
(1995) 03 GUJ CK 0052
In the Gujarat High Court

Kamuben Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Urban Land (Ceiling and Regulation) Act, 1976 — Section 34, 34, 6, 6(1)

Citation : (1995) 2 GLR 1646

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

Bench : Single Bench

Judgement

M.R. Calla, J.—The petitioner's case is that one Dhaniben, daughter of Haribhai Lalbhai and wife of Dalpatbhai Durlabhbhai was holding agricultural lands bearing Survey Nos. 90/T-1, 90/T-2 and 494 and House No. 384. On the portion of the land bearing Survey No. 494, constructions were there in the nature of stables and Dargah, since 1974 and on the portion thereof, the agricultural operations were carried on and the grass was grown. On the land bearing Survey Nos. 90/T-1 and 90/T-2, the agricultural operations were carried on prior to 1975-76 and thereafter that there was no master plan prepared by any Competent Authority under any law or otherwise in respect of the agricultural lands bearing Survey Nos. 90/T-1 and 90/T-2 and 494. It is the further say of the petitioner that Dhaniben was in fact, not required to file any declaration in Form No. 1 u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short) because according to the learned Counsel for the petitioner, the land held by her was not a vacant land within the meaning of the provisions of the said Act. However, she filed the declaration in Form No. 1 about her holding of land. The Competent Authority and Additional Collector, Surat, while processing the Form, exercised the suo motu powers u/s 20 of the said Act and granted exemption to the land bearing Survey No. 494 from the applicability of the said Act, and so far as the lands bearing Survey Nos. 90/T-1 and 90/T-2 are concerned, it was held that these lands were placed in the agricultural zone in the master plan, i.e., the development plan prepared by the Surat Urban Development Authority under the

provisions of the Gujarat Town Planning and Urban Development Act, and there was no need to grant any exemption. House No. 384 was constructed properly and on the land bearing Survey No. 494, there were seven stables and one Dargah. Dhaniben, therefore, moved an application before the Revenue Authority of the Government of Gujarat for withdrawal of the exemption granted to the land bearing Survey No. 494 u/s 20 of the said Act as the same was redundant, according to the petitioner, because the provisions of the said Act were not applicable. The Revenue Department of the Government of Gujarat withdrew the exemption by its order dated 12th October 1990 and thereafter the proceeding pertaining to Form No. 1 u/s 6 was resumed by the Competent Authority in connection with the land bearing Survey No. 494 and the residential house. Dhaniben expired on 17th November 1983 and her husband Dalpatbhai Durlabhbai was her legal heir for the properties of deceased Dhaniben. Accordingly, Dhaniben's husband Dalpatbhai Durlabhbai participated in the proceedings before the Competent Authority. The Competent Authority came to the conclusion that there was no excess holding with deceased Dhaniben and accordingly the notice issued u/s 8(4) of the said Act was required to be withdrawn and the proceedings u/s 6(1) of the said Act were preferred. The Competent Authority, therefore, passed the order on 5th November 1990 filing the Form and withdrawing the notice. According to the petitioner, the said Survey No. 494 was included in the draft Town Planning Scheme, Surat and the predecessor of the petitioner was informed by the Town Planning Officer by letter dated 29th December 1993 that a tentative reconstitution Plan was prepared and the land bearing Survey No. 494 was given original plot No. 34 and in lieu of the said original plot No. 34, final Plot No. 75 was proposed to be allotted. However, the order dated 5th November 1990 as referred to above, was made a subject-matter of revision by issuing notice dated 19th April 1993 after a period of about three years and a notice calling upon the heir of deceased Dhaniben was issued to show cause as to why the land admeasuring 3,984.39 sq. mtrs. should not be declared as an excess vacant land. After the death of Dhaniben, Dalpatbhai married the petitioner and Dalpatbhai gave a detailed reply to the aforesaid notice dated 19th April 1993 on 8th February 1994 contending therein that there were seven stables in all admeasuring 1,700 sq. mtrs. and there was a Dargah on the said land bearing Survey No. 494 from the very beginning and that there was reduction of 880 sq. mtrs. in the total area of the said land bearing Survey No. 494 comprising the final plot No. 75 as was proposed to be reconstituted under the Town Planning Scheme No. 18 and that the other lands were agricultural lands and thus, deceased Dhaniben did not hold any excess land beyond the ceiling limit on the date of the coming into operation of the said Act. The respondent No. 1 in exercise of the revisional powers u/s 34, passed the order on 23rd May 1994 holding that 3,780 sq. mtrs. of land was in excess. After the passing of the aforesaid order on 23rd May 1994 by the Revenue Department, Government of Gujarat, Dalpatbhai Durlabhbai also expired and now, the petitioner, claiming to be the legal heir of deceased Dalpatbhai, has filed the present petition.

