(2001) 12 GUJ CK 0052

In the Gujarat High Court

Case No : Special Civil Application No 1273 of 1987

Nutan Saurashtra Engineering Works APPELLANT

Vs

Govt. of Gujarat RESPONDENT

Date of Decision : 18-12-2001

Acts Referred:

Citation : (2001) 12 GUJ CK 0052

Hon'ble Judges : Kundan Singh, J

Bench : Single Bench

Advocate : J.R. Nanavati for J.D. Ajmera, for the Appellant; M.I. Hava, for Respondents No. 1-3 and B.Y. Mankad, AGP, for the Respondent

Final Decision : Allowed

Judgement

Kundan Singh, J.—This petition has been filed for quashing an setting aside the orders passed by the respondents no. 2 and 3 at Annexures - B and Annexure-D to the petitioner respectively and also for declaring that the petitioner is not holing any excess land than the prescribed by the (Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred as the ULC Act.

2. It is also stated that the petitioner is a registered partnership firm having two partners in the partnership firm namely Pranlal Tribhovandas Khara and Virendra Pranlal Khara. The petitioner firm purchased the land bearing Survey No. 401 admeasuring 2652-1 sq. mtr. situated at Umakant Udyognagar Plot No. 12, Rajkot and that land belongs to the partnership firm and that was for the industrial purpose to start the industry and to construct a shed. The petitioner firm filled in form u/s 6 (1) of the ULC Act. Before the respondent no. 3 it was urged that initially there were six partners in the petitioner firm and each of the partners is entitled to hold vacant land to the extent of 1500 sq. mtr.. As such, there is no excess land. The property of the partnership firm cannot be assessed as one unit and individual share of the partners of the petitioner firm should also be take into account and it should be assessed accordingly. The respondent no.3 held that the land to the e extent of 1152-20 sq. mtr.is in excess and ordered to

vacate the specified portion of the land. The petitioner firm filed an appeal before the Tribunal wherein it was pointed out that one of the partners Pranlal Tribhovanas Khara had filed in his form in his individual capacity and his case was disposed of by ULC 6 (1) 2154 dated 8-9-1982 and by the said order, the land admeasuring 795-66 sq. mtr. has been included in his holding of the land in question of the firm. The respondent no. 2 dismissed the appeal. Hence, this petition has been filed against the orders passed by the lower authorities - respondents no. 2 and 3.

3. It is stated that when form was filled in by the respondent firm, there were 6 partners. But thereafter by the dissolution of the partnership deed dated 7-11-1980, the firm was dissolved and thereafter there remained only 2 partners and outgoing partners were paid a sum of Rs.23,064/-. One partner of the petitioner firm was assessed in his individual capacity as he was holding some other land. The land admeasuring 795-66 sq. mtr.. belonging to his share from the land in question has already been assessed in his individual capacity. It is also stated that in view of the provisions of the ULC Act, the same land cannot be assessed twice. As such, the respondent authorities have committed an error parent on the face of the record of the case on the ground that Section 4(5) of the ULC Act the authority concerned is required to take into account vacant excess land held by any person. Where any partnership firm or union corporate association or body of individuals holds vacant lands or holds any other land on which there is a building with a dwelling - unit therein or holds both vacant land and such other 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 or association or body shall also be taken into account in calculating the extent of vacant land held by such person.

4. The authorities have committed an error in holding that the firm''s property will be deemed to be one unit after excluding 1500 sq. mtr. and remaining land will be deemed to be excess land. As such, the orders passed by the lower authorities - respondents no. 2 and 3 require to be quashed and set aside by this Court.

