Central Engineering Works Vs. Competent Authority and Additional Collector and anr.

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SooperKanoon Citation : sooperkanoon.com/739860

Court : Gujarat

Decided On : Nov-17-1988

Reported in : (1989)1GLR650

Judge : M.B. Shah, J.

Appellant : Central Engineering Works

Respondent : Competent Authority and Additional Collector and anr.

Judgement :

M.B. Shah, J.

1. Being aggrieved and dissatisfied by the judgment and order dated 20-10-1987 passed by the Urban Land Tribunal in Appeal No. Rajkot 553 of 1984, the petitioner - a registered partnership firm has filed this petition under Article 226 of the Constitution of India.

2. The petitioner-partnership firm filled in form under the provisions of Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act'). After considering the objections raised by the petitioner, the Competent Authority by its order dated 23-2-1984 declared that the petitioner-firm was holding 3624 sq. mts. of land as excess vacant land. The Competent Authority arrived at

the conclusion that the petitioner was a registered partnership firm and was holding the land in excess of the ceiling limit. It negatived the contention of the petitioner that for deciding the ceiling limit, the land owned by the partnership firm should be considered to be of co-ownership of the partners and as each partner is individually entitled to bold 1500 sq. mts. of land the case of the partnership firm should be decided accordingly. It further negatived the contentions of the petitioner that as an application under Section 20 of the Act for exemption was pending the proceedings should be stayed.

3. Being aggrieved and dissatisfied by the said judgment and order, the petitioner preferred the aforesaid appeal under Section 33 of the Act before the Urban Land Ceiling Tribunal which is dismissed by the Tribunal.

4. Mr. Shah, learned Advocate appearing on behalf of the petitioner, vehemently submitted that the application of the petitioner under Section 20 of the Act was pending before the authority and therefore, the competent authority ought not to have proceeded further with the matter. He further submitted that the partnership firm is not a legal entity but it consists of different partners who are holding separate shares and therefore, while deciding the ceiling each partner's share should be taken into consideration and on that basis the competent aunthority ought to have decided the application filed by the partnership firm. He relied upon Section 4(5) of the Act in support of his contention.

5. With regard to the pendency of application under Section 20 of the Act, it should be noted that the petitioner has filed application under Section 20 of the Act for exemption on 20-6-1982. That application was rejected by the competent authority on 22-10-1982. Thereafter the petitioner filed review application on 14-6-1986. It is the contention of the learned Advocate for the petitioner that as the review application was pending, the appellate authority ought not to have proceeded further with the matter and ought to have adjourned the proceedings till that application was decided. He further submitted that the order passed on 20-10-1982 is null and void as it was passed without giving any opportunity of hearing to the petitioner.

6. It is an admitted fact that prior to the review application, the competent authority had already passed the final order on 23-2-1984 declaring the excess vacant land. The order on the application under Section 20 of the Act was passed on 22-10-1982. Hence it cannot be said that the petitioner's application under Section 20 of the Act was pending when the comptent authority passed the order under Section 9 of the Act. Further, it is difficult to accept the contention that the order dated 20-12-1982 is null and void. In Special Civil Application Nos. 2220 and 3567 of 1986 decided on 28-10-1988 Avanti Organisation v. Competent Authority, Rajkot reported in : AIR1989 Guj129 the Full Bench had an occasion to decide the question whether the State Government is under an obligation to give an audience or personal hearing before passing the order under Section 20(1) of the Act adverse to the partie's seeking exemption. The Full Bench held as under (at page 596-597 of GLR) :

Administrative authorities, therefore, often consider the introduction of this doctrine and insistence to its strict adherence by Courts as time consuming without realising that the time taken is well spent firstly because the citizen goes with the feeling that he was able to place his point of view before the authority and secondly because it ultimately adds to the quality of the decision and provides an insulation against the decision being branded as arbitrary or the product of non-application of mind. A decision taken after giving the concerned party an opportunity of being heard is always acceptable than a decision rendered without hearing the concerned party, however well-merited it may be.

The Full Bench further held that it is not necessary that in each and every case the Government should give personal hearing to the person who files an application under Section 20 of the Act. The Court held that it must be left to the discretion of the authority, that is, the State Government, to decide for itself in each case having regard to the facts and circumstances and the complexity or otherwise of the issues arising therein, whether or not to give a personal hearing to the concerned applicant before refusing exemption claimed by him. Therefore, giving of personal hearing before passing order under Section 20 of the Act depends upon facts of each case. In this view of the matter it cannot be said that as hearing was not given before passing the order dated 22-10-1982 it is a nullity order which requires

to be ignored. Further, Mr. Hava, learned Advocate for the respondents, pointed out that the review application filed by the petitioner was also rejected on 14-12-1987.

