
(1983) 01 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 1771 of 1979

B.B. Billimoria and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-01-1983

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 4

Citation : (1983) 2 BomCR 618

Hon'ble Judges : R.A. Jahagirdar, J;M.P. Kanade, J

Bench : Division Bench

Advocate : F.H.J. Talyarkhan, instructed by Gagrath and Co, for the Appellant;
R.D. Rane, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R.A. Jahagirdar, J.—This petition arises out of the proceedings started under the provision of the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as "the Ceiling Act". The two petitioners together own a land bearing C.T.S. No. 82 and situated at Koregaon Park, Pune. That land measures 542809 sq. metres. Each of the petitioners filed a statement u/s 6 of the Ceiling Act. Besides the aforesaid land, which is held by the petitioners jointly, each of the petitioners owns certain other property also. The first petitioner owns a flat in a building owned by a Co-operative Housing Society at Bombay. The area of the flat is 297.28 sq. metres. Bombay being in category A of Schedule 1 of the Act, for calculating the area in terms of category B, in which Pune is situated, the area has to be doubled. Accordingly, the area of the flat occupied by the first petitioner in Bombay should be taken to be 594.56 sq. metres.

2. The second petitioner owns a residential flat in Bombay having an area of 111.11 sq. metres. This flat is also in a building owned by a Co-operative Housing Society. Besides this, his wife is in possession of a part of an industrial building and the area of the same has to be taken as 235.78 sq. metres. Taking all these areas into consideration, the Competent Authority, who is joined as

respondent No. 2 in this petition, by a final declaration held that the first petitioner is holding a total area of 3308.61 sq. metres. While doing so, he took into consideration half of the area of 5,28.10 sq. metres situated at Pune. Thus he held the first petitioner to be in possession of 2714.05 sq. metres at Pune. This is correct in view of the law laid down in *Shardaben Mafatlal v. V.N. Karandikar* 1982 M L J 732. In this case it has been held that if several persons are holding any land as tenants-in-common then even though the land has not been divided by metes and bounds, the share of each person holding as a tenant-in common has to be taken as belonging to him. Since C.T.S. No. 82 is jointly held by the two petitioners as tenants-in-common, each of them must be taken to be holding 2714.05 sq. metres. The Competent Authority added to this share the area of the flat in Bombay, that is 594.66 sq. metres. Thus he arrived at a figure of 3308.61 sq. metres. Since in Pune the ceiling area is 1000 sq. metres the first petitioner was held to be holding excess land to the extent of 2308.61 sq. metres.

3. As far as the second petitioner is concerned, the area in Pune was same as that of the first petitioner, namely 2714.05. Added to this was the total area of the flat held in Bombay, namely 222.22, Again, to this was added on area of 235.78 sq. metres which is the area of the part of the building held by the wife of the second petitioner. Thus total of these three figures comes to 3172.05 sq. metres. Thus the second petitioner held an excess area of 2172.05 sq. metres. The case of the first petitioner was tried by the Competent Authority as Case No. 715-BI-1003 while the case of the second petitioner was tried as Case No. 362-KA-1002. The order in the case of the first petitioner was passed on 19th April, 1978 while the order in the case of the second petitioner was passed on 14th April, 1978. The two petitioners preferred appeals, being Urban Land Ceiling Appeals Nos. 136/78 and 138/78 respectively. Both these were heard and disposed of by the Collector and Appellate Authority, Pune Urban Agglomeration by a common judgment and order dated 20th January, 1979. By this judgment and order the Appellate Authority confirmed the finding given by the Competent Authority below him though at some places he made some observations which were meant to correct the reasoning given by the Competent Authority.

4. Both the petitioners have approached this Court under Article 227 of the Constitution challenging the order passed by the Appellate Authority. At the outset it was pointed out to Mr. Talyarkhan, appearing in support of the petition, that one petition could not be entertained against the orders passed in two appeals as these orders are from two different cases decided originally by the Competent Authority. Mr. Talyarkhan appreciated this difficulty and agreed that two petitions in fact ought to have been filed. However, this is a technical irregularity which can be cured by asking the petitioners to pay additional Court fee of Rs. 50 which Mr. Talyarkhan says would be paid. We direct that the additional Court fee be paid on or before 4th February, 1983.

5. Mr. Talyarkhan has pointed out that the two authorities below have committed

patent errors in including the areas of the flats occupied by the two petitioners at Bombay while calculating the total area of vacant land held by the petitioners. That each of the petitioners should be taken to be holding an area of 2714.05 sq. metres must be in the first place accepted. If this is so, says Mr. Talyarkhan, then according to the building regulations prevailing in Bombay which were brought to the notice of the two authorities below only 1/3rd of the land held by each of the petitioners could be used for the construction of a building. This must necessarily mean that in the remaining 2/3rd portion of the land held by each of the petitioners no construction is permissible. According to the definition of "vacant land" which is to be found in section 2(q) of the Ceiling Act, the 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 has got to be excluded. In other words, it can be treated as vacant land. The two authorities below, however, have held that on the land bearing C.T.S. No. 82 as such, building regulations do not prevent construction of any building. Therefore, it cannot be regarded as a land on which construction of a building is not permissible under the building regulations in force. Thus the ground on which both the authorities below have held the entire land to be vacant is incorrect. In fact, Mr. Rane, appearing for the respondents, sought to support the orders of the two authorities below on this ground. He also contended that if the building regulations in force in the area of Pune do not prevent the construction of a building on C.T.S. No. 82 the entire land which is comprised in C.T.S. No. 82 must be held to be vacant land or cannot be excluded from the definition of a vacant land. We are unable to accept this reasoning of the two authorities below and the argument to Mr. Rane based upon this reasoning.

