

(2004) 10 GUJ CK 0066
In the Gujarat High Court

Case No : Special Civil Application No. 7199 of 1996 and Civil Application No. 1154 of 2003

AMC

APPELLANT

Vs

Rataji Gandaji Thakore

RESPONDENT

Date of Decision : 30-10-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Bombay Town Planning Act, 1954 — Section 51(3)
Constitution of India, 1950 — Article 226

Citation : (2004) 10 GUJ CK 0066

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Prashant G. Desai, for the Appellant; A.J. Patel and B.G. Patel for Respondent Nos. 1-4 and Jitendra M. Patel, for the Respondent

Judgement

Jayant Patel, J.—The petitioner-Corporation has preferred this petition for the reliefs inter alia to direct the respondents to treat the order passed by the Secretary (Appeals) Revenue Department dated 6.09.1995 in the Tenancy Case No. 1/1995 as cancelled. The petitioner has also prayed for a declaration that in view of Town Planning Scheme No. 20 (Gulbai Tekra), Final Plot No. 42 is reserved for petitioner-Corporation for School and has vested in the Corporation free from all encumbrances on the date on which the Final Town Planning Scheme has come into force and the petitioner Corporation is the owner of the said Plot No. 42. The petitioner has also prayed to call for the record and proceedings of Tenancy Case No. 1/1995 and Tenancy Case No. 39/1993 from the Secretary (Appeals) and Mamlatdar and ALT and prayed to set aside the observations made against the petitioner about the ownership of Final Plot No. 42 of Town Planning Scheme No. 20.

2. It appears that one Dayabhai Kalidas, Vahivatdar of Parabadi Trust was originally holding the land bearing survey No. 49/2. It also appears that thereafter TP Scheme No. 20 was framed and in the year 1960 intention to make

the TP Scheme was declared. It is the case of the Corporation that a draft scheme was sanctioned on 26.06.1961 and as per the Corporation, the Scheme was sanctioned u/s 51(3) of Bombay Town Planning Act, 1954 and accordingly it came into operation from 15.07.1966. It is further case of the Corporation that land of Survey No. 49/2 was given original Plot No. 21 and, in the scheme and against Plot No. 21, three final plots were allotted being Final Plot No. 41, 62, and 63. It is the case of the Corporation that original Plot No. 21 was admeasuring 4961 Sq. yards and in lieu thereof three final plots were allotted, admeasuring 4705 Sq. yards and Final Plot No. 41 was carved out from original Plot No. 21 and final Plot Nos. 62 and 63 were carved out from original Plot No. 27. As per the Corporation one Dayabhai Kalidas, claiming as the original owner has taken possession of Final Plot Nos. 62,63 and 41. It is also the case of the Corporation that certain portion was reserved for road of original Plot No. 21 and certain portion was reserved for School, and adjacent to original Plot No. 21 there is another original Plot No. 20 and the said Plot has been included in the scheme from the land of original Survey No. 49/1/1 and 49/1/2 and as per the Corporation the said Plot was held by one Babubhai Narainbhai and others and original Plot No. 20 was admeasuring 10527 sq.yards out of which final Plot No. 43 was carved out admeasuring 8516 sq. mts.

3. It appears that the respondent Nos. 1 to 5 are claiming the right as tenant over the land bearing Revenue Survey No. 49/2 and therefore the application u/s 32(g) of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Tenancy Act") was made against Mithakali Dharmda Trust. The Mamlatdar and ALT - respondent No. 6 herein, came to the conclusion that the final Plot No. 42 was reserved for school and, while exercising powers under Tenancy Act it was also observed by Mamlatdar and ALT that respondent Nos. 1 to 4 could not prove their tenancy rights over the said land and therefore except final Plot No. 42, the respondent Nos. 1 to 4 were held as agricultural tenant. It appears that the order of the Mamlatdar and ALT was carried in appeal before the Deputy Collector and the appeal came to be rejected on 13.11.1992. It further appears that the matter was further carried before the Gujarat Revenue Tribunal and there appears to be some compromise and the revision was withdrawn.

4. It further appears that in the Revision No. 586/92 which was preferred against the order of the Mamlatdar dated 11.08.1992 qua the land of Plot No. 42, the matter was remanded to Mamlatdar and ALT and it further appears that the matter was carried before the State Government in Revision No. 11/1993 and the State has passed the order on 29th October, 1993 whereby the order of the Deputy Collector in revision was partly set aside and it was ordered to Mamlatdar and ALT for passing formal order. It appears that the Mamlatdar and ALT, thereafter considered the matter and on 9.12.1994 passed the order under the Tenancy Act whereby the rights of the tenants were decided but the grievance of the petitioner herein is that the Mamlatdar and ALT while exercising power under the Tenancy Act could not have observed that the petitioner Corporation is not

the owner or in possession of the land of original Survey No. 49/2 (final Plot No. 42) and it was further ordered to remove the name of the Corporation from the record and it was ordered to restore the original status as on 1.04.1957 and 13.12.1960. It appears that the Mithakali Dharmadi Trust who was the owner of the land, carried the matter before the State Government and the State Government in the revision, as per order dated 6.09.1995 also, incidently recorded the finding of Mamlatdar and ALT and ultimately dismissed the revision.

