

(1996) 04 GUJ CK 0019
In the Gujarat High Court

Case No : Special Civil Application No's. 2773 with 3216 of 1991

H.N. Dastur

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 20, 20(1)

Citation : AIR 1997 Guj 169

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Suresh M. Shah, for the Appellant; A.G. Uraizee, Assistant Government Pleader, for the Respondent

Judgement

J.N. Bhatt, J.—Since both these petitions raise common questions and identical points, they are being disposed of by this common judgment and order.

2. Whether growing of "Nilgiri" and "Subabul" trees could be said to be falling within the ambit of agricultural crop and operations and whether such operations in the land would amount to public purpose in view of the Government notification No. 2/31/77 (UCU(i) dated 19-12-1977 issued by the Government of India and whether exercise of powers in rejecting an application for exemption u/s 20(1) by the respondent authority is proper and valid, are the questions which have come to the surface for examination, interpretation and adjudication in these two petitions under Articles 226 and 227 of the Constitution of India.

3. The two petitions are hereinafter referred to as the first petition and the second petition, for the sake of convenience and brevity.

4. Petitioners are medical practitioners and agriculturists. The petitioner in the first petition had submitted an application to the respondent authority for exemption of lands bearing survey numbers 250, 251, 252 and 261 part of village Bedi belonging to himself, his wife and daughter. However, at that time, as

these land were in agriculture zone, the respondent authority by an order dated 17-1-1984 held that as these lands were in agriculture zone, permission was not necessary u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 ("the ULC Act" for short).

5. The petitioner in the second petition had filed a statement in the prescribed form to the respondent authority at showing his holdings of lands bearing survey numbers 449 of village Gauridad and 215.202 and 261 part of village Bedi held by him. Since these lands were in agriculture zone, the respondent authority by its order dated 31-1-1978 held in ULC case No. 601 that it was not necessary under the ULC Act to file a statement in the prescribed form.

6. Later on, in the concerned Master Plan, the aforesaid lands of the petitioners came to be shown in non-agriculture zone. In case of the first petition, the lands of the petitioner came to be shown in the residential zone and in case of the second petition, the lands of the petitioners came to be shown in the industrial zone. The petitioners, therefore, had submitted applications for exemption of the said lands for agricultural purpose inter alia contending that the lands are agricultural lands and used as farm lands u/s 20(1) of the ULC Act. The petitioners' case before the respondent authority was that the lands are used for agricultural purpose. The petitioners contended that growing of "Subabul" and "Nilgiri" trees is agricultural crop and predominantly they are agriculturists and in view of the aforesaid notification of the Central Government, they claimed exemption u/s 20(1) of the ULC Act. The respondent authority rejected the applications inter alia holding that:

(i) there was no continuous use of the lands for agricultural purpose by the petitioners since the "appointed-day" under the ULC Act;

(ii) growing of "Nilgiri" and "Subabul" trees cannot be said to be agricultural crop and therefore, it was not consistent with the purpose and design of the ULC Act; and

(iii) there was no public purpose and no question of hardship was involved in claiming agricultural exemption.

7. In the first petition, the impugned order came to be recorded on 1-12-1990 and in the second petition, the impugned order came to be recorded on 24-5-1991. Being aggrieved by the aforesaid orders, the petitioners have now come before this court challenging their legality and validity, by filing this petition under Articles 226 and 227 of the Constitution of India.

8. The question whether growing of "Nilgiri" and "Subabul" trees can be said to be falling within the definition of "agriculture" requires firstly consideration of the statutory definition incorporated in the ULC Act. In Explanation (A) for the purpose of clause (o) and clause (q), to Section 2. definition of "agriculture" is given. It reads as under;

"" X X X X X " "(A) "agriculture" includes horticulture, but does not include-

- (i) raising of grass.
- (ii) dairy farming,
- (iii) poultry farming;
- (iv) breeding of livestock
- (v) such cultivation, or the growing of such plant, as may be prescribed".

9. It could very well be seen from the aforesaid definition that raising of grass, dairy farming, poultry farming breeding of livestock and such cultivation or the growing of such plant, as may be prescribed, are not included within the definition of agriculture. No doubt, agriculture includes horticulture, but at the same time, the aforesaid items are excluded. There is no clear evidence on record as to whether growing of "Nilgiri" and "Subabul" trees are prescribed in the terms of clause (v) of definition of agriculture. Not only that, in the absence of any clear and acceptable evidence as to whether growing of "Nilgiri" and "Subabul" trees can be said to be plants or crops under the definition of agriculture, it would not be possible for this Court to reach a definite conclusion about the legality and validity of the impugned orders. There is also no material on record to show as to whether any public interest or hardship issue is involved or not, it appears from the record that the impugned orders are required to be quashed and set aside and the matters are required to be remitted back to the respondent authority for a fresh decision after holding requisite inquiry and to decide in each application the issue u/s 20(1) of the ULC Act, after giving an opportunity of hearing to the parties concerned.

10. In the result, the impugned orders are quashed and set aside and the matters are remanded back to the respondent authority for fresh inquiry and decision after giving an opportunity of hearing to the parties concerned and to decide, in accordance with law. Obviously, it would be open for the petitioners to urge and agitate all legal and permissible pleas before the respondent authority. Rule in each of the petitions is made absolute to the aforesaid extent with no order as to costs.