(2007) 10 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 4430 of 1992

DIP Co. Op. Hsg. Society Ltd. — APPELLANT

Vs

State of Gujarat and Another — RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(5), 10(6), 19, 19(1), 2
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2008) 2 GLR 1382

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : A.J. Patel and Shalin N. Mehta, for the Appellant; Mini Nair, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This petition preferred under Article 227 of the Constitution of India arises from the proceedings under the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as, "the Act of 1976"]. The petitioner-Dip Cooperative Housing Society Limited [hereinafter referred to as, "the Society"] is a Cooperative Housing Society. The petition is preferred through its Chairman - one Anjanaben Harshvadan Shah. The Society has challenged the judgment and order dated 29th January, 1991 passed by the Urban Land Tribunal [hereinafter referred to as, "the Tribunal"] in Appeal No. Ahmedabad-1291/1989. The subject matter of dispute is the lands bearing Survey Nos. 314/1 & 314/2, admeasuring 12141 sq.mtrs. in aggregate of village-Sola, District Ahmedabad.

2. By a sale deed registered on 11th December, 1975 one Harshvadan Shah, a businessman in the city of Ahmedabad and one Mohanlal Umiyashanker Tripathi, resident of Sarkhej an agriculturist, purchased the subject lands Survey No. 314/1 & 314/2 from the owners -Gandabhai Mangalbhai Patel and others. Upon introduction of the Act of 1976 with effect from 17th February, 1976, the said

Harshvadan Shah and Mohanlal Tripathi declared their holding in Form No. I as envisaged by Section 6 of the Act of 1976 as promoters of the proposed Dip Cooperative Housing Society. The said form was processed by the competent authority. Before the Competent Authority, the declarants maintained that they had purchased the subject lands as promoters of the Society. The subject lands were, therefore, exempt from application of the Act of 1976. The competent authority, by its order dated 31st May, 1989 rejected the contention. According to the competent authority, the Society was registered in the year 1980. i.e. long after the appointed day. On the appointed day, ie., the date of the Act, the said purchasers -Harshvadan Shah & Mohanlal Tripathi held the subject lands as individuals. Considering their joint ownership, the competent authority held that each of them was entitled to retain 1000 sq.m of vacant land. After making provision for 2000 sq.m of land for the said two holders, the land to the extent of 10141 sq.m was held to be excess vacant land. The said order was confirmed by the appellate tribunal. Therefore, the present petition.

3. In the petition, the main thrust of challenge is that the subject lands were purchased by the holders as the promoters of the society. The said lands were, therefore, exempt from the application of the Act. Reliance is placed on the Government Circular dated 1st October, 1977 and the registration of the society on 15th February, 1980. Pending this petition, one Purshottambhai Patel, the Secretary in the Society made affidavit on 3rd October, 2005. In the said affidavit, the Society has raised further challenge. Now the challenge is many fold. First; irrespective of the decision of the Tribunal, the possession of the subject lands has remained with the Society. In view of the repeal of the Act of 1976 by the Urban Land [Ceiling & Regulation] Repeal Act, 1999 [hereinafter referred to as, "the Act of 1999"], all proceedings in respect of the subject lands have abated. In support of the claim that the Society continued to be in possession of the said lands, the Society has produced copies of Village Forms 7 & 12; report of the Court Commissioner recorded in a civil suit; expenses incurred by the Society for security and upkeep of the lands; acquisition of part of the subject lands for road widening, etc. Second; the subject lands were agricultural lands and were used for agriculture purposes. Under the relevant master plan, all lands of village-Sola were reserved for agriculture. Hence, the said lands were neither "urban land" nor "vacant land" within the meaning of the Act of 1976. The provisions contained in the Act of 1976 did not apply to the said lands. Third; the competent authority had by its order dated 13th November, 1979 granted agricultural exemption to the aforesaid lands Survey Nos. 314/1 & 314/2. Fourth; once the said lands were not the "urban land" or "vacant land" within the meaning of the Act of 1976, the said status could not be changed by any subsequent action of the State. The said Purshottam S. Patel has made one more affidavit on 3rd December, 2005. By the said affidavit, the Society has challenged the action of the State Government in taking over possession of the subject lands under the Act of 1976. It is now brought on the record that pending the proceeding before the competent authority the declarants

