

(1987) 09 GUJ CK 0021

In the Gujarat High Court

Case No : Spl. Civil Application No. 6388 of 1986

Himatlal J. Vakharia

APPELLANT

Vs

Urban Land Tribunal and Another

RESPONDENT

Date of Decision : 29-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Urban Land (Ceiling and Regulation) Act, 1976 — Section 45

Citation : AIR 1988 Guj 135 : (1988) 1 GLR 205

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : J.R. Nanavati, for the Appellant; M.I. Hawa, for the Respondent

Judgement

1. Which is the starting point of limitation in cases wherein an order passed by - the Competent Authority is corrected under the provisions of S. 45 of the Urban Land (Ceiling and Regulation) Act, 1976? This, in short, is the question which calls for examination and answer.

2. The petitioner is holder of vacant land situated in the urban agglomeration area of Rajkot. In respect of the land held by him, the petitioner filled in form under S. 6 of the Act and thereafter final statement under S. 9 of the Act was issued on Sept, 30, 1979. The petitioner in fact consented and thereafter the final statement was issued. In the final statement, instead of Survey No. 489, by mistake Survey No. 89 was mentioned. The mistake was corrected as per order dt. Feb, 24, 1984. The petitioner preferred, appeal under S. 33 of the Act on March 26, 1984. The petitioner contended that the appeal was within time because the starting point of limitation should be Feb, 24, 1984 and not Sept, 30, 1979 when the original order was passed after considering the facts of the case, the Urban Land. appellate-Tribunal held that there was gross delay in filing the appeal. The prescribed period of limitation started from Sept., 30, 1979, the date on which the final statement was issued and not from the order dt. Feb., 24, 1984, correcting the mistake. That the original order was passed with the

consent of the parties and there was no justifiable reason to condone the delay. Hence, the appellate authority rejected the appeal on the ground of delay alone, as per its order dt. Nov. 12, 1984. the petitioner has challenged -the legality and validity of the aforesaid order by invoking the provisions of Art. 227 of the Constitution.

3. Be it noted that the petitioner knew and also understood that he held the land of Survey No. 489 of Rajkot and not that of S. No. 89. The petitioner had filled in the form mentioning therein that the land held by him was that of S. No. 489. The petitioner did not hold any land of S. No. 89. The petitioner in fact applied for permission under S. 26 of the Act for sale of the land. It was at the request of and by the consent of the petitioner that the proceedings under S. 6 of the Act were hastened and the final statement under S. 9 of the Act was passed with the consent of the, petitioner. In the form, the petitioner described the land retainable by him. Therein the petitioner mentioned that he wanted to retain land of S. No. 489. However, typographical error crept in the final statement, in respect of land and instead of S. No. 489 it was written S. No. 89. The mistake remained as it is till the same was corrected as per Order dt. Feb. 24, 1984. Meanwhile the petitioner took advantage of the order passed by the competent authority. He even obtained permission for sale of, the land under S. 26 of the Act. It appears that at the stage when Notifications under S. 10 were issued, the mistake was detected and the same was sought to be corrected. The petitioner did not even raise objections when the mistake was corrected. In this connection, the Tribunal has observed as follows:-

"The clerical error in showing the suit land as Survey No."89" in the Draft Statement was not objected to by the appellant and the said error has been corrected under S. 45."

The aforesaid statement of fact which occurs, in para 7 of the judgment of the Tribunal is neither disputed nor controverted by the learned counsel for the petitioner. The only point raised at the time of hearing of the petition is that if the period of limitation is calculated from the date of the order correcting the mistake, then the appeal is within time. In his submission, the period of limitation should start from the date of the order directing correction to be made in the original order.

4 . S. 45 of the Act reads as follows : -

"S. 45. Clerical or arithmetical mistakes in any order passed by any officer or authority under this Act or errors arising therein from any accidental slip or omission may at any time be corrected by such officer or authority either on his or its own motion or on an application received in this behalf from any of the parties."