5. It further appears that in the meantime when the Corporation was to take possession of final Plot No. 42, respondent No. 4 has preferred Civil Suit No. 4395/1992 in the Court of City Civil Court at Ahmedabad and one of the contentions raised in the Civil Suit is that the Corporation is having no right title or interest over the land in question.

6. It is, under these circumstances the petitioner has preferred this petition for the above referred reliefs.

7. Mr. Desai, learned advocate appearing for the petitioner submitted that the authority exercising power under the Tenancy Act can at the most decide the rights of the tenant and it had no authority or jurisdiction to examine the ownership of the Corporation which is asserted as per the relevant Act under which the TP Scheme is framed. He further submitted that since, as per the Corporation a part of the land forming part of final Plot No. 42 is reserved for school purpose, it would vest to the Corporation and the holder of the property may be original owner or the tenant, at the most would be entitled to compensation. He also submitted that as such, as per the Corporation, the compensation is fixed and the net amount assessed is Rs. 4592.00 qua the land in question and therefore, he submitted that the observations made by the Mamlatdar and ALT and its confirmation thereof by the State Government would seriously prejudice the rights of the petitioner Corporation in implementing the scheme as well as if the observations made in the order are not expunged it may also seriously prejudice the defence of the Corporation in the proceedings of Civil Suit No. 4395/1992.

8. Mr. Patel, the learned counsel appearing for the respondents submitted that the rights of the tenant over the land in question will continue even after framing the scheme and irrespective of the inclusion of the land in TP Scheme. He, therefore, submitted that merely because the TP Scheme is framed, rights of private respondent as the tenant over the land in question shall not stand extinguished. He further submitted that since Mamlatdar and ALT had to examine the rights of the tenant over the land, which is included in Plot No. 42, as per the Corporation, it was required for the Mamlatdar and ALT to examine the said aspect and as the proper rectification is not made by the Corporation, in the record of the scheme and as no other evidence could be produced before the Mamlatdar and ALT, the observation made by Mamlatdar and ALT in the order dated 9.12.1994 and its confirmation thereof by the State Government are legal and valid. Mr. Patel also submitted that as such, against the order of the

Mamlatdar and ALT, the Corporation has also preferred appeal and the said appeal is pending. He further submitted that the order of the State Government dated 6.09.1995 was carried before this Court and it is confirmed. He also submitted that even if the finding of the Mamlatdar and its confirmation thereof by the State Government are to be upset on the ownership of either party, it would require examination of disputed questions of fact and therefore he submitted that this Court may not interfere with the orders passed by the Mamlatdar and by the State Government, and the observations made, may not be expunged by this Court in exercise of the powers under Article 226 of the Constitution of India.

9. Therefore, the first aspect which may be required to be considered is whether the order of the State Government is confirmed by this Court or not.

10. It appears that Mithakali Dharmda Trust, who was the original owner of the land in question, had preferred Special Civil Application No. 7323 of 1996 before this Court against the order passed by the State Government dated 6.09.1995. However, perusal of the copy of the order dated 27.09.1996 passed by this Court (Coram: H.R.Shelat, as he then was) shows that the following order was passed:

"Hearing the Id. advocate representing the petitioner, it appears that the cause now does not survive and the petition is virtually infructuous. The petition is, therefore, rejected."

There is no examination on merits to the order passed by the State Government which was challenged in the said petition and therefore it is not possible to conclude that as the petition preferred by the Trust which was essentially for challenging the rights as the original owner of the land vis-a-vis the rights of the tenants, if rejected as having become infructuous, the order passed by the State Government was confirmed by this Court on merits and therefore the said contention of Mr. Patel appearing for the private respondents cannot be accepted.

11. The contention raised on behalf of the petitioner that whether the observations made by the Mamlatdar and ALT while exercising power under the Tenancy Act qua the rights of the Corporation is without jurisdiction or not, deserves consideration. There is no dispute on the point that Mamlatdar and ALT was exercising power under Tenancy Act and therefore the scope and ambit of the jurisdiction of the Mamlatdar and ALT would be within the provisions of the Tenancy Act. There is also no dispute on the point that the Mamlatdar and ALT could not have exercised the jurisdiction under the Town Planning Act. Formerly it was Bombay Town Planning Act and now The Gujarat Town Planning And Urban Development Act, 1976 (hereinafter referred to as the TP Act). Therefore, while examining the matter, the Mamlatdar and ALT could not have travelled beyond the provisions of the Tenancy Act. Even if the finding of the Mamlatdar is accepted for the consideration that the necessary correction was not carried out in the revenue record by the Town Planning authority while preparing the scheme and/or while finalising the scheme, the Mamlatdar and ALT could not have made