6. That the building regulations did not permit the construction on the entire land cannot be disputed. That the construction of building on the land is permitted to the extent of 1/3rd of the land only can clearly be seen from the building regulations which have been shown to us. The two authorities below have not disputed this fact. While one is interpreting sub-clause (i) of Clause (q) of section 2 one cannot take the land as a whole and then say that this land, in small area on which construction of building is permissible, should be treated as vacant land. If on a particular area of a large piece of land construction of building is not permissible then that area on which construction of such building is not permissible must necessarily be excluded from the definition of the vacant land as mentioned in section 2(q)(i). It would be highly artificial and it will lead to absurd results if one treated the land as a whole and holds that if in any part of the land construction of the building is permissible then no part of the land can be excluded from the definition of vacant land. Any Rule of construction cannot permit such construction sought to be put on the words contained in section 2(q)(i). We, therefore, hold that 2/3rd of 2714.05 sq. metres area deemed to have been held by each of the petitioners must be held to be land which is not vacant land.

7. If this is so, then the vacant land which each of the petitioners holds from

C.T.S. No. 82 is 905 sq. metres. The next question would be whether the areas comprised in the flats held by the two petitioners should be added to the area of 905 sq. metres which is now held to be vacant land. For this purpose we must go to the provisions of section 4 of the Ceiling Act. Our attention has been drawn by the learned Assistant Government Pleader to sub-sections (8), (9) and (10) of the said section 4. In fact the two authorities below have also relied upon sub-section (8) of section 4 while adding the areas of the two flats to the area held by the petitioners at Pune. Sub-section (8) of section 4 mentions that :

"Where a person, being a member of a housing co-operative society registered or deemed to be registered under any law for the time being in force, holds vacant land allotted to him by such society, then the extent of land so held shall also be taken into account in calculating the extent of vacant land held "by such person". (emphasis provided)

In the case of each petitioner what is held by him is a flat in a building owned by a co-operative society. He does not hold vacant land allotted to him by such society. The question of adding the area of the flat held by either of the petitioners, therefore, does not arise. Looking to sub-section (9) of section 4 one notices that if a person holds any other land on which there is a dwelling unit therein, then the extent of such other land occupied by the building and the land appurtenant thereto shall be taken into account. In the present case again neither of the petitioners is holding any other land on which there is a building with a dwelling unit therein. Mr. Rane, however, contends that even in co-operative society he must be deemed to be holding a land on which there is a building with a dwelling unit therein. We are unable to agree with Mr. Rane on this because he is trying to enlarge the meaning of the definition "to hold" contained in section 2(1) of the Act. The definition says that to hold means to own such land or to possess such lands as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement of partly in one of the said capacities and partly in any other of the said capacity or capacities. It is impossible to accept Mr. Rane's contention that a member of the co-operative society who is allowed to occupy a flat in a building owned by that society can be said to be holding any land. The land is held by the co-operative society. The building constructed on the same is owned by the co-operative society. The tenant-member or member of the said society has at the maximum a right to occupy the flat which is allotted to him. No land is allotted to him in such society. No land is held by him. The land is held by the society as a whole as a juridical person. The Government Pleader's attempt to press into service the provisions of section 9 must, therefore, fail. For the same reason we also hold that the area of the part of the industrial building held by the wife of the second petitioner also cannot be added to the vacant land held by the second petitioner in Pune.

8. Sub-section (10) of section 4 does not apply to the facts of the present case. It refers to a person owning a part of the building, being a group housing.

However, in such a case the proportionate share of such person in the land occupied by the building and the land appurtenant thereto is to be taken into account in calculating the extent of the vacant land held by such person. This is not the case before us because the buildings in which the first and the second petitioners own flats or part of the built up structures are of the co-operative societies and neither of the petitioners own a part of the building. In all probability, this provision relates to a building which in a place like Maharashtra is owned under the provisions of Maharashtra Apartment Owners' Act. We are satisfied that the areas occupied by the petitioners in the flats owned by the co-operative societies cannot be added to the areas of the vacant land held by them under any of the sub-section of section 4.

9. Thus it must be held that each of the petitioners is holding a vacant land to the extent of 905 sq. metres. This is well below the ceiling limit of 1000 sq. metres prescribed for Pune Agglomeration. Neither of the petitioner is holding any excess land over and above the ceiling limit prescribed for the Pune Agglomeration.

10. In the result, the petition must be allowed. The orders passed by the Collector and the Appellate Authority, Pune, Urban Agglomeration, Pune in Urban Ceiling Appeal Nos. 136/78 and 138/78 confirming the orders passed by the Competent Authority, Pune Urban Agglomeration, Pune in Case No. 715-BI-1003 and Case No. 362-KA-1002 are set aside. It is declared that neither of the petitioners is holding any land in excess of the ceiling limit of the Pune Agglomeration. On the facts of the case, there will be no order as to costs. The notification issued u/s 10(3) of the Ceiling Act based upon the orders which are set aside is also set aside.