
(1994) 03 GUJ CK 0013
In the Gujarat High Court

Kalaben Dashrathlal Kavi and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 34, 6(1)

Citation : (1995) 1 GLR 877

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—Rule. Service of Rule is waived by Shri Dave for the Respondents.

The order passed by and on behalf of respondent No. 1 on 20th April 1993 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. By the impugned order, respondent No. 1 took into suo motu revision the order passed by the Competent Authority at Ahmedabad (respondent No. 2 herein) on 19th July 1990 in U.L.C. Case Nos. Vejalpur-1124 and 1132 and modified it by holding that the holding of petitioner No. 1 was in excess of the ceiling limit by 420.66 square metres and of petitioner No. 2 by 57 square metres.

2. It is not necessary to set out in detail the facts giving rise to this petition. Suffice it to say that pursuant to the prescribed form filled in by the petitioners separately u/s 6(1) of the Act with respect to their holding within the urban agglomeration of Ahmedabad, respondent No. 2 passed the necessary common order on 19th July 1990 holding that neither petitioner herein was having any property in excess of the ceiling limit. Its copy is at Annexure-E to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Thereupon a show cause notice u/s 34 of the Act came to be issued on 12th November 1992 calling upon the petitioners to show cause why the order at Annexure-E to this petition should

not be revised. A copy of the aforesaid show cause notice is at Annexure-I to this petition. It appears that the petitioners filed their reply to the show cause notice and resisted the proposed action on several grounds. A copy of their reply is at Annexure-L to this petition. It appears that on different occasions the petitioners also produced xerox copies of certain documents in support of their case set up in their reply at Annexure-L to this petition. After hearing the parties, by the order passed on 20th April 1993, respondent No. 1 revised the order at Annexure-E to this petition and came to the conclusion that the holding of petitioner No. 1 was in excess of the ceiling limit by 420.66 square metres and that of petitioner No. 2 by 57 square metres. Its copy is at Annexure-M to this petition. The aggrieved petitioners have thereupon moved this Court by means of this petition under Article 226 of the Constitution of India for questioning its correctness.

3. The grievance of the petitioners in support of this petition is two-fold. It has been urged by Shri Raval for the petitioners that the record and proceedings of respondent No. 2 culminating into the order at Annexure-E to this petition were not called for by the officer exercising the power of respondent No. 1 u/s 34 of the Act and such default on his part has resulted in miscarriage of justice. Secondly, according to Shri Raval for the petitioners, xerox copies produced by and on behalf of the petitioners of the documents before respondent No. 2 ought to have been taken into consideration before passing the impugned order at Annexure-M to this petition.

4. It has clearly been averred in the petition that the record and proceedings of respondent No. 2 culminating in his order at Annexure-E to this petition were not summoned by and on behalf of respondent No. 1 before passing the impugned order at Annexure-M to this petition. The averments in that regard in the petition have not come to be denied at all by or on behalf of the respondents. The wordings of Section 34 of the Act are a clear pointer as to the manner in which the powers thereunder have to be exercised. The condition precedent for exercise of such powers is to call for and examine the records inter alia of any order passed under the provisions of the Act. In view of this clear-cut mandate given by the legislature, no power u/s 34 of the Act can or need be exercised unless the records of the order sought to be revised are called for and examined by or on behalf of respondent No. 1. The impugned order at Annexure-M to this petition cannot, therefore, be sustained in law on this ground alone.

5. The author of the impugned order at Annexure-M to this petition ought not to have refused to rely on the xerox copies of the documents produced by or on behalf of the petitioners in answer to the show cause notice at Annexure-I to this petition. If he doubted the genuineness or veracity of those documents, he ought to have called upon the petitioners to produce their original or to satisfy that they were true xerox copies of the original documents. Without doing so, he could not have just brushed aside the xerox copies produced by and on behalf of the petitioners in support of their case in reply to the show cause notice at

Annexure-I to this petition. It is clearly reflected in the impugned order at Annexure-M to this petition that the materials produced by the petitioners in reply to the show cause notice at Annexure-I to this petition were not relied on because they were xerox copies. The impugned order at Annexure-M to this petition cannot, therefore, be sustained in law on this ground also.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-M to this petition cannot be sustained in law and deserves to be quashed and set aside. The matter is required to be remanded to respondent No. 1 for its fresh decision according to law pursuant to the show cause notice at Annexure-I to this petition in the light of this judgment of mine.

7. In the result, this petition is accepted. The order passed by and on behalf of respondent No. 1 herein on 20th April 1993 at Annexure-M to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Both the parties are directed to maintain status quo with respect to the subject-matter of this petition.