7. Hence, there is no substance in the contention that as the application under Section 2tkof the Act was pending, the proceedings were required to be stayed by the appellate authority.

The second contention of the petitioner is covered by the decision of this Court in the case of Minish v. State reported in : AIR1985 Guj56 . In this case, the Court held that partners of a partnership do not hold the particular property as co-owners or joint owners. The relevant discussion is as under (at page 214 of GLR):

It was contended by the Counsel for the petitioners that the partners of the firm own property as co-owners, therfore in view of section of the provisions of Section 4(5) of the Act, the firm could hold the land as decided by the competent authority. The argument proceeds on a clear misconception of law that partners in a firm are not co-owners. They do not hold property as joint owners or co-owners. So long as the partnership continues, the property is that of the partnership firm. The share of an individual partner is in profit or loss of the firm as may be due after taking proper accounts. The position of law has been well-settled by the Supreme Court as decided in the case Champartan Cane Concern v. State of Bihar reported in : [1963]49ITR152(SC) . In para 8 of the judgment Justice S.K. Das, speaking for the Court, while pointing out the difference between co-ownership and partnership has observed to the following effect:

1. One of the principal difference is that co-ownership is not necessarily the result of agreement whereas the partnership is.

2. The second difference is that co-ownership does not necessarily involve community of profit or loss, but partership does.

3. That one co-owner can without the consent of the other, transfer his interest, etc., to a stranger. A partner cannot do this.

4. In a partnership each partner acts as an agent of the other. In a co-ownership one co-owner is not as such the agent, real or implied, of the other.

The aforesaid position has been reiterated by the Supreme Court subsequently in the case of Narayanappa and Anr. v. Bhaskara Krisnappa and Ors. reported in : [1966]3SCR400 and in the case of Commissioner of Income Tax, Madhaya Pradesh, Nagpur and Bhandara v. Dewas Cine Corporation reported in : [1968]68ITR240(SC) . The position of law has been made clear by the Full Bench of this High Court in the case of Chief Controlling Revenue Authority v. Chaturbhuj reported in [1976] XVII GLR 898. After discussing the case law on this point the Full Bench held as follows:.There is no concept of co-ownership amongst partners during the subsistence of the partnership. The partnership properties are not held by the partners as co-owners. The property belongs to the firm and it merely vests in all the partners because the firm has no legal entity. But such vesting does not mean that all the partners are the co-owners of the property.... Thus as far back as in the year 1963 the position of law has been made clear and reiterated by the Supreme Court as well as by this Court in a series of decisions.

The Court thereafter negatived the contention that, the partners hold the property as co-owners and the guidelines issued by the Government for co-owners were applicable.

8. Further, under Section 2(i) of the Act the legislature has provided that the firm to be considered as a legal entity. Section 2(i) of the Act provides that 'person' includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. Therefore, a partnership firm is considered to be separate person, that is, legal entity for the provisions of the Act. Now, the firm being separate entity, under Section 6 of the Act, is required to fill in the form and if it holds excess vacant land, then its land is required to be taken into consideration and not of its partners. As for the partners, if they are holding any other land in their individual capacity, then they are required to fill in separate form as per the provisions of Section 6 of the Act. For deciding their holding apart from the land held by them individually their share of the land in the partnership property is required to be included under Section 4(5) of the Act. Section 4(5) of

the Act provides that where a 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 laid 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. Therefore, if a person who is a partner in a partnership firm is holding vacant land or holding any other land then while determining his right his share in the land belonging to the partnership firm is required to be taken into consideration. That is, for the purposes of the Act a partnership firm would be a separate person - that is, a different legal entity - from its partners. Its partners may or may not be holding any land but if partnership firm is the owner of excess vacant land then the excess land 'would vest in the State Government. This point would be clear if we take a hypothetical illustration wherein a partnership firm consisting of two partners is owning land admeasuring 2400 sq. mts. The prescribed ceiling for the area is 1500 sq. mts. One partner in his individual capacity is holding land admeasuring 1400 sq. mts. and another partner is not holding any land. The partnership firm would be 'required to fill in the form as a separate entity. The partner who is holding 1400 sq. mts. of land would also be required to fill in the form under Section 6 of the Act. At the time of determining the case of the partner his holding of 1400 sq. mts. and his share of 1200 sq. mts. in partnership land would also be required to be included as per Section 4(5) of the Act. In this view of the matter, there is no substance in this petition. Hence, tWs petition is rejected. Notice discharged. However, interim relief shall continue for a period of four weeks from today.