
(1992) 04 GUJ CK 0011
In the Gujarat High Court

Chunilal Chhaganlal Pandya (Decd.) through his heirs APPELLANT
Manglaben Chunilal Pandya and Others

Vs

Competent Authority and Dy. Collector and Another RESPONDENT

Date of Decision : 08-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 2(a), 2(c), 2(i), 3

Citation : (1992) 2 GLR 861

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—This petition under Article 226 of the Constitution of India is directed against the judgment and order of Urban Land Ceiling Tribunal in Appeal Nos. 1253 of 1984 and 1222 of 1984 preferred u/s 33 of the Urban Land (Ceiling & Regulation) Act, 1976, whereby the Tribunal has dismissed the Appeals by judgment dated 20th October, 1987 and has confirmed the order of Competent Authority dated 7th June, 1984.

2. In order to appreciate the challenge to the impugned orders, it is necessary to state relevant facts hereunder:

I. On coming into force of the Urban Land (Ceiling & Regulation) Act, 1976, one Chunilal Chhaganlal Pandya (since deceased) filed a statement u/s 6(1) of the said Act before the competent authority specifying the location, extent, value and such other particulars of the vacant lands and all other land with buildings which were held by him and he stated therein the nature of his right vis-a-vis such properties. u/s 6(4), such statement is required to be filed in the case of an individual by the individual himself and from the record of the case it transpires that the statement was filed by said Chunilal Chhaganlal Pandya as individual.

II. Once such statement is filed, after necessary enquiry, if thought fit, u/s 8, the competent authority is required to prepare a draft statement in respect of the person who has filed the statement u/s 6 and such draft statement was prepared

by the competent authority.

III. It shall be noted that the statement was not filed by deceased Chunilal Chhaganlal Pandya u/s 6 for or on behalf of association of persons and the competent authority has in the draft statement treated the said statement as one filed by the individual.

IV. In the draft statement the competent authority has described various properties and at Item No. 3, he has mentioned one parcel of land (vacant land) admeasuring 4553 sq. metres which was stated to have been acquired by Chunilal Chhaganlal Pandya by registered sale deed and its stated use was for industry as well as agriculture. His total holding in the said statement filed u/s 6 was stated to be 4939.28 sq. metres. In the said statement the competent authority also described the land which holder was entitled to retain and it should be stated that Item Nos. 1 & 2 being land with buildings thereon along with land admeasuring 1113.72 sq. metres out of survey No. 91/1 were stated to be retainable property. u/s 6 the land which was excess in the draft statement was stated to be 3439.28 sq. metres.

V. After such draft statement which was prepared by the competent authority u/s 8(1) of the said Act, notice u/s 8(3) was issued to said Chunilal Chhaganlal Pandya on 11th October, 1982, wherein also the total holding of said Chunilal is stated to be 4939.28 sq. metres and excess vacant land was stated to be 3439.28 sq. metres.

VI. To such notice and draft statement, deceased Chunilal has filed his objection u/s 8(3) of the said Act on 24th January, 1983.

VII. After receiving such objection, the competent authority was required to consider such objection u/s 8(4) of the said Act after affording the reasonable opportunity of being heard to the objector and it was required to pass appropriate order thereafter.

VIII. The competent authority in this case after hearing the deceased Chunilal on the objection filed by him proceeded to pass the final order dated 7th June, 1984 and under such order the competent authority has treated such statement filed u/s 6 by deceased Chunilal as a statement filed by association of persons, viz., by Chunilal Chhaganlal Pandya and by Nalinkumar Section Mody and it has also proceeded to consider the statement filed u/s 6 by deceased Chunilal only and has ultimately come to the conclusion that after deducting the returnable land admeasuring 1500 sq. metres, the excess vacant holding was 7504 sq. metres, which was liable to be declared excess vacant holding of deceased Chunilal.

IX. Being aggrieved by the said order passed by the competent authority, deceased Chunilal preferred an Appeal before the Urban Land Ceiling Tribunal, which came to be dismissed by the Tribunal by judgment and order dated 20th October, 1987.

