

# GUJARAT HIGH COURT

Thakorbbhai

Vs.

State (Gujarat)

Special Civil Appln. No. 2852 of 1979

(M.P. Thakkar and A.N. Surti, JJ.)

16.07.1980

## JUDGMENT

**M.P. Thakkar, J.**

1. "Undue hardship" (not mere hardship, undue hardship), an expression occurring in Section 20(1)(b) of the Urban Land (Ceiling and Regulation) Act, 1976, which has been enacted *inter alia* to prevent concentration of urban lands in few hand and to secure its equitable distribution, has given rise to the controversy which is in the centre in the present petition under Article 226 of the Constitution of India. The said provision empowers the State Government to grant exemption from operation of Chapter III of the Act to a holder of vacant land in excess of the ceiling in case the State Government is satisfied that 'undue hardship' would be caused to him. 'Indebtedness' of a holder of land without anything more entitles a holder of excess land to claim exemption under the said provision in view of *Odhavji Narsi v. State of Gujarat*<sup>1</sup>, contends the petitioner. The learned Chief Justice before whom the matter came up for admission, being unable to agree with the reasoning of the learned single Judge, has referred the matter to a Division Bench. Be it realised that in Odhavji Narsi's case the learned single Judge was called upon to interpret the expression 'hardship' occurring in Section 7(2) of the Gujarat Vacant Lands in Urban Areas (Prohibition of Alienation) Act of 1972. We are concerned with the expression "undue hardship" in the context of a different status viz. the Urban Land (Ceiling and Regulation) Act, 1976. But subject to this point of distinction, *prima facie* Odhavji Narsi's case lends support to the proposition (apparently an extremely wide one) being canvassed by the petitioner. It is in this backdrop that we are faced with this delicate question. 'Delicate' because construed too narrowly the exemption clause may become self-defeating and may not achieve its life aim. Construed too widely it will sound the death-knell of the Act itself. But before we undertake the task we must look at the landscape.

2. The petitioner approached the Secretary, Revenue Department. Government of Gujarat. by

way of an application as per Annexure-'A' dated August 12, 1976, with a prayer that he may be exempted from the operation of the Urban Land (Ceiling and Regulation) Act under Section 20(1)(b) on the ground of undue hardship to him. The petitioner thereafter produced certain material in order to show the extent of his indebtedness as per

<sup>1</sup>(1976) 17 Guj LR 259

Annexure-'B' collectively. After hearing the petitioner, the Under Secretary, Revenue Department, Government of Gujarat, rejected the application of the petitioner by a speaking order as per Annexure-'C' dated Sept. 12, 1979. Thereupon the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

3. The material produced before the competent authority goes to show that the petitioner is indebted to a very great extent. The particulars of his indebtedness are as under :-

Rs. 3,35,653-85	with running interest at 12% as per the decree passed by Second Joint Civil Judge (S. D.) Baroda, in Special Suit No. 352/73
Rs. 4,98,717-13	with running interest as per the award rendered by the Court of Board of Nominees Co-operative Societies, on May 10, 1973
Rs. 5,26,341-00	due to depositors as per the balance-sheet for S. Y. 2032 (statement of liabilities for the S. Y. 2032 of the firm M/s. Industrial India).
Rs. 3,55,998-10	with running interest as per decree passed by the Court of Joint Civil Judge (S. D.) Baroda in Special Suit No. 106/73.
Rs. 4,44,444-00	due to depositors as per the balance sheet for S. Y. 2032 (statement of liabilities for the S. Y. 2032 of the firm M/s. Bharat Chemicals).
Rs. 21,61,154-08	Total

According to the petitioner there are other debts also. We may mention that we are not concerned with either the genuineness or the true extent of the debts for the purposes of the present petition. We are concerned with the question as to whether a holder of vacant land in excess of ceiling limit whose debts far excised his total assets can claim exemption under Section 20(1)(b) on the ground of undue hardship to him. The view taken by the Deputy Secretary in his impugned order at Annexure-"C" is that his indebtedness will not fall within the ambit of the expression "undue hardship" occurring in Section 20(1)(b) which reads as under :-

"20. (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter :-

(a) xx xx xx xx xx

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any as may be specified in the order, such vacant land from the provisions of this Chapter :

Provided that no order under the clause shall be made unless the reasons for doing so are recorded in writing".

