

(1987) 09 GUJ CK 0002

In the Gujarat High Court

Case No : Spl. Civil Application No. 578 of 1978

Jayantilal Govindji Kundliya and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-09-1987

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21

Citation : AIR 1988 Guj 185 : (1988) 1 GLR 29

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

Bench : Single Bench

Advocate : Suresh M. Shah, for the Appellant; M.I. Hawa, for the Respondent

Judgement

1. Petitioner 1 is the owner of land of part of Survey No. 451 of Rajkot admeasuring 8094 sq.mts. Petitioner 2 is a proposed housing co-operative society. The petitioners applied for exemption under S. 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act") in respect of the land owned by petitioner 1. The application for exemption has been rejected by the Government as per its order 4th April, 1986, produced at Annexure B to the petition. The petitioners challenge the legality and validity of this order.

2. In respect of this very land, petitioners had obtained permission under S. 21 of the Act for constructing dwelling units for the accommodation of the weaker section of the society. Even after obtaining the permission as stated above, the petitioners did not construct dwelling units for the weaker section of the society. However, the petitioners applied for exemption under S. 20 of the Act. In view of this factual position, it is observed in the order that the application is not bona fide. Moreover, the land was required for construction of houses by Gujarat Housing Board and, therefore, it is considered that it would not be in Public interest to grant exemption. It is also held that if the exemption is not granted, no hardship would be caused to the owner of the land i.e., petitioner 1. As the owner of the land is desirous to dispose of the land by way of sale if exemption is

granted, no public interest would be served. For the aforesaid reasons, the application has been rejected.

3. The learned counsel for the petitioners submits that grant of permission under S. 21 of the Act for construction of houses for weaker section of the society cannot be treated as a ground for rejection of the application seeking exemption from the operation of the Act. In his submission, as per Government Circulars persons who had obtained permission under S. 21 of the Act could also apply for exemption under S. 20 of the Act. That may be so. While considering application under S. 20 of the Act for exemption from the operation of certain provisions of the Act, it cannot be said that application under S. 21 of the Act could not have been made. A holder of land is not disabled from applying simultaneously for exemption under S. 20 of the Act and also for applying under S. 21 of the Act seeking permission to construct houses for weaker section of the society. S. 20 of the Act relates to the powers of the Government to exempt vacant land from the operation of certain provisions of the Act, while S. 21 of the Act provides that in certain cases excess vacant land should not be treated as excess land. The underlying object and the considerations which should weigh with the Government while dealing with application under S. 20 of the Act and an application under S. 21 of the Act are quite different. While dealing with application under S. 20 of the Act, the Government is required to take into consideration the following factors:

- i) location of the land;
- ii) purpose for which the land is to be used or is proposed to be used;
- iii) whether it is necessary or expedient in the public interest to grant exemption or not;
- iv) The question of hardship to the owner of the land.

Section 21 of the Act provides that in certain cases the owner of the land for which permission is granted may continue to be the owner of the land but the land shall be used for a specific purpose, that is to say, construction of houses for weaker section of the society. The user of the land which is admittedly in excess of the ceiling limit is sought to be regulated. As per the terms and conditions in the permission that may be granted under S. 21 of the Act, the user of the land will be for specific purpose and the same shall have to be put to that use within prescribed time limit.

4. In above view of the matter, it is obvious that the object that may achieved by passing an order under S. 20 of the Act and the considerations which may weigh with the Government are quite different than those which may weigh while dealing with an application under S. 21 of the Act. A landholder may be in a position to make out case under both the provisions of the Act. Therefore, it is understandable that owner of the land may be permitted to apply under both the provisions of the Act. When such applications are made, both the applications are

required to be dealt with in accordance with law. But that does not mean that where the owner of the land has been granted permission under S. 21 of the Act and has failed to carry out the scheme for construction of houses for weaker section of the society as per the terms and conditions of the permission, this circumstance cannot be taken into consideration while deciding an application under S. 20 of the Act. Certainly this is a most relevant circumstance for considering bona fides of the applicant, that is, the owner of the land. This is what is done by the Government while refusing to grant exemption as prayed for. In the order it is mentioned that since the petitioner has not carried out the scheme for construction of houses for weaker sections of the society as permitted under S. 21 of the Act, the prayer for exemption under S. 20 of the Act cannot be considered to be bona fide. Therefore, the circumstance that a landholder can apply under both the provisions of S. 20 as well as under S. 21 of the Act is of no help to the petitioners. The point is, while deciding application under S. 20 of the Act, the factual position, namely, failure of the landholder to carryout the scheme under S. 21 of the Act, can be considered a relevant factor or not for the purpose of deciding bona fides of the land holder. Surely, the answer is, in affirmative. Had the landholder been not actuated by the profit motives and had he not been keen to sell the land to petitioner 2 -proposed co-operative housing society - he would have surely carried out the scheme of construction of houses for weaker section of the society for which he had obtained permission under S. 21 of the Act. This would have been in furtherance of the object of the Act. As stated hereinabove, the land is also required for the purpose of the construction of houses by Gujarat Housing Board. Therefore, it is clear that it would not be in the public interest to grant exemption as prayed for.

5. The learned counsel for the petitioners submitted that various documents were produced before the Government for showing that the petitioners would suffer hardship and this material has not been considered while passing the order. There appears to be some misconception as regards the nature of the order to be passed by the authority exercising powers under S. 20 of the Act. In the case of Manilal Hiralal Doshi (by LR) and Others Vs. State of Gujarat, , Division Bench of this High Court in para 5 of the judgment has observed to the effect that in such cases the submissions of the applicant are to be "dealt with by reasonably reasoned order". Thus, all that is required by the authority is to pass a "reasonably reasoned order". Meaning thereby it is not necessary for the authority to deal with each and every piece of evidence or material that might have been produced before it. It is sufficient if the order indicates the reasons which have weighed with the authority for not granting the exemption as prayed for. As far as the question of hardship is concerned, the same has been taken into consideration and dealt with by the authority while passing the order. It is indicated in the order that the owner of the land (petitioner 1) is desirous to sell the land and if exemption is not granted it will not cause any hardship to the owner of the land. Be it noted that it is also the finding of the authority that the application for exemption is not bona fide, inasmuch as the applicant did not

carry out the scheme for construction of houses for weaker section of the society. In view of this position, it can never be said that the authority has not dealt with the question with regard to hardship or the same has been decided otherwise than in accordance with law. All that was necessary for the authority was to pass a "reasonably reasoned order". Reasons which have weighed with the authority have been indicated in the order. Failure to refer to particular material or particular piece of evidence would not vitiate the order, because thereby the order does not become arbitrary or unreasonable.

6. Though the petition is styled and labelled as one under Art. 226 of the Constitution the petition is essentially under Art. 227 of the Constitution. Even so, I have dealt with all the points which would go beyond the scope of a petition under Art. 227 of the Constitution. There is no error much less an error apparent on the face of the record. The impugned order passed by the respondent authorities cannot be said to be in any way arbitrary or unreasonable, No case is made out for interference with the impugned order. Hence, the petition is rejected. Notice discharged. Ad interim relief granted on 20-3-1987 was limited and remained in operation up to 9-4-1987 only. Thereafter no ad interim or interim relief operates.

7. The learned counsel for the petitioners requests that the aforesaid order be kept in abeyance for some time so as to enable the petitioners to approach the superior forum as may be available to the petitioners. In the facts and circumstances of the case it is directed that the aforesaid order shall remain in abeyance up to Nov. 2, 1987.

8. Order accordingly.