
(1992) 05 GUJ CK 0003
In the Gujarat High Court

Hargovindbhai Prabhubhai Patel and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 04-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2(f), 34, 34

Citation : (1993) 2 GLR 1100

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 the State Government dated 12-2-1990 passed in exercise of revisional powers u/s 34 of Urban Land (Ceiling & Regulation) Act, 1976.

2. The relevant facts giving rise to the present petition are as under:

(i) One Prabhudas Jadav was the holder of land. He left behind him two sons, namely, (i) Hargovindbhai and (ii) Chimanbhai. Hargovindbhai had two sons, namely, (i) Bhikhubhai and (ii) Dineshbhai and Chimanbhai had three sons, namely, (i) Naginbhai, (ii) Shantilal and (iii) Hashmukhbhai. On the death of Prabhudas Jadav the properties came to be mutated in the name of Hargovindbhai and Chimanbhai.

(ii) On coming into force of the Urban Land (Ceiling & Regulation) Act, hereinafter referred to as the "said Act", both Hargovindbhai (petitioner No. 1) and Chimanbhai (petitioner No. 2) filed statements u/s 6(1) of the said Act and notices came to be issued u/s 8 of the said Act. The draft statement was prepared to which objections were filed.

(iii) After taking into consideration the objections and also after hearing the petitioners and appreciating the documentary evidence produced before the competent authority, it took the view that no excess land was held by the

petitioners, and therefore, statements filed u/s 6(1) were required to be filed. This order was passed by the competent authority on 20th July, 1986.

(iv) It may be stated that in view of the fact that the property was inherited by the preheat petitioners from Prabhudas Jadav, the separate forms filed by them u/s 6(1) were consolidated. The competent authority came to conclusion that with respect to Section Nos. 317, 318, 319, 320 & 327 of village APAJAN scheme u/s 21 of the said Act for construction of dwelling units for economically weaker sections of the society was sanctioned. After excluding the said land for which permission u/s 21(1) of the Act was granted the competent authority found that 5803 sq. mts. of land was the total holding of the two petitioners. The competent authority found that total holding of petitioner No. 1 was 3076.50 sq. mts. The petitioner No. 1 had one major son on the date of coming into force of the said Act, and therefore, branch of Hargovindbhai (petitioner No. 1) was entitled to two units. The branch of Hargovindbhai was therefore entitled to retain 3000 sq. mts. of land and therefore only 76.50 sq. mts. of land was excess. Therefore, consistent with the Govt. circulars, Revenue Department, bearing No. ULC 2082-5131-1, dated 4th January, 1985, he came to conclusion that since the excess vacant land was not exceeding 10% of the returnable land, same was to be treated as margin land and the form filed u/s 6(1) of the said Act was required to be filed. The competent authority did not mention anything about second son of Hargovindbhai, namely, Dinesh who was minor on the date on which the Act came into force.

(v) As regards holding of Chimanbhai (petitioner No. 2) the competent authority found that his total holding was 3116. 50 sq. mts. The competent authority found that the petitioner No. 2 had two major sons, namely, Shantilal and Naginbhai, and therefore, according to the competent authority the second petitioner was entitled to hold 3 ceiling units, i.e., 4500 sq. mts. Since he was holding only 3116.50 sq. mts. of land as against his entitlement to hold 4500 sq. mts. of land the competent authority found that he was not holding excess land and form filed u/s 6(1) was required to be filed. It may be mentioned that the competent authority did not take into consideration the fact that the petitioner No. 2 had three sons and the third sons Hashmukhbhai was minor on the date on which the Act came into force.

(vi) Thereafter, the State Government on going through the order passed by the competent authority found that the competent authority has committed a serious error of law while computing the permissible holdings of the petitioners, and therefore, it issued show cause notice dated 26th July, 1988 to the present petitioners pointing out the mistake committed by the competent authority while determining the holdings of the two petitioners. The State Government found that the petitioner No. 1 had two sons and share of his minor son-Dinesh was required to be clubbed with the share of the petitioner No. 1 u/s 4(7) read with Sections 2(f) and 2(i) of the said Act. On said calculation the holding of the first petitioner was excess holding to an extent of 551.58 sq. mts. and that the

holding of second petitioner was excess of vacant land to an extent of 58 sq. mts. and therefore the petitioners were called upon to show cause as to why the order of the competent authority should not be revised.