3. Being aggrieved by the judgment and order of the Tribunal, the petitioner has

filed the present petition.

4. Mr. S.M. Shah, the learned Counsel appearing for the petitioner has challenged the aforesaid order of the Urban Land Ceiling Tribunal as well as the Competent Authority by making following submissions:

(i) The order of competent authority as confirmed by Urban Land Ceiling Tribunal is vitiated in law inasmuch as while passing final order and issuing final statement u/s 9 of the said Act, the competent authority has gone beyond the draft statement prepared by it u/s 8 (1) and has not afforded any opportunity of being heard to the petitioner before deciding to after the draft statement to the detriment of the petitioner. He, therefore, submits that orders of competent authority as well as the Urban Land Ceiling Tribunal are vitiated and are required to be quashed and set aside.

(ii) Urban Land Ceiling Tribunal while exercising appellate power u/s 33 of the said Act has omitted to consider point No. 1 raised by the appellant and has also omitted to consider in detail point No. 3 by giving reasons for rejecting the said point. The order of appellate authority, therefore, suffers from vice of not dealing with and considering the specific contentions raised and to that extent the order suffers for non-application of mind.

Re-submission No. 1:

(1) In order to appreciate the first submission raised by Mr. S.M. Shah, it is necessary for me to refer to scheme of the Act and certain provisions of the Urban Land Ceiling and Regulations Act, 1976. The Act came to be enacted to provide for the imposition of ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of ceiling limit to regulate the construction of buildings on such land arid for matters connected therewith, with a view to prevent concentration of Urban Land in the hands of a few persons. The Act was thus intended to provide for:

(i) imposition of ceiling on both ownership and possession of vacant land in urban agglomerations, the ceiling being on a graded basis according to the classification of the urban agglomeration;

(ii) acquisition of the excess vacant land by the State Government with powers to dispose of the vacant land to subserve the common good;

(iii) payment of an amount for the acquisition of the excess vacant land in cash and in bonds;

(iv) granting exemptions in respect of certain specific categories of vacant land;

(v) regulating the transfer of vacant land within the ceiling limit;

(vi) regulating the transfer of urban or urbanizable land with any building (whether constructed before or after the commencement of the proposed legislation) for a period of ten years from the commencement of the legislation

or the construction of the building, whichever, is later;

(vii) restricting the plinth area for the construction of future residential buildings; and

(viii) other procedural and miscellaneous matters.

(2) Section 2 of the Act contains the definition clause. Section 2(a) defines "appointed day" and with respect to the State of Gujarat, the appointed day is 17th February, 1976. The word "ceiling limit" is defined by Section 2(c) to mean the ceiling limit specified in Section 4. For the city of Rajkot with which this Court is concerned in this petition since it falls in category "C", the ceiling limit fixed is 1500 sq. metres. The word "person" is defined by Section 2(i) to include an individual, a family, a firm, a company, or an association or any body of individuals, whether incorporated or not. Since it is not necessary to refer to other definitions for the purpose of this petition, it would be convenient to refer to Section 3 of the Act, which inter alia provides that on and from the commencement of the Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit. It would, therefore, be clear that in the city of Rajkot, no person is entitled to hold any vacant land beyond 1500 sq. metres.

(3) Section 6 of the Act inter alia provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein. Sub-section (3) of Section 6 empowers the competent authority to extend the date for filing the statement u/s 6(1). Section 6(4) provides that statement in the case of an individual shall be filed by the individual himself. It is, thus, clear that Section 6 of the said Act, on coming into force of the said Act requires the holder of a vacant land to file a statement before the competent authority.

(4) For the purposes of this petition, it is not necessary to refer to Section 7 which deals with cases where vacant land is held by a person within the jurisdiction of two or more competent authorities. Admittedly, in the case before me the lands held by the petitioner are situated within the town of Rajkot and, therefore, reference to Section 7 is not necessary.

(5) Section 8 of the Act being material for the purposes of this petition, the same is reproduced hereunder:

Section 8 (1) On the basis of the statement filed u/s 6 and after such inquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement u/s 6.