In our opinion, it cannot be said that the indebtedness of a holder of an excess vacant land can never amount to undue hardship within the meaning of Section 20(1)(b). Undue hardship has to be judged having regard to the circumstances the holder of such land, in view of fact that the provision in question provides that exemption may be granted the State Government is satisfied to the application of the provisions of Chapter III would cause undue hardship such holder. What then is the meaning and content of the expression "and hardship to such person" ? It may be realized that a holder of excess vacant land may be possessed of several properties. In modern life such a person may also have debt. Merely because such a person has debts, he cannot say that if provisions of Chapter III are applied in the excess vacant land in his possession is dealt with under the Act, it would cause undue hardship. The Act makes suitable provisions to enable the holder of such a land to retain some vacant land within the specified limits as prescribed by Section 4 read with Schedule I of the Act. It also provides for certain vacant land under certain circumstances as envisioned by Section 20 of the Act. If the mere fact holder of excess vacant indebted to some extent by itself were to be considered to constitute undue hardship to such person within the meaning of Section 20(1)(b), the very object of the Act which has been outlined in the pre amble of the Act viz. to prevent the concentration of urban land in the hands of a few persons, and, to prevent speculation and profiteering therein, and to secure an equitable distribution of land urban agglomerations to subserve the common good, would be defeated for it could be difficult to visualize a holder of excess land who has no debts whatsoever. Some illustrations will make the point clear. A holder of excess vacant land may be possessed of assets worth about Rs. 10 lacs. He may also be indebted to several persons, say to the extent to Rs. 6 lacs, in such a situation can he intend that the application of the provisions of Chapter III of the Act would cause undue hardship on him ? No. To hold that he would be entitled to exemption would be to sabotage the Act. It would amount to according a privileged treatment to a land holder who has borrowed from others vis-a-vis one who has not done so. Why should a landholder with debts be preferred to a land-holder without debts ? It would be irrational and unethical to do so. Besides it would amount to converting the unsecured debts of such landholder into secured debts realizable from vacant lands which are earmarked for re-distribution in order to achieve equitable redistribution to subserve common good. Instead of subserving common good it will serve the good of the land-holder who had concentrated lands into his grabbing hands and of his creditors who can proceed against his other assets. If he can meet his obligations from his other assets (the conclusion is obvious and inevitable) there is no question of

any hardship to him much less of undue hardship to him. We have, therefore, no hesitation in holding that Odhav Narsi's case ((1976) 17 Guj LR 259) in so far as it holds otherwise, does not state the law correctly. To the extent that it has been laid down by the learned single Judge. That once it is shown that the holder of the land is indebted, the Government is bound to grant exemption regardless of the fact whether the holder of the land is of other properties which may be sold in order to meet the obligations already incurred, does not represent the correct position in law. But to say that indebtedness by itself is no good ground for claiming exemption under the head of undue hardship is not to say that indebtedness in no case can constitute undue hardship. What is to happen when the extent of debts is such that these far exceed the total assets.

When the debts are of such a magnitude that they cannot be cleared except by liquidating the excess vacant lands, the matter assumes a different complexion and a different approach will have to be made, Refusal to grant exemption in such a case would result in the holder of the land being obliged to live and die in a state of indebtedness notwithstanding the fact that the excess vacant land in his possession could have been sold in the open market and the sale proceeds along with the sale proceeds of his other assets could have been applied in repaying the debts if only he was granted exemption from the provisions of Chapter III. In such an event it can certainly be said that refusal to grant exemption would cause "undue hardship" to him, Be it realised that the dominant purpose of the legislation is to prevent concentration of urban land in a few hands and to prevent speculation and profiteering in such lands apart from the object of achieving equitable distribution of land to subserve common good. It would be an anachronism to speak of equitable distribution when a particular holder of excess vacant land possesses the land only notionally in the eye of law in the sense that in his balance sheet it is merely illusory item on the agents of assets in the context of his overwhelming debts which more than drown the value of the excess land. So also there is no question of preventing concentration of land in the hands of a few persons or preventing speculation and profiteering therein. Apparently it is in order to meet such peculiar fact situation pertaining to individual land holders that the Legislature has enacted Section 20(1)(b). In the absence of such a provision on the one hand the holder of the land concerned would have to live and die in indebtedness and on the other hand innocent members of the society to whom such person is indebted would have to suffer. It is in this perspective that the Legislature in its wisdom has enacted Section 20(1)(b) and has provided that in case of undue hardship to a holder of an excess land, the State Government upon being so satisfied may grant exemption from the provisions of Chapter III subject to such conditions, if any, as may be specified in the order. And the Legislature has also with a purposeful all- seeing eye has provided that exemption may be granted on such conditions as may be specified so that the exemption is not misused and the object of granting exemption is not frustrated. The State Government can well specify that exemption is granted strictly on condition that (1) the land is sold at fair market rate and (2) within a specified time and (3) that the sale- proceeds are applied immediately for repayment of the genuine pre-existing debts as are specified in the order. No doubt before granting an exemption an enquiry would be required to be made as regards the genuineness of the debts. This precaution must be taken because otherwise in order to escape from the clutches of the aforesaid provision, unscrupulous persons might bring into existence