(vii) After hearing the petitioners and after taking into consideration the submissions made by the petitioners, the State Government vide its judgment and order, dated 12-2-1990 was pleased to quash and set aside the order passed by the competent authority, dated 20th July, 1986 and was pleased to declare that the holding of the petitioners was above the permissible holding to an extent of 609 sq. mts. and that said parcel of land therefore required to be declared excess vacant land. Being aggrieved and dissatisfied with the said order passed by the State Government in exercise of its revisional powers the petitioners have preferred this Spl. CA.

3. Mr. P.J. Vyas, learned Advocate for petitioner mainly submitted that the State Government has materially erred in passing the impugned order because there is no provision in the Urban Land (Ceiling & Regulation) Act, 1976 providing for clubbing the share of minor to the share of the father and that therefore the order of the competent authority is required to be restored and the order of the State Government is required to be quashed and set aside. He further submits that the competent authority has rightly determined that there was no excess vacant land held by either of the petitioners and therefore in his submission the State Government was not justified in upsetting the order of the competent authority. He has further submitted that there was construction on the parcels of land and 175 sq. mts. was the area of construction so far as the petitioner No. 1 is concerned and 215 sq. mts. was the area of construction so far as the petitioner No. 2 is concerned. If such area of construction along with land appurtenant thereto is excluded from consideration, there would be no excess vacant land in case of the petitioners.

4. Mr. B.M. Mangukia, learned A.G.P. for respondents has submitted that since error apparent on the face of record was committed by the competent authority, the State Government was justified in exercising its revisional powers and in view of error of law apparent on face of record which is noticed by the State Government the order passed by the State Government should be upheld.

5. In order to appreciate the rival contentions of the parties, it is necessary to make reference to some of the provisions of the Act. The Urban Land (Ceiling & Regulation) Act, 1976 came to be passed by the Parliament 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 constructions of buildings on such lands and for matters connected thereto. The Act received assent of the President of India on 17-2-1976. Section 2 of the said Act enacts definition clause. Section 2(f) defines "family" to mean "in relation to a person, the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children". The word "person" is defined u/s 2(i) to include an individual, family, a firm, a company or an association or body of individuals whether incorporated or

not. Section 2(g) defines the "vacant land" to mean land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) 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, (ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, the appointed day with the approval of the appropriate authority and the land appurtenant to such building, and (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building Section 3 of the Act, inter alia, provides that no person shall be entitled to hold any vacant land in excess of ceiling limit in the territories to which the Act applies except the otherwise provided in the Act. Ceiling limit is prescribed by Section 4 of the Act. Section 4(7) of the Act being relevant for the purpose of this petition is reproduced hereunder.

4(7) Where a person is a member of a Hindu Undivided Family, so much of the vacant land and of any other land on which there is building with a dwelling unit therein, as would have fallen to his share had the entire vacant land and such other land held by the Hindu Undivided Family been partitioned amongst its members at the commencement of this Act shall also be taken into account in calculating the extent of vacant land held by such person.

From the aforesaid provisions of the statute, it becomes clear that on coming into force the said Act, no person is entitled to hold any vacant land in excess of ceiling limit. The word "person" is defined to include an individual, a family, a firm, a company etc. Therefore, if the land is held by a family it can be said to be holding of a person. The word "family" is defined to mean in relation to a person, individual, a wife or husband, as the case may be, of such individual and their unmarried minor children. The liability, therefore, to file statements u/s 6(1) of the said Act arises where the land held by a person or family is beyond the ceiling limit. Section 4(7) makes the position very clear by providing that when a person is a member of a Hindu Undivided Family so much of the vacant land and of any other land on which there is building with a dwelling therein as would have fallen to the share of the person, had the entire vacant land and such other lands held by Hindu Undivided Family been partitioned amongst the members of the family at the commencement of the said Act, shall also be taken into account in calculating the extent of vacant land held by such person. Therefore, when the land belongs to a Hindu Undivided Family and where a member of Hindu Undivided Family files statement under Sec. 6(1) of the said Act because his holding was above the permissible ceiling limits on the date of commencement of the said Act, the legislature intended that there shall be a deemed or notional partition. A Hindu Undivided Family is a body of individuals which is not incorporated. Such body of individuals however differs from other association of

