

(1994) 03 GUJ CK 0015
In the Gujarat High Court

Jayantilal Kasalchand Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 24-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 10(5), 33, 34

Citation : (1995) 1 GLR 592

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by and on behalf of respondent No. 1 herein on 13th July 1987 u/s 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under Article 226 of the Constitution of India. Thereby the order passed by the Competent Authority at Rajkot (respondent No. 2 herein) on 20th October 1983 in U.L.C. Case No. 2128 of 1976 came to be revised and the holding of the petitioner came to be declared excess by 3106.01 square metres and the excess was declared to be surplus.

2. The facts giving rise to this petition move in a narrow compass. The petitioner held certain parcels of land in Rajkot. It was beyond the ceiling limit prescribed for that area under the Act. He, therefore, filled in the prescribed form u/s 6(1) thereof. The proceeding came to be registered as U.L.C. Case No. 2128 of 1976. Pursuant thereto, a draft statement was prepared by respondent No. 2 herein and it was caused to be served to the petitioner in accordance with Section 8 thereof. After hearing the parties, by his order passed on 20th October 1983 in the aforesaid proceeding, respondent No. 2 came to the conclusion that the holding of the petitioner was in excess of the ceiling limit by 134.69 square metres and it was declared surplus and it was to be carved out from plot No. 31 of Survey No. 399 in all admeasuring 484.68 square metres. Its copy is at Annexure-A to this petition. It appears that the petitioner was aggrieved by the order at Annexure-A to this petition. He, therefore, carried the matter in appeal before the Urban Land Tribunal at Ahmedabad (the Appellate Authority for

convenience) u/s 33 of the Act. It came to be registered as Appeal No. Rajkot-151 of 1983. It appears that he applied for unconditional withdrawal of his appeal. By the order passed by the Appellate Authority on 28th November 1984 in the aforesaid appeal, the appeal came to be disposed of as withdrawn. Its copy is a part of Annexure-B (collectively) to this petition. It appears that thereafter the notification u/s 10(1) of the Act came to be issued on 4th January 1985 with respect to the excess land declared surplus under the order at Annexure-A to this petition. Its copy is a part of Annexure-C (collectively) to this petition. It appears that the necessary notification u/s 10(3) thereof also came to be issued and published on 16th May 1985. Pursuant thereto, a notice was issued on 11th October 1985 to the petitioner u/s 10(5) thereof to hand over possession of the excess land declared surplus under the order at Annexure-A to this petition. Its copy is at Annexure-D to this petition. It appears that the petitioner did hand over the possession of the excess land declared surplus pursuant to the notice at Annexure-D to this petition. This factual position is not in dispute. It appears that the order at Annexure-A to this petition came to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its revision u/s 34 of the Act was, therefore, contemplated. Thereupon a show cause notice came to be issued to the petitioner on 2nd April 1986 calling upon him to show cause why the order at Annexure-A to this petition should not be revised. Its copy is at Annexure-E to this petition. The petitioner filed his reply thereto sometime on 6th May 1986. Its copy is at Annexure-F to this petition. After hearing the petitioner through his Advocate, by the order passed on 13th September 1987 u/s 34 of the Act, the order at Annexure-A to this petition came to be revised and it was held that the holding of the petitioner was in excess of the ceiling limit by 3106.01 square metres. Its copy is at Annexure-G to this petition. The aggrieved petitioner has thereupon moved this Court by means of this petition under Article 226 of the Constitution of India for questioning its correctness.

3. Shri Nanavati for the petitioner has submitted that, once an appeal against the order at Annexure-A to this petition was preferred, no revisional powers u/s 34 of the Act could be exercised. In the alternative, Shri Nanavati for the petitioner has submitted that the power u/s 34 of the Act has come to be exercised after lapse of unreasonable period of time and it has resulted in unsettling the settled transaction as reflected in the reply at Annexure-F to this petition. Shri Dave for the respondents has on the other hand submitted that the revisional powers u/s 34 of the Act can be exercised at any point of time in view of the binding Division Bench ruling of this Court in the case of Haresh Kantilal Vora v. Competent Authority & Additional Collector, Rajkot reported in 1992 (2) GLH 424. Shri Dave for the respondents has further submitted that, on interpretation of Section 34 of the Act, unless the appeal has been disposed of on its own merits, the revisional powers u/s 34 of the Act qua the order at Annexure-A to this petition could be exercised.

