

(1994) 04 GUJ CK 0042
In the Gujarat High Court

Bai Bachiben Velabhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 33, 6(1), 8, 8(3)

Citation : (1995) 1 GLR 761

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the competent authority at Rajkot (respondent No. 2 herein) on 14th November 1983 in ULC Case No. 1459 as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 18th May 1987 in Appeal No. Rajkot-163 of 1983 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order respondent No. 2 declared the holding of the original petitioner (the deceased for convenience) to be in excess of the ceiling limit by 5731.66 sq. mts. and declared the excess to be surplus for the purposes of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief).

2. The facts giving rise to this petition move in a narrow compass. The deceased was in occupation of certain properties within the urban agglomeration of Rajkot. The area thereof was in excess of the ceiling limit prescribed therefore under the Act. He, therefore, filled in the prescribed form u/s 6(1) of the Act. Pursuant thereto a draft statement was prepared and it was caused to be served to the deceased in accordance with Section 8 of the Act. According to the deceased he never received it. It is not in dispute that the envelope containing the draft statement was despatched at the address of the deceased by post under registered cover and it came back with the postal endorsement "unclaimed". That endorsement was treated as "refused". Apropos, the deceased was treated to have been served with the draft statement in accordance with Section 8 of the

Act. The deceased filed no objection thereto for obvious reasons. By his order passed on 14th November 1983 in the aforesaid proceeding, respondent No. 2 declared the holding of the deceased to be in excess of the ceiling limit by 5731.66 sq.mts. and declared the excess to be surplus for the purposes of the Act. Its copy is at Annexure B to this petition. The aggrieved deceased carried the matter in appeal before the appellate authority u/s 33 of the Act. It came to be registered as Appeal No. Rajkot-163 of 1983. By his order passed on 18th May 1987 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure C to this petition. The aggrieved deceased thereupon moved this Court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the impugned order at Annexure B to this petition as affirmed in Appeal by the appellate authority by the impugned order at Annexure C to this petition. During the pendency of this petition, the deceased breathed his last and the present petitioner as his only heir and legal representative has been brought on record in his place.

3. It is not in dispute that the envelope containing the draft statement u/s 8(3) of the Act was sent to the deceased by post under registered cover and it came back with the postal endorsement "unclaimed". It is unfortunate that the endorsement "unclaimed" was treated as equivalent of the endorsement "refused". It is our common knowledge that the postman in charge of the delivery of registered articles makes endorsements like "not found", "left without particulars", "not found at the given address", "unclaimed" or "refused" when a registered article could not be delivered by him. It cannot be gainsaid that all these endorsements have different connotations. It cannot be gainsaid that all these endorsements or any of them made by the postman would be in accordance with the rules of postal business. In that view of the matter, in absence of any evidence from the concerned official from the postal department, respondent No. 2 was not justified in coming to the conclusion that the envelope containing the draft statement bearing the endorsement of "unclaimed" would mean that the registered article was refused by the addressee. There could be hundred and one reasons why the endorsement "unclaimed" was made by the postman on the registered article in question when it could not be delivered. It is possible that the name of the addressee on the envelope in question might not be tallying with the correct name of the person to whom the article was tendered for delivery. It is possible that there might be discrepancy in the address of the addressee and the named person could not be found at the given address. It is equally possible that the envelope might have been tendered at the address of the addressee and in absence of the addressee himself, members of his family might have shown reluctance in accepting the registered article. This is not uncommon in this country where a registered article is believed to be associated with some apprehended or dreaded contents. There are thus reasons and reasons for the official responsible for the delivery of a particular registered article to make the endorsement of "unclaimed" on the envelope when it could not be delivered. In absence of any clear-cut endorsement of "refused" on the

registered article in question, neither respondent No. 2 nor the appellate authority was justified in coming to the conclusion that the endorsement "unclaimed" would connote refusal of the registered article in question by the addressee. In that view of the matter there is no escape from the conclusion that the deceased was never served with a copy of the draft statement in accordance with Section 8 of the Act. He was thus denied an opportunity of having his say in the matter. The impugned order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition cannot, therefore, be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No. 2 or his successor-in-office for restoration of the proceeding in question to file and for his fresh decision according to law. For the time being, the petitioner is directed to appear before respondent No. 2 or his successor-in-office on 11th August 1994 for receiving the draft statement from the office of respondent No. 2. In case the petitioner is unable to remain personally present before respondent No. 2 or his successor-in-office on the given date, she shall arrange to collect the draft statement from the office of respondent No. 2 through her authorised representative. In case the draft statement could not be delivered to the petitioner or her authorised representative on that day, it would be incumbent upon respondent No. 2 or his successor-in-office to arrange for the service of the draft statement to the petitioner according to law. The further proceeding should be carried on only after the draft statement is served to the petitioner and only after she files her objections, if any, thereto within the prescribed time-limit.

4. In the result, this petition is accepted. The order passed by the competent authority at Rajkot (respondent No. 2 herein) on 14th November 1983 in ULC Case No. 1459 at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 18th May 1987 in Appeal No.Rajkot-163 of 1983 at Annexure C to this petition is quashed and set aside.

5. The matter is remanded to the competent authority at Rajkot (respondent No. 2 herein) or his successor-in-office for restoration of the proceeding in question to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute with no order as to costs.