

ALLAHABAD BANK
v.
STATE OF WEST BENGAL AND ORS.

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FEBRUARY 20, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

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Urban Ceiling and Regulation Act, 1976—ss.19(2), 20—Permission to sell land rejected by competent authority on the premise that same was vested with Government—Writ Petition rejected on the ground of delay—Plea that issue was not examined in the light of ss.19(2) proviso and 20—Held, impugned order shows that High Court had not examined that aspect—Matter remitted to High Court.

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The Appellant Bank entered into an agreement with respondent nos. 4 & 5 in the year 1990 for purchase of land and building. The possession of the property was handed over to the appellant bank. Another agreement was entered into whereby respondent no. 5 was appointed as contractor to construct a multi-storied building of 29 residential flats. The building was constructed in terms of the plan and the possession was given to the Bank in 1992. All the flats were allotted and were in occupation of the allottees. When the construction was going on, the appellant-Bank sent a draft copy of the sale deed to respondent no.4 for finalization and for execution and registration of sale deed. There was no response to the request made by the appellant-Bank.

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The prayer for permission to sell was rejected by the Competent Authority under the Urban Ceiling and Regulation Act, 1976. Appellate Authority dismissed the appeal holding that the property in question vested with the Government and was in fact the excess land of the owners. However, liberty was granted to the appellant to move the State Government for seeking exemption.

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The State Government was moved but no action was taken on the applications. The appellant filed writ petition before the High Court which summarily rejected it on the ground that it was filed after seven years.

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In appeal to this court, the appellant contended with reference to Section

A 19(2) (proviso) and Section 20 of the Act that they are intended to take care of the situation as involved in the present case.

Disposing of the appeal and remitting the matter to High Court, the Court

B Held: It is not really necessary to examine whether Sections 9 and 20 of the Ceiling Act have any application to the present case. The impugned order shows that the High Court has not examined that aspect. Hence matter remitted back to the High Court for fresh consideration on merits. [Para 8] [916-H; 917-A]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 862 of 2007.

From the final Judgment and Order dated 22.9.2003 of the High Court of Calcutta in C.O. No. 1820/2003.

D K.K. Venugopal, C. Mukund, Ashok Jain, Pankaj Jain and Bijoy Kumar Jain for the Appellant.

Avijit Bhattacharjee and Saumya Kundu for the Respondents.

The Judgment of the Court was delivered by

E DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench of the Calcutta High Court summarily dismissing the writ petition filed by the appellant on the ground that it was highly belated.

F 3. A brief reference to the background facts as projected by appellant would be necessary.

G 4. Appellant-Bank entered into an agreement with respondent Nos. 4 and 5 in the year 1990 for purchase of land and building situated at No.1 Fakirpara Road, Calcutta. The consideration was fixed at Rs.20 lacs. Out of the said amount Rs.19,00,000/- was paid to the vendors-respondent Nos. 4-5. The possession of the property was handed over to the appellant-Bank with the right to demolish the existing structures and to construct building thereon. Another agreement was entered into on 12.11.1990. By this agreement respondent No.5 was appointed as contractor/developer to construct a multi-

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storied building of 29 residential flats at the property in question. The said flats were constructed by spending more than rupees one crore six lacs. The building was constructed in terms of the plan sanctioned by Calcutta Municipal Corporation and possession was given to the Bank in 1992. All the flats were allotted and are in occupation of the allottees. When the constructions were going on, the appellant-Bank sent a draft copy of the sale deed to respondent No. 4 for finalisation and for execution and registration of the sale deed. There was no response to the request made by the appellant-Bank. The prayer for permission to sell was rejected by the Competent Authority under the Urban Ceiling and Regulation Act, 1976 (in short the 'Act'). An appeal was filed which was dismissed by holding that the property in question vested with the Government and was in fact the excess land of the owners. It was categorically held by the order dated 20.3.1996 that the Competent Authority was right in treating the land in question to be taken into account while determining the total excess vacant land. However, liberty was granted to the appellant to move the State Government for seeking exemption. According to the appellant, after the said order the State Government was moved in terms of the directions given by the Appellate Authority on 2nd September, 1996, 13th March, 1997, 20th April, 2001 and 18th May, 2002. According to appellant-Bank since no action was taken on the applications, it was compelled to file writ petition before the High Court which summarily rejected it on the ground that it was filed after seven years.

5. Mr. K.K. Venugopal, learned senior counsel appearing for the appellant submitted that the High Court has erroneously concluded that there was inaction on the part of the appellants or that there was any delay. In fact in terms of the earlier directions of the High Court, several representations were made to the Competent Authority. Since no action was taken, filing of the writ petition became imperative.

6. It is stated with reference to Section 19(2) (proviso) and Section 20 of the Act that they are intended to take care of the situation as involved in the present case. Unfortunately the official respondents have not examined the issues in the proper perspective.

7. According to the learned counsel for the State of West Bengal, in reality there was no direction for consideration as contended by the appellant. It is, however, submitted that the Appellate Authority had granted liberty to the appellant-Bank to move the concerned authorities for such remedy as is available in law.

A Section 19 and Section 20 read as follows:

"19. Chapter not to apply to certain vacant lands:- (1) Subject to the provisions of sub-section (2) nothing in this Chapter shall apply to any vacant land held by -

B (i) the Central Government or any State Government or any local authority or any Corporation established by or under a Central or Provincial or State Act or any Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956)

(ii) any military, naval or air force institution

C (iii) any bank

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D Section 20. *Power to exempt* :- (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter-

E (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

F (b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

G Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing."

H 8. It is not really necessary to examine whether these provisions have

any application. The impugned order shows that the High Court has not examined that aspect. We, therefore, set aside the impugned order and remit the matter to High Court for fresh consideration on merits. This order, however, shall not stand in the way of the official respondents in considering the prayer made by the appellant-Bank. A

9. The appeal is accordingly disposed of with no orders as to costs. B

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Appeal disposed of.