(1984) 11 AHC CK 0079

In the Allahabad High Court

Case No : Civil Misc. Writ No. 13089 of 1982

State of Uttar Pradesh and Another — APPELLANT

Vs

The District Judge and Others — RESPONDENT

Date of Decision : 19-11-1984

Acts Referred:

Income Tax Act, 1961 — Section 2(31), 4
Urban Land (Ceiling and Regulation) Act, 1976 — Section 1(2), 10(3), 2, 3, 4(5)

Citation : (1984) AWC 681 Supp

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : Shitla Pd. Srivastava, for the Appellant; S.N. Khan and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—This writ petition has been preferred by the State of U.P. against the judgment of the District Judge, Allahabad, holding that neither the firm Sigma Chemicals, 332-A, Sulem Sarai, Allahabad, nor G.R.K. Shervani in the capacity of partner in the aforesaid firm owned land in excess of ceiling limit. Accordingly, the District Judge set aside the order of the Competent Authority who had declared 1550.67 square metres land as surplus.

2. On the commencement of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as ''the Act''), the Competent Authority Issued a draft statement to G.R.K. Shervani indicating that within the urban agglomeration of Allahabad, plot 184/1, measuring 3031 67 square metres was possessed by the aforesaid Respondent G.R.K. Shervani. Out of this area, the notice stated, 276.11 square metres was covered with building. The Competent Authority proposed to declare 1550.67 square metres as excess vacant land.

3. Against the draft notice, G.R.K. Shervani, Respondent 3, including other Respondents who were partners of Sigma Chemicals, filed an objection stating that the plot under reference belonged to the firm of which Respondents 3 to 8

were the partners in varying shares and as each one of the partners had much less than the prescribed minimum for Allahabad, nothing was liable to be declared as surplus. Respondents 3 to 8 further claimed that the total covered area was 357.28 square metres and not 276.12 square metres. They claimed that the constructed area along with 500 square metres appurtenant land could not be treated to be vacant land.

4. By the judgment and order dated 16-3-1981, the Competent Authority held that the land did not belong to Sigma Chemicals and it was owned exclusively by G.R.K. Shervani. He found that the total area of the land was 3050.67 square metres and after permitting 1500 square metres as vacant land to be retained by Respondent 3, the remaining 1550.67 square metres was liable to be declared as surplus.

5. In the appeal, the District Judge reversed the finding of the Competent Authority and found that the land in question belonged to M/s. Sigma Chemicals. The view further taken was that each one of the partners of the firm would be deemed to have owned the land In proportion to their respective shares in the partnership. His view was that the notice issued to G.R.K. Shervani by the Competent Authority was invalid. According to his finding, if 357.28 square metres along with 500 square metres as land appurtenant to it was excluded, the total left would be 2193.39 square metres, and if the share of each Individual partner is taken into account, No. one could be held to possess land in excess of the ceiling limit. On this ground, be allowed the appeal and discharged the notice.

6. Aggrieved, the State of U.P. has filed the present writ petition.

7. The first question that arises for consideration is whether the property in dispute belongs to the firm. The District Judge himself has noted that G.R.K. Shervani purchased this plot 184/1, Sulem Sarai, from Pratap Bahadur Chaudhary and others for the firm M/s. Sigma Chemicals. This purchase was made by G.R.K. Shervani on bahalf of the said firm. The plot in question was thus the property of the firm. Even if the partners of the firm constituting it had different shares, that would not affect the liability of the firm u/s 4(5) of the Act. Section 4(5) of the Act reads as under:

4(5), Where any firm or unincorporated 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 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.

8. Under the aforesaid provision, a firm is liable to be proceeded with under the Act and surplus vacant land in its possession is liable to be acquired by the State Government u/s 10(3).

9. The argument of the Respondents counsel was that only individual partners

could be held liable under the aforesaid provision and not the firm, and, therefore, the declaration of excess vacant land in the instant case was not permissible. He urged that each one of the partners, if separately considered, would own much less than the minimum ceiling prescribed for Allahabad. The submission is not tenable. For liability of the firm to submit a statement u/s 6 and its application to the Act, reference may be made to Section 3. Section 3 provides that on and from the commencement of the Act, No. person shall be entitled to hold any vacant land in excess of the ceiling limit in the territory to which the Act applies under Sub-section (2) of Section 1. The word "person" has been defined in Section 2(i).

The definition given is:

"person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not.

10. This definition is inclusive. However, without going into the question of the definition being inclusive, it may be pointed out that a firm has been clearly included in the definition of the expression "person". If Section 3 is read with the definition given in Section 2(i), a firm would be liable under the Act and that vacant land held by it in excess of the minimum prescribed would be, declared as surplus. It is immaterial that u/s 4(5), separate proceedings against the partners in respect of the land belonging to the firm coupled with that which exclusively is owned or held by him can also be taken. This definition includes a firm as a separate enumerated unit. For the purposes of the Act, it is a separate entity. The partners of the firm are distinct and different for the purposes of the Act. They are answerable under the Act and liable to be proceeded with as distinct entities. There are a number of advantages in forming a partnership. One of them is the convenience unifying the common interests of a large number of people.