sham transactions just with a view to claim exemption. This enquiry would, therefore, have to be made. A case may also arise where having regard to the ratio of other assets to total indebtedness it should be sufficient to grant exemption only partially and not in respect of his total holding. In such an event it may be necessary to grant exemption only in respect of a part of the excess vacant land sufficient to meet with the obligation arising out of genuine indebtedness. For instance, if a person claiming exemption holds 10,000 sq. metres of land and his debts (which exceed his other assets) are of such an extent that they can be satisfied by disposing of 2000 sq. metres of the land in the open market at the market rate, a limited exemption to the extent of 2000 sq. meters may be granted on suitable conditions. One of the conditions which might be imposed would be about the specified rate at which the land is to be sold in order to ensure that the land is not sold to relatives or parties having friendly relations at nominal rates or at rates lower than the prevailing market rates. Such a precaution may also be taken to ensure that underhand dealings do not take place and the market value expressed en paper is less than the real sale-price. For this purpose the Government may well make appropriate enquiries regarding the prevailing market rates in the locality in question and grant exemption on condition that the lands are sold at the reserved rates or at rates higher than reserved. In making assessment of the market value the State Government may take into consideration the realities of life. What we have in mind is a shady practice which has come to prevail in the present times viz. the practice to indicate a lower price than the real price and to pay the difference between the real price and the ostensible price to the vendor in unaccounted money. All these precautions may well be taken by the State Government. So also the debts which can be taken into consideration would be the debts anterior to the material date. If a land-holder in anticipation of this legislation has deliberately created debts and incurred liabilities with the end in view to escape the clutches of law, the State Government would be perfectly justified in refusing, to grant exemption. But otherwise if the debts are genuine and exceed his other assets, it cannot be said that the holder of the excess vacant land would not suffer undue hardship if exemptions was not granted.

4. It is now time to sound a note of warning. In a way every holder of excess vacant land may feel some hardship if the provisions of Chapter III were made applicable and he is deprived of the ownership and possession of such vacant land. Such a hardship cannot be taken into consideration for in that case it would amount to annulling the statute. The hardship must be undue hardship. There must be something special, something out of the ordinary, something peculiar to the facts situation pertaining to the individual concerned. It is only in such cases that the expression "undue hardship" would be attracted. We do not want to adumbrate exhaustively the situations to which the expression "undue hardship" could be applied for the purposes of Section 20(1)(b), So far as the aspect of indebtedness is concerned, we have indicated the nature and the extent of indebtedness which can justify the application of undue hardship principle to the holder of an excess vacant land in given situations.

5. One aspect which has been brought to our notice is that the indebtedness of the petitioner arose in his capacity as a partner in two partnership firms. It has been stated at the Bar, and we have no manner (means ?) of finding out whether it is correct or not, that the other partner was merely a

working partner who is not possessed of any means and that the debt burden would fall solely on the shoulder of the petitioner. If the holder of excess land is a partner of a firm and if the assets of the firm or the other partners are sufficient to meet financial obligations, the Government may well take into consideration these circumstances in order to decide whether or not exemption should be granted. Having regard to the realities of life it may be very difficult to assess the genuineness or otherwise of the debts incurred by the partnership and to assess whether the indebtedness pleaded by the holder of land is incurred in good faith or whether it is manipulated in order to oblige the partners. The competent authority will have to take an informed decision in the fact situation of each individual case bearing in mind the aforesaid dimension of the matter. We can and need say no more in this context.

6. In the result, we allow this petition, quash the impugned order at annexure 'C' dated September 12, 1979, and direct the State Government to reconsider the application made by the petitioner on merits in the light of the observations made hereinabove. We may clarify that the State Government may permit the petitioner to produce the relevant material and may also collect the relevant material on its own subject to affording a reasonable opportunity to the petitioner to have his say regarding the reliability of the material so gathered and to counter the effect of such material. The State Government may also impose such conditions as may be deemed expedient having regard to the facts and circumstances in the light of the guidelines indicated hereinabove. The State Government may act with expedition having regard to the fact that the decrees are passed against the petitioner carrying interest and the debt burden goes on mounting. Rule is made absolute to the aforesaid extent. There will be no order regarding costs. Petition allowed.