
(1987) 06 GUJ CK 0009
In the Gujarat High Court

Bipinchandra G. Dalal and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 16-06-1987

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, 211, 65

Citation : (1987) 2 GLR 971

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—These two petitions are directed against the order passed by the Secretary (Appeals), Revenue Department of the State of Gujarat, in exercise of power conferred by Section 211 of the Bombay Land Revenue Code (hereinafter called "the Code") whereby he cancelled the permission granted by the Taluka Development Officer, Mangrol, (hereinafter called "TDO") u/s 65 of the Code. The facts giving rise to these petitions, briefly stated, are as under.

2. The first petition, Special Civil Application No. 4577 of 1984, has been filed by two petitioners who had applied u/s 65 of the Code for permission to make non-agricultural use of the land bearing Survey No. 152/1 in Block No. 120 admeasuring about 4 acres 3 gunthas which they had purchased under a registered sale deed dated 20th July 1981 for Rs. 40,401/-. The case of the petitioners is that they were entitled to purchase the land in question since they themselves were agriculturists. The lands in question are situate in village Mota Borsava in Mangrol Taluka which falls in Zone III of the Industrial Zones created under the incentive scheme floated by the State Government under Government Resolution dated 22nd December 1977. As the land was situate in Zone 111 comprising Mangrol Taluka, the petitioners were entitled to certain incentives for setting up small, medium or large scale industries in the said zone. The petitioners made an application dated 16th August 1982 for permission to use the land in question for non-agricultural purposes, namely, plotting the same for construction of industrial sheds and residences. The TDO granted permission by

his order dated 6th November 1982, Annexure "A". It is the say of the petitioners that after the permission was granted u/s 65 of the Code, the lay-out plans were prepared and 45 sub-plots created thereunder were sold to different persons by registered sale deeds as detailed in Annexure "C". It appears from the said Annexure that the lands were sold on 7th/8th July 1983 to different persons. The actual possession of the lands sold to these persons was also transferred.

3. The petitioners say that to their utter surprise they received a notice dated 8th/11th May 1984 threatening to cancel the permission granted by the TDO on 6th November 1982 in exercise of revisional powers conferred by Section 211 of the Code. Annexure "B" to the petition is the show-cause notice issued by the Secretary (Appeals), Objections were filed to the said show-cause notice and oral submissions were made through Advocate at the date of hearing. The Secretary (Appeals) however, by his order dated 26th June 1984 rejected the objections and cancelled the permission granted by the TDO u/s 65 of the Code. In doing so, he held that the TDO had failed to follow the guidelines laid down by Government Resolution dated 25th March 1981 inasmuch as the permission was granted without consulting the concerned authorities including the Industries Department as required by the said guidelines. He also came to the conclusion that the procedure required to be followed in cases where a highway is passing along the land had not been followed by the TDO. The contention regarding limitation was brushed aside on the ground that in view of two decisions of this Court in Kamalkhan Ajitkhan v. State of Gujarat Special Civil Application No. 395 of 1978 decided on 27th March 1978 and Gulam Yasinmiya Shaikh v. Collector, Surat Special Civil Application No. 2022 of 1974 dated 3rd May 1978 both reported in (1978) 15 GLT 147 and 179 respectively, it was permissible to exercise revisional powers after a lapse of two or three years also and since in the instant case no construction had taken place, the exercise of power was not likely to cause any prejudice to the petitioners.

4. The second petition, Special Civil Application No. 6510 of 1984 concerns land bearing Survey Nos. 134 and 135 of Block No. 104, admeasuring about 48,993-4 sq. metres purchased by the petitioners under a registered sale deed dated 7th July 1981. This land is also situated in village Mota Borsava of Taluka Mangrol. Entrepreneures desirous of setting up small, medium or large scale industries in this area comprising Zone III are entitled to certain incentives e.g., cash subsidy at the rate of 15 per cent of the fixed assets or Rs. 25/- lakhs, whichever is less. The petitioners, therefore, purchased the lands and made an application dated 16th August 1982 u/s 65 of the Code for permission to make non-agricultural use thereof for the construction of industrial sheds and residences. The TDO by his order dated 6th November 1982 granted permission on the terms and conditions set out in Annexure "A" to the petition. After the grant of permission the petitioners entered into an agreement for sale of the land to Shrinathji Corporation on 5th October 1982. The petitioners contend that they received the full consideration for the lands and have since delivered actual possession thereof

to the organizers of Shrinathji Corporation. The petitioners contend that in view of the decision taken at the level of the Chief Minister they were served with a notice, Annexure "B" dated 8th/11th May 1984 to show cause why the permission granted by the TDO u/s 65 of the Code should not be cancelled. The petitioners contend that they filed their written objections to the proposed action and at the hearing made oral submissions through their Advocate but the Secretary (Appeals) cancelled the permission by his impugned order dated 20th June 1984. The petitioners, therefore, contend that the impugned action is mala fide and grossly delayed and smacks of abuse of power. The order of the TDO has been cancelled on the same grounds on which a similar order was cancelled in Special Civil Application No. 4577 of 1984 indicated earlier.

