

A . LALA JEETMAL KAPOOR TRUST  
v.  
STATE OF UTTAR PRADESH AND ANR.

DECEMBER 8, 1992

B [L.M. SHARMA, CJ., S. MOHAN AND S.P. BHARUCHA, JJ.]

*Urban Land (Ceiling and Regulation) Act, 1976 : Sections 2(q)(i), 6, 8, 9 and 20—Land dedicated to public purpose—Acquisition of—Whether entitled to exemption—Area meant for construction of roads and public—Whether to be excluded— Directions issued.*

C  
D A draft statement under Section 8(3) of the Urban Land (Ceiling and Regulation) Act, 1976, was issued proposing to acquire 1071.10 sq. metres, out of 2071.10 sq. metres of land owned by the appellant-Trust, as per the master plan for Southern Kanpur City Extension Scheme No. II notified on 17.1.1971.

E Objections were filed on behalf of the appellant-Trust that the layout as proposed by the Trust had been sanctioned by the controlling authority, provisions for construction of road and park meant for general public use had also been provided, and an agreement dated 12.4.75 was entered into between Kanpur Development Authority and the Trust and orders thereon had been passed on 13.10.77, and that an application under Section 20 of the Act for exemption had also been made to the Government.

F The objections were overruled, and the direction was given to prepare a final statement under Section 9 of the Act.

G Aggrieved, an appeal was preferred to the District Judge, who allowed the appeal in part holding that the competent authority should have excluded the area meant for roads and the park, in view of sub-clause (i) of clause (q) of Section 2 of the Act, and that the surplus land in the hands of the appellant was only 131.10 sq. meters. A writ petition challenging the correctness of this order was dismissed by the High Court. Hence, the appeal, by special leave, by the appellant-Trust.

H On behalf of the appellant-Trust, it was contended that as of date,

the application for exemption under Section 20 was pending before the Government and should that be decided in his favour, there would be no necessity to go into the other questions, and even otherwise, the interpretation of Section 2(q) (i) by the High Court was not correct.

On behalf of the respondents it was contended that the High Court was right in its interpretation of Section 2(q) (i), it talked of a building not being permissible; in other words, where no construction at all could be made, and that was not the case in the instant case, and that the pendency of the appellant's application for exemption did not bar the High Court from going into the merits.

Disposing of the appeal, this Court

**HELD:** The interest of justice would be met by issuing the following directions:

(i) It is open to the appellant to pursue the application for exemption under Section 20 of the Act. [427D]

(ii) Should the appellant succeed in getting the exemption, no further question arises, and [427E]

(iii) In the event of denial of benefit of exemption, it would be open to the appellant to challenge the order. While so challenging, the appellant will be at liberty to canvass the correctness of the finding of the High Court with regard to interpretation of Section 2(q) (i) of the Act. [427 F]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2559 of 1985.

From the Judgment and Order dated 12.11.84 of the Allahabad High Court in W.P. No. 7160 of 1980.

L.K. Bhushan and Arun K. Sinha for the Appellant.

R.C. Verma for A.K. Goel for the Respondents.

The Judgment of the Court was delivered by

**MOHAN, J.** This appeal by special leave is directed against the judgment dated 12.11.1984 passed by the Allahabad High Court in Civil

A Miscellaneous Writ Petition No. 7160 of 1980.

The short facts leading to this appeal are as follows:

B The appellant-Trust was started in the year 1917 for the benefit of poor Khattrey girls. Kanpur Southern City Extension Scheme No. II was notified on 17.1.1921. Under the said Notification the land belonging to the Trust was sought to be acquired. On 25th of April, 1928 a trust deed was executed whereby Jeet Mal Kapoor, the founder of that Trust, dedicated his properties for the benefit of the public.

C Devi Das Kapoor the Manager of the said Trust, filed a statement under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) to the effect that the Trust was the owner of plot No. 64, Govind Nagar, Kanpur. On inspection, the Assistant Director found that the Trust owned 2071.10 sq. meters in plot No. 64 which was a vacant land. As per the master plan it was sought to be  
D acquired for residential purposes. On the basis of this inspection a draft statement under Section 8(3) of the Act was issued proposing to acquire 1071.10 sq. meters of vacant land.

E To the above proposal, objections were filed on behalf of that Trust that the lay-out as proposed had been sanctioned by the controlling authority. Provisions for construction of road and park meant for general public use had also been provided. To this effect, an agreement dated 12.4.75 was entered into between Kanpur Development Authority and the Trust, on which orders had come to be passed on 13.10.77. Besides, an application under Section 20 of the Act for exemption has also been made  
F to the Government.

These objections were considered by the competent authority by an order dated 21.9.78. The objections were overruled and the direction was given to prepare a final statement under Section 9 of the Act.

G Aggrieved by the same, an appeal was preferred to the District Judge of Kanpur who allowed the appeal in part holding that the competent authority should have excluded the area for roads and the park in view of sub-clause (i) of clause (q) of Section 2 of the Act. Accordingly he held that the surplus land in the hands of the appellant was only 131.10 sq.  
H meters. Challenging the correctness of this order a writ petition was

preferred which came to be dismissed by the impugned judgment dated 12.11.84. Hence, this appeal by special leave. A

Learned counsel for the appellant would urge that as on today the application for exemption under Section 20 is pending before the Government, should that be decided in his favour there would be no necessity to go into the other questions. Even otherwise, the interpretation of Section 2(q)(i) by the High Court is not correct. That calls for interference by this Court. B

Learned counsel for the respondents would submit that the High Court was right in its interpretation. Section 2(q)(i) talks of a building not being permissible; in other words, where no construction at all can be made, That is not the case here. No doubt, the application of the appellant for exemption is pending but that does not mean that the High Court is barred from going into the merits. C D

On a careful consideration of the submissions it appears to us that the interest of justice would be met by issuing the following directions:

1. It is open to the appellant to pursue his application for exemption under Section 20 of the Act. E

2. Should the appellant succeed in getting the exemption, no further questions arises. F

3. In the event of the appellant being denied the benefit of exemption it would be open to him to challenge the order. While so challenging, the appellant will be at liberty to canvass the correctness of the finding of the High Court with regard to interpretation of Section 2(q)(i) of the Act. G

Civil Appeal is disposed of in the above terms with no order as to costs.

N.P.V.

Appeal Disposed of.