jhonson***[1] as if it dealt with Section 2(q)(i) category and after distinguishing it on that count, the Court proceeded to interpret sub-clauses (ii) and (iii) of Section 2(q) in the following manner:

> "**12.** The aforesaid three categories of lands would otherwise be "vacant land" but for the definitional exclusion. The specific non-inclusion of these three categories of land is by itself an integral part of the definitional and functional sphere. The question that arises what happens to lands over which buildings are commenced after the appointed day and the building progresses to completion thereafter. On the appointed day, these lands were vacant lands, but not so thereafter because of the surface change. Here the skill of the draftsman and the wisdom of the legislature comes to the fore in cognizing and filling up the gap period and covering it up in the scheme of sub-section (9) of Section 4. The visible contrast between "vacant land" and "any other land" held by a person on which there is a building with a dwelling unit therein becomes prominent.

> The said "any other land" is reckoned and brought at par with the "vacant land" for the purpose of calculating the final extent of vacant land. It seems to us that the expression "vacant land" in the first portion of the provision connotes land minus land under buildings constructed or in the process of construction before and on the appointed day, and the expression "vacant land" in the latter portion of the provision connotes the sum total of "vacant land" of the first order and distinctly the "other land" on which is a building with a dwelling unit therein of which construction commenced after the appointed day, and the land appurtenant thereto. Such an interpretation is required by the context as otherwise the concept of the appointed day and the gap period would be rendered otiose. The legislature cannot be accused to have indulged in trickery or futility in giving something with one hand and taking it away with the other. "Any other land" in the sequence would thus mean any other built-upon land except the one excluded from the expression "vacant land" on account of it being occupied by a building which stood constructed, or was in the process of construction, on the appointed day."

22. The Bench finally concluded that *"The interpretation we have put to the provisions pertinently relate to sub-clauses (ii) and (iii) of clause (q) of Section 2. This interpretation in express terms*

cannot apply to sub-clause (i) of clause (q) of Section 2. Johnson case [(1983) 4 SCC 110] as said before, is a case under sub-clause (i) of clause (q) of Section 2. ……..xx……. xx……xx……xx"

23. In ***Angoori Devi* (Smt.)** vs. ***State of Uttar Pradesh and Others***[3], a two-Judge Bench of this Court was confronted with a dispute re: the interpretation of sub-section (9) of Section 4 read with sub-section (q) of Section 2 of the Ceiling Act. The State of Uttar Pradesh relied upon ***Jhonson***[1]. It was then pointed out that ***Jhonson***[1] was considered and distinguished by a three-Judge Bench in ***Meera Gupta***[2]. This Court, thereafter, took stock of the anomalous observation in ***Meera Gupta***[2] to the effect that ***Jhonson***[1] was a case dealing with sub-clause (i) of Section 2(q) of the Ceiling Act. After the correct appraisal of ***Jhonson***[1] which was actually a case of 'vacant land' within the meaning of sub-clauses (ii) and (iii) of Section 2(q) and was not confined to Section 2(q)(i) only, the matter was referred to a Larger Bench as may be seen from the following operative part of the order:

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[3] (1997) 2 SCC 434

> **"17.** It has been contended that *Johnson case* [(1983) 4 SCC 110] 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 case* [(1983) 4 SCC 110] was confined to Section 2(*q*)(*i*) of the Act.
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> **18.** There is some force in this contention. The principle laid down in *Meera Gupta case* [(1992) 2 SCC 494] has been applied in the case of *Atma Ram Aggarwal* v. *State of U.P.* [1993 Supp (1) SCC 1]. Since *Meera Gupta case* [(1992) 2 SCC 494] 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."

24. ***Angoori Devi***[3] was then placed before a three-Judge Bench on March 19, 1997 when it was referred to a Larger Bench of five-Judges. The reference order is reported as ***Angoori Devi (Smt.)*** vs. ***State of U.P. and Others***[4]**.**

25. However, before the matter could be heard by a five-Judge Bench, the legal regime underwent a complete U-turn. The Ceiling Act was repealed initially by way of an Ordinance notified on 11th January, 1999, initially in the States of Haryana,

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[4] (1997) 7 SCC 757

Punjab and all the Union Territories. The Parliament thereafter enacted the Urban Land [Ceiling and Regulation] Repeal Act, 1999 which came into force in the States of Haryana and Punjab and all the Union of Territories with effect from 11th January, 1999, and in other States from the date of adoption of the Repeal Act under Clause (2) of Article 252 of the Constitution. The State of Uttar Pradesh also adopted the Repeal Act and, consequently, the Ceiling Act ceased to operate in the State of Uttar Pradesh. It rendered the reference in ***Angoori Devi***[4] case to a five-Judge Bench as infructuous.