5. From the above facts it clearly emerges that the petitioners had purchased the lands in question before they applied for permission u/s 65 of the Code. After they purchased the lands, they sought permission to make non-agricultural use thereof which permission was granted by the TDO by his order dated 6th November 1982. It is further case of the petitioners that after the grant of permission they sold or agreed to sell the lands in question to third parties and received consideration for the same. They also parted with the actual possession of the land in favour of the vendees. Long thereafter the Secretary (Appeals) issued show-cause notices dated 8th/11th May 1984 for exercise of revisional power u/s 211 of the Code. In other words, the revisional power was sought to be exercised after a lapse of almost 1 1/2 years. The order cancelling the permission was ultimately passed in June 1984 and it is against that order that the present two petitions are preferred.

6. It may here be mentioned that the petitioners of Special Civil Application No. 6510 of 1984 had also sought permission in respect of another parcel of land situate in village Mota Borsava admeasuring about 2,723 sq. yards which was granted by the TDO on 6th May 1982. In respect of that land also a show-cause notice was issued on 8th May 1984 by the Secretary (Appeals). Insofar as the said proceedings were concerned, the contention urged on behalf of the petitioners that the exercise of power u/s 211 of the Code was grossly delayed was upheld by the very same officer and the show-cause notice was withdrawn by his order dated 16th October 1984, copy whereof is produced at Annexure "D" to that petition. A copy of the said order is also produced in Special Civil Application No. 4577 of 1984 for the purpose of pointing out that while in that case the Secretary (Appeals) upheld the contention that the proposed action was grossly delayed, surprisingly he took just a contrary stand while passing the impugned orders which are the subject-matter of the present petitions. On a bare perusal of the order passed by the Secretary (Appeals) in respect of that plot of land in Block No. 80 admeasuring 2,723 sq. yards, it becomes clear that the material facts were more or less identical to the facts in the present two petitions and yet while in the said proceedings he withdrew the show-cause notice by his order dated 16th October 1984, he surprisingly adopted just the contrary course while passing the impugned orders which are the subject-matter

of the present two petitions. It is not possible to reconcile the two decisions since the material dates are identical.

7. The Supreme Court in the case of *State of Gujarat v. Raghav Natha* 1969 GLR 992 was concerned with a case where revisional powers were sought to be exercised u/s 211 of the Code in respect of permission granted u/s 65 of the Code. In that case one of the questions which came up for consideration was, whether it was open to the concerned authority to exercise revisional jurisdiction at any point of time or whether the same ought to be exercised within a reasonable time. Dealing with this question the Supreme Court observed that while no period of limitation was prescribed u/s 211 of the Code, the power must be exercised within a reasonable time, the length of reasonable time to be determined by the facts of the case and the nature of the order proposed to be revised. The Supreme Court further stated that in cases where revisional power is sought to be exercised with reference to the order made u/s 65 of the Code, the length of reasonable time must be determined having regard to the time factor provided in Section 65 of the Code for the grant of permission. Taking note of the fact that u/s 65 of the Code if the Collector does not inform the applicant of his decision within a period of three months the permission by fiction of law must be taken to have been granted, the Supreme Court observed that the revisional power must be exercised within a few months of the order passed u/s 65 of the Code having regard to the urgency accorded to such orders by the legislature. The Supreme Court answered the question in paragraph 13 of the judgment as under:

Reading Sections 211 and 65 together it seems to us that Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission.

It is clear from the above observation that in cases where revisional power is proposed to be exercised u/s 211 of the Code in regard to permission granted u/s 65 of the Code, the same must be done within a few months keeping in mind the urgency exhibited by the legislature by providing that if the authority does not make up its mind within three months and does not indicate the decision, the permission shall be deemed to have been granted. In the present cases the permission was granted by the TDO on 6th November 1982 and thereafter, after a lapse of almost 1 1/2 years, the Secretary (Appeals) issued show-cause notices dated 8th/11th May 1984 for exercise of power u/s 211 of the Code. The question then is, whether the power can be said to have been exercised within a reasonable time?