Harshvadan Hathising Shah & Mohanlal Umiyashanker Tripathi passed away on 11th May, 1981 and 14th July, 1978 respectively. Nevertheless, the correspondence was addressed to the said Harshvadan Shah and Mohanlal Tripathi. Notice to hand over possession u/s 10[5] of the Act of 1976 was also given to the said Harshvadan Shah & Mohanlal Tripathi, the dead persons. Hence, the mandatory requirement u/s 10[5] of the Act of 1976 of giving notice to the persons in possession was not complied with. Any action of taking over possession of the excess vacant land as envisaged by Section 10[6] of the Act of 1976 is void, illegal and is non-est in the eye of law.

4. In support of these submissions advanced on behalf of the Society, Mr. Patel has extensively read over the pleadings and the supporting documents. He has relied upon the definition of the words "urban land" and "vacant land" that occur in Clause (o) & (q) of Section 2 of the Act of 1976. He has relied upon the judgments in the matters of Smt. Atia Mohammadi Begum Vs. State of U.P. and others[OVERRULED], ; of The State of A.P. and ors Vs. N. Audikesava Reddy and ors, of Indrajitsing P. Geel v. Competent Authority and Deputy Collector, Ahmedabad and Anr. 2007 (1) GLR 677; of Ishwardas v. The State of Madhya Pradesh and Ors. AIR 1979 SC 551; of Smt. Shanti Bhardwaj v. State of U.P and Anr. (2004) 10 SCC 130; and of Shivshanker Shaw Mill v. Addl. Collector & Competent Authority Officer (ULC) and Ors. 2006 (2) GLH 319; and of this Court in the matter of Maninagar Vishalipark Cooperative Housing Society Limited v. Competent Authority and Deputy Collector and Ors. Special Civil Application No. 7812 of 1993: Decided on 15th February, 2006 :: Coram-Akil Kureshi, J.

5. Ms. Nair has appeared for the State Government and has contested the petition. She has relied upon the counter affidavit and has asserted that possession of the excess vacant land was taken over by the State Government as envisaged by Section 10[6] of the Act of 1976 on 23rd June, 1992. Section 4 of the Act of 1999 shall, therefore, have no applicability in the present case. She has relied upon the judgments in the matters of Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others, ; and of State of U.P. Vs. Civil Judge, Nainital and Others, She has also relied upon the further affidavit made by the competent authority. She has submitted that pending the proceeding before the competent authority, the master plan then in operation was revised. The revised master plan was sanctioned by Notification dated 2nd November, 1987. In the said revised master plan, the subject lands Survey No. 314/1 & 314/2 were reserved for public purpose [for GSFC]. The said plan was further revised and sanctioned by Notification dated 4th May, 2001. Under the revised plan now prevalent, the said lands are reserved for general residential purpose.

30th October, 2007

6. I am unable to agree with the contentions raised by Mr. Patel. The claim that the subject lands were purchased by the aforesaid Harshvadan Shah and Mohanlal Tripathi as the promoters of the Society is fallacious. The sale deed is

