

**(1995) 02 GUJ CK 0008**  
**In the Gujarat High Court**

Kamlaben K. Bhatt

APPELLANT

Vs

The Competent Officer and Dy. Collector, U.L.C. and Another

RESPONDENT

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**Date of Decision :** 02-02-1995

**Acts Referred:**

Urban Land (Ceiling and Regulation) Act, 1976 — Section 6, 6

**Citation :** (1996) 2 GLR 357

**Hon'ble Judges :** M.R. Calla, J

**Bench :** Single Bench

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**Judgement**

M.R. Calla, J.—The petitioner's husband expired on 19th November 1968. The petitioner, i.e., widow of Shri Keshavlal Dalsukhbhai filed the declaration in Form No. 1 u/s 6 of the Urban Land (Ceiling & Regulation) Act, 1976 ("the Act" for short) with regard to the land in question. The Deputy Collector and Under Secretary, Urban Land Ceiling, passed an order dated 21-4-1980. He took note of the exemption accorded u/s 20 of the Act, dated 9th May 1979, passed by the Revenue Department, Government of Gujarat, and found that the lands mentioned at item Nos. 1 and 2 in the order dated 21-4-1980 were exempted and the lands mentioned at item Nos. 3 to 8 were in the agricultural zone and the same were being used for agricultural purposes. On that basis, the Competent Authority was of the opinion that there was no necessity for making any further inquiry in connection with the form and the draft statement u/s 8 was not required to be prepared. Accordingly, the order was passed for closing this form on 21-4-1980 with the specific mention that this order shall remain in Force till such time as the land is used for agricultural purposes and the lands situated in the agricultural zone continued to be so. Thus, the controversy was decided in the year 1980. Later on, an order was passed on 30th November 1987 by the Competent Authority and Additional Collector. Urban Land Ceiling, Ahmedabad, with reference to Form No. 1 dated 13th September 1976 filed u/s 6(1) of the Act by the present petitioner and the notice and draft statement were forwarded to the concerned on 18th June 1983 declaring the land of Survey Nos. 681/2, 694/1, admeasuring 4,333 sq.mtrs. and 590 sq.mtrs, at Naroda and Survey Nos.

363/A/I, 364 and 365 admeasuring 3,809 sq.mtrs., 8,397 sq.mtrs. and 6,406 sq.mtrs. at Nikol, respectively, to be surplus. Against this order passed on 30th November 1987, an appeal u/s 33 was preferred by the petitioner before the Urban Land Tribunal, Ahmedabad. Although it is not specifically made out from this order passed by the Urban Land Tribunal that the lands situated at Nikol were subsequently included in the non-agricultural zone, it was argued by Mr. Uraizee, learned Assistant Government Pleader that in fact, the disputed lands at village Nikol became part of non-agricultural zone and, therefore, the matter had to be reopened. The Urban Land Tribunal has held that, when a land is specified in Master Plan for a purpose other than agriculture, the present user of such land or its classifications in the revenue records or land records becomes irrelevant and further that, in the instant case, the land had been included in the non-agricultural zone in the Master Plan. The Tribunal has further mentioned that, it is not only the position on the date of the enforcement of the Act according to which, the ceiling has to be determined, but subsequent events are also required to be taken into consideration and further that a land may not have been vacant initially, but may become vacant subsequently and, therefore, the Competent Authority was justified in including these lands in the computation of the excess vacant land held by the appellant. Accordingly, the Urban Land Tribunal remanded matter to the Competent Authority for disposal of the same in accordance with law in the light of the observations made in the appellate order dated 25th April 1990. Thereafter, the Competent Authority passed an order on 20th September 1990 holding that the lands of Survey Nos. 363/A/I, 364 and 365 respectively, at Nikol, i.e., in all 17,833 sq.mtrs. were In excess and this order has to remain in force so long as use of the land is for agricultural purposes.

The Competent Authority thereupon passed an order dated 20th September 1990 in the remanded proceedings, holding that 17,833 sq.mtrs. of land at Nikol was in excess of the ceiling limit.

2. The petitioner has challenged through this Special Civil Application the order dated 30th November 1987 passed by the Competent Authority, the order dated 25th April 1990 passed by the Urban Land Tribunal and the ultimate order dated 20th September 1990 passed by the Competent Authority in the remanded proceedings.

3. Learned Counsel for the petitioner has submitted that the proceedings to deal with the Form No. 1 u/s 6 had already concluded in the year 1980 and the land is being used for agricultural purposes only and further that, this factual position has not been disputed and even in the impugned orders, it is not said that the land in question was not being used for agricultural purposes and even if certain lands as mentioned by the Competent Authority were included in the non-agricultural zone, later on, it is of no consequence and, therefore, neither the proceedings which were concluded in the year 1980 could be reopened in the year 1987 nor the impugned orders could be passed against the petitioner.

4. Learned Assistant Government Pleader Mr. Uraizee, has argued that the petitioner did not prefer any appeal u/s 33 of the Act against the order dated 20th September 1990 passed by the Competent Authority and Additional Collector and that the order which had been passed by the Tribunal on 25th April 1990 could not be challenged in view of the fact that the Competent Authority had passed orders in the remanded proceedings when the matter was remanded by the Urban Land Tribunal vide its order dated 25th April 1990 and further that at the most, the matter could be remanded and the petitioner may apply for exemption u/s 20 of the Act.

