
(2010) 10 GUJ CK 0139

In the Gujarat High Court

Case No : Letters Patent Appeal No. 909 of 2010 In Special Civil Application No. 3744 of 2010

Dharmesh Chandulal Purohit

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 61

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 10(5), 6(1)

Citation : (2010) 10 GUJ CK 0139

Hon'ble Judges : S.J. Mukhopadhaya, C.J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : B.S. Patel and Arpit P. Patel, for the Appellant; U.A. Trivedi, AGP for Respondents 1-4 and J.R. Nanavati and Sunil B. Parikh for Respondents 5-10, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The appeal is directed against order dated 29.3.2010 passed by Learned Single Judge in Special Civil Application No. 3744/2010 by which the petition of the present Appellant came to be dismissed. This case has a chequered history.

2. Briefly stated facts are as follows:

2.1. On or around 11.8.1976 one M/s. Shakti Brick Works, a partnership firm filed form u/s 6(1) of the Urban Land (Ceiling and Regulation) Act (#the ULC Act# for short) disclosing its land holding bearing survey No. 154-A admeasuring 2 acres 10 gunt has and 43 sq. mtrs and survey No. 154-B admeasuring 3 gunt has and 4 sq. mtrs both of village Naroda, Ahmedabad(hereinafter referred to as #the said land#). ULC authorities adjudicated on the question of excess land and issued notification u/s 10(1) of the ULC Act with respect to the lands found excess of the ceiling limit. Notification u/s 10(3) of the ULC Act was issued on 29.1.1997. Notification u/s 10(5) of the ULC Act was issued on 5.8.1997. The

competent authority took possession of the land on 1.12.1997 drawing panchnama.

2.2. On 2.4.1998 City Mamlatdar, Ahmedabad issued a notice purportedly u/s 61 of the Bombay Land Revenue Code to the original Petitioner (i.e. present Appellant) Dharmesh Chandulal Purohit stating that the said land is of the ownership of the Government. Talati, Naroda in his statement dated 20.11.1998 has stated that on the said land Petitioner has unauthorisedly constructed five rooms in 66 sq. mtrs. of land and thereby encroached on the Government land. He was therefore called upon to show cause why steps should not be taken u/s 61 of the Bombay Land Revenue Code to evict his occupation and to recover fine for such encroachment.

2.3. In response to the notice, Petitioner filed reply on 17.4.1998 contending that he is in possession of the said property since year 1984. He had occupied the land as partner for which he however, does not have any documents presently. If the land is Government land, it may be allotted to him permanently and his encroachment may kindly not be removed.

2.4. On 6.5.1998, the City Mamlatdar however, passed an order directing removal of the encroachment of the Petitioner. It was recorded that out of 20407 sq. mtrs. of land of Survey No. 154-A which has become the land of the ownership of the Government, the Petitioner Dharmesh Chandulal Purohit has occupied 66 sq. mtrs. of land by constructing five rooms. He has applied for grant of land on permanent basis on payment of fine. However, this request is not required to be accepted. He therefore, ordered that encroachment be removed. Though the Petitioner approached Additional Collector ULC, challenging the order of Mamlatdar and also prayed for regularisation of his possession, admittedly, such request was not accepted. In the meantime, proceedings under the ULC Act continued.

2.5. Eventually, three separate petitions came to be filed before this Court namely Special Civil Application No. 8670/2001, Special Civil Application No. 5963/2002 and Special Civil Application No. 452/2001.

2.6. Special Civil Application No. 8670/2001 was filed on behalf of Shakti Brick Works, a partnership firm challenging the order passed by the authorities under the ULC Act. Special Civil Application No. 5963/2002 came to be filed by Dharmesh Chandulal Purohit i.e. the present Appellant claiming to have right, title and interest over the said land claiming to be a partner of the said partnership firm. Special Civil Application No. 452/2001 came to be filed by persons who were allotted the said land by the Government but who were unable to get possession thereof on account of legal proceedings.

2.7. All these petitions came to be disposed of by Learned Single Judge by a common judgement dated 29.3.2007. Learned Judge was of the opinion that possession of the land was not taken by the Government in accordance with law. No procedure as envisaged under the Act was followed. Notification under

Sections 10(1), 10(3) and 10(5) of the Act as well as possession panchnama were not in accordance with law. There was thus no vesting of the land in Government nor can the Government be stated to be in lawful possession thereof. On the basis of these findings, Learned Single Judge was pleased to allow Special Civil Application No. 8670/2001 filed on behalf of Shakti Brick Works and set aside orders under the ULC Act.

With respect to Special Civil Application No. 5963/2002 filed by the present Appellant, it was observed that he is unable to point out how he is the owner of the property in question. It was observed that he had not filled in form u/s 6 of the ULC Act. Before the competent authority, he had never remained present. No partnership deed was produced. He was unable to establish his right over the property. He was permitted to present copy of partnership deed before the High Court also. He never produced such document. It was therefore, held that no material has been produced on record by him regarding proof of ownership of the land. It was therefore, concluded that he had no right, title or interest over the land in question. It was also noted that Civil Suits with respect to this land filed by him have already been dismissed.