observations which results into nullifying the statutory effect of TP Scheme. It is well settled that the competent authority under one enactment has to exercise the power within the scope and ambit of the said enactment. It may refer to the other enactment while considering the matter because incidently it may also be required to consider the facts, but while exercising power under one enactment, the final declaration cannot be given under other enactment for which there is no jurisdiction with the said competent authority. The reference may be made to the decision of this Court in case of Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, and Anr. decision of this Court in case of Janardan D. Patel Vs. State of Gujarat, . Therefore, it is apparent that the Mamlatdar and ALT has exceeded in its jurisdiction for making observations that there is no right of Ahmedabad Municipal Corporation over the land and the name of Ahmedabad Municipal Corporation be deleted as the possessor of the land in question. So far as the other observations and the order passed by the Mamlatdar and ALT qua the rights of the tenant vis-a-vis rights of the original owner of the land are concerned, as there is no challenge against the same either by the tenant or by the land lord, it is not required for this Court to examine the merits of the said part of the order, but at the most it can be said that it was within the jurisdiction of the Mamlatdar and ALT to examine the rights of the tenant vis-a-vis the rights of the original owner of the land as per the Tenancy Act.

12. In the revision before the State Government there is recording of the aforesaid finding by the Mamlatdar and ALT qua the ownership of the land in question of the Corporation and it appears that the State Government in revisional jurisdiction has also committed apparent error in not expunging the observation and/or setting aside the order passed by the Mamlatdar qua the rights of the Corporation over the land in question and the further orders thereto. After the sanction of the scheme, whether the land vested to the Corporation and whether the Corporation became absolute owner of the land in question or not, is a matter which the petitioner as well as the Plaintiff of Civil Suit No. 4395 of 1992 will have to establish in the proceedings of the Suit and, therefore, I find that any view expressed by this Court on the said aspect may be prejudice to the rights of either side in the proceedings of Civil Suit No. 4395/1992 and therefore, the said contentions of both the sides deserves to be kept open.

13. In view of the aforesaid, if the observations made in the impugned order passed by the Mamlatdar and ALT and its confirmation thereof by the State Government in the revisional jurisdiction qua the rights of the petitioner Corporation, appears to be exceeding in exercise of the jurisdiction and also without jurisdiction, because neither the Mamlatdar and ALT nor the State Government, exercising revisional power under the Tenancy Act has any competence or jurisdiction to finally conclude the rights of the parties over the land in question, vis-a-vis the rights of the local authority which the competent authority to implement the scheme as per the provisions of Town Planning Act. When the observations made in the order and the operative portion in the order

of the Mamlatdar to that extent and its confirmation thereof by the State Government to that extent are wholly without jurisdiction, I find that considering the facts and circumstances referred to hereinabove, the normal principle of not to exercise the power by this Court under Article 226 of the Constitution by way of self-imposed restriction in a case where the appeal can be preferred or the appeal is preferred, should not be made applicable. It appears that the order passed by the Mamlatdar and ALT as well as by the State government qua the rights of the petitioners over the land of final Plot No. 42 deserve to be quashed and set aside, leaving the liberty to the private respondents herein, who are claiming the rights as the tenant over the land to resort to the appropriate proceedings in accordance with law in case if they are aggrieved by any action of the Town Planning authority, including the petitioner Corporation.

14. Mr. Patel has relied upon the decision of this Court in case of Navrangpura Gam Dharmada Milkat Trust Vs. Ramtuji Ramaji and Others, . The reliance placed on the decision of this Court in case of Navrangpura Gam Dharmada Milkat Trust and Anr. (supra) by Mr. Patel, the learned counsel appearing on behalf of the private respondents is of no help to the respondent Nos. 1 to 5 because, in the case before the Division Bench, the subject matter was, as to whether, after the TP Scheme is framed, the rights as the tenant under the Tenancy Act can be continued or not; whereas in the present case the issue is whether the competent authority exercising power under the Tenancy Act can make any observations which results into affecting the authority of the Town Planning and/or competence of the local authority implementing the TP Scheme under the TP Act or not. Even if the principles laid down in the aforesaid decisions are considered, at the most it can be said that even after framing of the scheme the respondent Nos. 1 to 5 can continue to claim the rights over the land in question as the tenant, therefore, at the most they may step themselves into the shoes of the original owner of the land and consequently may be entitled to the compensation or otherwise but such cannot be read to defeat the rights of the Corporation as the authority implementing the scheme, wherein the land may be in the ownership of the original owner or there are rights of the tenant over the land, which is reserved for public purpose under TP Scheme under TP Act.

15. In view of the aforesaid, the petition is partly allowed to the extent that the observations made in the order passed by the Mamlatdar and ALT and its confirmation thereof by the State Government qua the rights of the petitioner over the land of final Plot No. 42 of TP Scheme No. 20 shall stand quashed and set aside. It is made clear that quashing of the aforesaid or the relief granted to the petitioner shall not prejudice the rights of the respondent Nos. 1 to 5 to challenge any action of Town Planning Authority, including the petitioner Corporation pertaining to the Scheme under the Town Planning Act in accordance with law. It is also made clear that the contentions of both the sides in the proceedings of Civil suit No. 4395 of 1992 shall remain open and the Civil Court will be at liberty to decide the Suit in accordance with law.

Rule is partly made absolute. Considering the facts and circumstance, there shall be no order as to costs.

16. In view of the order passed in the main matter, Civil Application No. 1154 of 2003 would not survive and shall stand disposed of accordingly.