

(1994) 01 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 4468/87

Parmanand Vadilal Vasani and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-01-1994

Acts Referred:

Constitution of India, 1950 — Article 227

Partnership Act, 1932 — Section 45, 46, 48, 69

Urban Land (Ceiling and Regulation) Act, 1976 — Section 6(1), 8, 8(3), 8(4)

Citation : AIR 1994 Guj 206 : (1994) 2 GLR 1634

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Advocate : A.J. Patel, for the Appellant; D.C. Dave, Asst. Govt. Pleader, for the Respondent

Judgement

A.N. Divecha, J.—The order passed by the Competent Authority at Bhavnagar on 7th July, 1984 u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Ceiling Act" for brief) as affirmed in appeal by the common order passed by the Urban Land Tribunal ("the Appellate Authority" for convenience) on 26th May, 1987 inter alia in Appeal No. Bhavnagar-1318 of 1984 is under challenge in this petition under Art. 227 of the Constitution of India. By his impugned order, the Competent Authority declared the holding of the petitioners to be in excess of the ceiling area by 4749.69 square meters.

2. The dispute arising in this petition centres round four parcels of land bearing Plots Nos. 865 admeasuring 1071.24 square metres, 886 admeasuring 1003.35 square metres, 888 admeasuring 1449.01 square metres and 1300 measuring 836.13 square metres situated in Bhavnagar ("the disputed lands" for convenience). The aforesaid block of four lands was taken on lease for 99 years by the deceased father of the petitioners along with one Nandlal Prabhudas sometime in 1954. A copy of the necessary communication in that regard is at Annexure A to this petition. The terms of the partnership between the father of the petitioners and said Nandlal Prabhudas were not reduced to writing. The

father of the petitioners herein breathed his last sometime, on 23rd August, 1973. Since there were only, two partners in the partnership firm and since one partner died leaving behind only one partner in the partnership firm and since there cannot be a partnership firm of only one partner according to, law, the partnership in question automatically stood dissolved on the death of the father of the present petitioners. It is the case of the petitioners that both the partners in the said partnership firm had equal share and the leasehold rights in the disputed lands were inherited by the branch of the deceased partner and the other partner in equal share. On coming into force of the Ceiling Act, the petitioners were required to file the required form u/s 6(1) thereof. Both the petitioners filed their separate forms for the purposes of the Act. So far as the disputed lands are concerned, each petitioner showed his 1/3rd share in 50% thereof. In other words, each petitioner showed his 1/6th share in the disputed lands along with his other properties. On the basis of the aforesaid form, one draft statement was prepared by the competent authority and served to the petitioners and their mother as the heirs and legal representatives of their deceased predecessor-in-title. Its copy is at Annexure C to this petition. On behalf of the petitioners, a reply thereto was filed on 17th October, 1981. Its copy is at Annexure D to this petition. It appears that in the meantime the other partner of the deceased father of the petitioners also breathed his last. He was survived by his own heirs and legal representatives. They appear to have formed one partnership firm in the name and style of Gokuldas Prabhudas & Bros. After the reply at Annexure D to this petition was received by the competent authority, it appears that another draft statement was prepared treating the disputed lands as belonging to the heirs of both the partners of the dissolved partnership firm in their capacity as an association of persons. That draft statement was served to the petitioners as well as the partnership firm formed by the heirs and legal representatives of the other partner as required by Section 8(3) of the Ceiling Act. Its copy is at Annexure E to this petition. On behalf of the petitioners, the necessary objections were raised. A copy of their objections is at Annexure F to this petition. Strangely enough, the competent authority thereupon registered in all five cases on the basis of the reply at Annexure F to this petition. One case was registered even against the father of the petitioners though he was no longer alive on the appointed day for the purposes of the Ceiling Act. By his common order passed on 7th July, 1984 in the aforesaid cases, the competent authority came to the conclusion that the disputed lands belonged to the heirs and legal representatives of both the partners of the aforesaid dissolved firm in their capacity as an association of persons and they would be entitled to only one single unit under the Ceiling Act for holding the vacant land. In that view of the matter, he came to the further conclusion that the holding of the petitioners was to the tune of 6749.69 square metres and it was in excess of the ceiling area by 4749.69 square metres. A copy of the aforesaid common order passed by the competent authority on 7th July, 1984 is at Annexure G to this petition. The aggrieved petitioners carried the matter in appeal before the appellate authority by means of their Appeal No. Bhavnagar-1318 of 1984. It was heard along with