With respect to Special Civil Application No. 452/2001, the allottees of the land by the Government, the Learned Single Judge observed that since order of the competent authority is set aside, all consequential orders also stand quashed. It would therefore, be for the State to decide which new land should be allotted to the said persons. Government was therefore directed to consider their case afresh sympathetically and expeditiously.

2.8. The present Petitioner challenged the order of the Learned Single Judge in Letters Patent Appeal. However, such appeal also came to be dismissed on 6.8.2007 wherein Division Bench also observed that he has not produced any evidence supporting his claim that he was partner of the firm Shakti Brick Works. While dismissing the appeal, however, the Division Bench granted liberty to the Petitioner to take appropriate steps under the law in the Civil Court, if he had any right.

2.9. It is not in dispute that subsequently the Petitioner also instituted Civil Suit No. 86/2008 wherein his injunction application came to be rejected. He preferred Appeal from Order against such rejection. It also came to be dismissed by this Court by order dated 5.11.2009. Though the Petitioner claims to have filed SLP against the said order, it is not in dispute that so far no interim order has been passed in his favour by the Apex Court.

2.10. Since the Petitioner failed to establish his right, title or interest over such property and failed to get any protection in his favour from the Civil Court, it appears that the Government initiated steps to evict him from the property in question. By inter-department communication dated 29.1.2010 produced at Annexure-A to the petition, Revenue Department on the representation on behalf of Shakti Brick Works, the partnership firm, conveyed to the Collector that the

Petitioner's encroachment is required to be removed immediately. It is this communication that the Petitioner challenged in the writ petition contending that the State had no power to invoke Section 61 of the Bombay Land Revenue Code since it was question of private dispute and land did not belong to the State Government. This petition came to be dismissed by the Learned Single Judge as mentioned earlier by observing that:

4. It is clear from the above narration of relevant facts that the Petitioner is yet to establish his right to possess the lands in question either as an heir of the erstwhile partner of Shakti Brick Works or on any other basis. His attempt at protecting his possession by obtaining injunction orders from the Civil Court and this Court have already failed, and without being in possession he is seeking to challenge the orders and communications between two Government Officers. Therefore the petition is dismissed only on the ground of the Petitioner having no locus-standi and his civil litigation being pending before the appropriate Civil Court.

5. It is clarified at the request of learned Counsel Mr. B.S.Patel that the Court has not entered into merits, legality or otherwise of the impugned orders or communications.

3. Before us, learned Counsel for the Appellant vehemently contended that the State machinery was misused for private gain. The Appellant was in possession of the land since year 1984. Once ULC proceedings came to be terminated by High Court quashing orders passed by the authorities below and declared possession of the Government illegal, Section 61 of the Bombay Land Revenue Code could not have been invoked.

3.1. He further contended that previously for this very purpose Ghanshyam bhai B. Rangvani acting on behalf of Shakti Brick Works, the partnership firm, had approached the High Court seeking direction to the Government to evict the Petitioner from property in question. However such request was turned down.

On the other hand learned Counsel Shri Nanavati appearing for Respondents No. 5 to 10 contended that the Petitioner failed to establish any right, title or interest over the property before any Court or forum. At no stage, he was in picture in the ULC proceedings. Section 6(1) form was filled on behalf of the partnership. Petitioner has not produced any document to show that he was partner thereof. His petition came to be dismissed by the Learned Single Judge. Division Bench also relegated him to civil proceedings. No stay has been granted in suit filed by him later on. Previously, his suits were also dismissed.

Upon hearing the advocates and perusal of the documents, it becomes clear that at all stages the Petitioner has failed to establish the legality of his possession. He has been adopting contradictory stands. Though previously his stand was, that as a partner of the said firm he had come upon possession, it appears that in subsequent suit filed by him his stand is that he has become owner of the property by adverse possession. Be that as it may, we do not propose to make

any further observations with respect to these issues since the Civil Suit filed by the Petitioner is still pending. Suffice it to say that he has not been able to produce any material to protect his possession. Importantly, when the land was declared surplus under the ULC Act and possession was purportedly taken over by the Government, his occupation was held to be unauthorised. After issuance of notice and receiving his response, Mamlatdar on 6.5.1998 ordered his eviction. This order was never disturbed. Before the Mamlatdar in response to the show cause notice he had contended that if his possession was found unauthorised, Government may regularise the same upon collection of fine. In view of such overwhelming facts against the Petitioner, we see no reason to allow Letters Patent Appeal. Though we have our doubt whether after the Learned Single Judge quashed the orders of ULC authorities, powers u/s 61 of the Bombay Land Revenue Code could have been invoked, in facts of the present case, now that possession has already been taken over, we do not find it appropriate to grant any relief to the Appellant in exercise of discretionary writ jurisdiction, particularly, when he has failed before several Courts to prima facie establish his right, title or interest over the property in question.

In view of this we also do not propose to opine on the stand of Respondents No. 5 to 10 that the present Petitioner has no material to show that he had entered into the land prior to 1997 (i.e. when the Government took possession of the land from the original owners) and that all documents pertained to period post 1997 and that therefore, Government had to return the possession of the land to the partnership firm upon quashing the orders under the ULC Act after removing such encroachments.

In the result, appeal fails. Same is dismissed.