(2014) 11 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 17523 of 2005

Harumal Jhumromal APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 26, 27, 3, 6

Citation : (2014) 11 GUJ CK 0044

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Chinmay M. Gandhi, Advocate for the Appellant; M.B. Gandhi, Advocate and Jaimin Gandhi, AGP, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—The petitioner has prayed for a direction that the respondent-State Government shall not claim the ownership of 2318 sq.mtrs of land of the petitioner under the Urban Land (Ceiling and Regulation) Act, 1976 [''the ULC Act'' for short). The petitioner has prayed for a further declaration that he is the exclusive owner of the said land bearing Survey No. 262-B-3 situated at Behrampur, Ahmedabad. The petitioner has also prayed for setting aside an order dated 08.08.1989 passed by the competent authority under the ULC Act and order dated 22.02.1995 passed by the Urban Land Ceiling Tribunal (''the Tribunal'' for short).

2. Brief facts are as under:

"A parcel of land bearing Survey No. 262-B-3 of Behrampur Taluka, Ahmedabad which was later on given Final Plot No. 104 of Town Planning Scheme No. 13 of Behrampur Taluka was in the original form admeasuring 3318 sq.mtrs. The said land was originally of the ownership of a partnership firm named Alka Prints which partnership comprised of Mohamad Hanif and Farid Mohamad as the partners. The partnership had multiple liabilities far exceeding its assets. Against the partners of the said firm, therefore, proceedings under [The] Presidency Towns Act, 1909 (''the Insolvency Act'' for short) were instituted under Insolvency Application No. 9 of 1968 before the City Civil Court, Ahmedabad. It is stated by the petitioner that adjudication order came to be passed on such petition on 05.12.1969. A receiver was also appointed under the same order. Pursuant to such order, the property in question namely the said land was put to public auction which was held on 20.01.1978. The petitioner purchased the said land for a consideration of Rs. 2.75 lacs. He deposited a sum of Rs. 68,750/- on the date of the auction itself. Remaining amount was deposited with the receiver on 07.02.1978. The auction was challenged at one stage, however, once such challenge was dismissed, the deed of conveyance was executed in favour of the petitioner on 09.04.1980."

3. It appears that Mr. Mohamad Hanif, one of the partners of the firm, had made a declaration under the ULC Act on 13.09.1976 declaring the land in question with superstructure as one of the ownership of the partnership. On such form, the competent authority under the ULC Act passed an order on 30.03.1989 declaring 2318 sq.mtrs out of a total of 3318 sq.mtrs of land as excess vacant land. There is nothing on the record to suggest that said Mohamad Hanif challenged such order of the competent authority before the Tribunal. However, the petitioner as the purchaser of the land sought to challenge the order of the competent authority before the Tribunal for which he preferred an Appeal No. 74 of 1994. In such appeal he contended inter alia that the land in question was purchased by him through public auction held on 20.01.1978. He had therefore become owner of the said land. The order passed by the competent authority was, thus, without taking into consideration such developments.

4. The Tribunal, however, dismissed the appeal by order dated 22.02.1995 on the short ground that the petitioner claimed to have purchased the land after coming into force of the ULC Act. Any transaction entered into subsequently would have to be ignored. Under such circumstances, appeal was dismissed.

5. For many years thereafter the petitioner took no legal recourse. Case of the Government is that, in the meantime, the actual possession of the land was also taken-over under the provisions of the ULC Act from the original owner. Long thereafter the petitioner filed this petition in the year 2005 contending that the action of the Government claiming the title of the land is illegal and the petitioner should be declared as the exclusive and sole owner of the land.

6. Learned counsel Mr. M.B. Gandhi for the petitioner contended that the insolvency proceedings was instituted against the partners. Adjudication order was passed way back in the year 1968 upon which, the land would vest in the official assignee. The partner of the firm therefore had no authority to file a declaration under the ULC Act. The petitioner purchased the land through public auction. He was in possession of the land all throughout. Since then no notice for taking over possession was ever issued to the petitioner. With the repeal of the ULC Act, therefore, all proceedings must abate. In the present case, since the

possession continued with the petitioner, no further action can be taken by the Government. In this respect, counsel relied on the decision of this Court in case of Laxmanbhai K. Chokshi Vs. Competent Authority and Additional Collector (U.L.C.), in which, it was held that the action of the competent authority of taking actual possession without serving a notice was illegal. I am informed that this decision was confirmed in appeal.

7. On the other hand, learned AGP Mr. Jaimin Gandhi opposed the petition contending that the petition is belated. The Tribunal dismissed the appeal of the petitioner in the year 1995. The ULC Act was repealed in the year 1999. The petition was presented in the year 2005 and is thus, grossly belated. He further contended that the partnership firm continued to be the owner of the land till it was sold. In the meantime, the ULC Act intervened. The partners were therefore, liable to make a declaration, which, in the present case, was done and duly processed by the competent authority. With respect to no notice to the petitioner before taking possession, he submitted that name of the petitioner was nowhere reflected in the official records as a person in possession. The competent authority, therefore, had no responsibility to issue a separate notice to the petitioner.