5. In the counter affidavit filed on behalf of the respondent no. 3 it is stated that on verification of the file, the competent authority has passed the order declaring the land excess admeasuring 1152.20 sq. mtr. vide order dated 12-8-1983 and the appeal was also filed against that order and the same was rejected on 10-10-1986. The notification u/s 10 (1) has been issued on 13-11-1986 which has been duly published in Government Gazette. 27-11-1986. Thereafter, the notification u/s 10(3) of the ULC Act was issued and the same was published in the Govt. Gazette on 29-1-1987. The notice u/s 10 (5) of the ULC Act was issued on 9-3-1987. It is also stated that the Government of Gujarat issued GR dated 7-4-1986 whereby the Government of Gujarat created separate and additional establishment for taking possession of the excess vacant lands and its consequential allotment in six Urban agglomerations under the ULC Act. By

virtue of the said GR necessary posts in the rank of Dy. Collector, Mamlatdar, Dy. Mamlatdar and Maintenance Surveyors were created in Ahmedabad, Baroda, Surat and Rajkot for taking possession of the excess vacant land as vested in the Government in pursuance of the notification issued u/s 10 (3) of the ULC Act. The Government of Gujarat have delegated the powers to the Dy. Collector, Mamlatdar, Dy. Mamlatdar and Maintenance Surveyor to take possession of excess vacant land as vested in the Government under the ULC Act. The possession of the property was taken by the Mamlatdar and that is legal, just and proper and is in accordance with law. Hence, the possession of the excess land taken over by the Mamlatdar is in accordance with the power delegated by the Government of Gujarat. It is also made clear that the possession of the excess vacant land was taken over by the Mamlatdar on 6-9-1991 in accordance with the provisions of law. This Court has held in Special Civil Application No.6854/94 vide order dated 9-7-2001 that the Incharge Mamlatdar is authorised for taking over the possession of excess vacant land. After taking possession of the excess vacant land, necessary mutation Entry No.. 220 was entered in the revenue record on 1-4-2000 maintaining the name of the Government as owner and possession of the said land the said entry was certified by Additional Mamlatdar, Rajkot City on 31-8-2000 and the possession of the excess vacant land of the petitioner is still with the Government from 6-9-1991 till the date and even as on the date of coming into force of the Repeal Act, 1999 also the possession of the excess vacant land is with the Government. As such, the petition is not maintainable and is required to be dismissed.

6. Rejoinder affidavit has been filed by the petitioner stating therein that the petitioner firm was given a notice for recovery of land revenue for a period from 1-8-90 and the said amount has been paid by the petitioner on 20-3-1991 and physical possession of the excess vacant land has not been taken over by the prescribed authority as alleged in the counter affidavit. Similarly, the notice was gain issued for recovery of the land revenue dated 4-12-1992 and that was paid by the petitioner. City Mamlatdar, Rajkot has issue the notice on 21-2-2000 asking the petitioner to pay the amount of Rs. 5,085/- towards the outstanding dues of land revenue. The petitioner has paid the same on 24-3-2000. The copy of the statement showing surplus land under the ULC Act in possession of the State Government since the year 1976 till 30-3-1999 has been placed on the record of this case and the said statement shows that the open land with encroachment of which the possession has been taken over i.e. nil and disposal of land of vacant land till 30-3-99 is also nil. Available open land for disposal as on 30-3-99 is also nil. It is also asserted that originally there were six partners of the partnership firm and Pranlal Tribhovandas had 30% share while the other partners i.e. partners respondents no. 2, 3, 4 and 5 had only 12 1/2 % share and 6th partner had 20% share in the property. As such, the remaining five partners have also interest in the land in question and they have never issued any notice nor they were heard at any point of time. Therefore, the proceedings and orders against other partners of the partnership firm are illegal and null and

void.

7. This Court passed the order to issue notice and status-quo was directed to continue vide order dated 3-4-1987. The petition was dismissed for default on 25-9-1990 and the same was restored by the order dated 23-12-1991. Once the matter has been restored to its original number, it would be deemed that the order of status-quo has also been restored and revived for all practical purposes.

