

(2008) 02 SC CK 0122

In the Supreme Court Of India

Case No : Civil Appeal No. 4420 of 2004

Ramanlal Bhailal Patel and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(35)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63, 63(1), 84C
Citizenship Act, 1955 — Section 2
Gujarat Agricultural Lands Ceiling (Amendment) Act, 1

Citation : AIR 2008 SC 1246 : (2008) AIRSCW 1257 : (2009) 2 ALT 7 : (2008) 3 CLT 80 : (2008) 1 GLH 749 : (2003) 23 GLH 329 : (2008) 3 GLR 1841 : (2008) 2 JT 222 : (2008) 2 MLJ 1042 : (2008) 5 SCC 449 : (2008) 1 Supreme 722

Hon'ble Judges : R. V. Raveendran, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, Ajay Kumar Jha, Shakun Tiwari, Ranjeeta Rohtagi, Kunal Verma, Arjun Garg, M. Mannan and Rajul Shrivastava, for P.H. Parekh and Co, for the Appellant; R.P. Bhat Hemantika Wahi and Pinky Behera, for the Respondent

Final Decision : Disposed Of

Judgement

R.V. Raveendran, J.—This appeal by special leave, against the judgment dated 4.3.2003 passed by the Gujarat High Court in L.P.A. No. 123 of 2000, relates to the interpretation of the word 'person' in the Gujarat Agricultural Lands Ceiling Act, 1960 ('Ceiling Act' for short).

The Facts:

2. The five appellants along with their respective spouses purchased 172 acres and 36 guntas of agricultural land in Madheli village under four sale deeds dated 14.11.1970 (128A, 26G), 29.4.1971 (26A, 37G), 23.6.1971 (10A, 14G) and 18.12.1971 (6A, 39G) for a total consideration of Rs.46,300/-. Before such purchase, the ten purchasers entered into an agreement dated 15.9.1969 proposing to purchase about 175 acres of land in their joint names and recording

the conditions subject to which they proposed to purchase such land. The reason stated in the agreement for the joint purchase, was to avoid each of them having to individually negotiate and enter into separate agreements with several owners of the lands. They agreed that one of them would be authorized to hold negotiations and go through the procedural requirements for the purchase; and that after purchasing the land in their names, they would divide the lands equally as early as possible. They also agreed that there will be no collective or joint cultivation of the lands proposed to be purchased by them.

3. After the purchase of the lands, the ten purchasers entered into another agreement on 30.12.1971 recording that the total sale price of Rs.46,300/- was paid equally by all of them. The said agreement also recorded the division of 172A, 36G of land purchased by them into ten portions among them. Under the said agreement, they also agreed to get their names registered in the Land Revenue Records as per the division. Subsequently, on their applications, Mutation Entry No. 1371 dated 25.2.1976 (duly verified and approved on 19.4.1976) was made showing each co-owner as the separate owner of the lands respectively allotted to him/her, vide Hak Patrak (Village Form No. 6), issued by the Land Revenue authorities.

The Proceedings:

4. The Mamlatdar issued a notice dated 5.11.1976 u/s 20 of the Ceiling Act to the co-owners seeking particulars of the lands held by them, to determine whether they held any surplus land. After considering their statements, he passed an order dated 30.4.1983. He held that the total land held by them was 182 A. 23 Guntas; that when the lands were converted into 'C' Class category, the extent was 181A, 31G; that each couple (husband and wife) were together entitled to one unit (36 acres of 'C' category land); and that therefore the five couples (the five appellants with their spouses) were entitled to hold five units, that is, 180 acres. Consequently, he made a declaration u/s 21 of the Ceiling Act, that the surplus holding was 1 acre, 31 guntas and that such surplus land (in Sy. No. 643/43 in Madheli) shall vest in the Government.