26. It is extremely important to quote paragraph 4 of the Statement of Objects and Reasons dated 17th February, 1999 of the Repeal Bill, which interestingly said that:

> "4. The proposed repeal, along with some other incentives and simplification of administrative procedures, is expected to revive the stagnant housing industry. The repeal will facilitate construction of dwelling units both in the public and private sector and help achievement of targets contemplated under National Agenda for Governance. The repeal will not, however, affect vesting of any vacant land under sub-section (3) of section 10 of the

> Urban Land (Ceiling and Regulation) Act, 1976 the possession of which has been taken over by the State Governments. It will not affect payments made to the State Governments for exemptions. The exemptions granted under section 20 of the Act will continue to be operative. The amounts paid out by the State Governments will become refundable before restoration of the land to the former owners."

While we do not mean to infuse any binding force in a Statement of Objects and Reasons, but it certainly gives us a glimpse of the miserable failure of a reformatory legislation.

27. We may now turn to ***State of Maharashtra and Another*** vs. ***B.E. Billimoria and others***[5] --a dictum rendered by a three-Judge Bench and the sheet anchor of Shri Jaideep Gupta, learned Senior Counsel for the appellants.

28. That was a case where Billimoria (Respondent No. 1) and Laxmi Bai Kalyanji Kapadia jointly owned a plot measuring 5428.09 sq.m in Koregaon Park, Pune. In addition, Billimoria owned a flat having an area of 297.28 sq.m in a building owned by a co-

[5] (2003) 7 SCC 336

operative housing in Mumbai. Kapadia also owned a residential flat having an area of 111.11 sq.m. in a building owned by a cooperative housing in Mumbai. The Competent Authority under the Ceiling Act held that Billimoria owned half of the plot in Koregaon Park which came to 2714.05 sq.m. The area of his flat in Mumbai was added to hold that Billimoria owned 3308.61 sq.m. which was in excess of the ceiling limit of 1000 sq.m. in Pune city, to the extent of 2308.61 sq.m. Kapadia was also found owning more than the permissible retainable land.

29. Billimoria challenged the decisions of the competent authority and the appellate authority in a writ petition before the High Court of Bombay. The High Court relied upon the Building Regulations as were in force in the Koregaon Park area of Pune whereunder no construction on more than 1/3rd of the total area of the plot was permissible. The High Court viewed that since no construction was possible on an area of 2308 sq.m., the same could not be treated as 'vacant land' within the meaning of Section 2(q)(i) of the Act. The remaining land was

held to be within the permissible ceiling limit of Pune city.

30. The aggrieved State approached this Court. In his leading judgment, G.P. Mathur, J. [for Khare, CJ and himself] analysed Section 2(q)(i) and affirmed the view taken by the High Court, laying down as follows:

> "A plain reading of the provision would show that any land on which construction is not permissible under the building regulations in force in the area would not come within the ambit of "vacant land". Sub-rule (9) of Rule 2 of the Building Rules framed by the Collector of Pune for Koregaon Park lays down that not more than one-third of the total area of any building plot shall be built upon and in calculating the area covered by a building the plinth area of the building and other structures excepting compound walls, shall be taken into account. It further provides that any area covered by staircase and projections of any kind shall be considered as built over. The appellant does not dispute the applicability of this building rule to Koregaon Park area where the plot of land CTS No. 82 is situate. The definition of "vacant land" as given in Section 2(*q*) clearly provides that land on which construction of a building is not permissible under the building regulations in force in the area has to be excluded. As under the relevant rules in force in the area

> construction was not permissible on two-thirds of the area of the plot, the High Court was perfectly justified in holding that for determining the vacant land in CTS No. 82, Koregaon Park, Pune, two-third portion of each of the respondents had to be excluded and thus the vacant land held by each one of them in the said area was only 905 sq metres. In fact, on the plain language of the statute and the prohibition contained in the Building Rules in Koregaon Park area, which are in operation, it is not possible to take any other view."
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> (emphasis applied)

31. S.B. Sinha, J., in his separate concurring opinion held that the Ceiling Act, being an expropriatory legislation, is required to be construed strictly. Since Parliament has excluded the categories of lands as are specified in sub-clauses (i), (ii) and (iii) of Section 2(q) from the definition of 'vacant land', such exclusionary clauses must receive a liberal construction. The expression 'means' in Section 2(q) of the Ceiling Act was held to be, prima facie, restrictive and exhaustive. The previous decisions of this Court in ***Jhonson[1]***, ***Meera Gupta[2]***, ***Atmaram Aggarwal vs. State of U.P. [1993 Supp(1) SCC 1]***, ***Kunj Behari Lal*** vs. ***District Judge, Gorakhpur [(1997) 6 SCC 257]***

besides the observations by a two-Judge Bench in ***Angoori Devi***[3], as well as the reference made by the three-Judge Bench in ***Angoori Devi***[4] to a larger Bench of five-Judges were duly noticed. It was then concluded that:

> "32. It is well settled that the provisions of the statute are to be read in the text and context in which they have been enacted. It is well settled that in construction of a statute an effort should be made to give effect to all the provisions contained therein. It is equally well settled that a statute should be interpreted equitably so as to avoid hardship. So interpreted the decision of this Court in Meera Gupta v. State of W.B. [(1992) 2 SCC 494] commends to us in preference of the decision of this Court in State of U.P. v. L.J. Johnson [(1983) 4 SCC 110]. Meera Gupta case [(1992) 2 SCC 494] has been followed by this Court in Atma Ram Aggarwal v. State of U.P. [1993 Supp (1) SCC 1] and Kunj Behari Lal v. District Judge, Gorakhpur [(1997) 6 SCC 257].
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> 33. We are not unmindful of the observations made by a two-Judge Bench of this Court in Angoori Devi v. State of U.P. [(1997) 2 SCC 434] stating that the decisions of this Court in Johnson case [(1983) 4 SCC 110] and Meera Gupta case [(1992) 2 SCC 494] are in conflict with each other and Johnson case [(1983) 4 SCC 110] should hold the field. However, in Angoori Devi case [(1997) 2 SCC 434] the conflict

was not resolved by the Constitution Bench to which a reference was made by a three-Judge Bench in Angoori Devi v. State of U.P. [(1997) 7 SCC 757]

34. In view of our discussions aforementioned, it must be held that:

(1) that the respondents having independent title to the property in question, are entitled to the two separate units under the said Act;

(2) despite the fact that no construction had been raised on the appointed day, they are entitled to the benefit under sub-clause (i) of clause (q) of Section 2 of the Act; and

(3) for the purpose of determination of the ceiling limit, the area of the flats belonging to the respondents in Bombay would not be taken into consideration. I, thus, agree with the conclusion arrived at by the High Court."

[emphasis applied]

32. Shri Jaideep Gupta, learned Senior Counsel for the appellants strongly relied upon ***Billimoria***[5] as a binding precedent on the interpretation of Section 2(q)(i) and urged to remit the case to the Competent Authority to re-determine the 'vacant land' in the hands of the appellants after excluding the area on which no construction is permissible under the Building Regulations of Calcutta Municipal Corporation. On the other hand, Shri Rakesh

Dwivedi, learned Senior Counsel for the respondents strenuously urged that the outcome in ***Billimoria***[5] was largely influenced by the fact that there were two joint owners of the subject property who were held entitled to their separate units under the Ceiling Act and each such unit was required to exclude 2/3rd area where construction was impermissible and after such exclusion, what was left in the hands of Billimoria or Kapadia was definitely less than the retainable land measuring 1000 sq.m. in Pune Urban area. To say it differently, the contention is that ***Billimoria***[5] is not founded upon a plenary interpretation of Section 2(q)(i) of the Ceiling Act and what has been held therein is an acknowledgement of two separate independent units of each co-owner, where 2/3rd area of each unit was required to be kept open mandatorily as per the Building Regulations.

33. We have considered the rival submissions. There is undoubtedly a note of discordance between ***Jhonson***[1] [two-Judge Bench] and ***Billimoria***[5] [three-Judge Bench]. ***Jhonson***[1], on facts, was not a case under Section 2(q)(i) but this Court consciously

resorted to interpret and explain the entire scheme of the Act including the fall out of Section 2(q)(i) thereof. ***Meera Gupta***[2] mis-applied ***Jhonson***[1], hence, was rightly doubted in ***Angoori Devi***[3]. However, before the controversy could be authoritatively settled by a five-Judge Bench, ***Angoori Devi***[3] was rendered infructuous due to repeal of the Ceiling Act in the State of Uttar Pradesh. Unfortunately, the lead judgement in ***Billimoria***[5] did not even notice ***Jhonson***[1] though apparently it was brought to the notice of the Bench. We say so for the simple reason that the concurring opinion specifically refers to ***Jhonson***[1]. ***Billimoria***[5] did not expressly overrule ***Jhonson***[1]. Whether ***Jhonson***[1], to the extent it opined on Section 2(q)(i) of the Ceiling Act, has been impliedly overruled or not, is a debatable issue.

34. Billimoria[5] perhaps lends support to the contentions raised on behalf of the appellants.

35. The Ceiling Act indeed is an expropriatory Legislation. The `payment' under Section 11 of the Act to a land owner is not fair and just market value of the surplus vacant land. Principles of strict

construction would thus be attracted to such a statute.

36. The words, "….in an area" as incorporated in all the sub-clauses of Section 2(g) and 2(q) also deserve special attention but have not been explicitly discussed in any of the cited decisions.

37. We are thus of the considered opinion that the interpretation, spirit and object of the Ceiling Act, as it was envisaged at the time of its enactment, when juxtaposed against the regressive impact experienced in different States which is indicated in the Statement of Objects and Reasons of the Repeal Act, invite an authoritative determination of all the related issues by a Larger Bench. This case may, therefore, be placed before Hon'ble the Chief Justice of India for appropriate directions.

..... J.
(SURYA KANT)

.....J.
(DIPANKAR DATTA)

New Delhi;
October 9, 2023