(2) Every statement prepared under Sub-section (1) shall contain the following particulars namely:

(i) the name and address of the person:

(ii) the particulars of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by such person;

(iii) the particulars of the vacant lands which such person desires to retain within the ceiling limit;

(iv) the particulars of the right, title or interest of the person in the vacant land, and

(v) such other particulars as may be prescribed.

(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.

(4) The competent authority shall duly consider any objection received, within the period specified in the notice referred to in Sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under that Sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

(6) From the aforesaid provision it becomes clear that once a statement is filed u/s 6 by the holder of the vacant land, the competent authority is required to make necessary enquiry. The function of the competent authority u/s 8(1) is a quasi-judicial function inasmuch as the authority is required to make necessary enquiry with respect to correctness or otherwise of the facts stated in the statement filed by the holder of the land. The mode of enquiry to be held by the competent authority is not stated in Section 8(1). Without expressing any opinion about the nature of enquiry which a competent authority is required to hold u/s 8(1), it can be stated that the enquiry which the competent authority is required to make is referable to a draft statement which the competent authority is required to prepare in respect of the person who has filed the statement u/s 6.

(7) Section 8(2) stipulates as to what a draft statement to be prepared by the competent authority shall contain. From the detail of the particulars which the draft statement should contain, it becomes clear that the enquiry to be made by the competent authority cannot be necessarily confined to what is stated by the holder of the land in his statement filed u/s 6 and enquiry outside the material provided by the person filing the statement appears to be permissible. After such enquiry a draft statement is required to be prepared.

(8) After the draft statement is prepared, the same is required to be served on the holder of the land who has filed the statement u/s 6(1). Such a draft statement is also required to be served in such a manner as may be prescribed. The Central Government has framed the Urban Land (Ceiling and Regulation)

Rules, 1976 in exercise of the powers conferred upon it by Sub-section (1) read with Sub-section (2) of Section 46 of the said Act. Rule 5 of the said Rules, inter alia, provides that every draft statement prepared under Sub-section (1) of Section 8 shall contain the particulars specified in Form-III. Rule 5(2) being material is reproduced hereunder:

Rule 5(2) (a) the draft statement shall be served, together with the notice referred to in Sub-section (3) of Section 8 on.

(i) the holder of the vacant lands, and

(ii) all other person, so far as may be known, who have, or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned.

(i) in the case of the holders of the vacant lands, to his address as given in the statement filed in pursuance of Sub-section (1) of Section 6, and

(ii) in the case of other persons at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the effects to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, any other person referred to in clause (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in Clause (b) the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which the holder of the vacant lands or, as the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

(9) It becomes clear from Rule 5(2) that after the draft statement is prepared by the competent authority, the same is required to be served not only on the holder of the land who has filed the statement u/s 6(1), but the same is also required to be served on the person concerned together with a notice inviting objection to the draft statement within 30 days of the service thereof. The obvious intention of the legislature in enacting Section 8(2) read with Rule 5(2) of the Rules is that once after necessary enquiry, the competent authority prepared the draft statement wherein various details including the detail of excess vacant land and the returnable vacant land by the holder of the vacant land are given by the competent authority, the objections thereto are invited from the person who has filed the statement as well as from all other persons who have or are likely to have any claim to or interest in the ownership or possession or both of the vacant land. Rule 5(1) provides that every draft statement prepared under Sub-section (1) of Section 8 shall contain the particulars specified in Form-III. From reference to Form No. III which is