placed on record of the petition. Evidently, the subject lands were purchased by the aforesaid Harshvadan Shah and Mohanlal Tripathi in their individual capacity and not as the promoters of the Society. The relevant mutation entries Nos. 3455, 3456 and 3457 made in the Village Form No. VI on 15th December, 1975 also recorded the purchase of the subject lands by the aforesaid Harshvadan Shah and Mohanlal Tripathi. The name of the society was entered in the revenue record under mutation entry no. 3845 made on 5th July, 1980. The said entry did record that the subject lands then held by Harshvadan Shah, etc., as the promoter of Dip Cooperative Housing Society, as the said society was registered on 15th February, 1980, on production of certificate of registration and the affidavit, the name of Dip Cooperative Housing Society was entered. It is obvious that the aforesaid recording was not the whole truth. As noted above, prior to 5th July, 1980, the subject lands ran in the name of Harshvadan Shah and Mohanlal Tripathi as individuals and not as the promoters of the Society. Section 19 of the Act of 1976 provided for vacant land to which Chapter-III of the Act did not apply. In other words, it provided for exemption to certain "vacant lands". Clause (v) thereof referred to, inter alia, "...a housing cooperative society, registered or deemed to be registered under any law relating to cooperative societies for the time being in force." The Government Circular dated 1st October, 1977 was issued in respect of grant of exemption u/s 20[1](a) and 20[1](b) of the Act of 1976 to cooperative societies which were not eligible for exemption u/s 19[1] of the Act of 1976. As on the date of the Act, the Society was neither registered nor was it deemed to be a registered housing society. The claim that u/s 19[1] of the Act of 1976, it was exempt from the application of Chapter III of that Act requires to be rejected outright. As to the benefit under the aforesaid Circular dated 1st October, 1977, it should be noted that the exemption under the said Circular could not be and was not meant to be automatic. But, the concerned cooperative housing society was required to ask for exemption u/s 20[1] of the Act of 1976. It is not the case of the Society that it had ever applied for such an exemption. In absence of a request for exemption u/s 20[1] of the Act of 1976, the claim that the subject lands were exempt under the aforesaid Circular dated 1st October, 1977 is misconceived; is an afterthought and deserves to be rejected. The claim that by order dated 13th November, 1979 made by the competent authority, the agricultural exemption was granted in respect of the subject lands is also misleading. It transpires that the vendors did not sell whole of the lands Survey Nos. 314/1 and 314/2. A part of the said lands admeasuring 15 gunthas was retained by the vendors. Evidently, the aforesaid exemption dated 13th November, 1979 was granted to the vendors in respect of the said 15 gunthas of the land. Otherwise also, if the said exemption were in respect of the subject lands, it could not have been granted to the vendors in 1979 - years after it was sold to the aforesaid Harshvadan Shah and Mohanlal Tripathi. Thus, in any view of the matter, the subject lands were not exempt from the applicability of the Act of 1976.

7. "Urban Land" was defined in Clause (o) of Section 2 of the Act of 1976 to

mean {i} any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or {ii} in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture." "Vacant land" was defined in Clause {q} thereof to mean - "land, not being mainly used for the purpose of agriculture, in an urban agglomeration, but does not include...." Mr. Patel has vehemently argued that the subject lands were agricultural lands and were being cultivated. Under the master plan, all of the lands of village Sola were reserved for agriculture. For that, he has relied upon the abstracts from the village form Nos. 7 & 12 and the statement under the master plan issued in respect of the lands of villages of Daskroi Taluka. Against village-Sola, lands of several survey numbers including Survey Nos. 311 till the end are shown to be agricultural lands i.e., the lands of survey Nos. 314/1 and 314/2 also are the agricultural lands. It may, however, be noted that the said statement does not disclose the date to which the said statement relates. As against that the State Government has produced copies of the revised master plans sanctioned on 2nd November, 1987 and 4th May, 2001. What is relevant is the revised master plan sanctioned on 2nd November, 1987. Under the said revised master plan, the subject lands were reserved for GSFC i.e., for non-agricultural purpose. If it is believed that on the date of the Act of 1976, the subject lands were situated within the agricultural zone; were not urban land or vacant land as defined in the Act of 1976, atleast since the date of the revised sanctioned plan of 1987, the subject lands became "urban land" or "vacant land" within the meaning of the Act of 1976. As decided by the Hon''ble Supreme Court in the matter of N. Audikesava Reddy and Ors. [Supra], the commencement of the Act of 1976 in respect of the subject lands would be the date on which the subject lands became "vacant land" within the meaning of the Act of 1976. Thus, on the date of the order of the competent authority, the subject lands were the "vacant lands" within the meaning of the Act of 1976.

8. The contention that the action of the State Government in taking over possession of the subject lands was without the authority of law and is non-est requires to be rejected. Mr. Patel has submitted that notice as envisaged by Section 10[5] of the Act of 1976 was issued upon the aforesaid Harshvadan Shah and Mohanlal Tripathi, both of them had died pending the proceeding before the competent authority. Obviously, the said persons were not in possession of the subject lands. Admittedly, no notice u/s 10[5] of the Act of 1976 was issued to the persons then in possession of the subject lands. It is also submitted that the State Government has not proved that the person who allegedly took over possession of the subject lands on 23rd June, 1992 was authorized by the State Government to do so. Notice to hand over possession, issued u/s 10[5] of the

