

(1991) 04 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 6158 of 1988

Haresh Kantilal Vora

APPELLANT

Vs

The Competent Authority and Additional Collector, Rajkot and
Another

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Income Tax Act, 1961 — Section 2(47), 34(3)

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 2(1), 20, 34, 4(5)

Citation : AIR 1993 Guj 41

Hon'ble Judges : R.D. Vyas, J;A.P. Ravani, J

Bench : Division Bench

Advocate : Suresh M. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

Ravani, J.—The petitioner was one of the partners of the firm named Madhusudan Oil Mill, Rajkot. The firm had purchased a place of land admeasuring 2465.10 sq. mtrs. by sale deed dated October 27, 1970. The land is situated within the limits of Urban Agglomeration Area of Rajkot town. On coming into force of the Urban Land (Ceiling & Regulation) Act, 1976, ("the Act" for short) the firm filled in the form u/s 6(1) of the Act. Before the competent authority, it was contended that the partnership document dated April 16, 1971 was executed and as per this partnership deed, individual partners were the co-owners of the land in question. Therefore individual holding of different partners was required to be taken into consideration and on this basis on one held the land in excess of the ceiling limit. The competent authority accepted the submission and ordered to file the form as per his order dated October 10, 1980.

2. The Government in exercise, of its power u/s 34 of the Act issued show cause notice dated February 13, 1984 and called upon the firm to show cause as to why the case should not be taken in revision. It was alleged that the firm was a

"person" as defined under the Act. Therefore, the holding of the firm was required to be taken into consideration and not that of individual partners. After hearing the parties, the Government held that the total holding of the firm was 2465.10. sq. mtrs. and the ceiling limit for Rajkot Agglomeration area under the Act was 1500 sq. mtrs. Therefore it was declared that land admeasuring 965 sq. mtrs was in excess of the ceiling limit and the same was declared as surplus. This order was passed by the Government on March 14, 1988.

3. The petitioner has challenged the legality and validity of the order passed by the Government. The order is produced at Annexure "C" to the petition. The petitioner also prays for declaration that the definition of "person" occurring in Section 2(i) of the Act be declared ultra vires the provisions of Article, 14 of the Constitution of India and therefore, illegal and void.

4. On facts it is contended that the purchase of the land by document dated October 27, 1970 was by individual partners and it was not by the firm. The sale document is relied upon in support of this contention. In the document names of all the partners have been mentioned. Therefore it is submitted that the sale should be considered in favour of the partners. The contention cannot be accepted for the simple reason that the document is in favour of the partnership firm called Madhusudan Oil Mill. If the sale were not in, favour of the partnership firm, the name of the firm would not have been written at all in the sale document. All the individuals whose names are mentioned in the document have been described as partners of the firm and they are not described in their individual capacity. The entire reading of the document shows that the sale of the land is in favour of the partnership firm. Different small pieces of the land by defined shares have not been sold to different individuals. Moreover the firm itself has filled in the form u/s 6(1) of the Act. Thus, having regard to contents of the document and to all other relevant facts and circumstances, it is evident that the document is in favour of the firm and it is not in favour of different individual partners in their individual capacity. Except the sale document no other material is relied upon to show that the sale was in favour of the individual partners. In our opinion, the decision taken by the Government that the sale was in favour of the firm is eminently just and proper. This decision is not required to be interfered with in exercise of power under Article 226/227 of the Constitution of India.

5. The learned counsel for the petitioner submitted that the definition of "person" occurring in Section 2(i) of the Act should be read in such a manner that the word "firm" occurring in the section should be understood to mean a group of individual partners. In his submission, if it is not read in this manner, the definition would be unreasonable and arbitrary and therefore violative of the provisions of Article 14 of the Constitution. It is further submitted that different members of the group which may be called "firm" should be considered different unit or person for the purpose of calculation of ceiling limit of the land holding under the Act. The contention be examined.

6. Section 2(i) of the Act defines "person" as under :

"2(i) "person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;"

If the contention is accepted, the definition of "person", will have to be read by substituting the words "firm" by words "a group of individual partners". In that case, the definition would read as follows :

" "person" includes an individual, a family, "a group of individual partners", a company or an association or body of individuals, whether incorporated or not."

If a group of individual partners is considered to be one unit and one person, then there may not be any difficulty in accepting the interpretation suggested by the learned counsel for the petitioner. However, difficulty arises on account of the fact that the learned counsel for the petitioner further submits that each individual who may be the member of the group should be considered as a separate and distinct person for the purpose of calculation of the ceiling limit. If this is done, the definition of "person" would become unworkable, and it would frustrate the very object of the Act.

7. The object of the Act is, inter alia, to prevent the concentration of urban land in the hands of a few persons. The Act aims at prevention of speculation and profiteering in the vacant land of urban area. It aims at bringing about an equitable distribution of land with a view to subserve the common good. If the word "firm" occurring in the definition of the term "person" is read as suggested by the learned counsel for the petitioner, it would be very easy for anyone to avoid the implementation of the Act. All that would be necessary would be to form a partnership consisting of large number of partners. Then the land held by all the partners if considered separately would not exceed the ceiling limit even if the same may be five times or ten times in excess of the ceiling limit. Thus such an interpretation would make the Act unworkable and it would defeat the object of the Act.

