Gujarat High Court
Kishorlal Prabhudas Ghiya vs State Of Gujarat And Ors. on 11 July, 1991
Equivalent citations: (1991) 2 GLR 1390
Author: S Shah
Bench: S Shah
JUDGMENT S.D. Shah, J.

1. By judgment and order, dated 24-1-1989 the appellate Tribunal exercising powers under Section 33 of the Urban Land (Ceiling & Regulation) Act, 1976 dismissed the appeal of the present petitioner and confirmed the order passed by the competent authority declaring 1590.49 Sq. Mts. of lands as excess vacant land. This petition is directed against the said two orders.

2. The present petitioner and respondent No. 3 jointly purchased Plot No. 9 of S. No. 329/384 admeasuring 3852 Sq. Mts. situated at Gondal Road, Rajkot. With respect to these parcels of lands application under Section 20 was made for exemption to use the said parcels of land for industrial purpose, but the said application was rejected.

3. Mr. P.V. Hathi, learned Advocate for petitioner submits firstly that the competent authority as well as the appellate authority erred in holding that the petitioner and the respondent No. 3 constitute a body of persons so as to be entitled to hold one unit only. Mr. Hathi relies upon the definition of word "person" as defined by Section 2(i) of the Urban Land (Ceiling & Regulation) Act, 1976. It is an inclusive definition so as to include an individual, family, a firm, a company or association or body of individuals whether incorporated or not. Mr. Hathi submits that to regard two persons as body of individuals is quite against common sense and while using the words body of individuals or association of individuals the Legislature has in mind a body which is incorporated and a body which is not incorporated. He, therefore, submits that in order to distinguish the group of number of persons whether incorporated or not, the expression "association or body of individuals" is resorted by the Legislature. In his submission, when there are two individuals they cannot be said to be association or body of individuals. I shall have to keep in mind that the Legislature has given a special definition of the word "person" by the definition clause. Secondly, it shall have to be noted that it is an inclusive definition. Thirdly, the word, "person" includes an individual. The Legislature has used singular and not plural. It is not said "person" includes individuals. Therefore, when there are individuals, meaning thereby two individuals or more, they would fall within the expression "association" or "body of individuals". However, uncommon it may sound to common sense, but for the purpose of this legislation, even if there are two individuals or persons coming together to hold the land jointly they would be regarded as "a person" within the meaning of Section 2(i) of the said Act. I, therefore, do not agree with the first submission of Mr. Hathi that two joint holders of land cannot be regarded as body of individuals and that each one of them is entitled to one unit as a matter of right under the said Act.

4. There is no dispute about the fact that the shares of petitioner and the third respondent are not well defined or earmarked in the properties purchased by them. Their shares are not specified in the sale deed. On the date on which the Act came into force or prior thereto no actual partition by metes and bounds has taken place. In fact, they have continued to hold the land jointly. Therefore, present

case is covered by the decision of this Court in the case of Savitaben v. State of Gujarat 1990(2) GLR 792. In the said case Justice Majmudar has taken the view that when co-owners hold definite and earmarked shares in the common property they can be said to be the tenants in common. Their specified shares do not undergo fluctuation by the enhancement of group of co-owners or by deletion from said group. If actual partition by metes and bounds takes place they do not remain co-owners but they become separate owners of separate parcels of lands put in their possession. So long as that eventuality does not take place they remain tenants in common being the owners of the specified shares.

5. However, in case where the shares of the co-owners are not definite and earmarked shares, it cannot be said that all such co-owners held land separately. I, therefore, do not uphold this submission of Mr. Hathi and I hold that the lower authorities were right in not granting separate unit to the third respondent.

6. Mr. Hathi further submits that under the Urban Development Rules since the land was to be used for the purpose of industry petitioner was entitled to deduction of 2173.26 Sq. Mts. and if such deduction is granted, holding of the petitioner is not excess holding. This submission of Mr. Hathi is negatived on merits by the appellate authority. Firstly, it cannot be assumed that the land is to be used for industrial establishment when the application for exemption under Section 20 filed by the petitioner is rejected, secondly, the land is situated in the housing zone and therefore it cannot be used for industrial purpose, and thirdly for housing zone the area on which construction made under the Urban Land Development Rules is 973 Sq. Mts. and the said area is deducted by the competent authority while calculating the excess holding.

7. I, therefore, do not find any substance in this submission also. No other submission is made by Mr. Hathi.

In the result, petition fails. Same is, therefore, dismissed. Rule is discharged with no order as to costs.