Act of 1976, appears to have been issued upon the Society through its office bearers ? the above referred Harshvadan Shah and Mohanlal Tripathi. Thus, notice to hand over possession was issued to the Society and not to the individual persons viz., Harshvadan Shah and Mohanlal Tripathi. If the said persons; the alleged promoters of the Society, had died pending the proceeding before the competent authority and the Society had elected other office bearers, it was the duty of the Society to notify the same to the competent authority. It further appears that not only this fact was not brought to the notice of the competent authority, the said fact was not disclosed in Appeal before the Tribunal nor before this Court in the writ petition. It is not open to the Society to allege that due notice to hand over possession of the subject lands u/s 10[5] of the Act of 1976 was not given to it. I am of the view that the notice to hand over possession as envisaged by Section 10[5] of the Act of 1976 was duly served upon Dip Cooperative Housing Society which claims to be in possession of the subject lands. It further appears that the possession of the subject lands was taken over by the Maintenance Surveyor & Deputy Mamlatdar in presence of panch, under the instruction issued by the competent authority. In absence of a specific challenge that the Maintenance Surveyor was not authorized to take over possession u/s 10[6] of the Act of 1976, it must be believed that the Maintenance Surveyor was authorized to take over possession of the subject lands u/s 10[6] of the Act of 1976. The action of the Maintenance Surveyor in entering upon the subject lands and taking over possession of the same in presence of panch cannot now be questioned. In above view of the matter, I hold that the subject lands have vested in the State Government and the possession has been taken over on 23rd June, 1992 lawfully. If the Society claims that it has continued to hold possession of the subject lands pending the present petition and till the date, the possession of the Society is illegal and amounts to trespass. The reliance placed on the report of the Court Commissioner in a Civil suit or panchnama is of no consequence. Neither the competent authority nor the State Government was party to the said civil suit. As to the proceedings under the Tenancy Act, the finding of the Society being in possession of the subject lands also is of no consequence. Reliance is placed on Village Forms 7 & 12 which too do not seem to be trustworthy. Copies in respect of subject land Survey No. 314/1 produced on the record of the petition show possession of Gandabhai Mangalbhai and others - the vendors of the subject lands, is shown under their cultivation right from the year 1971-72 till 1994-95. In respect of the subject land Survey No. 314/2, the vendor Gandabhai Mangalbhai and others are shown to be in possession and cultivating the said land since the year 1971-72 to 1984-85. Thus, if the revenue record were to be believed, the vendors Gandabhai Mangalbhai and others after selling the subject lands in December, 1975 continued to hold the possession of the subject lands and to cultivate the same till the year 1984-85. Even after 1984-85, the said vendors continued to hold the subject land Survey No. 314/1 and to cultivate the same for another ten years till 1994-95. It is not even the case of the Society that the purchasers of the land - the aforesaid Harshvadan Shah and Mohanlal Tripathi- did not take over possession of the subject lands, or that the Society was not in possession of the subject lands till the year 1985 or 1995. In above view of the matter, the contention that inspite of the order of the competent authority and the appellate tribunal, the Society has continued to hold possession of the subject land; that it was the Society which held the possession of the subject lands on 30th March, 1999 - the date on which the Act of 1976 was repealed by the Act of 1999 and even thereafter, is rejected.

9. Though it has not been disclosed in the affidavit made by the above referred Purshottambhai Patel, it has come on record in the affidavit made by the competent authority on 24th October, 2005 that pending this petition, though this Court had ordered the parties to maintain status quo in respect of the subject lands, the Society has made construction on some 1200 sq.m of the subject lands. In answer to the said contention raised by the competent authority, the Society has made affidavit on 3rd December, 2005. It is not disputed that the Society has constructed five storeyed commercial building on the site. However, defence has been put-forth that the construction has been made on that part of the land which was allowed to be retained by the Society. The said defence is controverted by the competent authority. It is demonstrated by production of maps, etc that the construction in question is made on the subject lands [excess vacant land] which are acquired under the Act of 1976. Be that as it may, as it is a disputed question of fact, I do not intend to resolve it here. It should be open to the competent authority or the concerned authority to take action against the Society in respect of the alleged illegal construction made by it.

10. No other contention is raised before me. In view of the above discussion, the petition is dismissed with cost. The cost is quantified at Rs. 10,000/=. Rule is discharged. Interim relief is vacated.

