

(1995) 01 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 654 of 1985

Mohansingh Gurucharansingh

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-01-1995

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, 20, 29, 34, 6

Citation : AIR 1996 Guj 80

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Prashant G. Desai, for the Appellant; T.H. Sompura, A.G.P., for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Calla, J.—These four Special Civil Applications involve common questions of fact and law and, therefore, all these four Special Civil Applications are being disposed of by this common Judgment.

2. Originally one Shri Chhotalal Patel held the land bearing S. No.-350 admeasuring 2 Acres and 21 Gunthas situated in the St. of village Dani Limda. After the death of Shri Chhotalal Patel, the land was inherited by his four sons, namely, Hiralal, Rameshbhai, Naranbhai and Umedbhai and they inherited about 1076 sq. mts. of land as alleged by the petitioners and it has been given S. Nos. 350 2/1, 3502/2, 3502/3, and 350 2/4. It is the case of the petitioner Mohansingh in Special Civil Application No. 654 of 1985 that he with his brothers Amriksingh, Gajendrasingh and Smt. Gurudarshankaur i.e. wife of his yet another brother Bhupendrasingh had purchased the land bearing S. Nos. 350 2/1, 350 2/2, 350 2/3 admeasuring 3228 sq. mts. from Rameshbhai, Hiralal and Naranbhai respectively by three separate registered sale deeds dated 7-7-72 for an amount of Rs. 25720/-. Thus, three sale deeds were executed by above

referred three brothers in favour of the petitioner along with his two brothers and yet another brother's wife. It is the case of the petitioner Mohansingh that there was no partnership firm and it was a simple case of joint purchase and the persons from whom it was purchased also of not Gold any excess land under the Act, and further that the petitioners have got no other land except the land in question. The purchase was made in order to construct a Cinema Theatre on this land. No Objection Certificate having also been issued by the Police Commissioner, Ahmedabad on 6-8-73 and after obtaining No Objection Certificate, the plans had been submitted for the construction of Cinema Theatre, which were passed and approved on 21-10-73 and the construction of the Cinema Theatre was also started in the year 1975. It is also the case of the petitioner's that there said land was included within the limits of Ahmedabad Municipal Corporation in February, 1975 and, thereafter, the petitioners received a notice from the Corporation not to make further construction until they obtain a certificate from Urban Land Ceiling Authority. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act") came into force on 17-2-76 and the petitioner Mohansingh along with his two brothers and yet another brother's wife, who was party to the purchase, filled the form u/s 6 of the Act. It is the admitted case of the parties that only one form was filled up on behalf of all the four persons including the petitioner Mohansingh and according to the petitioners, by mistake in column No. 2 of the said form, the word "Pedhi", meaning "Firm" was mentioned, although in fact there was no firm or a partnership firm. It is also stated that the Police Commissioner vide his letter dated 20-8-76 extended the permission to construct the Cinema Theatre up to 17-10-77. The matter remained pending with the Competent Officer up to 1982 when by the order dated 23-8-82 it was held by the Competent Officer that the petitioners were not holding any excess land. It was also held that according to the village form No. 7-12, each one of the petitioners owned one fourth share in the property. Petitioner Mohansingh's case, therefore, has to be confined for 807 sq. mts. of land only because according to the petitioners, there were four purchasers and each one of them had one-fourth share in the property.

3. The petitioner Mohansingh has also alleged that all the members of the party to these sales, as aforesaid, decided to construct the Cinema Theatre and, therefore, an application u/s 20 was preferred and the policy of the Government was laid down in Circular/Resolution dated 9-12-77. It was decided by the Government to exempt the land for the purpose of constructing the Cinema Theatres on the surplus land. A copy of the Circular/ Resolution dated 9-12-77 has been placed on record. On 31-7-79, a reply was received from the Government to the effect that development plans submitted by the Ahmedabad Municipal Corporation was pending for approval before the State Government and, therefore, only after receiving the approval, the petitioners may re-file the application. Petitioners again submitted the application u/s 20 for exemption of the land. As no decision was taken by the State Government, the petitioners addressed a letter dated 5-7-79. It has also been stated by the petitioners that