2. The learned Counsel for the petitioner firstly argued that the land on which the constructions were raised in the form of stables and Dargah could not have been taken into consideration, but an order Annexure-H dated 23rd May 1994 shows that the constructions were not raised prior to the coming into force of the Act and, therefore, the land in excess was rightly determined. A reference has been made to the entries in Form No. 1 which was filed u/s 6 and in this Form, in the column relating to construction, no construction has been shown.

3. Faced with this situation, the petitioner argued that the land in question was the agricultural land and therefore, the same was exempted beyond the scope of the provisions of the Act. The learned Counsel made a reference to the document Annexure-C, but the entries in this document do not show that the land was being actually used for agricultural purposes inasmuch as the crop is only wild grass and, therefore, this argument of the learned Counsel for the petitioner cannot be accepted in view of the contents of the document Annexure-C on which the petitioner herself has placed reliance. An amendment was sought by the learned Counsel for the petitioner on 7th March 1995 itself and the same was also granted. Through this amendment, the petitioner sought to raise the following ground:

4A. The petitioner says and submits that the respondent No. 1 has rightly taken into consideration the area comprising the final plot No. 75 admeasuring 5,280 sq. mts. allotted to the petitioner in lieu of her original survey No. 494 by the Surat Urban Development Authority under the Gujarat Urban Development and Town Planning Act, which abuts on the Town Planning road. However, the respondent No. 1 thereafter has committed an error of law apparent on the face of record in not giving deduction from the said final plot to the area admeasuring 880 sq. mts. which is forming the part of the road and the Dargah and also committed an apparent error in not giving deduction to 1,296 sq. nits, from the said land which the petitioner would be obliged to keep open as the margin land under the General Development Control Regulations framed by the Surat Urban Development Authority under the Gujarat Urban Development and Town Planning Act on account of the petitioner's final plot abutting on the Town Planning road. The petitioner, therefore, submits that the order of the respondent No. 1 is illegal, unjust and ex-facie without any authority and requires to be quashed.

4. I called upon the learned Counsel for the petitioner to show as to whether this contention was raised before the Government in the proceedings u/s 34 or not, but the learned Counsel failed to point out this ground from the order Annexure-H and the reading of the whole order Annexure-H does not indicate that this ground was urged before the Government in the proceedings u/s 34 and in my considered opinion, in a writ of certiorari, such a ground cannot be allowed to be raised for the first time in the writ proceedings under Articles 226 and 227 of the Constitution of India. Moreover, I find that there is no factual foundation in the proceedings from which the ground sought to be taken by way of amendment can be made discernible and therefore, no interference is warranted on this

ground. The learned Counsel for the petitioner lastly argued that, in the case at hand, the proceedings u/s 34 were started after a long lapse of time, i.e., a period of about three years and so also the impugned order Annexure-H should be set aside. The proceedings u/s 6 were finalised in November 1990 and the notice was issued on 19th April 1993. Thus, there appears to be a delay of about two years and five months. It is a matter of common knowledge that when the Urban Land (Ceiling and Regulation) Act, 1976 came into force, large number of cases had been decided by the Competent Authority and orders were passed. Section 34 does not provide any period of limitation and since large number of orders are there, the respondent, State of Gujarat must have taken time in ascertaining as to which order passed by the Competent Authority was required to be examined u/s 34 and, therefore, it cannot be said that the period which has been taken for the purpose of initiating action u/s 34 was unreasonable and the intention of the Legislature also appears to be that, in such matters, any order passed by the Competent Authority should not be allowed to be a fate accomplished because the cases in which the Competent Authority passed orders against the declarant are appealable before the Tribunal. But those cases in which the orders are passed in favour of the declarant can be scrutinised only by the revisional powers u/s 34 which naturally takes time and only for that reason, no period of limitation has been prescribed u/s 34. In any case, on the facts of this case, it cannot be said that the initiation of the proceedings u/s 34 suffers from such an unreasonable delay that the order passed thereunder should be set aside on this ground alone.

5. No other point has been argued.

I do not find any merit in this Special Civil Application and the same is accordingly dismissed summarily, in limine. There shall be no order as to costs.