
(1995) 10 GUJ CK 0022
In the Gujarat High Court

Chhotalal Morarji Adhia

APPELLANT

Vs

Competent Authority and Addl. Collector, U.L.C. and Another

RESPONDENT

Date of Decision : 10-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 4(4), 8(4), 8(4)

Citation : (1996) 1 GLR 557

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.

The petitioners of these three petitions are brothers. The orders under challenge in these petitions are common for all three brothers. The properties involved in all these three petitions are also the same. Common questions of law and fact are found arising in all these petitions. I have therefore thought it fit to dispose of all these three petitions by this common judgment of mine.

1. The order passed by the competent authority at Rajkot (respondent No. 1 in each petition) on 25th June, 1985 u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976, (the Ceiling Act (for brief) as affirmed in appeal by the common order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 in each petition) on 28th December, 1988 in Appeals Nos. Rajkot-87 of 1985, Rajkot-5 of 1986 and Rajkot-76 of 1985 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order respondent No. 1 declared the holding of the petitioners of all these three petitions to be in excess of the ceiling limit by 1337.22 square metres, 54.08 square metres and 62.31 square metres respectively.

2. The facts giving rise to these three petitions move in a narrow compass. The predecessor-in-title of the petitioners, named, Chhotalal Morarji Adhia, was their father. He breathed his last on 13th May, 1975. He held certain properties within the urban agglomeration of Rajkot. His son, Prafulkumar, the petitioner in Special

Civil Application No. 1840 of 1989 the "first petition" (for convenience) and the petitioners in Special Civil Application No. 1841 of 1989 ("the second petition" for convenience) filed the declaration in the prescribed form u/s 6(1) of the Ceiling Act on behalf of their father with respect to his holding within the urban agglomeration of Rajkot. That form was duly processed by respondent No. 1 and, by his order passed u/s 8(4) of thereof on 15th June, 1985, declared the holding of the deceased to be in excess of the ceiling limit by 1,337.22 square metres and of the petitioners of Special Civil Application No. 1842 of 1989 ("the third petition" for convenience) by 62.31 square metres and that of his brother Chandrankant Chhotatal by 54.08 square metres. Its copy is at Annexure-K to the first petition. It appears that a clerical error crept in unwittingly in the order at Annexure-K to the first petition was sought to be rectified by the order passed by respondent No. 1 on 5th December, 1985. Its copy is at Annexure-L to the first petition. That aggrieved the petitioners herein and they carried the matter in appeal before respondent No. 2 herein u/s 33 of the Ceiling Act. Their appeals came to be registered as Appeals Nos. Rajkot-476 of 1985, Rajkot-77 of 1985 and Rajkot-5 of 1986. By the common order passed on 28th December, 1988 in the aforesaid three appeals, respondent No. 2 dismissed all the appeals. Its copy is at Annexure-M to the first petition. The aggrieved petitioners have thereupon approached this Court by means of these petitions under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-K to the first petition as amended by the order at Annexure-L thereto as affirmed in appeal by the appellate order at Annexure-N thereto.

3. These petitions can be disposed of on a short ground the effect that the original owner, named, Chhotatal Morarji Adhia, admittedly breathed his last on 13th May, 1975 that is, prior to coming into force of the Act. He was survived by his widow and three sons. They would succeed to the property of the deceased in equal property in view of the relevant provisions contained in the Hindu Succession Act, 1956. They would be holding the properties as co-owners.

4. It may be noted that, so far as one house property by the name of "Nath Vihar" is concerned, it is the case of the petitioners that it was bequeathed to the widow of the deceased, named, Ramadevi, by one testamentary document executed on 22nd April, 1968. Its copy is at Annexure-D to the first petition. It may be noted that the widow of the deceased Chhotatal Morarji Adhia has not filed any declaration in the prescribed form u/s 6(1) of the Ceiling Act. Similarly, another brother, named, Chandrakant Chhotatal, has also not filed any declaration in the prescribed form u/s 6(1) of the Ceiling Act as transpiring from the impugned order at Annexure-K to the first petition.

5. It appears that respondent No. 1 has considered that the property of the deceased as belonging to the deceased and not to his heirs solely on the ground that he died on 13th May, 1975, that is, within the period specified in Section 4(4) of the Ceiling Act. It may be noted that the aforesaid statutory provision requires the transferred property to be included in the holding of the landholder

if such transfer has taken place between 17th February, 1975 and 17th February, 1976. What types of transfer have to be included for the purpose thereof have been enumerated therein. The types of transfer enumerated therein are by way of sale, mortgage, gift, lease or otherwise. All these types of transfer refer to transfer by volition of parties. All these types of transfers are ordinarily bilateral acts of the parties. The only exception in the transaction of gift. It is not based on any contractual relationship between the parties. So far as transaction of the gift is concerned, though it does not partake the character of contractual relations, it is done during the life time of the parties, that is, the donor and the donee. Such transaction of gift is more or less covered by the Transfer of Property Act, 1889 ("the T.P. Act" for brief). In that view of the matter, the types of transfer contemplated in Section 4(4) of the Act are by volition of the parties and more or less during their lifetime and covered by the T.P. Act.

6. The devolution of interest with respect to a property by succession, whether testamentary or intestate, is found excluded from the purview of Section 4(4) of the Ceiling Act. In either case, devolution of interest takes place on the death of the concerned property-holder and not during his lifetime. A testamentary document also takes effect after the death of the testator. Similarly, intestate succession opens only after the death of the concerned person and not during his life time. Any property acquired by succession will therefore fall outside the purview of Section 4(4) of the Ceiling Act. Such devolution is by operation of law and it would not amount to transfer for the purposes of the aforesaid statutory provision. In that view of the matter, acquisition of property by succession, testamentary or intestate, within the period specified in Section 4(4) of the Ceiling Act will be of no consequence and such cannot be treated as the holding of the deceased landholder for the purposes thereof. The properties left behind by the deceased during the specified period mentioned in Section 4(4) of the Ceiling Act will have to be treated as properties belonging to the heirs and legal representatives of the deceased who survived the deceased or who succeeded the deceased. In that view of the matter, respondent No. 1 was clearly in error in treating the properties as belonging to the deceased Chhotalal Morarji and not to those of his widow and sons separately in view of their share therein by testamentary or intestate succession, as the case may be, for the purposes of the Ceiling Act.

In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-K to the first petition as affirmed in appeal by the appellate order at Annexure-M thereto cannot be sustained in law. It deserves to be quashed and set aside. The matter is required to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It would be open to the petitioners to bring on record the necessary material for supporting their contentions which are taken in these petitions.

7. In the result, the order passed by the competent authority at Rajkot

(respondent No. 1 in each petition) on 25th June, 1985 at Annexure-K to the first petition as amended by the order passed by him on 5th December, 1985 at Annexure-L thereto as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad on 28th December, 1988 in Appeals Nos. Rajkot-87 of 1985 and allied matters at Annexure-M to the first petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.