5. The Deputy Collector, Dabhoi, in exercise of suo motu power of revision u/s 37 of the Ceiling Act, issued a show cause notice dated 3.5.1984 to the appellants, being of the view that the determination of surplus land by the Mamlatdar was contrary to the provisions of the Ceiling Act. After hearing, he passed an order dated 23.8.1984 holding that a group of persons or association of persons purchasing agricultural land together, had to be treated as 'a person' under the Act and therefore they could jointly hold only one unit (36 Acres) in view of the provision of Section 6(1) of the Ceiling Act. As a consequence, he determined the surplus land as 145 A, 31G and directed the Mamlatdar to obtain selection of the land to be surrendered. The said order was challenged by the appellants before the Gujarat Revenue Tribunal, by invoking its revisional jurisdiction. The Tribunal, by its judgment dated 29.12.1987, upheld the decision of the Deputy Collector, by applying the definition of 'person' in the Bombay General Clauses Act, 1904,

to the word 'person' in the Ceiling Act.

6. The appellants challenged the order of the Tribunal before the Gujarat High Court. A learned Single Judge by order dated 30.12.1999 allowed the petition and remanded the matter to the Revenue Tribunal to decide whether the definition of 'person' in the Bombay General Clauses Act, 1904 ('General Clauses Act' for short) could be imported into the definition of a 'person' under the Ceiling Act. The appellants challenged the order of the learned Single Judge in appeal. A Division Bench of the Gujarat High Court allowed the appeal in part, by judgment dated 4.3.2003. It held that there was no need for remand, as the question whether the definition of 'person' included an association of persons, was a pure question of law which can be decided by the High Court itself. It held that definition of 'person' in the General Clauses Act has to be read into the definition of 'person' in the Ceiling Act and therefore, the decision of the Revenue Tribunal treating the ten co- owners as an association of persons, and consequently, a 'person' for the purpose of the Ceiling Act, entitling them to hold only one unit (36 acres), did not suffer from any infirmity. The order of the Tribunal was thus restored. The said order of the Division Bench of the High Court is challenged in this appeal by special leave.

The Contentions:

7. The appellants contend that the definition of 'person' in General Clauses Act cannot be read into the definition of 'person' in the Ceiling Act. They submitted that the general definition in the General Clauses Act would apply only in the absence of a specific definition in the concerned enactment; that as the Ceiling Act itself defined the word 'person', there was an legislative intention to exclude the general definition of the word 'person' in the GC Act; and that consequently the definition of 'person' in Section 2(21) should be interpreted as referring only to a natural person (a human being) or a joint family as defined in the Ceiling Act; and that therefore, an association of persons or body of individuals will not be a 'person' for the purpose of Ceiling Act.

7.1 Alternatively, it is submitted that even if the word 'person' is held to include an association of persons or body of individuals, a co-ownership cannot be considered as a body of individuals or association of persons and each co-owner should be considered as a person for the purposes of the Ceiling Act.

7.2 The appellants contended that Section 6(2) of the Ceiling Act provided that while calculating the holding of an individual who is a member of a family, the land held by the spouse (as also minor sons and minor unmarried daughters) has to be clubbed with the individual's holding; and therefore, in this case, the holding of wife of each appellant should be added to his holding for the purpose of considering whether he held any surplus land. In other words, each couple (each of the five appellants with his wife) was a 'person' entitled to hold one unit (36 acres); and therefore, the decision of the Mamlatdar that the appellants were entitled to hold five units (180 acres) and only the land in excess of five units

was surplus land was in accordance with law.

8. On the other hand, the respondent State contended that the definition of 'person' in the GC Act will have to be read into the definition of 'person' in Section 2(21) of the Ceiling Act and therefore any 'association of persons' or 'body of individuals' will have to be treated as a person. It is submitted that when the five appellants and their respective spouses joined together to purchase 172 acres 36 guntas of land, they constituted an 'association of persons' or 'body of individuals' and therefore, the purchase by the ten purchasers was a purchase by a 'person' and the ten co-owners as a 'person' were entitled to hold only one unit (36 acres of 'C' class land).