The aforesaid section is in pari materia with S. 152 of the C.P.C., 1908. The underlying object behind making provisions of S. 45 of the Act is to see that whenever on account of clerical or arithmetical mistake intention of the authority

is left in doubt or not properly articulated, the same should be corrected. Rather it is the duty of the authority concerned to rectify the clerical error arising from an accidental slip or omission. When such mistakes are corrected, the original order passed by the authority is not replaced or superseded nor the same is materially altered by correction of mistake. All that is done by the authority is that the apparent anomaly arising out of error or mistake is removed. But the substance of the judgment or order originally passed remains the same. Different considerations may arise when an order is reviewed and at the end of review proceedings, if a new judgment or order comes into existence superseding the original one. But that is not the case insofar as the facts of this matter are concerned.

5. In this connection, reference may be made to a decision of the Division Bench of the Punjab High Court in the case of Suba Singh v. Sadhu Singh, reported in AIR 1966 Punjab 518. After considering the case law on the point in para 16 of the judgment, it is observed that correction of a mistake or an error under the provisions of S. 152 of C.P. Code does not supersede the original judgment or decree. All that the Court does is to rectify a clerical error arising from an Accidental slip or omission and it is the duty of the Court to correct it whenever it comes to its notice or is brought to its notice by any of the parties. In case the intention of the Court is quite clear and if by some clerical error or omission that intention is left in doubt or is not properly effectuated then use can be made of the powers under S. 152 of the C.P.C. and indeed the Court is bound to correct such errors or mistakes which fall within the ambit of S. 152 of Civil Procedure Code. Same principle would apply in cases falling within the purview of S. 45 of the Act.

6. In above view of the matter, it has got to be held that the subsequent order correcting the mistake instead of "S. No. 89" mentioning "S. No. 489" was within the purview of S. 45 of the Act and by correcting the mistake the competent authority did not supersede the original order nor did the authority alter the order in any manner. But it merely removed the clerical mistake which was even not objected to by the petitioner. Thus, cause for filing appeal remained the same, that is, the original order. Therefore, it has got to be held that the limitation started to run from the date of the original order, i.e., Sept., 30, 1979.

7. Except the aforesaid argument, no cause much less "sufficient cause" for condoning such inordinate delay is made out. However, the learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and submitted that the phrase "sufficient cause" should be interpreted liberally. The learned counsel for the petitioner submitted that it should be held that the petitioner did not intend to give up his right of Appeal and he should be given an opportunity to agitate the appeal on merits. After the aforesaid decision of the Supreme Court, it would be difficult to discover a case which would not come within the sweep of "sufficient cause" as enunciated by the Supreme Court. But

this is one of such rarest of rare cases which would not come within" the sweep of widest possible meaning of the phrase "sufficient cause" as held by. the Supreme Court in the aforesaid decision. The petitioner filled in the form mentioning therein that the land held by him was that of S. No. 489. The petitioner in fact did not hold any land bearing S. No. 89. The petitioners consented to the order being passed by the competent authority under S. 9 of the Act. In fact the petitioner hastened up the proceedings. The petitioner applied under S. 26 of the Act for sale of the land. He even submitted indemnity bond for the purpose of selling away part of the land retainable by him. Thus he had no grievance against the order passed by the competent authority. It is not the case of the petitioner that he had no grievance against the order because it contained typographical errors and that he was also misled by the error.

8. From the facts and circumstances of the case an irresistible inference has to be drawn, that the petitioner wishes to take advantage of the mistake which had crept in the original order dt. 30, 1979 and which has been corrected as per order dt. Feb., 24, 1984. In the facts and circumstances of the case, it is difficult to believe that the petitioner did not know nor did he understand that the land comprised in the order dt. Sept. 30, 1979 was that of S. No. 489 and "not that of S. No. 89. By order dt. Feb. 24, 1984, merely a typographical mistake has been corrected and the original order remains as it is. In view of this position, the petitioner should have rendered sufficient explanation for not preferring the appeal within the period of limitation against the order passed on Sept., 30, 1979. There is no explanation for not preferring appeal within limitation calculated from the date of original order. Hence, the only inference that can be drawn is that the petitioner after taking advantage of the order passed on Sept. 30, 1979 wishes to get reopened the entire case. The petitioner's action lacks bona fide and honesty. Therefore, the principles laid down in the aforesaid decision of the Supreme Court do not help the petitioner. The Urban Land Appellate Tribunal was justified in rejecting the appeal on the ground of delay alone.

9. No other contention is raised. There is no substance in the petition. Hence, the petition is rejected. Notice discharged. Ad interim relief granted earlier stands vacated.

10. Petition dismissed.