8. Since the records were slightly old, some of the documents are not on record. However, I have proceeded on the basis of certain facts as undisputed, which are as under:

"The land in question was of the ownership of a partnership firm. Since the partnership was in debt, insolvency proceedings were instituted against the partners. Adjudication order was passed in such proceedings by a competent Court on 05.12.1969. The land in question was put to auction on 20.01.1978 by the receiver which was purchased by the petitioner. In the meantime, the ULC Act was promulgated in the year 1976. The partner of the said firm filed a declaration under the ULC Act on which, the competent authority declared 2318 sq.mtrs of the land as excess vacant land. Petitioner challenged such order before the Tribunal but, the appeal was dismissed on 22.02.1995."

9. Section 10 of the [The] Presidency Towns Insolvency Act pertains to power to adjudicate. It provides that if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor and the Court may on such petition make an order of adjudication adjudging him as insolvent. Section 17 of the Insolvency Act pertains to effect of order of adjudication. As per this section on the making of an order of adjudication, the property of the insolvent would vest in the official assignee and shall become divisible among his creditors.

10. Envisaging that in some cases, after the order of adjudication has been implemented, partially or fully such order may be annulled, Sub section(1) of Section 23 of the Insolvency Act provides that where an adjudication is annulled, all sales and disposition of property and payments duly made and all acts done

by the official assignee or other person acting under his authority shall be valid but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint or, in default, of such appointment shall revert to the debtor to the extent of his right or interest therein on such terms and conditions as the Court may provide. Section 33 of the Insolvency Act casts duty on the insolvent besides others to give inventory of his property. Section 55 of the Insolvency Act provides that any transfer of property not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall if the transferor is adjudged insolvent within two years after the date of the transfer be void against the official assignee.

11. These provisions were noted in order to appreciate the effect of an order of adjudication in an insolvency petition filed against a person. Section 17 itself provides that on making of an order of adjudication, the property of the insolvent shall vest in the official assignee. It is further provided that such property shall become divisible among his creditors. It would, thus, appear that upon adjudication order being passed, the property would vest in the official assignee. Further provisions of the said act noted above give credence to this principal since these provisions in essence provide for the official assignee to dispose of the property in the best interest of the creditors. I am therefore, prepared to proceed on the basis that on the date ULC Act was promulgated, the partnership was not the owner of the land and that the title had vested in the official assignee who held such property in trust for and on behalf of the creditors of the partnership firm. It may, therefore, appear that the partner could not have filed a declaration under the ULC Act of the property of which he was not the owner. Whether the official assignee was required to make such a declaration is a vexed question. One view possible is that if there are multiple creditors, the rigors of the provisions of the ULC Act may not apply. I am also prepared to proceed on such basis even though full details of such creditors are not on record. Nevertheless, the question is, could the petitioner have purchased the property in disregard of the provisions of the ULC Act?

12. This question becomes relevant because admittedly when the petitioner purchased the property, ULC Act was promulgated and applied in all its rigors. Section 3 of the ULC Act provides that except as provided in this Act, on and from the commencement from the Act no person shall be entitled to hold any vacant land in excess of the ceiling limit. Section 6 required the persons holding vacant land in excess of ceiling limit to file statement in the prescribed format. Such declaration would be processed by the competent authority culminating into a final statement to be made under Section 9 of the ULC Act determining the vacant land held in excess of the ceiling limit. Section 10 of the ULC Act pertains to acquisition of vacant land in excess of ceiling limit.

13. Section 26 of the ULC Act requires a notice to be given before transfer of vacant lands. Sub-section (1) thereof provides that notwithstanding anything

contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority. Section 27 of the ULC Act, on the other hand, put prohibition on transfer of urban property. Sub-section (1) thereof provides that notwithstanding anything contained in any other law for the time being in force, no person shall transfer by way of sale, mortgage, gift etc. any urban or urbanisable land with a building (whether constructed before or after the commencement of the act) or a portion of such building except with the previous permission in writing of the competent authority.

14. It can thus be seen that ULC Act operated in two stages. As per Section 3, from the commencement of the Act, no person was entitled to hold any vacant land in excess of the ceiling limit. On the other hand, Sections 26 and 27 of the ULC Act, control the transfers of vacant or constructed land after coming into force of the Act.

15. Admittedly, the petitioner did not obtain any permission for purchase of the land which was in excess of the ceiling limit. In such a case, by virtue of Section 3 of the ULC Act he was not entitled to hold any such land in excess of ceiling limit. If the case of the petitioner is that the land was open land, the transaction was hit by Section 26 of the ULC Act. According to the petitioner, if the land was partially or fully constructed upon, permission under Section 27 was needed.

16. Under the circumstances, quite apart from the gross delay in filing the petition, as rightly pointed by the learned AGP, I refuse to recognize the locus standi of the petitioner to question the order passed by the competent authority which he sought to challenge before the Tribunal. His transaction of purchase of the land was not recognized by law. He could not have purchased the land in breach of Section 3 read with Section 26 or Section 27 of the ULC Act. In either case either the sale was hit by mandatory provisions of the law or required a prior permission from the authority. His contention that with lapsing of the ULC Act the sale should be recognized beg the question for the sale itself was not in accordance with law. No title in the property would pass in the petitioner. His name was nowhere reflected in the official records. In that view of the matter, the question of lapsing of ULC proceeding so far as the petitioner is concerned would not arise. In any case, his name was never reflected in any of the records as the owner or occupant of the land. There is nothing on record to suggest that even he made an attempt to have his name entered. The competent authority therefore had no occasion to serve him with the notice of eviction. For all such reasons, petition is dismissed. Rule is discharged. I.R. stands vacated.