8.1 The respondent's next contention is based on Section 8 of Ceiling Act which provides that any transfer or partition effected between 24.1.1971 and the date on which the Gujarat Agricultural Land Ceiling (Amendment) Act, 1972 came into force shall be deemed to have been made in anticipation in order to defeat the object of the said Amending Act unless it is proved to the contrary. It is contended that the partition effected among the ten co-owners under the unregistered agreement dated 30.12.1971 should be deemed to have been effected with the intention of defeating the object of Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972, (Amending Act for short) having regard to the provisions of Section 8 of the Ceiling Act. It is pointed out that the only way to avoid such a presumption was to make an application to the Collector under Sub-section (2) of Section 8 in the prescribed form within the prescribed period seeking a declaration that such partition was not made in anticipation in order to defeat the object of the Amending Act, 1972. It is contended that as such an application was not made to the Collector, the partition will have to be deemed as having been made to defeat the object of the Act and consequently the partition shall have to be ignored in computing the surplus land under the Act.

8.2 Lastly it is submitted by the respondents that the joint purchase by ten persons was a ruse to circumvent the bar contained in Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act' for short) which prohibits sale of agricultural land in favour of non- agriculturists. It is alleged that most of the ten purchasers were non- agriculturists who could not have purchased agricultural land, and they have attempted to circumvent the bar contained in Tenancy Act, by nominally joining with some agriculturists and buying land as co-owners and thereafter effecting a partition and claiming exclusive ownership. It is contended that if each co-owner is a distinct 'person', then sale in favour of non-agriculturists will not be valid, even if the purchase was jointly in the names of agriculturists and non-agriculturist and consequently, the lands to the extent purchased by the non-agriculturists will vest in the State Government.

9. The appellants replied that even if the partition was ignored u/s 8 of the Ceiling Act, it would not affect the calculation of surplus land, as each co-owner was a 'person' and each family (husband and wife) will be entitled to one unit. In

regard to contention based on Section 63 of the Tenancy Act, it was submitted that while determining the surplus land under the provisions of the Ceiling Act, there was no question of holding any enquiry u/s 63 of Tenancy Act. And at all events, even if the question as to whether the purchasers were agriculturists or not, has to be gone into, the same being a question of fact that will have to be decided by a separate inquiry under the Tenancy Act and not in the proceedings under the Ceiling Act.

10. On the contentions raised, the following questions arise for our consideration:

(i) Whether the definition of 'person' in the Gujarat Agricultural Lands Ceiling Act, 1960, includes a body of individuals/association of persons ?

(ii) Whether co-ownership, per se, is an 'association of persons/body of individuals' and therefore, constitutes a 'person'?

(iii) Whether the ten purchasers, who became co-owners of the land, together constitute a 'body of individuals/association of persons' and therefore a 'person' within the meaning of that expression in the Ceiling Act?

(iv) Whether the partition dated 30.12.1971 among the co-owners is 'deemed to have been made in anticipation to defeat the object of Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972' u/s 8(1) of the Ceiling Act; and if so what is the effect of failure to make an application under Sub-section (2) of Section 8 of the Ceiling Act.

(v) What would be the position if some of the co-owners were non- agriculturists at the time of purchase of the lands? Whether the Mamlatdar can examine this issue when considering the question of surplus land under the Ceiling Act?

Statutory Provisions:

11. The Ceiling Act was enacted to fix a ceiling on holding of agricultural lands and to provide for the acquisition and disposal of surplus agricultural land. Section 4 relates to delimitation of local areas and provides that there shall be different classes of local areas in the state as specified in Schedule I and the local areas falling in each such class shall be as respectively specified in Schedule II. Section 5 deals with ceiling areas. Sub-section (1) thereof provides that subject to the provisions of Sub-sections (2) and (3), in relation to each class of local area as specified in Schedule I, the ceiling area with reference to each class of land shall be as specified in the said Schedule against the respective class of local area. Madheli village, Waghodia Taluk (Baroda District) is specified as class C area under Schedule II. It is not in dispute that the lands in question were found to be dry crop land, and therefore the unit ceiling area was 36 Acres under Schedule I to the Ceiling Act.