prescribed under Rule 5 of the said Rules, it becomes clear that the competent authority is required to state (1) to which person does the draft statement relate, and (2) extent of vacant land to be surrendered. From the contents of the draft statement prescribed by Rule 5, there is no manner of doubt that the competent authority is required after holding necessary inquiry to determine the extent of vacant land which was required to be surrendered by the holder of the land and objection to such draft statement are invited. Section 8(4) enjoins upon the competent authority that it shall duly consider objection received within the period specified in the notice or within the extended period or within any such farther period as may be extended by the competent authority. The person who has filed the objection is required to be afforded a reasonable opportunity of being heard and thereafter the competent authority is required to pass such order as it deems fit. From this scheme of Section 8, it becomes abundantly clear that the function of the competent authority is a quasi-judicial function. He has already prepared a draft statement. Such draft statement as stipulated by prescribed Form No. III should contain the extent of vacant land which is required to be surrendered by the holder of the land. The competent authority is, therefore, required to determine on its enquiry the extent of vacant land, which in its opinion is required to be surrendered by the holder of the land. To such draft statement, the holder of the vacant land or other person interested under Rule 5(2) of the said Rules has power to file objection. The holder of the land can, therefore, file objection to point out that the extent of vacant land which is required to be surrendered as determined by the competent authority is not correct. He can point out that, in fact, there is no vacant land which is in excess of the ceiling limit prescribed or he can also point out that the land which is treated as vacant land is not vacant land which is required to be declared as surplus. In short, the holder of the land or person interested under Rule 5(2) has every right to point out to the competent authority that the extent of vacant land which is required to be surrendered as shown in the draft statement is not correct and that no land is required to be surrendered as vacant or smaller area of vacant land is required to be surrendered. Thus, the objection which the holder of the land is required to file is to the statement contained in the draft statement. If the competent authority has not stated any area of land as vacant land which was required to be surrendered, the holder of the land may not file any objection. The objections which are to be filed are the objections to the draft statement and to the tentative proposals contained in the draft statement to the effect that the extent of vacant land which is required to be surrendered by the holder of the land is either correct or not correct. It, therefore, goes without saying that objections to be filed by the holder of the land are referable to only that vacant land, which is stated to be required to be surrendered by the holder of the land. He is not expected or required to file objection to final decision that may be reached by the competent authority after taking into consideration the objections of the holder of the land. It, therefore, becomes clear that if the competent authority has stated 3439.28 sq. metres of land as excess vacant land, which was required to be surrendered in the draft statement prepared u/s

8(1) as well as in the notice issued u/s 8(3), the petitioner as holder of the land was required to file the objection only with respect to 3439.28 sq. metres of vacant land. He was not expected to file any objection with respect to larger area of land for which he has no notice or intimation and for which he was not expected to file any objection. What happens when after taking into consideration the objections filed by the holder of the land, the competent authority decides that larger area of vacant land was required to be surrendered by the holder of land than the area which was stated in the draft statement as liable to be surrendered as vacant land by the holder of the land? In this case, the competent authority has in the draft statement stated 3439.28 sq. metres of land as excess vacant land which was required to be surrendered by the holder of the land. However, after taking into consideration, the objections filed by the petitioner u/s 8(3) of the Act, the competent authority has ultimately come to the conclusion that land admeasuring 7504 sq. metres was required to be treated as excess vacant land, which was required to be surrendered. With respect to this larger area of the land, the petitioner has no opportunity to file objection. In fact, while inviting objection, the competent authority has not invited objection with respect to 7504 sq. metres of land as excess vacant land which was required to be surrendered. The objections were only invited with respect to 3439.28 sq. metres as excess vacant land which was required to be surrendered. Therefore, Mr. S.M. Shah is justified in contending that competent authority has gone beyond the scope of the draft statement and was not, in fact, justified in declaring 7504 sq. metres of land as excess vacant land which was required to be surrendered by the petitioner as against the draft statement which only stated 3439.28 sq. metres of vacant land which was required to be surrendered by the petitioner. On proper reading of Section 8 more particularly in light of the contents of draft statement as prescribed by Form No. III and the right of filing objection to the draft statement given to the holder of the vacant land as well as other persons interested, I am of the opinion that the right to file objection which is given to the holder of the vacant land as well as other persons is referable to objection to the statement of extent of vacant land which is required to be surrendered as stated in the draft statement prepared by the competent authority u/s 8(1). If a draft statement contains the statement of excess vacant land which is required to be surrendered as beneficial to the holder of the land, he may not even file any objection and may very well accept the draft statement prepared by the competent authority. He may request the competent authority to treat the draft statement as final statement in the event of his accepting the statement of excess vacant land required to be surrendered. It is not expected of him to know what is the ultimate decision which a competent authority may reach after taking into consideration his objection vis-a-vis the excess vacant land which is required to be surrendered. In fact, his right to object necessarily postulates the right to object to the statement contained in the draft statement. The right to object cannot be stressed any further. I am, therefore, of the opinion that if the competent authority after taking into consideration the objections that may be filed by the holder of the vacant land

