(2003) 03 GUJ CK 0035

In the Gujarat High Court

Case No : Letters Petent Appeal No. 123 of 2000 in M.C.A. No. 208 of 200 with Spl. C.A. No. 1939 of 1988

Ramanbhai B. Patel and Others APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:
Bombay General Clauses Act, 1904 — Section 3, 3(35), 8
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 2(21), 6(2)

Citation : (2003) 2 GLR 1522

Hon'ble Judges : D.S. Sinha, C.J;J.M. Panchal, J

Bench : Division Bench

Advocate : S.B. Vakil, for the Appellant; Premal R. Joshi, A.G.P., for the Respondent

Final Decision : Partly Allowed

Judgement

J.M. Panchal, J.—By filing instant appeal under Clause 15 of the Letters Patent, the five appellants claim that the order and judgment dated

December 30, 1999 passed by the learned single Judge in Special Civil Application No. 1939 of 1988 remanding the matter to the Gujarat

Revenue Tribunal for deciding two questions, namely, whether the word ""person"" as defined in Gujarat Agricultural Lands Ceiling Act, 1960 (''the

Ceiling Act'' for short) includes ""association of persons"", and whether in absence of an application u/s 8 of the Ceiling Act, the appellants are

entitled to different units, as well as the decision dated February 23, 2000 rendered by the learned single Judge in Misc. Civil Application No. 208

of 2000 rejecting the prayer made by the appellants to review the judgment delivered in Special Civil Application No. 1939 of 1988, being illegal

should be set aside.

2. The relevant facts may be noticed in brief.

2.1 On September 15, 1969 an agreement was entered into between the appellants and their spouses for purchase and cultivation of agricultural

lands. It was provided therein that the division/partition of the lands to be purchased should be effected as early as possible. The said agreement is

produced at Annexure-D to the petition. The appellants were holding the following agricultural lands :

Village Taluka District Measurement

Acre Guntha

Madheli Vaghodia Vadodara 172 33

Vasad Anand Kheda 19 30

Chhotanagar Pavi-Jetpur Vadodara 5 36

Kasod Petlad Kheda 1 12

The lands situated at village Madheli were purchased in the names of 10 persons under different sale-deeds dated (1) September 14, 1970 which

is produced at Annexure-E to the petition, (2) April 29, 1971 which is produced at Annexure-F to the petition, (3) June 23, 1971 which is

produced at Annexure-G to the petition and (4) December 18, 1971 which is produced at Annexure-H to the petition. The above- referred to

lands of village Madheli were partitioned between the joint owners vide deed dated December 30, 1971 which is produced at Annexure-I to the

petition.

2.2 The Mamlatdar and A.L.T., Dabhoi, initiated proceedings u/s 20 of the Ceiling Act. He held that (1) the lands situated at village Vasad were

used for non-agricultural purpose before coming into force of the Ceiling Act, and were therefore, entitled to be excluded from computation, (2)

the lands situated at village Madheli were purchased by five appellants jointly and not by ten persons as claimed by the appellants, (3) the

agreement dated September 15, 1969 is genuine, (4) the total holdings of the appellants for the purpose of the Ceiling Act is 181 acres and 31

gunthas (5) the appellants are entitled to five units i.e. they are entitled to hold 180 acres of land, and therefore, land admeasuring 1 acre and 31

gunthas is liable to be declared as surplus under the Ceiling act. He, therefore, by his order dated April 30, 1983 held that the appellants were holding 1 acre and 31 gunthas of land as surplus land.

2.3 The Deputy Collector, Dabhoi, exercised powers of review conferred on him by Section 37 of the Ceiling Act. He held that all the appellants

were entitled to hold only one unit and not five units as held by the Mamlatdar and A.L.T., Dabhoi. He therefore, by his order dated August 23,

1984, held that the appellants are holding lands admeasuring 145 acres and 31 gunthas as surplus land.

2.4 Feeling aggrieved, the appellants invoked revisional jurisdiction of the Gujarat Revenue Tribunal by filing Revision Application No. TEN B.A.

1243 of 1984. The Tribunal dismissed the revision application by judgment dated December 24, 1987.

2.5 Thereupon, the appellants preferred Special Civil Application No. 1939 of 1988 before the High Court under Article 226 of the Constitution.

The learned single Judge, by judgment dated December 30, 1999, has set aside the decision of the Tribunal and remanded the matter to the

Tribunal for deciding the question whether the word ""person"" includes ""association of persons"" and in absence of an application u/s 8 of the Ceiling

Act, the appellants are entitled to different units.