11.1 Section 6 deals with ceiling on holding of land. Sub-sections (1), (2), 3(B), 3(C), and 3(D) which are relevant are extracted below:

(1) Notwithstanding anything contained in any law for the time being in force or

in any agreement, usage or decree or order of a Court, with effect from the appointed day, no person shall, subject to the provisions of Sub-sections (2), (3), (3B) and 4 be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

(2) Where an individual, who holds land, is a member of a family, not being a joint family which consists of the individual and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, irrespective of whether the family also includes any major son, land is also separately held by such individual's spouse or minor children, then the lands held by the individual and the said members of the individual's family excluding the major sons, if any, shall be grouped together for the purposes of the Act and the provisions of the Act shall apply to the total land so grouped together as if such land had been held by one person.

xxxxxxx

(3B) Where a family or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely:

(i) minor son,

(ii) widow of a pre-deceased son,

(iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

such family shall be entitled to hold land in excess of the ceiling area to the extent of one fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area:

x x x x x

(3C) Where a family or a joint family irrespective of the number of members includes a major son, then such major son shall be deemed to be a separate person for the purposes of Sub-section (1).

x x x x x

11.2 Section 8 deals with transfers and partitions effected to defeat the objects of the Ceiling Act. Sub-section (1) provides that where after 24.1.1971 but before the stipulated date (the date on which the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 - Gujarat Act 2 of 1974) came into force), any person has transferred or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force, such transfer or partition, shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of the Amending Act of 1972. Sub-

sections (2) and (4) of Section 8 read as under: "(2) Any person effected by the provisions of Sub-section (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of this Act, or as the case may be, of the Amending Act of 1972.

x x x x x

(4) Where the application is rejected, the transfer or, as the case may be, the partition shall be ignored in computing under this Act the area of surplus land, if any, held by such person.

11.3 Section 2 contains the definitions. Clauses (16) and (21) which are relevant are extracted below:

2. Definitions.-- In this Act, unless the context requires otherwise -- x x x x x

(16) "Joint family" means a undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence;

x x x x x

(21) "person" includes a joint family;

12. Bombay General Clauses Act, 1904 also defines the word 'person'. The said definition in Section 3(35) is extracted below:

3. Definitions : In this Act, and in all Bombay and Gujarat Acts made after the commencement of this Act, unless there is anything repugnant in the subject or context,...(35). "Person" shall include any company or association or body of individuals, whether incorporated or not;

13. Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, as applicable in Gujarat bars transfer to non-agriculturists. Sub-section (1) of Section 63 provides that save as otherwise provided in the Act, no sale shall be valid in favour of a person - (i) who is not an agriculturist, or (ii) who being an agriculturist cultivates lands not less than ceiling area, or (iii) who is not an agricultural labour. The first proviso to Sub-section (1) provides that the Collector (or an officer authorized by the State Government) may grant permission for such sale, but the second proviso to Sub-section (1) provides that no such permission shall be granted where the land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds Rupees five thousand.

Question (i) - who is a 'person' ?

14. The extent of land that could be held by the appellants depends upon the interpretation of the word 'person' in Section 6(1) of the Ceiling Act which provides that "no person...shall be entitled to hold...land in excess of the ceiling area". If the ten co-owners are considered as an 'association of persons' or 'body

of individuals', and consequently as a 'person', then the ten co-owners together as a person, will be entitled to only one unit of land which is the ceiling area per person. But if 'association of persons' or body of individuals is not a 'person', or if a co-ownership is not an association of person/body of individuals, then each co-owner or the family of each co-owner, as the case may be will be a separate 'person' having regard to the definition of person in Section 2(21) of Ceiling Act, in which event, each family will be entitled to hold one unit of land.