5. I have considered the submissions made by both the sides. It is clearly established that the proceedings in Form No. 1 u/s 6 were closed by the Competent Authority when it passed the order on 21-4-1980 but this order was to remain in force till such time the land continued to be under the agricultural zone and is used for agricultural purposes. On this basis, even if it is considered that the matter could be reopened when certain lands were included in the non-agricultural zone, it is clear that this inclusion was subsequent to the year 1980 in point of time, i.e., after the closure of the proceedings of Form No. 1 u/s 6. Although neither of the parties had been able to give out the date on which the land was included in the non-agricultural zone, but this fact-situation is not disputed before me and is also borne out from the documents placed on record that, if at all it is included in the non-agricultural zone, it must have been so some time after 1980 and had it been included at the time of the commencement of the Act, there is no question of passing the order dated 21-4-1980 so as to close the proceedings of Form No. 1 u/s 6 of the Act. Moreover, I find it to be mentioned in the order passed by the Urban Land Tribunal that the disputed land was included in the non-agricultural zone in the Master Plan and it has not been shown before me that the Master Plan was in existence at the time of the commencement of the Act in the year 1976 and obviously, the very fact that the proceedings were closed in the year 1980, there is no escape from the conclusion that the inclusion was after the year 1980. In AIR 1993 SC 2645 (Smt. Alia Mohammadi Begum v. State of U.P. and Ors.), it has been held that, Master Plan should be in existence at the time of the commencement of the Act and this condition is clearly wanting in the facts of the present case and therefore,, on the basis of the inclusion of certain lands in the non-agricultural zone, subsequent to the commencement of the Act, and also later on in a point of time, when the passing of the order dated 21-4-1980, it has been rightly argued that the consideration of the subsequent inclusion of the land in question in the non-agricultural zone is of no legal consequence against the petitioner, and therefore, this contention deserves to be accepted.

6. The argument of Mr. Uraizee, learned Assistant Government Pleader is that the petitioner has not filed an appeal against the order passed by the Competent Authority and Additional Collector, Urban Land Ceiling on 20th September 1990 whereas this order was appealable and, therefore, the petition deserves to be rejected on the ground that the petitioner did not avail the remedy of preferring

the appeal. The Special Civil Application is pending since 1991, the order dated 20th September 1990 has been passed in the proceedings remanded by the Urban Land Tribunal vide its order dated 25th April 1990 and moreover, when the basic fact that the land was included in the non-agricultural zone subsequent to the commencement of the Act and that the Master Plan was not there at the time of the commencement of the Act and further that the matter had already been agitated earlier in an appeal u/s 33, and the order dated 20th September 1990 is itself an order passed in the proceeding remanded by the Urban Land Tribunal, to me it does not appear to be a fit case for rejection only on the ground that the appeal was not preferred against the order dated 20th September 1990, as no useful purpose will be served and it will be an exercise in futility in view of the fact that the Master Plan was not in existence at the time of the commencement of the Act and the inclusion of the land in dispute in the non-agricultural zone much after the commencement of the Act is also transparently clear. In this view of the matter and after the five years of the pendency of this matter, after issuing Rule, it will not be desirable to now, relegate the petitioner to the remedy of filing appeal u/s 33 of the Act against the order dated 20th September 1990 passed by the Competent Authority. The alternative request of Mr. Uraizee, learned Assistant Government Pleader that the matter may be remanded to the Competent Authority does not deserve to be accepted in the facts of this case because I am of the view that it will be a plain and simple case of exercise in futility once it is established that the Master Plan was not in existence at the time of the commencement of the Act and the inclusion of the disputed land in the non-agricultural zone is later on, in point of time, after the commencement of the Act and the passing of the order in the year 1980 there is closure of the proceedings. Thus, the litigation cannot be allowed to be prolonged when no useful purpose is likely to be served. The other contention of learned Assistant Government Pleader that, once the order has been passed by the Competent Authority on 20th September 1990 after the remand order dated 25th April 1990, the order of the Tribunal had already been acted upon, giving effect to and the Competent Authority had also passed the order. This argument has no merit because the Tribunal had passed the order Annexure-H dated 25th April 1990 and the direction for remanding the matter is itself the subject-matter of challenge. Merely because the remanded proceedings have culminated into the ultimate order passed by the Competent Authority on 20th September 1990, the petitioner cannot be deprived of her right to challenge the basic order under which the proceedings were remanded to the Competent Authority when the order passed by the Urban Land Tribunal itself is contrary to the law laid down by the Supreme Court in the case as aforesaid. In my opinion, the position is rather reverse inasmuch as the position of law is that, without challenging the basic order, the consequential order cannot be challenged and here is a case in which the basic order with regard to the remand was the order passed by the Tribunal and the order dated 20th September 1990 passed by the Competent Authority was only to give effect to the direction for remand ordered by the Tribunal and the only exercise which the Competent Authority has later on taken into

consideration is to apply the observations made by the Tribunal in the facts of this case so as to determine the question of availability of excess vacant land beyond the ceiling limit on the basis of the inclusion of the land in the non-agricultural zone and thus, but for a simple mathematical exercise of computation, nothing more was to be done by the Competent Authority and hence, this objection raised by Mr. Uraizee, learned Assistant Government Pleader that, the petitioner could not challenge the order of the Tribunal after the direction of remand had been ordered, is devoid of any merit, the same is not tenable and hence rejected.

7. The upshot of the aforesaid discussion is that the impugned order dated 20th November 1987, passed by the Competent Authority, the order dated 25th April 1980 passed by the Urban Land Tribunal and the ultimate order dated 20th September 1990 passed by the Competent Authority in the remanded proceedings cannot be sustained in the eye of law and the same are hereby quashed and set aside.

8. This Special Civil Application, therefore, succeeds and the same is accordingly allowed. Rule is made absolute accordingly. The interim order dated 22nd April 1991 is not required to operate any further and the same is, therefore, vacated. There shall be no order as to costs.