decides to hold that land larger in area than that was stated in the draft statement was required to be declared as excess vacant land liable to be surrendered, the competent authority is required to issue a fresh draft statement calling upon the objector and other interested persons to file fresh objection and to afford them an opportunity of being heard as contemplated by Section 8(3). In the case of Khooblal v. State of Uttar Pradesh, reported in 1984 (X) All. LR 248, the Allahabad High Court was called upon to decide identical contention. In the case before Allahabad High Court, draft statement was prepared and served upon the petitioner u/s 8(1) declaring 1168.79 sq. metres as excess vacant land liable to be surrendered. The petitioner in that case did not appear nor did he file any objection. The competent authority thereupon passed final order u/s 8(4) of the Act declaring 1595.75 sq. metres land as surplus land, which the authority had arrived at by conducting survey of the land held by the petitioner. Such an order was required to be examined. The learned Judge of Allahabad High Court found that Section 8 of the Act has not specifically provided for such a contingency when the competent authority comes to a conclusion contrary to tentative conclusion reached by him in the draft statement and when such final conclusion is going beyond the tentative conclusion reached in the draft statement. The learned Judge in terms held that on general reasoning and taking into consideration the rules of natural justice, it should be held that the competent authority has jurisdiction to correct clerical or arithmetical errors or errors due to inadvertance in the draft statement prepared and served upon the holder of the land u/s 8(1) of the Act, but the person concerned should be given a fresh opportunity to file his objection in the light of the amendment effected subsequently in the draft statement. Exactly identical is the situation before me. In the present case the competent authority has in the draft statement stated 3439.28 sq. metres of land as excess vacant land, which was liable to be surrendered. While passing the final order, it has stated 7504 sq. metres of land as excess vacant land, which was required to be surrendered. The petitioner or the holder of the land had no opportunity whatsoever to file his objection to the indentment of the competent authority to declare 7504 sq. metres of land as excess vacant land liable to be surrendered. Had this large area of land been specified in the draft statement from its institution, the holder of the vacant land could have filed his objection and could have by necessary evidence convinced the competent authority as to why such a larger area of land was not required to be declared as excess vacant land liable to be surrendered.

5. In my opinion, the first submission made by Mr. S.M. Shah is required to be accepted. The competent authority was not justified in law in declaring area larger than one which was stated in the draft statement as excess vacant land, which was liable to be surrendered. If that was the intention of the competent authority, it was required to serve a fresh draft statement and or to serve a fresh notice on the holder of the land calling upon him to file objection to the larger area of land being declared surplus vacant land for being surrendered. That having not been done the requirements of Section 8(3) of considering objection

to the draft statement is not complied with and the order of the competent authority to that extent can be in violation of Section 8(3) as well as general rules of natural justice and the same is required to be quashed and set aside, and the matter is required to be remanded to the competent authority. Since the order of competent authority fails, the confirmation of the said order by the Urban Land Ceiling Tribunal also fails, and the order of the Tribunal is also to be quashed and set aside.

6. In the result, the petition succeeds. The judgment and order of the competent authority as confirmed by the Urban Land Ceiling Tribunal are hereby quashed and set aside with direction to the competent authority to issue a fresh draft statement to the holder of the land and all other persons concerned, to whom such statement is required to be served under Rule 5(2) and to invite objections thereon from the holder of the land and all other persons concerned and to pass appropriate order thereafter u/s 8(4) in accordance with law.

7. The second submission raised by Mr. S.M. Shah is not considered since petition is allowed on the very first submission. Rule is accordingly made absolute to the aforesaid extent. Interim relief stands vacated. There shall be no order as to costs.