

(1996) 02 GUJ CK 0017
In the Gujarat High Court
Case No : S.C.A. No. 2343 of 1989

Durlabhji Dhanjibhai Patel and Others APPELLANT
Vs
Competent Authority and Deputy Collector, Surat and Others RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 45
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 33, 6(1), 8, 8(4)

Citation : AIR 1996 Guj 197 : (1996) 2 GLR 640

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Advocate : Y.N. Oza, for the Appellant; D.N. Patel, Asstt. Govt. Pleader, for the Respondent

Judgement

A.N. Divecha, J.—The order passed by the Competent Authority at Surat (respondent No. 1 herein) on 19th July, 1984 u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 4th October, 1988 in Appeal No. Surat--1557 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioners to be in excess of the ceiling limit by 13069 square metres.

2. The facts giving rise to this petition move in a narrow compass. All the petitioners including deceased petitioner No. 1 filed their separate declarations in the prescribed form u/s 6(1) of the Act. Since the properties shown in the declaration were common, respondent No. 1 processed all the forms together. After observing necessary formalities u/s 8 of the Act, by his order passed on 19th July, 1984 u/s 8(4) of the Act, respondent No. 1 declared the holding of the petitioners to be in excess of the ceiling limit by 13069 square metres. Its copy is at Annexure-B to this petition. The aggrieved petitioners carried the matter in appeal before respondent No. 2 u/s 33 of the Act. It came to be registered as

Appeal No. Surat-1557 of 1984. By the order passed on 4th October, 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure-A to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition.

3. It appears that the lands bearing Survey No. 13(B-114) situated at Pandesara and Survey No. 57 situated in Bhedawad within the urban agglomerations of Surat were purchased by the petitioners including deceased petitioner No. 1 jointly under a registered sale deed executed on 1st September, 1975. They claim that each one was a co-owner and was therefore entitled to a separate ceiling unit for the purposes of the Act. It appears that the authorities below have treated the petitioners as an association of persons.

4. Whether or not co-owners of a property are an association of persons is no longer *res integra*. The Division Bench of this Court in its ruling in the case of *Chhaganlal Trikamdas Thakkar v. Competent Authority*, reported in 1994(1) GCD 1 had an occasion to deal with that question. It has been held therein that co-owners of a property cannot be said to be an association of persons. Sitting as a single Judge, the aforesaid Division Bench ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith.

5. It transpires from the material on record that the sale document in the instant case has not specified the share of each co-owner in the properties purchased by them thereunder. In this connection, a reference deserves to be made to Section 45 of the Transfer of Property Act, 1882. It has been provided therein that, in such a case, the share of each co-owner would be equal. Relying on the aforesaid statutory provision, this Court in its unreported ruling in Special Civil Application No. 998 of 1988 decided on 27th June 1988, some portion of which has appeared in 1995 (2) GLH 18, has held that, in absence of specific mention about shares of co-owners in any sale deed, all co-owners will have their equal share in the properties thereunder.

6. The authorities below have taken a view contrary to the aforesaid rulings of this Court. It cannot therefore be sustained in law.

7. Learned Advocate Shri Oza for the petitioners submits that the land bearing Survey No. 57 situated at Bhedawad is covered by the State Highway running between Surat and Navsari and, in view of the Ribbon Development Rules, no construction is permissible therein. In that view of the matter, runs his submission, it should fall outside the purview of "vacant land" as defined in Section 2(q) of the Act. As against this, learned Assistant Government Pleader Shri Patel for the respondents has submitted that the Ribbon Development Rules cannot answer the definition of "building regulations" contained in Section 2(b) of the Act, and as such the so-called unconstructible area in the land in question will answer the definition of "vacant land" contained in Section 2(q) thereof.

8. It cannot be gainsaid that the Ribbon Development Rules have been framed under the relevant provisions contained in the Bombay Land Revenue Code, 1879 (the Code for brief). It has been specified therein that no building can be constructed within a distance of certain specified area from the control line with respect to National Highways, State Highways and Major District Roads. The control line in each case is different for different categories of roads. When there is restriction on any construction activity, it is in the nature of regulations with respect to construction activity.

9. Section 2(b) of the Act defines "building regulations" to mean the regulations contained inter alia in the law in force governing construction of building. As pointed out hereinabove, the Ribbon Development Rules are framed under the Code. Any breach thereof would entail consequences as provided under the relevant provisions contained in the Code. In that view of the matter, the Ribbon Development Rules can be said to have the sanction behind their enforcement. They can therefore be said to have a force of law. Since they govern the construction activity in a particular area, the Ribbon Development Rules can therefore be said to be "building regulations" for the purposes of Section 2(b) of the Act. Once the Ribbon Development Rules are accepted as "building regulations", Sub-clause (i) of Section 2(q) of the Act will come in play. If land on which construction of building is not permissible under the building-regulations enforced in the area in which such land is situated, it has to be kept outside the purview of "vacant land". I am therefore of the opinion that the area of the land on which construction is not permissible under the building regulations in the nature of the Ribbon Development Rules will not fall within the purview of "vacant land" as defined in Section 2(q) of the Act.

10. The petitioners claim an area of 1214 square metres from Survey No. 15 situated at village Bhedawad to be covered by the Ribbon Development Rules. There is no clear-cut finding on the point by the authorities below. In that view of the matter, the point will have to be investigated into for ascertaining the exact area which would fall within the purview of the Ribbon Development Rules imposing restriction on construction activity.

11. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition deserves to be quashed and set aside. The matter will have 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 is clarified that each co-owner will be entitled to a separate ceiling unit for the purposes of the Act. It is further clarified that the area covered by the Ribbon Development Rules will fall outside the purview of "vacant land" defined in Section 2(q) thereof. It would be open to the petitioners to canvass all the points that are raised in this petition.

12. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No. 1 herein) on 19th July, 1984 u/s 8(4) of the

Act at Annexure-B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 4th October, 1988 in Appeal No. Surat-1557 of 1984 at Annexure-A to this 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 preferably by 31st, May, 1996. Rule is accordingly made absolute with no order as to costs.