4. Shri Dave for the respondents is right in his submission to the effect that there

is no time-limit prescribed for exercise of the powers u/s 34 of the Act and in its aforesaid ruling in the case of Haresh Vora (supra) this Court has held that such powers can be exercised even after lapse of considerable time. It has however, been further held therein: Mere lapse of time, without anything more, would not make the exercise of power unreasonable" (Emphasis supplied). It would mean that if it is brought to the notice of the authority exercising the power u/s 34 of the Act that such exercise would be unreasonable after lapse of certain period in view of the facts and circumstances of the case, it will have to be considered by the authority before exercising such power. What has been emphasised in the aforesaid Division Bench ruling of this Court is to the effect that, in absence of any special circumstances of the case, mere lapse of time would not make the exercise of power u/s 34 of the Act unreasonable.

5. In view of this dictum of law laid down by the Division Bench of this Court in its aforesaid ruling in the case of Haresh Vora (supra), it will be necessary to examine the submission urged before me by Shri Nanavati for the petitioner to the effect that the exercise of power u/s 34 of the Act could be said to be unreasonable in view of the circumstances mentioned in the reply at Annexure-F to this petition.

6. In his reply at Annexure-F to this petition, the petitioner pointed out to the author of the show cause notice at Annexure-E to this petition that he transferred several parcels of land in favour of certain third parties for establishment of some small industrial undertakings and such small industrial undertakings in fact came to be established on the transferred parcels of land. He also pointed out therein that certain property was transferred to a third party for his residence and it was being used as residence by the said third party. As transpiring from the reply at Annexure-F to this petition, all these transactions took place between the period from the date of the order at Annexure-A to this petition to the date of the show cause notice at Annexure-E to this petition. As pointed out hereinabove, the excess land declared surplus under order at Annexure-A to this petition has already come to be surrendered by the petitioner pursuant to the notice at Annexure-D to this petition. In that view of the matter, pursuant to the order at Annexure-A to this petition, he entered into certain transactions and these transactions came to be settled. The impugned order at Annexure-G to this petition has resulted into unsettling such settled transactions. It is an admitted position on record that the impugned order at Annexure-A to this petition came to be passed on 20th October 1983 and the show cause notice at Annexure-E to this petition came to be issued on 11th March 1985, nearly eighteen months after the date of the order at Annexure-A to this petition. This lapse of two years resulted in certain settled transactions. Unsettling such settled transactions after lapse of eighteen months can be said to be unreasonable exercise of the power u/s 34 of the Act.

7. In view of my aforesaid discussion, I am of the opinion that, in view of the special circumstances of the case as reflected in the reply at Annexure-F to this

petition, the power to revise the order at Annexure-A to this petition should not have been exercised after lapse of eighteen months. With respect, the author of the impugned order at Annexure-G to this petition has not applied his mind to this aspect of the case and has merely come to the conclusion that the authority u/s 34 of the Act has an absolute power to revise any order even after lapse of any length of time. This view of his runs counter to the aforesaid Division Bench ruling of this Court in the case of Haresh Vora (supra). The authority exercising the power u/s 34 of the Act after lapse of time has to keep in mind the special circumstances reflected in the reply to the show cause notice or pointed out at the time of hearing. In that view of the matter, the impugned order at Annexure-G to this petition cannot be sustained in law and it has to be quashed and set aside.

8. After coming to the aforesaid conclusion, I think it is not necessary to examine the tenability of the submission urged before me by Shri Nanavati for the petitioner to the effect that no power u/s 34 of the Act could be exercised once the order at Annexure-A to this petition was subject to appeal u/s 33 thereof.

9. In the result, this petition is accepted. The order passed by and on behalf of respondent No. 1 on 13th July 1987 u/s 34 of the Act at Annexure-G to this petition is quashed and set aside. The order passed by respondent No. 2 at Annexure-A to this petition is restored. Rule is accordingly made absolute with no order as to costs.