15. The word 'person' is defined in the Act, but it is an inclusive definition, that is "a person includes a joint family." Where the definition is an inclusive definition, the use of the word 'includes' indicates an intention to enlarge the meaning of the word used in the Statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus, where a definition uses the word 'includes', as contrasted from 'means', the word defined not only bears its ordinary popular and natural meaning, but in addition also bear the extended statutory meaning (See S.K. Gupta and Another Vs. K.P. Jain and Another, following *Dilworth v. Commissioner of Stamps* 1899 AC 99 and *Jobbins v. Middlesex County Council* 1949 (1) KB 142).

16. The ordinary, popular and natural meaning of the word 'person' is 'a specific individual human being'. But in law the word 'person' has a slightly different connotation, and refers to any entity that is recognized by law as having the rights and duties of a human being. Salmond defines 'person' as 'any being whom the law regards as capable of rights and duties' or as 'a being, whether human or not, of which rights and duties are the attributes (Jurisprudence : 12th Edition Page 299]. Thus the word 'person', in law, unless otherwise intended, refers not only to a natural person (male or female human being), but also any legal person (that is an entity that is recognized by law as having or capable of having rights and duties). The General Clauses Act thus defines a 'person' as including a corporation or an association of persons or a body of individuals whether incorporated or not. The said general legal definition is, however, either modified or restricted or expanded in different statutes with reference to the object of the enactment or the context in which it is used. For instance, the definition of the word 'person' in Income Tax Act, is very wide and includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not, a local authority and every other artificial juridical person. At the other extreme is the Citizenship Act, Section 2(f) of which reads thus : "Person does not include any company or association or body of individuals whether incorporated or not." Similarly, the definition u/s 2(g) of Representation of People Act 1950, is "person" does not include a body of persons.

17. Both definitions of the word 'person', in General Clauses Act and Ceiling Act, are inclusive definitions. The inclusive definition of 'person' in General Clauses

Act applies to all Gujarat Act unless there is anything repugnant in the subject or the context. The inclusive definition of 'person' in Section 2(21) of the Ceiling Act, does not indicate anything repugnant to the definition of 'person' in General Clauses Act, but merely adds 'joint family' to the existing definition. Therefore the definition of person in the Ceiling Act, would include the definition of person in Section 3 of General Clauses Act. The resultant position can be stated thus : The definition of person in General Clauses Act, being an inclusive definition, would include the ordinary, popular and general meaning and those specifically included in the definition. The inclusive definition of 'person' in the Ceiling Act, in the absence of any exclusion, would have the same meaning assigned to the word in the General Clauses Act, and in addition, a 'joint family' as defined. Thus, the word 'person' in the Ceiling Act will, unless the context otherwise requires, refer to:

- (i) a natural human being,
- (ii) any legal entity which is capable of possessing rights and duties, including any company or association of persons or body of individuals (whether incorporated or not); and
- (iii) a Hindu Undivided Family or any other group or unit of persons, the members of which by custom or usage, are joint in estate and residence.

18. We are fortified in this view by the decision of this Court in *Hasmukhlal Dahayabhai and Others Vs. State of Gujarat and Others*, wherein this Court had occasion to consider the definition of 'person' in the Ceiling Act, in a different context. It was contended in that case that in view of the definition of 'person' in General Clauses Act, 1897, a central enactment, that is, 'person' shall include any company or association or body of individuals, whether incorporated or not, there cannot be a different definition in the Ceiling Act, and therefore, Section 6(2) of the Ceiling Act treating family as a 'person' was unconstitutional. It was pointed out that Section 6(2) had the effect of making a person who held land within ceiling limit, to lose part of his/her holding, on marriage to someone who also held land within ceiling limit. (For example, if a bachelor who was holding 35 acres of land which is within ceiling limit, married someone who held 20 acres, they will together lose 19 acres by reason of the fact that they formed a 'family'). This Court negatived the challenge to the definition of 'person'. In that context this Court observed that the term 'person' is not, strictly speaking, defined in the Act, and the definition merely clarified that the term includes a joint family and did not exclude an individual from being a person in the eye of law. This Court observed that the term 'person' for the purposes of Ceiling Act would include individuals as natural persons as well as group or body of individuals as artificial persons, as also a joint family and a family.