11. Section 2(31) of the Income Tax Act also includes a firm. For the purposes of Income Tax Act, a firm is regarded as having a separate existence apart from the partners who carry on the business. The partners of the firm are distinct assessible entities while the firm as such is a separate and distinct unit for the purposes of assessment. The provisions of the Income Tax Act go to show that the technical view of the nature of a partnership under the English Law or Indian Partnership Act cannot be taken in applying the Law of Income Tax. Under the Law of Partnership, a firm has No. legal existence apart from its partners and it is merely a compendious name to describe its partners. While a firm does not under the Income Tax Act assume a legal personality It is nonetheless treated as a person u/s 2(31) and a unit for the purpose of taxation under the charging Section 4.

12. The position with regard to accountably of a firm in respect of land held by it is the same. It is a person within the meaning of Section 2(i) and as such, Section 3 would apply, under which No. person can hold vacant land more than

the prescribed ceiling limit under the Act.

13. In Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala, , the question considered was about the liabilities of the firm. The Supreme Court held that the partners are the agents and sureties of the firm. The liabilities of the firm are regarded as the liabilities of the partners only in case they cannot be met by the firm and discharged out of its assets. This would not help Respondent. The Supreme Court itself noted in this case that a firm is a separate legal entity.

14. For what I have said above, I find that a firm is a separate entity which is liable to be proceeded with under the Act. Under the Income Tax Act also a firm is an entity which is liable to pay tax. It is an Assessee apart from individual partners who may be assessed in their individual capacities. That being the position, the Act applies to the present case. A firm cannot be equated with the partners because from the relevant provisions of the Act, it is quite clear that the firm is an entity which may be assessed as a person as distinguished from individual partners.

15. In Kunj Behari Lal v. District Judge Gorakhpur Writ Petition No. 13067 of 1982, decided on 12-9-1984, this controversy came up for consideration before me in which the view taken was:

Thus, for what I have said above, it is found that a firm although is not a juristic person but as the definition of "person" given in Section 2(i) provides that the firm is a person for the purposes of the Act, a firm would be a person and would be liable to the consequences of the same. It is just like the same as under the Income Tax Act a firm is treated as a legal entity for the purposes of assessment.

16. Section 4(5) has a different purpose and it should not be confused with the liability of the firm to submit its return and declaration of its land as surplus, if it possesses above the ceiling limit. Section 4(5) will apply to a case where proceedings are taken against the partners individually.

17. In Ved Prakash Gupta v. The District Judge Aligarh 1983 ALJ 188 proceedings were not taken against the firm but against the individual partners. While interpreting Section 4(5), it was held:

Section 4(5) is attracted in the case of vacant land held by a partnership firm. Therefore, such land to the extent of the share held by the partner in the partnership property can be included in the vacant land of the partner''s family for calculating the surplus vacant land of the family on the basis of Section 4(5).

18. This ruling is distinguishable as it does not deal with the question whether the firm is a person and is liable to be proceeded with for the acquisition of land in its possession. The learned Counsel referred to a number of anomalies which have been pointed out by the learned author M.P. Mehrotra in his book "The Urban Land (Ceiling and Regulation) Act, 1976". To my mind, the present is not a case which will give rise to any anomaly. As each of the partners individually

does not own anything apart from what was possessed and owned by the firm. Moreover, with respect to the argument of the learned Counsel for the Respondent, it is pointed out that a clear interpretation of the provision of law, which has been made by me above, will not change it only because some anomalies may crop up. In fact, in a case where proceedings are taken against a firm and also against its partners individually, the land which may be declared surplus of the firm should be proportionately demarcated from the shares of the partners and the surplus of their individual properties be found out on that basis. However, as in this case I am not directly called upon to consider this aspect of the matter, it may not be taken as expression of conclusive opinion. This question would arise only in those cases where individual partners have land in excess of the ceiling limit and have in the statement mentioned about the properties of the firm indicating their shares and also mentioning the total area of the firm which would be declared as surplus.

19. The net result of the above discussion is that on the finding of the District Judge that the property in question was that of the firm, the firm could be proceeded with and excess was liable to be taken possession of from it. The ratio in which the shares were held by the partners constituting it is not material for the purpose of Section 3. Accordingly, the judgment of the District Judge exonerating the firm from the liability of the Act is not correct. The notice in the case was served on G.R.K. Shervani, who was one of the partners. The service of the notice of the firm could be only on partners. The District Judge wrongly considered the notice as to be invalid merely because it was not addressed to G.R.K. Shervani as partner of the aforesaid firm. It is not the technicality but the substance that should be considered. The firm had full say in the matter through its partners. That was sufficient.

20. Without going into the controversy as to how much had been constructed upon, it would be seen that the total area as held by the Competent Authority was 3050.67 square metres. 1500 square metres is allowable in Allahabad, hence 1550.67 square metres was rightly declared as surplus. Whether there was construction over 356.28 square metres or 276.12 square metres is not of any consequence in the instant case inasmuch as, as said by the Supreme Court in State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, , the land constructed upon will also be taken into account while calculating the extent of vacant land.

21. For these reasons, the writ petition succeeds and is allowed. The judgment of the District Judge is quashed, and that of the Competent Authority is restored. No. order as to costs.