2.6 The appellants were of the view that the remand was uncalled for, and therefore, submitted Misc. Civil Application No. 208 of 2000 for

review of the judgment delivered in Special Civil Application No. 1939 of 1988. The learned single Judge has rejected the same by order dated

March 23, 2000, giving rise to the present appeal.

3. We have heard Shri S. B. Vakil, learned Senior Advocate-appearing for the appellants and Mr. Premal Joshi, learned Assistant Government

Pleader appearing for the respondents, at length and in detail, and considered the documents forming part of the petition.

4. The question whether the word ""person"" includes ""association of persons"" is decided by the decision rendered by the learned single Judge in

Balu Rama Bhurada and Ors. v. State of Gujarat and Ors. 1994 (1) GCD 623 (Guj.), wherein it is held that the expression ""person"" in Section 6

of the Ceiling Act read with the word ""person"" defined in Sub-section (35) of Section 3 of the Bombay General Clauses Act, 1904, includes the

persons of a village within the meaning of Section 6 of the Ceiling Act. On remand, the Gujarat Revenue Tribunal will be confronted with the decision delivered by the learned single Judge which is referred to above and will have no option but to follow the same having regard to law of

precedent. The question whether the word ""person"" includes ""association of persons"" is a pure question of law and should have been decided by

the Court with reference to the statutory provisions and decided cases, if any. Further, the question whether in absence of an application u/s 8 of

the Ceiling Act, the appellants would be entitled to different units is also a pure question of law and depends upon the answer to the question

whether the word ""person"" includes ""association of persons"". In our view, the remand of the matter to decide two questions of law formulated by

the learned single Judge was not warranted in the facts of the case, and therefore, the decision rendered by the learned single Judge in Special Civil

Application No. 1939 of 1988 is liable to be set aside. As the judgment delivered in the main matter i.e. Special Civil Application No. 1939 of

1988 is liable to be set aside, the order dated March 23, 2000 rendered in Misc. Civil Application No. 208 of 2000, refusing to review judgment

delivered in Special Civil Application No. 1939 of 1988, would not survive and will have to be set aside.

5. In normal course, this Court would have remanded the Special Civil Application to the learned single Judge for deciding the same on merits

because the matter is not decided on merits by the learned single Judge. However, we notice that even the learned single Judge would be bound by

the decision rendered in Balu Rama Bhurada (supra), and if the same is followed, the matter would come up before the Division Bench by an

appeal which may be filed by the aggrieved party, and in case the learned single Judge differs with the view taken in Balu Rama Bhurada (supra), a

reference to the Division Bench may be necessitated. Thus, ultimately the Division Bench will have to deal with the matter on merits. Therefore, the

learned Counsel for the appellants has suggested that instead of remanding the matter to the learned single Judge for deciding the petition on merits,

the matter may be heard on merits by this Court and legality of the decision rendered by the Gujarat Revenue Tribunal be adjudicated upon. This

suggestion is accepted by the learned Assistant Government Pleader appearing for the respondents. Further, the matter is very old. Under the

circumstances, instead of remanding the petition to the learned single Judge, for being decided on merits, we propose to decide the Special Civil

Application on merits wherein the decision of the Gujarat Revenue Tribunal is challenged.

6. The contention advanced on behalf of the appellants that Section 2(21) of the Ceiling Act includes only joint family and would not include an

association or body of individuals cannot be accepted. It is to be noticed that the phrase employed by the Legislature is ""includes"". The word

includes"", when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their

natural import, but also those things, which the clause declares that they shall include. Thus, when the word ""includes"" is used, the definition is

extensive and not restrictive.

7. In Hasmukhlal Dahayabhai and Others Vs. State of Gujarat and Others, the Supreme Court was concerned with the question whether the

Ceiling Act violates second proviso to Article 31A(1) of the Constitution of India. While upholding the validity of the Ceiling Act, the Supreme

Court has noticed that the term ""person"" is not, strictly speaking, defined in the Act and Section 2, Sub-section (21) only clarities that the term

person"" will include a ""joint family"" also. What is emphasized by the Supreme Court is that it certainly does not exclude an individual from being a

person in the eyes of law. It is emphatically held by the Supreme Court therein that clarification of the term ""person"" has been done apparently to

make it clear that in addition to individuals, as natural persons, families, as conceived of by other provisions, can also be and are persons. It is

observed by the Supreme Court that there is no fixed concept of person anywhere and that the concept is wide so that it could be contended that

it should not be narrowed down or confined. On analysis of Section 6(2) of the Ceiling Act, the Supreme Court has held that the said section does

not either disable a husband or wife from owning or holding their separate properties separately, nor does it merge or destroy their separate legal

personalities, but it requires that their separate holdings to be grouped together as though they were held by one person only for the purpose of

determining the ceiling limit for each member of a family. It is explained by the Supreme Court that it may indirectly have the effect of disabling a

member of a family from holding land upto the prescribed ceiling limit for a person holding as an individual and the result is that such a member of a family will have to be content with a holding less than that of an unmarried individual. The Supreme Court has authoritatively ruled in the said

decision that Section 6(2) of the Act does not affect either the legal status or competence of persons who are grouped together for the purposes of

the Act, and there is no prohibition enacted by the second proviso to Article 31-A against different ceiling limits prescribed for various individuals

or classes of individuals differently situated.