8. I have heard the learned counsel for the petitioner at length and perused all the relevant papers.

9. Learned counsel for the petitioner contended that the notification u/s 10 (1) of the ULC Act was issued on 13-11-1986. Thereafter, the notification u/s 13 (3) of the ULC Act was issue don 29-12-1986. The notice u/s 10 (5) of the ULC Act was issued on 9-3-1987 to only one partner of the partnership firm. The other partners have not been issued notice. As such, on the ground of non-service of the notice to the other partners, the proceedings are vitiate and are not maintainable at law and are not sustainable in the eye of law. On 6-9-1991, the possession of the land is said to have been taken without issuing any notice u/s 10 (5) of the ULC Act. No portion of the land was taken into possession. In Columns No. 7 (A), 7 (B) of the aforesaid statement at page No. 56 showing declared surplus land under ULC Act in possession of the State Government from 1976 till 30-3-1999. Learned counsel for the petitioner referred to the entries made in Columns No. 7(A), 7(B), 7(C), 8 and 9 to the effect that no land was taken in possession of the State Government. Hence, in Columns No. 7(A) and 7 (B) the land has been shown as nil an in Columns No. 8 an 9 also the land has been shown as nil.

10. On the contrary, the learned A.G.P. pointed out that though the possession of the excess vacant land was taken by the State Government. subsequently the possession was not restored and hence during pendency of the petition the matter was sub-judice an hence in Columns No. 7(C) land admeasuring 1152.20 sq. mtr. has been shown as under litigation and it also shows the date of physical possession i.e. 6-9-91. Learned A.G.P. also pointed out that the notice dated 10-3-1991 was issued by the respondent no.3 and the notices dated 14-12-1992 and 15-5-1995 are in respect of the land which was in possession of the petitioner firm. Therefore, it cannot be said that these documents pertain to the land which was excess vacant land and the possession thereof has already been taken over by he State Government. The notice for recovery of land revenue and education cess was issued and the amount towards land revenue and education cess has been deposited and that land is not excess vacant land which has also been taken over by the State Government. As such, according to learned A.G.P. none of the documents filed by the learned counsel for the petitioner refers to the excess land, the possession thereof was taken over by the State Government.

11. The next contention of the learned counsel for the petitioner is that the notice u/s 10 (5) of the ULC Act shows that the possession is to be taken by the

Dy. Collector who is authorised by the State Government. While, in the affidavit-in-reply filed by the respondent no.3 it is stated that the possession was taken by the Mamlatdar and the panchnama shows that the possession was taken over by the Deputy Collector. Second affidavit-in-reply shows that the possession was taken over by the State Government. Thus, it is not ascertained by the State Government that which of the authorities has taken over the possession of the excess vacant land of the petitioner firm. The notice u/s 10 (5) of the ULC Act was issued to only one partner at his residence and not to all the partners of the petitioner firm or at the place of the petitioner firm. As such, the notice u/s 10 (5) of the ULC Act would vitiate the entire proceedings. I have considered this argument. But I do not find any substance in this argument. Whenever any notice of proceedings is issued to any of the partner of partnership firm that it always deemed to be the proceedings within the knowledge of all the partners of the partnership firm of the petitioner. It cannot be said that it was an act of an individual person outside the partnership firm as all are the partners of the firm. As such, even the notice was issued to one of the partners of the partnership firm and that is sufficient in the eye of law to give notice to all the partners of the partnership firm and it is not require that all the partners of the partnership firm should be served with the notice u/s 10 (5) of the ULC Act. It is stated that the person who had taken over the possession has not filed any affidavit and it is not stated that they have gone at the site and got the possession in presence of the panchas. This argument has also been considered by me but I do not find any substance or merit in this argument in view of the fact that the notice was issued u/s 10 (5) of the ULC Act to one of the partners that will be deemed to be the notice to all the partners of the partnership firm. Secondly, even the person who had taken over the possession of the excess vacant land has not file any affidavit in this case. But from the facts and circumstances of this case, it appears that the possession was taken over by some authority i.e. Mamlatdar or Dy. Collector or by the State Government on 6-9-1991. At the time when the petition was dismissed for default and the same was restored on 23-12-1991 the information was issued to the petitioner on 8-10-1991 after taking the possession of the excess vacant land and the petitioner was informed to appear before the authority on 28-10-1991 for award of amount of the property. The son of the petitioner received the notice date 8-10-1991 and made a statement on 28-10-1991 that they stated they will not accept any any amount of the surplus land. They are not in knowledge that this writ petition has been dismissed and they will take future action for filing the matter before the Division Bench of this Court and the application for restoration being M.C.A. No. 1532/91 was filed wherein it is stated that the petitioner got information from the notice dated 8-10-1991 that the petition has been dismissed in default on 25-9-1990 and they have given certain reasons for restoration of the petition. Actually, the petition was restored to the file at its original number on 23-12-1991. Thus, it cannot be said that the possession of the excess vacant land was not taken on 6-9-1991 by the notice dated 8-10-1991. the information was receive by the petitioner firm that the petition has been dismissed in default and possession has been taken on

