
(1993) 08 GUJ CK 0014
In the Gujarat High Court

Jayantibhai Chunilal Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-08-1993

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 21(1), 34, 34

Citation : (1994) 1 GLR 512

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioners are aggrieved by the order of the Government passed u/s 34 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act") in suo motu revision cancelling the order passed by the competent authority u/s 21(1) of the Act.

2. A declaration u/s 21(1) read with Rules 11 and 11(a) was made on March 30, 1979 the last day for making such application. In the body of the form in the column of land-holder, the name of petitioner No. 1 was mentioned. However, the declaration was signed by petitioners Nos. 2 and 3 also. The petitioners Nos. 2 and 3 were holding the land of Naroda being Survey Nos. 571/1, 2 and 3.

3. By an order dated November 3, 1981, the competent authority rejected the application of the petitioners Nos. 2 and 3 on the ground that the petitioners Nos. 2 and 3 had not filled in Form No. 5 and had not made requisite declaration separately. Against this order, no appeal was filed. The appeal was to be filed within 30 days. However, after about eight months on July 7, 1982, an application was made to review and/or revise the order on the ground that the dismissal of the application was for non-fulfilment of some formal things. On that application, it appears that the competent authority had raised a question as to whether the competent authority can review or revise the order already passed and after considering the same, the competent authority, on July 22, 1982, passed an order running into three typed pages and held that as the land in respect of which the scheme was proposed was already mentioned in the Form

No. 5 and as the land-holders have signed Form No. 5 right from the beginning and as this was a mere formal defect and not a decision on merits, the competent authority could review the matter and, therefore, the order was passed to reconsider the matter. This order dated July 22, 1982 is on record. It has not been taken into suo motu revision and it has not been set aside.

4. Thereafter, the competent authority proceeded to consider the scheme on merits and by an order dated August 11, 1982, the scheme was sanctioned and order was passed u/s 21(1) of the Act.

5. On January 17, 1984, the Government issued show cause notice (at Annexure "E" to the petition) on the following grounds:

(1) That the competent authority having passed the order dated November 3, 1981 rejecting Form No. 5 could not have passed the order on August 11, 1982 in respect of the same subject and it was without jurisdiction.

(2) In Form No. 5 in Col. 1, land-holder was mentioned as Kanaiyalal Chunilal Vyas and it also mentioned Survey Nos. 571/1, 2 and 3 and there was no separate form filled in by the land-holder Jasumatiben and Shantaben Names of these two ladies are not mentioned as land-holders in Column No. 1.

(3) Col. 1 shows the name of only one person, i.e., Kanaiyalal Chunilal as the person making declaration.

(4) Form No. 5, Col. 7 does not show four boundaries of these Survey Numbers.

(5) That the competent authority has not taken into consideration the demands of the Gujarat Housing Board and Slum Clearance Board though on record and had granted the scheme without applying the mind to those demands.

After hearing the parties, the Government cancelled the order of the competent authority on these grounds.

The land-holders have challenged the said order of the Government by way of this petition.

6. As far as grounds No. 2, 3 and 4 are concerned, they are too formal, trivial and inconsequential and do not deserve any consideration. On such trivial and inconsequential grounds, the Government could not have exercised suo motu revisional power and cancelled the scheme.

7. However, grounds No. 1 and 5 require some consideration. It is true that on November 3, 1981, the competent authority had rejected the application and the competent authority had, on August 11, 1982, granted that application. It would, thus, appear that after having decided the application once and dismissed the same, he had granted the same application which was dismissed by him earlier. There is no express power of review conferred on the competent authority and there is no inherent power in such authority to review its own order. However, in the present case, the earlier order was on too technical, trivial and procedural

grounds not amounting to dismissal on merits. Rightly or wrongly, he had entertained and allowed that application by order dated July 22, 1982. That order has not been taken into suo motu revision and has not been cancelled and that order has survived and is operating. In view of the fact that the said order has not resulted into any failure of justice, nothing further need be said about the same and the Government not having taken the order of July 22, 1982 in suo motu revision and not having cancelled the same, this ground taken by the Government in the show cause notice and in the impugned order also cannot survive.

8. Now, the only question that survives is that though there were demands of Gujarat Housing Board and Slum Clearance Board for these very lands before the competent authority, the competent authority has not taken these demands into consideration and has sanctioned the scheme. The learned Counsel for the petitioners submitted that it should be presumed that the competent authority had taken them into consideration and rejected them. It is not possible to accept this contention. To reject those demands would require reasons. There are no reasons indicated at all. In fact, there is no reference to such demands; even though they are on record even before the competent authority had passed an order sanctioning the same. It is, thus, clear that the competent authority had sanctioned the scheme without referring to and without applying mind to these demands of public authorities for the land for public purpose.

9. The learned Counsel for the petitioners submitted that u/s 21(1) of the Act, these demands are irrelevant and the competent authority has only to consider the scheme proposed by the land-holder and if the scheme is otherwise in order and legal and if the application is filed in time and in accordance with law, the competent authority is bound to sanction the scheme and the demand by any authority for the land is wholly irrelevant and the authority is not entitled to take it into consideration. It is submitted that public interest and other considerations are mentioned by the Legislature specifically in Section 20 and the same Legislature has not mentioned these considerations in Section 21, It is also submitted that Section 21 does not indicate any factor to be taken into consideration except what is mentioned in Section 21, namely, declaration, its time, manner and other particulars and the scheme approved by the specified authority. If all these things are satisfied, according to the petitioners, the scheme has to be sanctioned and the authority has no discretion to refuse to sanction the scheme nor has he any power to go into the question as to whether the land is required by any public authority or not.