8. Reliance placed on the decisions in (1) S. K. Gupta and Anr. v. K. P. Jain and Anr. AIR 1979 SC 734, (2) Regional Director, Employees''

State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, , (3) P. Kasilingam and others Vs. P.S.G.

College of Technology and others, and (4) Feroze N. Dotivalaq Vs. P.M. Wadhwani and Others, to contend that when the word ""include"" is used

by the Legislature, it shall include those things which are declared to be included and nothing else, and therefore, an association or body of persons

cannot be included in the definition of word ""person"" as given in the Ceiling Act, is of no avail. In the decisions which are relied upon by the learned

Counsel for the appellants it has been specifically held by the Supreme Court that the word ""include"" is very generally used in interpretation clauses

in order to enlarge the meaning of words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be

construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation

clause declares that they, shall include. The natural import of the word ""person"" has been interpreted by the Supreme Court in Hasmukhlal (supra),

wherein it is held that individuals and natural persons as well as families are covered within the word ""person"" and in view of inclusive definition of

word ""person"", it also includes joint family. Therefore, the Gujarat Revenue Tribunal did not commit any error in treating the appellants, who are

co-owners, as a ""person"" within the meaning of the Ceiling Act.

9. This question can be examined with reference to the provisions of Bombay General Clauses Act, 1904 also. Section 3 of the General Clauses

Act, 1904 defines certain words and phrases. The opening words of the said Section are very important. As per the opening words, the definition

of words given in Section 3 of the said Act would be applicable to the words used in the said Act and in all Bombay Acts or Gujarat Acts made

after the commencement of the Act, unless there is anything repugnant in the subject or context, Section 3, Sub-section (35) of the General

Clauses Act provides that ""person"" shall include any company or association or body of individuals, whether incorporated or not. It is not in

dispute that the Ceiling Act has been enacted after the commencement of Bombay General Clauses Act, 1904, and after Section 3 of the said Act

was amended by Gujarat A.O. 1960. Thus, by force of opening words of Section 3 itself, word ""person"" as defined in the Ceiling Act shall also

include any company or association or body of individuals whether incorporated or not. A conjoint and meaningful reading of the provisions of the

Ceiling Act with the provisions of the Bombay General Clauses Act, 1904, in no uncertain terms establishes that the word ""person"" would mean

not only such things as it signifies according to its natural import, but also includes any company or association or body of individuals, whether

incorporated or not as provided in Section 3(35) of the Bombay General Clauses Act, 1904, and also a joint family as provided in Section 2(21)

of the Ceiling Act. In M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, , the Supreme Court noticed that the expression ""person

as defined in Section 2(9) of the Indian Income Tax Act, 1922 included a Hindu undivided family and a local authority, and has while construing

said expression, ruled that, when the definition is inclusive, resort may appropriately be had to the general clauses Act to ascertain the meaning of

the expression ""person"" In the said decision it is held that a firm is a ""person"" within the meaning of Income Tax Act. The plea based on the

decision of the Supreme Court in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, that resort to the Bombay General

Clauses Act should not be made as the definition of the word ""person"" occurring in Section 3(35) of the said Act is repugnant to the subject of

Ceiling law, has no merits. In Dulichand (supra) the Supreme Court had occasion to consider the question whether a partnership purporting to be

one between firms, a Hindu undivided family business and an individual as a firm required registration. It was noticed that the word ""persons"" in

Section 4 of the Partnership Act contemplated only natural or artificial i.e. legal persons and a firm is not a ""person"". Therefore, it has been held that to import the definition of the word ""person"" occurring in Section 3(42) of the General Clauses Act, 1897 into Section 4 of Partnership Act is

not proper as it is totally repugnant to the subject of partnership law. In our view, reading of the definition of the word ""person"" occurring in

Section 3(35) of the Bombay General Clauses Act, 1904 into Section 2(21) of Ceiling Act is not repugnant to the subject of Ceiling law, but is in

consonance with the avowed object of the Ceiling Act. Further, definitions contained in the General Clauses Act are intended for proper

interpretation of all Gujarat Acts made after the commencement of that Statute and the terms defined by that enactment will have the same

meaning, in all subsequent enactments which employ that term, unless there be something inconsistent or repugnant to the context in the latter Act.