6-9-1991. Thus, even some irregularities have taken place in the proceedings for taking the possession of the land in dispute. But it cannot be said that the possession of the land in question of the petitioner firm was not taken by the State Government.

12. Lastly, the learned counsel for the petitioner contended that the provisions of Repeal Act u/s 6 of the Principal Act will not be affected in respect of the vesting of any excess vacant land u/s 10(3) of the ULC Act, the possession of which has been taken over by any person duly authorised by the State Government or on behalf of the competent authority of the State Government. As such, where the property has been taken over u/s 10(3) of the Act by the State Government, the provisions will not be applicable of Repeal Act 1999.

13. On the basis of the merits, the contention of the learned counsel is that one of the partners of the petitioner''s partnership firm filled in the form u/s 6(1) of the ULC Act in individual capacity and the authority wherein the petitioner has disclosed his share of the property of the partnership firm as 795.66 sq. mtr. and that has been accepted by the authority concerned. If one of the partner of the partnership firm has share of 795.66 sq. mtr. then remaining part of the land will go to the other partners of the partnership firm and each of the partners of the partnership firm will be deemed to be one unit for the property on the basis of the provisions of Section 4(5) of the ULC Act, wherein it is provided that where any firm or incorporated association or body of individuals holds vacant land or holds any other land on which there is a building with a dwelling unit therein or holds both vacant land an such other 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 or association or body shall also be taken into account in calculating the extent of vacant land held by such person. The property of the partnership firm at the time of commencement of the ULC Act came into share of six partners of the partnership firm. As such, even the property of one partner of the partnership firm is excluded as mentioned by the competent authority, the remaining portion of the land will be less than the required excess vacant land to be taken from the partnership firm. I have considered this argument also. Thus, the provisions of Section 4(5) of the Act makes it clear that the share of partner of the partnership firm regarding vacant land shall also be taken into account in calculating the extent of vacant land held by such person. As such, on the basis of the statutory provisions of law, it is clear that the property of the partnership firm will be deemed to be property of each individual and share therein of each partner will be considered for taking into account in calculating the extent of vacant land. Thus, the provisions of Section 4(5) of the ULC Act make it clear that the property of the partnership firm will not be deemed to be one unit for the purpose of calculating extent of vacant land under the ULC Act. Thus, all the authorities have committed error on the face of the record in holding that the partnership firm''s property will be deemed to be one unit and the share of the partners of the partnership firm will not be taken into account. It is pointed out that one of the partners of the

petitioner firm has been given 795.66 sq. mtr. as share vide order dated 8-9-1982, the remaining property of the land would be the property of the rest of the partners of the petitioner firm. It appears from the calculation that after dividing the share of other partners of the petitioner firm would less for declaring excess land out of the entire property of the partnership firm. The excess land taken over in possession by State Government has not been used for any purpose by the State Government.

14. Considering the facts and circumstances of the case, material on record and the submissions made by the learned counsel for the parties, the impugned orders passed by the respondent no. 2 and 3 Annexure-B and D respectively are illegal and are not sustainable in the eye of law and are not in consonance with the statutory provisions of law. Therefore, this petition deserves to be allowed. Accordingly, this petition is allowed and the impugned orders passed by the respondents no. 2 and 3 Annexure - B and D respectively are quashed and set aside. The State Government is directed to forthwith hand over the possession of the disputed land to the petitioner firm if the land is in possession of the State Government. Rule is made absolute to the aforesaid extent, with no order as to costs.