10. There is no merit in this contention. u/s 21, the authority has to be satisfied that the scheme can be implemented successfully without any hurdle. If the authority is satisfied that the scheme may not succeed or if the authority is satisfied for any reason that there is another public purpose to be served, the authority has sufficient discretion and the Legislature has deliberately used the word "may" and not "shall". Therefore, if the authority is satisfied that the land is

required by any public authority for any public purpose, the competent authority "may" refuse to sanction the scheme. If there is any case for use of the land for any public purpose, the competent authority can legitimately exercise the discretion against the land-holder. Section 21 does not give any right to the land-holder. The object of Section 21 is not to confer any benefit or right on the land-holder, but to further the cause of the weaker section of the society for housing, but that purpose cannot be held to be the only purpose for which the land can be put to use and it is for the competent authority to consider as to whether the land should be allowed to be put to the benefit of the weaker sections of the society under the scheme of a land-holder or whether the land shall be allowed to be used for public purpose by the public authorities. On the contrary, the needs of the public authority are highly relevant and in consonance with the object of the Act.

11. In the case of *Narayanbhai Ramabhai Vs. State of Gujarat*, a similar argument was considered. It was a case u/s 20 and there the exemption was sought on the ground that the land-holder wanted the land to utilise it for public purpose by enabling the co-operative society members of the weaker sections of the public to put up residential houses. The exemption was refused and it was observed that the authority, while deciding the question of granting exemption u/s 20(i)(a) has to keep in view all the relevant guidelines applicable and mere filing of application gives no vested right to the applicant to get exemption. In para 2, the High Court observed as under:

Mr. Patel next submitted that even if the exemption is refused, the excess lands will be utilised for a public purpose while the petitioners themselves want to utilise the same for a public purpose. That is neither here nor there. If the petitioners have not made out any case for exemption u/s 21(i), the excess vacant land would get subjected to the disposal as laid down by the Act. It would be obviously for a public purpose. They will form part of the common pool. That would benefit the society at large, for whom the Act is meant. Under these circumstances, it cannot be said that any case is made out by the petitioners for interference of this Court in the present proceedings. The order passed by the Deputy Secretary is well reasoned and reflects no apparent error of law. On the contrary, in the facts of the cases, it is well sustained. Hence rejected.

12. The learned Counsel for the petitioners submitted that the scheme under Sections 20 and 21 is entirely different and this judgment, though applicable on interpretation of Section 20 is not applicable for interpretation of Section 21. It is submitted that the relevant considerations which are mentioned in Section 20 by the Legislature are not mentioned in Section 21 and therefore, the question of public interest or other public purpose is not relevant. There is no merit in this contention. The object and purpose of the Act and of Sections 20 and 21 is common and it must be read into every provision of the Act. The distinction sought to be made out by the learned Counsel is a distinction without difference. The competent authority has discretion u/s 21 to grant or to refuse to sanction

the scheme u/s 21. If the argument of the petitioners were to be accepted, there was no need for the competent authority to be given this discretion. Once the formalities of an application are completed, the specified authority would examine the scheme and once it is done by the specified authority, nothing would be required to be done by the competent authority. In such circumstances, the question would have been left to be decided by the specified authority, but the fact that the Legislature has not allowed the matter to end with the specified authority and given discretion to the competent authority, the competent authority has to exercise discretion and he cannot abandon the discretion, and for guiding his discretion, he is entitled to take into consideration the other purposes to which the land can be put to use and the purposes and public interest involved therein. The competent authority is duty bound to consider whether the land is required by any public authority for any public purpose and whether or not to sanction the scheme.

13. In the present case, though Gujarat Slum Clearance Board and the Gujarat Housing Board had already informed the competent authority that they require the land for public purposes, the competent authority had without taking the same into consideration, granted the scheme. This is thoroughly illegal and the competent authority has failed to exercise the discretion and jurisdiction vested in it. Therefore, the order of the competent authority granting the scheme has to be quashed and set aside and the matter is required to be remanded to the competent authority for a fresh decision in accordance with law.

14. During the pendency of the litigation and inspite of the litigation, if any construction is done, that will be subject to the result of the proceedings and such construction will not prejudice the considerations by the competent authority.

15. In the result, the petition partly succeeds and the order of the Government rejecting petitioners' application u/s 21 of the Act is quashed and set aside. However the order of the Government cancelling the order which granted the scheme is confirmed and the matter is remanded to the competent authority for considering the matter afresh and disposing of the same in accordance with law after giving an opportunity of hearing to the petitioners and to the Gujarat Housing Board and Gujarat Slum Clearance Board. Rule is made absolute accordingly with no order as to costs.

16. The learned Counsel for the petitioners prays that the order passed in this petition be stayed in order to enable the petitioners to take further recourse in accordance with law. In view of the fact that the Government had cancelled the order granting the scheme in 1985 and for all these years, there has been no stay against that order, no question of staying this order arises. Hence, the request is rejected.