

(1984) 09 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 13067 and 13377 of 1982

Kunj Behari Lal

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 12-09-1984

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 2(1), 3, 3(42), 4(5)

Citation : (1984) AWC 549 Supp

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant; K.P. Gupta, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

K.C. Agarwal, J.—These two writ petitions have been filed against the Judgment of the District Judge Gorakhpur, dated 10-8-1982 reducing surplus area of the firm to 1176.911 square metres from 1495.791 square metres, and, thesefore, they are being disposed of by a common judgment.

2. M/s. K.B. Industries Corporation, Gorakhpur, is a partnership firm registered, under the Partnership Act. The said firm consists of four partners, amongst whom the Petitioner Kunj Behari Lal is one of them. Each one of the partners had one-fourth share.

3. Upon coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"), the Petitioner Kunj Behari Lal filed of statement before the Competent Authority in his Individual capacity in respect of the property held by M/s. K.B. Industries Corporation, Gorakhpur. On the basis of the said statement, a notice along with a draft statement was sent by the Competent Authority proposing, to declare 3235.44 square metres as excess vacant land, The Petitioner filed an objection stating that the property since was the joint property of all the four partners, namely, Kunj Behari Lal, Laxman

Kumar paliwal, Smt. Sita Devi Paliwal and Smt. Usha Devi Paliwal, and each of the Partners had one-fourth share in it, therefore, the Petitioner's share in the said property being 1308.86 square metres was within the "ceiling limits prescribed for Gorakhpur.

4. The Competent Authority allowed the objection of the Petitioner Kunj Behari Lal in part and declared 1495.791 square metres as excess vacant land. The State of U.P. did not prefer any appeal against this order. Kunj Behari Lal filed an appeal, which was partly allowed by the District Judge, Gorakhpur, who, after having found that since the area covered by the dwelling unit, which was 318.88 square metres, was liable to be exempted, the total land surplus with the Petitioner was 1076.911 square metres. Assent to this judgment, Kunj Behari Lal has filed writ Petition No. 13067 of 1982, whereas Writ Petition No. 13377 of 1982 has been preferred by the State of U.P.

5. The grievance of the State of U. P. is that in reducing the surplus, the learned District Judge has misconstrued Sub-section (9) of Section 4 of the Act. The case of the Petitioner Kunj Behari Lal, however is that as the property in dispute belonged to the firm and not to him individually and as no notice was served on the firm, therefore, the proceedings were illegal. The alternative case further was that a firm is not a juristic person, hence the property held by the firm would be deemed to be that of the partners, and as there were four partners in the said firm, the share of each one of them being 1308.86 square metres, no part of the land was liable to be declared as surplus.

6. First, I would like to deal with the case of Kunj Behari Lal. The Competent Authority as well as the appellate authority have found surplus on the basis of the property being that of the firm. Kunj Behari Lal, the Petitioner of Writ No. 13667 of 1982, has not also denied that this was not the property of the firm. What was alleged on his behalf was that as the firm was not a person liable under the Act, the property would be treated to be that of the partners and ceiling area should be decided on its basis. For this purpose, reliance was placed on Section 4(5) of the Act. Section 2(1) defines "person", the definition of person given in the aforesaid provision includes an individual, a family, a firm, company or an association or body of individuals, whether incorporated or not.

7. Under the common Law, a firm is not a juristic person, but on account of the definition given in Section 2(1) it is a person for the limited purposes of the Act. A firm has been treated by the Act as a distinct person from the partners who constitute it. It is a unit to which Section 3 of the Act will apply wholly as it applies to an individual. u/s 6 of the Act, a firm would be liable to submit its statement. As a firm acts only through its partners, the statement u/s 6 has to be filed by one of the partners. Section 6(4) provides that the statement under this section in case of a firm has to be filed by a partner. The submission of the Petitioner's learned Counsel, therefore, that the property could not be treated to be that of the firm but only that of the partners constituting it, is not correct. The Petitioner had filed the return which, in the circumstances, can be treated only as

a partner on behalf of the firm. In these circumstances, the technicality of the notice not being addressed to the firm but to the Petitioner as partner, treating It to be property of the firm, is of No. relevance.