19. This Court proceeded to explain Section 6(2) thus:

We do not find any fixed concept of "person" anywhere. No doubt the concept is wide so that it could be contended that it should not be narrowed down or

confined. But does Section 6(2) do that? Section 6(2) does not either disable a husband or wife from owning or holding their separate properties separately. It does not merge or destroy their separate legal personalities. It requires 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 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. In other words, 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. It has the effect of making it clear that what have to be grouped together are the separate properties of individuals belonging to families other than what are "joint families", in law. It takes in and applies to members of families other than undivided Hindu families. It means that married persons and their minor children will have to be viewed as though they hold one lot together even though they retain their separate legal personalities and remain competent owners of their separate holdings. It does not affect either their legal status or competence. It does reduce their individual holdings.

Question (ii) - Whether co-owners are together a 'person'?

20. When several persons acquire undivided shares (as contrasted from defined portions) in a property, either equal or unequal, they become co-owners of the property; or where an owner of a property transfers a share in the property to another, the transferee becomes a co-owner along with the original owner. To be termed as co-owners, the right of each owner should be co-ordinate with the other 'owners'. If the right of one is higher in degree than that of the other, there is no co-ownership. For example, a mortgagor and mortgagee are not co-owners. A lessor and lessee are not co-owners. Whether the shares are equal or not, each co-owner is entitled to be in possession of every part of the property, jointly with the other co-owners. In *Sri Ram Pasricha Vs. Jagannath and Others*, , this Court observed:

Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place....

21. This Court also relied on the following passage from Salmond's 'Jurisprudence':

It is an undivided unity, which is vested at the same time in more than one person ? The several ownership of a part is a different thing from the co-ownership of the whole. So soon as each of two co-owners begins to own a part of the thing instead of the whole of it, the co-ownership has been dissolved into sole ownership by the process known as partition. Co- ownership involves the undivided integrity of what is owned.

22. The terms 'association of persons' and 'body of individuals' (which are

interchangeable) have a legal connotation and refer to an entity having rights and duties. They are not to be understood literally. For example, if half a dozen people are travelling in a car or a boat, or standing in a bus stop, they may be a group of persons or a 'body of individuals' in the literal sense. But they are not an association of persons/body of individuals in the legal sense. When a calamity occurs or a disaster strikes, and a band of volunteers or doctors meet at the site and associate or co-operate with each other for providing relief to victims, and not doing anything for their own benefit, they may literally be an association of persons, but they are not 'an association of persons/body of individuals' in the legal sense. A mere combination of persons or coming together of persons without anything more, without any intention to have a joint venture or carry on some common activity with a common understanding and purpose will not convert two or more persons into a body of individuals/association of persons. An 'association of persons/body of individuals' is one in which two or more persons join in a common purpose and common action to achieve some common benefit. Where there is a combination of individuals by volition of the parties, engaged together in some joint enterprise or venture, it is known as 'association of persons/body of individuals'. The common object will have some relevance to determine whether a group or set of persons is an association of persons or body of individuals with reference to a particular statute. For example, when the said terms 'association or persons' or 'body of individuals' occur in a Section which imposes a tax on income, the association must be one the object of which is to produce income, profit or gain. [vide : Commissioner of Income Tax, Bombay North, Kutch and Saurashtra Vs. Indira Balkrishna, , Mohamed Noorullah, Representing The Estate of Late Khan Sahib Mohd. Oomer Sahib Vs. The Commissioner of Income Tax, Madras, , N.V. Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras, and M/s. Meera and Company, Ludhiana etc. Vs. Commissioner of Income Tax, Punjab, J and K and Chandigarh, Patiala, But the object need not always be to carry on commercial or business activity. For example, when the word 'person' occurs in a statute relating to agriculture or ceiling on land holding, the term 'association of persons/body of individuals' may refer to a combination of individuals who join together to acquire and own land as co-owners and carry on agricultural operations as a joint enterprise.

