
(1996) 04 GUJ CK 0037
In the Gujarat High Court

Jagdishbhai Nagarbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 12, 30, 33, 34

Citation : (1996) 2 GLR 499

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

Bench : Single Bench

Judgement

J.N. Bhatt, J.—The short question which has come to the surface in this petition under Article 226 of the Constitution is as to whether a revision u/s 34 of the Urban Land (Ceiling and Regulation) Act, 1976 ("U.L.C. Act", for short) is maintainable after the appeal is heard against the same order.

2. The petitioner has questioned the show cause notice issued pursuant to purported exercise of powers of suo motu revision u/s 34. The impugned show cause notice alongwith stay order came to be issued on 1-9-1995 for reviewing order dated 2-4-1994 which came to be passed by the Competent Authority and Additional Collector, Surat ("the competent authority" for short) declaring 3,790 sq. mts. of land as excess vacant land which had been confirmed in U.L.C. Appeal No. 69 of 1994 by the Urban Ceiling Tribunal ("the Tribunal" for short) by its order dated 1-9-1995.

3. Section 34 reads as under:

34. The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred u/s 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or so as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

4. It is very clear from the plain reading of Section 34 that exercise of revisional power can be resorted to by the State Government on its own motion by calling for the record of any order passed or the proceeding taken under the provisions of the U.L.C. Act and against which no appeal has been preferred either u/s 12 or 30 or Section 33. Therefore, it becomes very clear that the underlying purport and design is to check irregular or illegal orders of the competent authority either by the appellate authority or by the revisional authority. There cannot be a revision either suo motu or otherwise u/s 34 against an order of the competent authority if appeal is preferred and decided on merits. In the present case, the order of the competent authority was questioned before the appellate authority u/s 33 and the appeal came to be dismissed. Thus, the order of the competent authority would merge with the order of the appellate authority. In the circumstances, considering the spirit and underlying design, the Legislature has rightly provided that revision u/s 34 will not be maintainable if the same order is questioned and decided in an appeal. In the circumstances, issuance of the impugned show cause notice with the stay order dated 1-9-1995 is vulnerable being without jurisdiction and that is the reason why this Court has entertained a petition against issuance of a show cause notice.

5. Therefore, the contention of the learned Assistant Government Pleader that the petition should not be entertained against the show cause notice is rejected.

6. In the result, the petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.