another appeal bearing No. Bhavnagar-1293 of 1984. By the common order passed in the aforesaid appeals on 26th May, 1987, the appellate authority dismissed both the appeals, Its copy is at Annexure H to this petition. The aggrieved petitioners have thereupon moved this Court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the impugned order at Annexure G to this petition as affirmed in appeal by the appellate order at Annexure H to this petition.

3. It appears that the competent authority remained totally ignorant of the relevant provisions contained in the Indian Partnership Act, 1932 ("the Partnership Act" for brief). The position of law emerging therefrom would be that, when a partnership consists of only two partners, on the death of either partner, the firm automatically stands dissolved as there could not be a partnership with only one person as a partner. No authority is needed for this proposition of law based on the first principle of the law of partnership. If one is needed, a reference may be made to the binding ruling of the Supreme Court in the case of Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, . This aspect of the law of partnership was lost sight of by the competent authority. If he had kept this aspect of the law of partnership in mind, in view of the relevant provisions contained in Sections 46 and 48 of the Partnership Act, he would not have hesitated in coming to the conclusion that, on dissolution of the firm, the partnership assets would devolve upon its partners or the representatives of the partners as tenants-in-common. It would mean that each person getting his or her share in the partnership assets would be getting his distinct share therein even if the partnership assets remain undivided.

4. The appellate authority appears to have misdirected himself by erroneously holding that, since the partnership was not registered under the Partnership Act, its existence could not be recognised. I wish the appellate authority had kept in mind the relevant provisions contained in Section 69 of the Partnership Act before reaching such erroneous conclusion. It is needless to say that registration of a partnership firm thereunder is not compulsory. Such registration enables the partnership firm to file a suit with respect to certain transactions connected with the contract with the partnership firm as mentioned therein. An unregistered firm will not be in a position to file such suit. Non-application of mind on the part of the appellate authority in that regard has resulted in an erroneous conclusion that the existence of a partnership firm cannot be taken note of in absence of its registration. Taking into consideration the reasoning reflected in both the impugned orders at Annexures F and G to this petition, there is no hesitation in coming to the conclusion that both the authorities remained totally oblivious to the law of partnership as in force in this country. They have thereupon decided the case of the petitioners dehors the law applicable in the instant case.

5. It is not in dispute that the other properties where the petitioners have their share were constructed properties prior to the appointed day for the purposes of

the Act. They will have to be excluded from the purview of "vacant land" as defined in Section 2(q) of the Act in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta Vs. State of West Bengal and others, . The disputed lands in all admeasured 4359.73 square metres. The deceased father of the petitioners was survived by the petitioners and their mother. They will be the heirs falling in Class I in the Schedule appended to the Hindu Succession Act, 1956, and as such they would inherit the property of the deceased in equal share. As pointed out hereinabove, the father of the petitioners had only 1/2 share in the partnership assets. The one-half of the area of the disputed lands would therefore come to 2179.98 square metres approximately. Each petitioner and the mother of the petitioners will have the 1/3rd share therein. Such 1/3 share would come to roughly 725 square metres approximately. This was very much within the ceiling limit fixed for that area under the Act.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure G to this petition as affirmed in appeal by the appellate order at Annexure H to this petition qua the present petitioners cannot be sustained in law and deserves to be quashed and set aside.

7. In the result, this petition is accepted. The common order passed by the competent authority at Bhavnagar on 7th July, 1984 u/s 8(4) of the Ceiling Act at Annexure G to this petition as affirmed in appeal by the common order passed by the Urban Land Ceiling Tribunal at Ahmedabad on 26th May, 1987 inter alia in Appeal No. Bhavnagar-1318 of 1984 at Annexure H to this petition is quashed and set aside. It is hereby declared that the holding of each petitioner herein was not in excess of the ceiling limit for the purposes of the Ceiling Act. Rule is accordingly made absolute with no order as to costs.