8. Moreover, it would be against the basic canons of interpretation of statute. As held by the Supreme Court in the case of State of Kerala Vs. Mathai Verghese and Others, . the court can merely interpret the section, it cannot rewrite, recast or redesign the section. In interpreting the provision, the exercise undertaken by the court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the power to "legislate" have not been conferred on the court. There is no reason to deviate from this basic principle of interpretation of statutes. The word "firm" occurring in the definition of "person" should be understood in its ordinary meaning and no attempt should be made to give different meaning so as to frustrate the very object of the Act.

9. It is submitted that if the word "firm" is not given the meaning as suggested by the petitioner, there would be unreasonable classification between a single

individual who may hold land in his individual capacity and another individual who may form partnership with others and hold land through partnership firm. It is submitted that the single individual would be entitled to hold land to the extent of ceiling limit -- in this case 1500 sq. mtrs. -- while another individual who forms partnership would be deprived of holding land to the extent of ceiling limit i.e. 1500 sq. mtrs. In his submission, this would be unreasonable and arbitrary and therefore violative of the provisions of Article 14 of the Constitution of India.

10. Different treatment to an individual who holds land in his individual capacity and to an individual who forms partnership for the purpose of carrying on business is just and proper. Such a different treatment has nexus with the object to be achieved. If an individual wants to do business in the land by forming a partnership, such partnership will be a "person" as defined under the Act. Partnership as per the provisions of the Indian Partnership Act, 1932 means the relationship between persons who have agreed to share the profits of business carried on by all or any of them acting for all. Be it noted that the definition of the partnership as per the provisions of the Indian Partnership Act, 1932 speaks of relationship between the persons and not between individuals. Again such relation comes into existence by agreement with an object to share profits of business. Therefore, individuals/partners who want to carry on the business in the land and who forms partnership for this purpose cannot be treated as person separately in their individual capacity. If persons or individuals who agreed to share the profits of the business and to carry on the same by all or by any of them acting for all, such group of persons/individuals has been treated as one person by the legislature for the purpose of the Act. This is so because the very object of the Act is to see that the concentration and also the speculation in vacant land in the urban agglomeration area is controlled and regulated. Therefore, the inclusion of the firm as "person" in the definition of the term "person" occurring in Section 2(i) of the Act cannot be said to be in any way unreasonable or arbitrary. Hence the contention fails.

11. The learned counsel for the petitioner relied upon a decision of learned single Judge (Coram : M. B. Shah, J.) in Special Civil Application No. 4795 of 1987 decided on December 7, 1988 and submitted that the provisions of Section 4(5) of the Act would be applicable to the facts of the petitioner's case and the decision rendered by the competent authority should be upheld. In that case the facts and the questions involved were quite different. The mother of the petitioner therein had expired on January 27, 1974 leaving behind her one son four daughters. In that context, the learned Judge held that the petitioner was co-owner of the land in dispute and his share in the land should be determined on the basis of his share and interest in the land. Moreover, the petitioner held dwelling unit as well as other land also. In view of this factual background, the learned single Judge held that the provisions of Section 4(5) of the Act were applicable. In the instant case, no such eventuality arises and therefore the reliance placed on this decision is of no help to the petitioner.

12. It is submitted that we may consider the question on the basis that the holding of an individual partner is required to be determined together with interest in the property held by the firm. We do not wish to enter into such hypothetical and academic discussion. In the instant case, nowhere it is shown that the petitioner is also owning other vacant land in his, individual capacity and other requirements of Section 4(5) of the Act are also fulfilled. The question did not arise for determining the folding of individual partners. The question was with regard to the determination of the extent of vacant land held by the firm. As indicated hereinabove, the decision on this question has been rightly taken by the Government. We do not wish to make out a hypothetical case and make conjectures and arrive at an academic decision for the reasons that the court does not decide questions for academic purposes.

13. Similar question as regards the holding of land by a firm arose in the case of *Minish K. Sheth and Others Vs. State of Gujarat and Others*, . In that case one of us (A. P. Ravani, J.) considered the position of law as regards the property owned by a firm, and returned to the following decisions :--

1. *Champaran Cane Concern Vs. State of Bihar and Another*, .
2. *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, .
3. *Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation*, .
4. *Chief Controlling Revenue Authority v. Chaturbhai* reported in 17 GLR 898 : (AIR 1977 Guj 1).

After considering the aforesaid decisions, the difference between co-ownership and partnership as indicated by the Supreme Court is noted. It is as follows:--

- "1. One of the principal difference is that co-ownership is not necessarily the result of agreement whereas the partnership is.
2. The second difference is that co-ownership does not necessarily involve community of profit or loss, but partnership does.
3. That one co-owner can without the consent of the other, transfer his interest, etc. to, a stranger. A partner cannot do this.
4. In a partnership each partner acts as a agent of the other. In a co-ownership one co-owner is not as such the agent, real or implied, of the other."