vide letter dated Nil June, 1982, the Government dismissed the Application of the petitioner filed u/s 20 of the Act on the ground that the said land is included in the residential zone in the Master Plan and that the land in question was required for a public purpose, although no specific purpose, as such, was given out. The Town Planning Officer informed the Deputy Secretary of the Revenue Department that the said "land was included in the Local Commercial Zone. According to the petitioners, the application had been rejected erroneously and another application u/s 20 of the Act was moved again on 1-9-86 before the State Government asking for exemption in view of the fact that the land was already in the Commercial Zone and there is an order of the Competent Officer dated 13-8-82 holding that the petitioners did not held any vacant excess land. According to the petitioners, while their application u/s 20 was pending, an injunction order dated 22-3-83 was received by the petitioners from the State Government that the Government had decided to revise the order dated 13-8-82 u/s 34 of the Act and, therefore, the status quo till further orders with regard to the land in question was to be maintained. Later on, show cause notice dated 25-8-83 was received by the petitioners from the State Government requiring them to show cause. The notice was based on the ground that in the form "Firm" had been shown by the declarant and the lands were purchased without defining the share of the petitioner Mohansingh and three other parties and in the Revenue Records, the names of all the persons were shown jointly. In purchase of this show cause notice, the petitioner Mohansingh appeared before the State Government and submitted all the necessary facts and contended that the earlier order cannot be revised after a period of about more than one year, especially when there was no "Partnership Firm" or "Firm". It is the case of the petitioners that they did not hold any excess land and it was on account of a bona fide mistake that the word "Firm" has been mentioned. The show cause notice was contested and it was also made clear that when shared, the petitioner Mohansingh may have 807 sq. Mts. of land and in view of this position, the order could not be revised.

4. No return has been filed to traverse the petitioners' case.

5. At this stage, when the matter has been considered by the authorities under the Urban Land Ceiling Act, at more than one stages, and the order has been passed by the Revenue Department of the Government of Gujarat on 9-5-84 in exercise of the powers u/s 34 and the order of the competent Officer has been set aside, and whereas in the form No. 1 u/s 6 the petitioners had held out it to be a case of the "Firm" and there is nothing to show the definite share of each of the joint purchaser, it cannot be assumed that they had a definite, identified, equal share. The learned counsel for the petitioner, had placed reliance on 1994 (1) GCD 1 (Guj) (Chhaganlal Trikamdas Thakker v. Competent Authority). In this decision, it is held that individuals owning definite and specified shares in the land, though acquired through a single source, may not come under ambit of association or body of individuals holding the land. Such individuals are "tenant in common" and cannot be treated as one unit for the purposes of the Act. It has

been argued by the learned counsel for the petitioners on the authority of this decision that in the case at hand also the four persons, who were joint purchasers, are tenants comparable with the term "tenant in common" and they could not be treated as one unit for the purposes of this Act. This decision cannot help the petitioners for the simple reason that in this case definite and specified shares were owned by the individuals whereas in the case before me, the learned counsel appearing for the petitioners could not lay his hands on any material whatsoever in the record, despite grant of full opportunity more than once, to show that the petitioner had definite and specified share, rather it may be mentioned in all fairness to the learned counsel for the petitioners that he has categorically stated that at the time of joint purchase, the definite and specified shares were not mentioned in any of the sale deeds. He has however, relied upon the Revenue Records in which the name of all the four petitioners have been shown as holding one fourth share each, but those Revenue Records pertain to the year 1980. It is not shown as to how and on what basis such entries were made in the year 1980. Be that as it may, the thing is very clear that at the relevant time, when the Act came into force, there were no such entries in the Revenue Records and no one's share was either defined or specified at that stage. The argument of the learned counsel for the petitioners was that it was only a case of mistake that in the form No. 1 the word "Pedhi" was mentioned. Otherwise, neither the firm was registered nor any business was carried out in the name and style of any Firm and that the ingredients of "Partnership Firm" were lacking. The position, which emerges from the entirety of the facts available on record, is that the land was jointly purchased without defining or specifying the shares and, therefore, even if it is not taken to be a case of "Firm" in its strict sense of the term, it was certainly a purchase by association of the four persons and, therefore, they could not be entitled to claim one unit for each of them. Even otherwise, it is an admitted fact that only one single form No. 1 u/s 6 was filed for and on behalf of all the four. Had it been a case, in which each of the petitioner would be claiming his or her own share, each of them was under an obligation to file a separate Form u/s 6. Thus, I find that there is no contemporaneous evidence in this case or any other material, on the basis of which it can be said that each one of them had " his or her separate, definite and specified share so as to claim one unit for themselves for the purpose of assessment under the Act.