23. Normally, where a group of persons have not become co-owners by their volition with a common purpose, they cannot be considered as a 'person'. When the children of the owner of a property succeed to his property by testamentary succession or inherit by operation of law, they become co-owners, but the co-ownership is not by volition of parties nor do they have any common purpose. Each can act in regard to his/her share, on his/her own, without any right or obligation towards the other owners. The legal heirs though co-owners, do not automatically become an 'association of persons/ body of individuals'. When different persons buy undivided shares in a plot of land and engage a common developer to construct an apartment building, with individual ownership in regard to respective apartment and joint ownership of common areas, the co-owners of

the plot of land, do not become an 'association of persons/body of individuals', in the absence of a deeming provision in a statute or an agreement. Similarly, when two or more persons merely purchase a property, under a common sale deed, without any agreement to have a common or joint venture, they will not become an 'association of persons/body of individuals'. Mere purchase under a common deed without anything more, will not convert a co-ownership into a joint enterprise. Thus when there are ten co-owners of a property, they are ten persons and not a 'body of individuals' to be treated as a 'single person'. But if the co-owners proceed further and enter into an arrangement or agreement to have a joint enterprise or venture to produce a common result for their benefit, then the co-owners may answer the definition of a 'person'.

Question (iii) - Whether the ten purchasers constitute a 'person'?

24. We will now examine whether a group of individuals purchasing agricultural land jointly as co-owners, not with the intention of retaining the property in co-ownership and carrying on agricultural activities jointly, nor with the intention of managing it as a joint venture nor with the intention of holding it together to generate income, profit or gain, but solely with the intention of dividing the land so purchased and hold their respective shares separately and individually, can be considered as a 'person' for the purposes of the Ceiling Act. The Tribunal and the High court have proceeded on the basis that the ten purchasers constituted an 'association of persons' and therefore a separate juristic person. Let us examine whether the said conclusion is correct.

25. Instead of buying the land (172 acres, 36 guntas) jointly under the four sale deeds it was open to the ten persons to have bought the lands individually, that is each of them purchasing such extent of land as he or she wanted. If they had registered the sale deeds individually (subject to each of them being entitled to buy agricultural land, under the land reforms laws in force) each couple would have been entitled to hold land to the extent of one unit. Instead of each individual or couple purchasing the land in their respective names, if for convenience in negotiations, ten individuals buy the land jointly, the position will be no different. It cannot be said that merely because the sale deed is in the joint names of ten persons, they purchased the land as "an association of persons" or as "body of individuals" with the common intention of carrying on agricultural activities jointly or producing income, profit or gain or carry on some common joint venture. In fact before purchasing the lands, the ten persons had entered into an agreement placing on record that the object of purchasing the lands jointly was only to facilitate negotiations and avoid duplicating the purchase procedures and not to cultivate them jointly. There is no evidence of any joint cultivation, nor any evidence of any intention to have a joint venture. On the other hand, after purchase, they divided the lands and informed the land revenue authorities and each co-owner was registered as the owner of the respective land allotted to him/her. This is not a case where a body of individuals purchased the land with the intention of having a continued community of

interest by way of a joint venture or as a business venture. It is therefore not possible to treat the ten purchasers as an 'association of persons/body of individuals' nor is it permissible to treat them as a single 'person', thereby restricting their entitlement to hold land to only one unit, even though there are ten purchasers.

26. The Tribunal and the High Court were right in holding that the word 'person' in the Ceiling Act includes an 'association of persons/body of individuals'. But they were not justified in treating the co-owners as an 'association of persons', or in holding that the ten co-owners will be entitled to own only one unit. Having regard to Section 6(2) of the Act, the share of each couple (husband and wife) in the land, plus any other land individually held by them will have to be calculated to find out whether they held any land in excess of the ceiling limit. Therefore the share of each appellant in the lands jointly purchased, with the addition of the lands held by his spouse, and addition of any other land held by them, will give the basis for determining the surplus land. For example, if a husband's share as co-owner is 20 acres and wife's share as co-owner is 20 acres, and their other individual holding is another 10 acres (all of the same category in C class), the total holding of the family will be 50 acres (20+20+10 acres) and the surplus will be 14 acres.