8. It is true that under the Partnership Act, a firm has No. legal existence from its partners and it is merely a compendious name to describe its partners. There is No. definition of the word "person" in the partnership Act, the General Clauses Act, 1897, however, by Section 3(42) provides that "person" shall include any company or association or body of individuals, whether incorporated or not. The firm is not a company, but is certainly an association or body of individuals. Under the English Law, a firm, not being a legal entity, could not sue or be sued in the firm name or sue or be sued by its own partner, for one cannot sue oneself. Later on, this rigid law of procedure gave way to considerations of commercial conveniences and permitted a firm to sue or be sued in the firm name. In the Indian Law also a provision for permitting the firm to sue was made in Order XXX of the Code of Civil Procedure. This provision allows a firm to sue or be sued.

9. Thus, for what I have said above, it is found that a firm although is not a juristic person out as the definition of "person" given in Section 2(1) provides that the firm is a person for the purposes of the Act, a firm would be a person and would be liable to the consequences of the same. it is just like the same as under the Income Tax Act a firm is treated as legal entity for the purposes of assessment.

10. Reference by the Petitioner was next made to Section 4(5) of the Act. According to this provision, where any firm, inter alia, owns vacant land then the right or interest of any person in the vacant land or such other land or both, as the case may be, on the basis of his share in such firm, shall also be taken into account in calculating the extent of the vacant land held by such person. To my mind, Section 4(5) has a different purpose and it should not be confused with the liability of the firm to submit its return and declaration of its land as surplus if it possesses above the ceiling limit. Section 4(5) will apply to a case where proceedings are taken individually against the partners. In that event, respective share of each partner in the land held by the firm will also be taken into account besides such other land as he may own apart from the share in the land held by the firm. While determining the surplus in relation to the firm, the firm itself has to be taken as one entity or person holding the land.

11. Learned Counsel next urged that as the draft statement u/s 8(1) was not served on the firm, but on Kunj Bebari Lal, the Petitioner being one of the partners, the service of the same as required by the Act and the Rules, should be treated to be invalid. The submission is not correct. The Petitioner, admittedly, was one of the partners. The notice of a firm can be served only on a partner. Wrong description will not be of any avail. The return was submitted on behalf of the firm and the proceedings were taken against it.

12. As pointed out in the beginning, the Competent Authority had declared 1495.791 square metres as surplus. In reducing this area, the learned District Judge wrongly excluded 318.88 square metres covered by the dwelling unit belonging to the firm. The area of the dwelling unit is also required to be taken into account in calculating the extent of the vacant land. In this regard, reference may be made to the decision of the Supreme Court in *State of U.P. v. L.J. Johnson* 1983 AWC 789 where in it observed

Section 4(9) contemplates that if a person holds vacant land as also other portions of land on which there is a building with a dwelling unit, the extent of land occupied by the building and the land appurtenant thereto shall be taken into account in calculating the extent of the vacant land. This Sub-section has to be read in conjunction with Section 2(q)(ii) and (iii).

13. For what I have said above, it is manifest that the Competent Authority will have in a case like the present to total the entire area of the lands in various places completely vacant or partly built and partly vacant and permit the person to retain 2000 square metres. In this view, the learned District Judge committed an error in excluding the covered area if that is taken into account, the judgment of the District Judge is liable to be set aside and that of the Competent Authority is to be restored. In fact, the area covered by the other constructions also should have been taken into consideration, which was excluded by the Competent Authority wrongly. But, since the State of U.P. did not prefer any appeal before the District Judge, and the present writ petition is confined only to 318.88 square metres covered by the dwelling unit, nothing further is required to be said in that respect in this judgment.

14. For the reasons given above, Writ Petition No. 13377 of 1982 succeeds and is allowed. The order of the District Judge, Gorakhpur, dated 10-8-1982 is quashed. Writ Petition No. 13067 of 1982 filed by Kunj Bebari Lal is dismissed. The State of U.P. will be entitled to get costs of both the petitions from Kunj Bebari Lal. The stay order passed in Writ Petition No. 13067 of 1982 is discharged.