6. The learned counsel for the petitioners has placed strong reliance on provisions of Section 45 of the Transfer of Property Act and has argued that Section 45 raises a presumption of equal interest/share in immovable property transferred to two or more persons, when there is absence of evidence as to the interest in the fund, out of which the properties were purchased. This argument raised on behalf of the learned counsel for the petitioner may not detain me further for the simple reason that the Transfer of Property Act is a general law, which deals with the rights with regard to the transfer of property in general. So far as the written Land (Ceiling and Regulation) Act is concerned, it is a specific

enactment, having the meanings and definitions given in Section 2 thereof and all the materials ancillary or otherwise are to be decided on the basis of the words and terms as used in this Act and according to the provisions contained in this particular Act and such general presumptions with reference to the provisions of Transfer of Property Act cannot be imported for the purpose of deciding the rights and obligations of the declarants under the Act. It is the trite law that specific enactment would always prevail over the general law and, therefore, whenever the rights and obligations of the parties are considered under a special enactment, the concept from general law cannot be made use of and, therefore, the contention raised by the learned counsel for the petitioners offhand during the course of the argument with regard to Section 45 of the Transfer of Property Act has no force and the same is hereby rejected.

7. Lastly the learned counsel for the petitioners has argued that his second application moved u/s 20 of the Act is pending and no orders have been passed thereon and reference has been made by the petitioners to the application dated 1-9-83 moved in the Revenue Department. The contents of this Application dated 1-9-83 are reproduced as under:

(Vernacular matter omitted -- Ed.)

The learned A.G.P. has submitted that this application dated 1-9-83 is kept pending in the sense that no reply thereof might have been sent to the petitioners, but the contents of this application show that it was only in the nature of review of the earlier order dated 4-6-82 whereby the petitioners' application u/s 20 has been rejected. The argument of the learned counsel for the petitioners is that the petitioners' request u/s 20 deserves consideration in the light of the subsequent facts, which have become available inasmuch as at the time of the rejection of the earlier application u/s 20, the land in question was in residential area and, therefore, the application seeking exemption so as to put the land for the construction of the Cinema Theatre was refused, but later on this very land has been included in the commercial area and this notification including this land in the commercial area was issued on 16-9-83 by Urban Development Department of the Government of Gujarat under Gujarat Town Planning Act. Mr. Uraizee has submitted that even in the earlier application, the petitioners had mentioned that the land was in the commercial area and he has referred to page 57 of Annexure "H" dated 5-7-79 in Special Civil Application No. 654 of 1985, wherein it is clearly stated that Ahmedabad Municipal Corporation had informed the Government of Gujarat in Revenue Department that the land was covered under commercial zone as per their plan and yet the exemption was declined and the application was rejected on 4-6-82 vide Annexure "I". This argument was sought to be countered by Mr. Desai by saying that even if it is found that the petitioners had erroneously mentioned it to be included in the commercial zone in the earlier application Annexure "H" and may be that at that time the notification including this land in the commercial zone had not been issued, the fact remains that the Ahmedabad Municipal Corporation had informed

the Revenue Department that the land was covered under commercial zone as per the plans of the Town Planning Department. Moreover it is his argument that the application Annexure "H" dated 5-7-79 had been rejected on the sole ground that the land in question was in the residential area and the petitioners' case of hardship and other relevant factors u/s 20 had not been considered and that strictly speaking the application dated 5-7-79 had not been considered on merits. It was thrown out only on the ground that the land in question was in the residential area and, therefore, there is no question of putting this land to the use for the purpose of constructing a Cinema Theatre. He has submitted that the Notification including this land in the commercial zone was issued only in September 1983 and in September 1983 itself the petitioners had moved another application, which is still pending and no orders have been passed thereon and, therefore, the concerned authorities may be directed to consider the question with regard to exemption u/s 20 once again in the light of the subsequent facts. This contention raised by Mr. Desai has been opposed by Mr. Uraizee with reference to a decision of this court reported in 1988(2) G.L.H. 348 (Pujaji Dhulaji Thakor v. State of Gujarat). In this reported decision, petitioner's application for exemption had been partially allowed inasmuch as the exemption sought for was in respect of 10000 sq. yds. of land whereas the exemption had been granted to the extent of 4000 sq. yds. and the order of this partial exemption dated 10-1-79 had attained finality, which was not challenged before any authority whatsoever and, therefore, the fresh challenge resulting into the review application was not held to be maintainable, because that would have amounted to reversing or modifying the earlier order dated 10-1-79, which had already attained finality and the Court took the view that it would amount to circumventing, the provisions of law. When such orders are not revisable, the concept of acquiescence had been taken note of, coupled with the fact that the parties have taken advantage of the order with regard to 4000 sq. yds., which had been exempted by the very same order and the land had been utilised by the parties for the purpose for which it had been exempted. In the reported decision of Pujaji Dhulaji Thakor (supra) the Court has further given caution that it will be doubtful that such an order can be reopened even if there be any fresh material and if such a course is permitted, it would amount to circumventing the provisions of law and such a course cannot be permitted to be taken in a petition under Articles 226/227 of the Constitution of India. I have considered the submissions of both the sides. The learned A.G.P. may be right in contending that such matters cannot be sought to be reopened to fresh challenge in the name of revision application and it has been rightly held in the decision, as aforesaid, that the provisions of law cannot be allowed to be circumvented and the orders, which have attained finality cannot be allowed to be challenged on the grounds which were very much available with the land holder the case at hand is not even a case of any fresh material on the basis of which the review is sought. It is not a case in which any such material which was already existing prior to the rejection of the earlier application on 4-6-82 that the petitioners have moved the second application in September, 1983. As a matter of fact, it is a case of subsequent