Question (iv) - What is the effect of Section 8 of Ceiling Act?

27. The fact that the partition among the co-owners on 30.12.1971 was between 24.1.1971 and the date on which the Gujarat Agricultural Land Ceiling Amendment Act, 1972 came into effect, is not in dispute. Sub-Section (1) of Section 8 makes it clear that where any person has transferred or partitioned any land held by him between those dates then notwithstanding anything contained in any law, such partition shall be deemed to have been made in anticipation in order to defeat the object of the said Amendment Act unless it is proved to the contrary. Sub-section (2) provides how the affected person may prove the contrary by filing an application to the collector seeking a declaration to that effect. When such an application is made, Sub-section (3) requires the Collector to hold an inquiry and make an order either rejecting the application or declaring that the partition was not made in anticipation in order to defeat the object of the Amending Act, 1972. Sub-section (4) lays down that where an application for declaration is rejected, the transfer or partition shall be ignored in computing the area of surplus land held by such person. The same will be the effect where no application is made at all. It is thus clear that the statutory presumption that a partition made between those dates was intended to defeat the object of the Amendment Act cannot be displaced unless an application is made under Sub-section (2) and a declaration is made by the Collector under Sub-section (3). In this case, neither any application was made under Sub-section (2) nor any declaration was made under Sub-section (3). Therefore it has to be held that the partition effected on 30.12.1971 was deemed to have been made in order to defeat the object of the Amendment Act, 1972 and consequently, the partition

will have to be ignored while computing the surplus land.

28. But in this case the exclusion of the partition may not have any significant effect. As we have held that the ten co-owners together are not to be treated as a person, the share of the co-owner will have to be calculated and the lands individually held by such co-owner will have to be added to determine his holding. Thereafter, the holdings of the person with that of his spouse and minor sons and unmarried daughter will have to be aggregated to determine the surplus.

Question (v) - What requires to be done?

29. The Mamlatdar will have to decide the matter by holding an enquiry u/s 21 of the Ceiling Act keeping in view the principles laid down in Sections 6 to 8 of the Ceiling Act. Further Section 63 of the Tenancy Act also has to be kept in view while examining the claim of co-owners. If the sale was effected jointly in the name of ten persons to enable some non- agriculturists who were barred from buying agricultural land, to buy agricultural land by joining some agriculturists as co-purchasers, the sale to the extent it is in favour of non-agriculturists will not be valid and the consequences on account of sale not being valid for violation of Section 63 of Tenancy Act will follow as provided in Section 84C of that Act. For example if ten purchasers purchase hundred acres of land with equal shares, and six of them are non-agriculturists, then the sale in respect of the six non-agriculturists (to an extent of 60 acres) will not be valid and such land purchased by non-agriculturists may have to vest in the State Government as provided in Section 84C of the Tenancy Act. In this case no such enquiry has been held to find out about the validity of the sale. Therefore, the matter will have to be remitted to the Mamlatdar to hold an enquiry under Sections 63 and 84C of Tenancy Act to decide whether all the purchasers were agriculturists who were entitled to purchase agricultural land and whether transfer in favour of all of them is valid or invalid and to make consequential orders.

30. We therefore, allow this appeal, set aside the orders of the High Court as also that of the authorities below. As a consequence, we direct the Mamlatdar:

(a) to decide whether any of the ten purchasers is a non-agriculturist and if so the extent of transfer in favour of such non-agriculturist which will be invalid and pass consequential orders in respect of such land in accordance with law;

(b) to determine whether any of the ten purchasers who are agriculturists, holds excess land by considering their share in the lands purchased as co- owners, with other lands as provided in Sections 6 to 8 of the Ceiling Act, and pass appropriate orders in accordance with law.