8. Mr. Bukhari, the learned Assistant Government Pleader, invited my attention to the decisions of this Court in *Habib Nasir Khanji v. State* 1970 GLR 307 and *Bhagwanji Bawanji v. State of Gujarat* 1971 GLR 156 and contended that the length of reasonable time must depend on the facts and circumstances of each

case and in the aforesaid decisions the exercise of revisional power after a lapse of a year or so was considered to be in order. He submitted that the basic idea is to see that the sword is not kept hanging on the party granted permission for an unreasonably long period as that would make it difficult for the party to make non-agricultural use of the land. It must be realised that both these decisions on which Mr. Bukhari places reliance are not concerning the grant of permission u/s 65 of the Code. The power u/s 211 of the Code can be exercised by the State Government and certain high ranking officers in respect of any inquiry or proceedings of any subordinate revenue officer. Such inquiry or proceedings may or may not relate to the question of grant of permission u/s 65 of the Code. While it is true that the length of reasonable time would depend on the facts and circumstances of each case, it must be realised that insofar as permission u/s 65 is concerned, that provision itself indicates the length of reasonable time within which action must be taken u/s 211 of the Code. Where the order sought to be revised is other than the one made u/s 65 of the Code, the length of reasonable time may be governed by the facts and circumstances of that case but when an order passed u/s 65 of the Code is sought to be revised, the time factor set out in that provision itself gives a clear indication of what could be the reasonable time within which the jurisdiction should be exercised. Therefore, exercise of power u/s 211 of the Code in regard to orders made u/s 65 of the Code stand on a different footing and as observed by the Supreme Court, the revisional jurisdiction must be exercised within a few months. In the present case the order of the Secretary (Appeals) does not indicate why the decision to exercise revisional powers was delayed by *Wi* years. Unlike in the batch of petitions, Special Civil Application No. 4530 of 1983 and allied matters disposed of today, no preliminary inquiry was made, at least that is nobody's case, before decision to exercise revisional powers was taken. There is no explanation whatsoever why revisional jurisdiction was not exercised soon after the orders granting permission u/s 65 of the Code were made on 6th November 1982. In the absence of a satisfactory explanation, it is difficult to say that the revisional power was exercised promptly and expeditiously, i.e. within a reasonable time.

8.1. The Secretary (Appeals) has relied on two decisions of this Court, both rendered by S.H. Sheth, J. In the case of Kamalkhan Ajitkhan (*supra*), the Mamlatdar granted land to the petitioner on 3rd January 1973 and the Assistant Collector issued notice u/s 211 of the Code on 21st January, 1975, that is, after a lapse of two years. Relying on the decision of the Supreme Court that the power must be exercised within a reasonable time, it was observed that reasonable time must depend on the facts and circumstances of each case. Taking note of the fact that the petitioner had not done anything on the Wada land and the land had remained as it was during the said period of two years, this Court held that it was permissible to exercise revisional power as the same was not likely to cause any prejudice to the petitioner. In the case of Gulam Yasinmiya (*supra*), the order made by the Assistant Collector on 7th August 1967 was sought to be revised after a lapse of almost three years by notice dated 27th October 1970. Taking

note of the decision of the Supreme Court as well as this Court in Habib Nasir's case (supra), the learned Judge observed that since the period of reasonable time must depend on the facts and circumstances of each case, it would have been necessary to seriously view the proposed action if the evidence had disclosed that after the land was granted to the petitioner, the petitioner had invested moneys in the land, developed it or had done something to develop it. In the absence of such evidence, this Court held that notwithstanding the lapse of time, since the proposed action was not likely to cause prejudice to the petitioner, the same must be upheld. Both these decisions do not pertain to exercise of revisional powers relating to permission granted u/s 65 of the Code. As pointed out earlier, cases governed by Section 65 read with Section 211 stand on a different footing and in view of the observations made by the Supreme Court extracted earlier, the power must be exercised within a few months from the date of permission. Besides, in the present case the petitioners have averred that after the grant of permission, they have sold or entered into an agreement to sell the plot for the purpose of development and if the permission granted is belatedly cancelled, it would have a direct impact on the transaction entered into by the petitioners. Miss Shah was, therefore, right in contending that so far as the present two petitions are concerned since the first respondent has not given any satisfactory explanation for the delay, this Court must hold that the power was not exercised within reasonable time. She submitted that in the present case it is not the contention of the first respondent that any preliminary inquiry was made to determine whether these were fit cases for exercise of revisional powers as in the batch of petitions. Special Civil Application No. 4530 of 1983 and allied matters disposed of today and, therefore, there is no explanation whatsoever why the power was not exercised promptly within a few months from 6th November 1982. This is all the more so because in similar circumstances the Secretary (Appeals) had while dealing with land in Block No. 18 admeasuring 2723 sq. yards, withdrawn the show-cause notice on the ground that the proposed action was delayed. I am inclined to agree with the submissions made by Miss Shah in this behalf.

9. In view of the above, I hold that in the facts and circumstances of the cases on hand, the exercise of revisional power by the Secretary (Appeals) was after the expiry of reasonable period as replaced by the Supreme Court in Raghav Natha's case (supra). I am, therefore, of the opinion that the impugned orders passed by the Secretary (Appeals) cancelling the permission granted u/s 65 of the Code must be set aside in both the cases. The rule is made absolute accordingly with no order as to costs.