development and change and not a case of placing reliance on any fresh material, which, though available prior to the passing of the earlier order, has now been discovered so as to make the basis of review. It is an undisputed fact that the Notification including the land in question as commercial zone was issued in September 1982, whereas the earlier application had been rejected in the year 1982. In the earlier application even the petitioner had mentioned that it was in the commercial zone, such mention was found to be factually incorrect and, therefore, the application was rejected on the ground that the land in question was in residential zone and it also appears that only for this reason, the concerned authority while dealing with the petitioner's application u/s 20 did not go into the other relevant considerations contemplated u/s 20 of the Act, Therefore, the decision in Pujaji Dhulaji Thakor (supra) relied upon by the learned A.G.P. is distinguishable on facts and I find that the petitioners have claimed exemption through application Annexure "H" on 5-7-79 on more than one grounds and it has also been submitted by the learned counsel for the petitioners that the permission has been granted by the Police Commissioner for constructing the Cinema Theatre way back in August 1973, when this Act has not even come into existence. This shows that the petitioners were honestly intending to construct the Cinema Theatre thereon. Not only this; but on 28-6-76 the Revenue Department of the Government of Gujarat had replied that the master plan of Ahmedabad had not yet been approved and, therefore, the request for the approval of the plan for construction of Cinema House could not be considered at that stage and after approval of the master plan, application may be submitted afresh. The application Annexure "H" dated 5-7-79 shows that the master plan had been submitted by Ahmedabad Municipal Corporation to the Government for approval since long but it had not been finalised even after the lapse of five to six years. The petitioners have already spent Rs. 1,00,000/- for the purpose of proposed Cinema Theatre and on this basis a case of hardship was mentioned and the order dated 4-6-82 passed thereon shows that this application was rejected only on the ground that the land was in residential area. Now it is not in dispute that the notification including this very land in the commercial zone has been issued after the rejection of this application u/s 20 and the petitioners moved application in September 1983 on the basis of the subsequent fact, which came into existence only after the rejection of the earlier application and a specific mention has been made in the application dated 1-9-83 that "recently the land had been included in the commercial zone". For all these reasons, I find that the petitioners do have a case for getting the application dated 1-9-83 Annexure "K" adjudicated on merits by the concerned authority in the light of the points, which had not been dealt with coupled with the subsequent, fact, which came into being for the purpose of inclusion of this land in question in the commercial zone.

8. The upshot of the aforesaid decision is that while I do not find any basis in these Special Civil Applications for the purpose of interfering with any of the impugned orders and for all these purposes these Special Civil Applications fail

and are dismissed, but for the above limited purpose, these Special Civil Applications are partially allowed and the respondents are directed to decide the petitioners' application Annexure "K" dated 1-9-83 in Special Civil Application No. 654 of 1983 in the light of the observations made hereinabove and the question with regard to the exemption u/s 20 of the Act may be considered again in accordance with law and for that purpose, it will be open for the petitioners to raise all the objections before the concerned authority and the concerned authority shall decide this question with regard to the exemption u/s 20 of the Act de novo within a period of three months from the date the writ is served upon the concerned authority. These Special Civil Applications, therefore, partially succeed and the Rule is made absolute in all these Special Civil Applications to the extent indicated above. Interim relief automatically stands vacated in all these special Civil Applications No order as to costs in all these Special Civil Applications.