individuals inasmuch in the case of association of individuals the interest of the members are defined and determinable. Therefore, by Section 4(7) of the Act the legislature provided that on the date of commencement of the Act a notional partition of Hindu Undivided Family amongst its members shall be presumed to have taken place in respect of vacant land or land on which there is building with a dwelling unit therein. On the basis of such notional partition share of a member will be determined in such land and it shall be taken into account in calculating the extent of vacant land held by a member. The partition contemplated by Sub-section (7) of Section 4 is notional or imaginary. Joint Hindu Family continues as such even in respect of such land and the members continue to hold vacant land or land on which there is building with dwelling unit therein. Therefore, despite the fact that there is no actual partition by metes and bounds the sub-section is to be applied in that manner. Share of each coparcener is to be ascertained. In the present case in the branch of Hargovindbhai (petitioner No. 1) there were three cosharers and therefore each one was entitled to hold 1/3rd share. Similarly, in the branch of Chimanbhai (petitioner No. 2) there were four sharers and each one was entitled to 1/4th share from the total holding. Minor son Dinesh in the branch of Hargovindbhai was entitled to 1/3rd share and minor son Hashmukhbhai in the branch of Chimanbhai was entitled to his share. However, in view of the definition of the word "family" as given u/s 2(f) it would include the individual, wife or husband, as the case may be, and such individual and their unmarried minor children. Therefore, the share which was earmarked for minor son shall have to be clubbed together with the share of the father and minor will not be entitled to hold separate share. Accordingly, the holding of Govindbhai is to be divided into three equal shares and that of Chimanbhai is to be divided into four equal shares and 1/4th property of Chimanbhai and 1/3rd property of Hargovindbhai is required to be clubbed together with the holding of Hargovindbhai and Chimanbhai. After such clubbing it is to be determined as to whether they were holding excess vacant land or not. From the combined reading of Section 3 with Section 4(7) definition of the word "family" as defined by Section 2(f) and the word "person" as defined by Section 2(i) of the Act it becomes clear that on the date of coming into force of the Act there takes place a notional statutory partition of the shares which the coparceners are entitled to hold. However, in view of the definition of Section 2(f) read with Section 2(i) the share of minor shall have to be clubbed with the share of the father/mother as the case may be and therefore the excess vacant land is to be determined. The competent authority unfortunately did " not take into account the share of minor sons in the branch of petitioner No. 1 as well as petitioner No. 2 with the result that in the case of Hargovindbhai property was divided into two units and in the case of Chimanbhai property was divided into three units only and it was held that they were not holding excess vacant land. This earlier mistake was noticed by the State Govt. in exercise of its revisional powers u/s 34 and it has rightly found in its order that total holding of Hargovindbhai was to be divided into three shares and total holding of Chimanbhai was required to be divided into four shares and accordingly Hargovindbhai (petitioner No. 1) was holding 551 sq.

mts. of excess vacant land while Chimanbhai was holding 58 sq. mts. of land as excess vacant land. In my opinion, the findings reached by the State Govt. in exercise of its revisional power u/s 34 of the said Act are absolutely consistent with the aforesaid provisions of the Act and there is no justification for This Court to interfere with such findings in its jurisdiction under Article 227 of the Constitution of India. No jurisdictional error is pointed out nor is any error of law apparent on the face of record is pointed out. Therefore, no case is made out for the interference of This Court with the order passed by the State Government.

6. While dealing with the constitutional validity of the said Act in the case of Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, the constitutional bench has incidentally called upon to decide the question of validity of definition of the word "Family" as contained in Section 2(f) of the said Act, While upholding the said definition as constitutionally valid, Y.V. Chandrachud, C.J. held mat the definition of "family" as contained in Section 2(f) which in relation to a person means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children will not necessarily lead to concentration of wealth in the hands of few persons or families. Such is not the intendment, nor the drive, nor the direct and inevitable consequences of the definition of "family". Justice Krishna Iyer in the concurring opinion found that the word "family" as defined in Section 2 (f) of the Act accords with the modern life style in urban conditions and is neither artificial nor arbitrary nor violative of Article 14. The Law is never static and must respond to the challenges of change. The Supreme Court quoted Willam J. Brennan Jr. Opinion, Roth v. United States (1957) 354 US 476 which reads as under:

"Family" as defined in Section 2(f) has been held invalid by my learned brother Tulzapurkar, J. as an arbitrary, artificial creation of the statute inconsistent with the natural unit prevalent in the country. Here, again, S must respond to the challenges of change.

The law is not an end in itself, nor does it profide ends. It is pre-eminently a means to serve what we think is right Law is here to serve. To serve what? To

serve, insofar as law can properly do so, within limits that I have already stressed, the realisation of man"s ends, ultimate and mediate...Law cannot stand aside from the social changes around it.