The observations made by the Full Bench of this High Court in the case of *Chief Controlling Revenue Authority* (supra) have also been noted which are as follows:--

"..... There is no concept of co-ownership amongst partners during the subsistence of the partnership. The partnership properties are not held by the partners as co-owners. The property belongs to the firm and it merely vests in all the partners because the firm has no legal entity. But such vesting does not mean that all the partners are the co-owners of the property....."

14. In above view of the matter, law is settled. Therefore, the contention that the different individual partners of the firm should be treated as co-owner and the holding of the firm should be determined by dividing the same into holdings of different partners cannot be accepted. Hence the contention that the provisions of Section 4(5) of the Act should be applied has no merits and the same is hereby rejected. We see no reason to take a different view than what is taken in the case of Minish K. Sheth and Others Vs. State of Gujarat and Others, .

15. The learned counsel for the petitioner submitted that the position of law requires to be reconsidered in view of the Supreme Court decision in the case of Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala, . In that case the Supreme Court considered the question with regard to the meaning of the expression "otherwise transferred" occurring in Section 34(3)(d) of the Indian Income Tax Act, 1961. This expression was considered in the context of the definition of "transfer" occurring in Section 2(47) of the Indian Income Tax Act, 1961. While considering the aforesaid provision, the Supreme Court determined the question with regard to the correctness or otherwise of withdrawal of development rebate in relation to a dissolved firm. In our opinion, the observations made by the Supreme Court in the context of the Indian Income Tax Act, 1961 and determination of the aforesaid question are not relevant for deciding the question in this petition. Moreover, the Supreme Court has not in any way changed the position of law enunciated by it in its earlier decision. Hence we do not think that the decision in 26(1) GLR 202 : Minish K. Sheth and Others Vs. State of Gujarat and Others, requires reconsideration.

16. The learned counsel for the petitioner submitted that the Competent Authority by his order dated March 31, 1980 has directed to file the form holding that no excess land was held by individual partners of the firm. Thereafter, the partnership was dissolved in October, 1980. Notice u/s 34 of the Act is dated February 13, 1984. Some of the partners were served with the notice in the year 1986. Therefore, it is submitted that there is inordinate delay in exercise of power u/s 34 of the Act. After such long period, the power u/s 34 of the Act could not have been exercised. Similar question arose in the case of Minish K. Sheth and others (supra). In that case, this question is discussed in paras 15 to 25 of the reported judgment. After considering the various decisions of the Supreme Court and of this High Court and particularly the decisions in the case of Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, , it is observed as follows (at page 848) :--

"1. Is the revising authority trenching upon the powers which are expressly reserved by the Act or Rules to other authority? If so, it would be beyond the powers of the revising authority.

2. Is the revising authority ignoring the limitation, meaning thereby, inherent constraints in the exercise of these powers? No such inherent limitation is pointed out."

Again after referring to a Division Bench judgment in L.P.A. No. 378 of 1983 decided on December 21, 1983, in para 24 of the reported decision it is further observed as follows:--

"What is important is that the power bestowed upon an authority should be exercised in a reasonable manner and within reasonable time. The time element enters into consideration only from the limited point of view to see as to whether it is a genuine exercise of power. The exercise of power must be reasonable and the reasonableness would in its sweep include the time element also."

17. In view of the aforesaid legal position, the question which is required to be examined and answered is -- is the exercise, of power genuine? Is it reasonable? There is nothing on record to show that simply because the power is exercised after a period of about three years, the exercise of power has become unreasonable. Mere lapse of time, without anything more, would not make the exercise of power unreasonable. Therefore the argument that there was inordinate delay in issuing show cause notice and therefore the Government could not have exercised powers cannot be accepted.

18. The learned counsel for the petitioner submitted that since the vires of definition of "person" occurring in Section 2(i) of the Act is challenged, the petition should be admitted by the court and the Government should be directed to file affidavit in reply. We see no substance in this argument. Simply because vires of a particular provision of the Act or Rules are challenged, the matters are not required to be admitted. Even without the help of the other side if the contention raised in the petition can be disposed of, the court need not and should not waste the public time and money. Hence the contention that since the vires of definition of "person" occurring in Section 2(i) of the Act is challenged, rule should be issued in the matter has no merits and the same is rejected.

19. No other contention is raised. Therefore, the petition is required to be rejected.

20. However, in facts of the case and particularly in view of the smallness of the area of land which is found to be in excess (i.e. 965 sq. mtrs.) and having regard to the large number of partners (about 15 (fifteen) of the firm and the fact that the firm has already been dissolved, we are of the opinion that the case is required to be considered sympathetically by, the Government, if the petitioner applies for exemption u/s 20 of the Act. We hope and trust that the Government will consider the case of the petitioner with due sympathy in case the petitioner submits such application. This aspect needs to be emphasised in view of the fact that as submitted by the learned counsel for the petitioner, after the Competent Authority passed the order on March 31, 1980, on Some pan of the land, the construction had also been put up. However, we do not express any opinion about the correctness of this statement. But if these facts are true, it would be proper for the Government to exercise its power u/s 20 of the Act and grant necessary exemption to the petitioner. Subject to the aforesaid observations

rejected.