Therefore, Section 3(35) of the Bombay General Clauses Act, 1904, would be applicable to the Ceiling Act because it could not be successfully

pointed out on behalf of the appellants that there is anything repugnant in the subject or context of the Ceiling Act. To constitute a person, the

person must be recognised by the State as a person and should be capable of rights and liable to duties. These two elements i.e. capacity to

possess rights and subjection to obligations and duties are matters of legislative results. Further, ""Body of persons"" would mean an aggregate of

individuals or groups and when two or more individuals voluntarily combine together for a certain purpose, ""an association of persons"" is formed.

Tested on this basic juristic approach, an association or body of persons known as co-owners will have to be regarded as a person within the

meaning of Section 2(21) of the Ceiling Act, because co-owners are recognised by law and they have capacity to possess rights and are subject to

obligations and duties. In Agrawal Trading Corporation and Others Vs. The Collector of Customs and Others, , it is held by the Supreme Court

that a firm is to be treated as a person within the meaning of Section 8 of the Foreign Exchange Regulation Act and Sections 167(3)(8) and (37) of

the Sea Customs Act by having recourse to Section 3(42) of the General Clauses Act. Thus, in our view, the word ""person"" comprehends

according to its natural import ""individuals"" as explained by the Supreme Court in Hasmukhlal (supra) and an association or body of persons as

defined in Section 3(35) of the Bombay General Clauses Act, 1904 and also a joint family. Under the circumstances, the view taken by the

Gujarat Revenue Tribunal deserves to be affirmed.

10. There is yet another angle of the matter which deserves specific mention. Section 13 of the Bombay General Clauses Act, 1904 inter alia

provides that words in singular shall include the plural and vice versa. In order to get its true import, it is necessary to view the enactment in

retrospect, the reasons for enacting, the evils it was sought to end, and the objects it was to subserve. Viewed in this perspective, we find that the

principle that singular shall include the plural must be applied to the word ""person"" as defined in Section 2(21) of the Ceiling Act. When a provision

is drafted in singular that does not mean a different intention has been expressed for not including plural. In Jaganath v. Parshottamdas 1967 GLR

9, it has been held by this Court that the word ""Councillor"" in Section 14 of the Gujarat Municipalities Act, 1963 includes ""Councillors"". Again in

Nathu Vs. State, and in Moti Lal Vs. The State, it has been held that Section 27 of the Evidence Act does not exclude the interpretation as to

plurality of information received from persons accused of any offence. After making resort to the provisions of General Clauses Act, 1897 it has

been held that the word ""person"" in singular includes plural. What is important is that in Wealth Tax Officer, Calicut Vs. C.K. Mammed Kayi

(since deceased) through his Lrs, Shri T.M. Pocker and Others, the word ""individual"" under Wealth Tax Act, 1957 is held to include group of

persons. Thus, applying the well settled principle of interpretation of statute, namely, singular shall include the plural, to the provisions of the Ceiling

Act, we find that the word ""person"" as defined in Section 2(21) would include ""persons"" who are not related to each other, but who form an

association or body for a purpose. On the basis of this reasoning also the decision of the Gujarat Revenue Tribunal will have to be upheld.

11. For what has been stated above, we are of the opinion that the Tribunal did not commit any error in upholding the decision of the Deputy

Collector by which the appellants, who are co-owners, have been held to be entitled to hold one unit. As we have held that the appellants who are

co-owners are included in the definition of word ""person"", the partition of the lands situated in village Madheli by deed dated December 30, 1971

will have to be regarded as having been made in anticipation in order to defeat the object of the Ceiling Act as provided in Section 8 of the said

Act and of no consequence. The Special Civil Application, is therefore, liable to be dismissed.

12. For the foregoing reasons, the appeal partly succeeds. The judgment dated December 13, 1999, rendered in Special Civil Application No.

1939 of 1988 is quashed. So also, the order dated March 23, 2000 passed in Misc. Civil Application No. 208 of 2000 which was filed in Special

Civil Application No. 1939 of 1988 is quashed. Special Civil Application No. 1939 of 1988 is dismissed and rule is discharged. The judgment

dated December 24, 1987, rendered by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A. 1243 of 1984 is confirmed. Appeal

stands allowed only to the extent indicated hereinabove. There shall be no order as to costs all throughout.

At this stage, Mr. S. B. Vakil, learned Senior Advocate appearing for the appellants, prays that interim relief granted earlier be continued for a

period of two months in order to enable the appellants to approach higher forum. Having regards to the facts of the case, interim relief granted

earlier is directed to ontinue for a period of two months from today.