It is possible that in the last century the prevalent concept of family was of a certain pattern. Indeed in the diversity of Indian social structure the concept of "family" has varied from region to region and even from community to community and we cannot postulate any parameters in this behalf. Moreover, fission, not fusion is the modern trend and whatever might have been the situation in Indian Rural life in the 1950s there is no doubt that nuclear families are becoming the vogue in the late 1170s and 1980s, of Indian urban life. In the western countries the family unit consists of the parents and their minor children and the West has invaded the East in life style at least in our cities. Whatever

may be the pastoral life of old or the idyllic picture we may cherish the social facts tell a different tale in contemporary India of the Cities. There is hardly space for a nuclear family to live in urban conditions and to think of large joint families as the natural unit is to resurrect bygone ways of life and turn the blind eye to the rapid growth of the small family of man and wife—"we two and we shall have two" is the desideratum and social factum. In these days of family planning and self-reliance of the adult we cannot condemn as arbitrary by a process of judicial ratiocination, the legislative provision that a family shall be defined as the parents plus their minor children. I, therefore, hold that "family" as defined in Section 2(f) of the Act accords with the current life style in urban conditions and is neither artificial nor arbitrary nor violative of Art, 14. It is noteworthy that many agrarian legislations have been upheld by This Court in a spate of recent cases where the definition of "family" is substantially the same.

7. It is thus clear that the definition of "family" to mean parents and their minor children is held to be a permissible definition and therefore well ascertainable. The share of minor shall have to be clubbed together with the share of the parents and after such clubbing their entitlement to hold the vacant land is to be determined. It is not correct to ascertain the share of major sharers and to exclude minor sharers from consideration. The share of minor shall have to be ascertained separately and that shall have to be clubbed together with the share of the parents. I think if share of minor is totally ignored! and total holding is divided into as many as number of shares as there are majors with regard to partition of the properties of the Joint Hindu Undivided Family which must take place on the date of coming into force of the said Act shall not take place a notional partition inasmuch as the share of the minor will be totally excluded. What Section 4(7) contemplates is the notional partition of the members of the family on the date of coming into force of the said Act. In that view of the matter, I am of the opinion that the submission made by Mr. Vyas cannot be accepted and it shall have to be held that the State Government was justified in reviewing the order passed by the competent authority u/s 34 of the said Act.

8. Mr. Vyas, Learned Counsel for petitioner has relied upon the decision of the Division Bench of the Calcutta High Court in the case of Pratima Paul and Ors. v. Competent Authority and Ors. reported in AIR 1990 Calcutta 185. The Division Bench of Calcutta High Court has taken the view that the members of Hindu Undivided Family consist of mother and minor sons inheriting the land in question from their husband and father respectively cannot be treated as one person or unit for the purpose of the Act. They would have separate ceiling limits u/s 4(7) of the Act. Hindu Undivided Family is not a person as defined u/s 2(i) of the Act not to be treated as single unit for the purpose of ceiling limit, but u/s 4(7) of the Act, each individual member of such family, major or minor, having share in the vacant land belonging to such family shall have their respective separate ceiling. The aforesaid view of the Division Bench of Calcutta High Court undoubtedly supports the submission made by Mr. Vyas. If the said decision is to hold the field the competent authority was right in holding that the petitioners

did not hold any excess vacant land. However, I am of the opinion that the said decision fails to give effect to the definition of word "family" as given by Section 2(f) read with Section 4(7) of the said Act. Section 4(7) of the said Act undoubtedly speaks of a notional partition on the date of coming into force of the said Act and notional partition can only be as amongst all coparceners entitled to share in the properties held by the family. If minor was entitled to share on the date on which the Act came into force, the notional partition shall have to be so effected that his share is worked out. However, by virtue of definition of word "family" as given in Section 2(f) such share of minor son or daughter shall have to be included in the share of the parent-father or mother, as the case may be. I am, therefore, of the opinion that in view of the aforesaid statutory provisions and in view of the decision of Constitutional Bench of the Supreme Court in the case of Maharao Saheb Shri Bhim Singji (supra) the decision of the Division Bench of Calcutta High Court with utmost respect to the Judges of the said Division Bench is not correct and I am of the opinion that on the date of coming into force of the said Act in case where the land is held by a family through its members, there shall be notional partition and each coparcener shall be entitled to equal share. A minor son, therefore, also shall be entitled to equal share. That share of minor son shall be clubbed together with the share of the parents because of definition of "family" as contained in Section 2(f) of the said Act.

9. In view of aforesaid findings, I do not see any reason to interfere with the order passed by the State Government.

In the result, petition fails and rule is discharged with no order as to costs.