
(1981) 07 BOM CK 0022
In the Bombay High Court
Case No : Spl. C.A. No. 834 of 1978

Shardaben Mafatlal and others

APPELLANT

Vs

V.N. Karandikar and another

RESPONDENT

Date of Decision : 14-07-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2(i), 33, 6, 6(1), 6(2)

Citation : (1982) MhLj 732

Hon'ble Judges : M.P. Kanade, J; M.L. Pendse, J

Bench : Division Bench

Advocate : R.J. Joshi with Dilip Dwarkadas, for the Appellant; D.P. Hegde for Respondents 1 and 2, for the Respondent

Judgement

M.L. Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the legality of notice under sub-section (2) of section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) dated March 29, 1978, issued by the Competent Authority, Pune Urban Agglomeration, Pune. This notice was issued by the Competent Authority in pursuance of the interim order dated March 29, 1978 passed while considering the statement filed by petitioner No. 1 u/s 6 (1) of the Act

2. The facts giving rise to this petition are as follows:

Petitioner No. 1 Smt. Shardaben had filed a statement u/s 6(1) of the Act before the Competent Authority on August 10, 1976. The inquiry into the statement revealed that the lands situated at C.T.S. No. 1084 final Plot No. 437 abutting Ganeshkhind Road of Bhamburda was held by 8 different persons. The 8 persons are the petitioners and they are holding separate distinct share in the property. In other words, they are co-owners of the property in question. The Competent Authority felt that as petitioners 2 to 8, who are co-owners alongwith petitioner No. 1, had not filed statement u/s 6 (1) of the Act, an inquiry was necessary to

consider whether the petitioners could be treated as a body of individuals and a statement should be filed by them. The petitioners objected to the course proposed to be adopted by the Competent Authority and that has given rise to the interim order passed by the Competent Authority.

3. The Competent Authority has found in paragraph 4 of the interim order that the land is held by 8 co-owners who are tenants in common with predetermined shares in ownership. The Competent Authority felt that since the shares of the co-owners, though determined are not demarcated and the property is not divided by metes and bounds, the property should be treated as held by the body of individuals. According to the Competent Authority, the tenants in common could not be treated as holding separate pieces of lands and therefore it was imperative to consider undivided holding of all the petitioners in the land in dispute as the holding of body of individuals. In pursuance of this finding, the Competent Authority issued notice under subsection (2) of section 6 of the Act and that notice based upon the interim order is under challenge in this petition.

4. Shri Joshi, the learned counsel appearing in support of the petition, submitted that the finding recorded by the Competent Authority that the land is held by the petitioners as tenants-in-common with predetermined shares is sufficient to hold that the petitioners could not be treated as a body of individuals holding undivided holding in the land. The learned counsel relied upon the decision of the Supreme Court in the case of Commissioner of Gift Tax, Kerala v. R. Valsala Amma (1971) 82 ITR 818 and urged that the property is held by the petitioners as tenants-in-common, each one having defined share, and therefore, the petitioners could not be treated together as a "person", defined u/s 2 (i) of the Act. We find considerable merit in the submission of the learned counsel. Shri Hegde, the learned Assistant Government Pleader on the other hand urges that we should not entertain this petition as the petitioners had an alternate efficacious remedy of filing appeal as provided u/s 33 of the Act. Shri Hegde very fairly conceded that on the findings recorded by the Competent Authority, it is not possible to record a conclusion that the petitioners would fall within the definition of "person" as- given u/s 2 (i) of the Act.

5. In view of these rival contentions, it is necessary to consider whether we should entertain this petition or should drive the petitioners to file an appeal as provided by section 33 of the Act. We are not inclined to follow the course suggested by Shri Hegde for several reasons. The order under challenge was passed on March 29, 1978 and more than three years have lapsed from that date. It would now be futile to drive the petitioners to file an appeal because that course would lead to multiplicity of litigation. We also find that the order under challenge could not be sustained on merits and in such circumstances to drive the petitioner to file an appeal would not be an appropriate course. In these circumstances, though the remedy of filing an appeal was available to the petitioners, we are not inclined to refuse the relief in this petition on that count.

6. Turning to the merits of the case, the Competent Authority has recorded a

clear cut finding that the property was held by the petitioners as tenants-in-common with a defined share. It is well settled that where the property is held by tenants-in-common having a defined share, then the holders could not be treated as joint holders merely on the ground that the property is not divided by metes and bounds. The assumption of the Competent Authority that as long as the property is not divided by metes and bounds, it is imperative to consider undivided holding as holding of a body individuals is clearly wrong. The reliance by Shri Joshi in this connection on the decision of the Supreme Court reported in 82 I T R 818 (supra) is very appropriate. On the first principle itself, it is impossible to sustain the conclusion recorded by the Competent Authority. Apart from that fact, the petitioners could not be termed as a person within the definition of that expression contained in section 2 (i) of the Act. The expression "person" includes an individual, a family, a firm, a company or an association or body of individuals whether incorporated or not. In our judgment, tenants in common cannot be treated as an association or body, of individuals. In this view of the matter, the interim order passed by the Competent Authority can not be sustained and so also the notice, copy of which is annexed as Exh. C to the petition, which was issued in pursuance of the interim order.

7. Accordingly, the rule is made absolute and the interim order dated March 29, 1978 passed by the Competent Authority and notice dated March 29, 1978 issued by the Competent Authority u/s 6 (2) of the Act are quashed and set aside. The Competent Authority to proceed with the hearing of objections raised by petitioner No. 1 in regard to the statement filed u/s 6 (1) of the Act.

In the circumstances of the case, there will be no order as to costs.