

(2006) 11 GUJ CK 0060

In the Gujarat High Court

Case No : Special Civil Application No. 7806 of 1988

Keshavji Devji Patel through Poa Mohanlal Keshavji and
Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Bombay Town Planning Act, 1954 — Section 21, 53, 54, 55, 71

Bombay Town Planning Rules, 1955 — Rule 23, 27

Gujarat Town Planning and Urban Development Act, 1976 — Section 21, 22, 23, 24, 25

Gujarat Town Planning and Urban Development Rules, 1979 — Rule 26, 33, 34

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

Citation : (2006) 11 GUJ CK 0060

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Mehul S. Shah and Suresh M. Shah, for Petitioners 1-3, 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5, for the Appellant; Government Pleader for Respondent 1, Purnanand and Co for Respondent 2 and J.R. Nanavati, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—It is the case of the petitioners that they were holding agricultural land bearing Survey No. 123 admeasuring 22 acres and 5 gunthas, which as per the petitioners, was in fact 23 acres and 15 gunthas. It is the case of the petitioners that the land was purchased by the petitioner No. 1 from one Dhirubhai Maganlal Sutariya. As per the petitioner, on 3.9.1971 the land was partitioned and the petitioners amongst themselves got 7 acres of the land individually and the remaining land of 2 acres and 15 gunthas was kept as of joint ownership. It is also the case of the petitioners that the exemption was obtained u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976. In the meantime, the Town Planning Scheme was brought into force in the year 1979 and in the said Scheme the original area admeasuring 23 acres and 15 gunthas belonging to the petitioners was shown as Plot No. 46 admeasuring 89537 sq.

mtrs in T.P. Scheme No. 1 and it was reconstituted and divided into Final Plot No. 64 admeasuring 2380 sq. mtrs, Final Plot No. 68 admeasuring 13551 sq. mtrs, Final Plot No. 90 admeasuring 10699 sq. mtrs and Final Plot No. 93 admeasuring 30050 sq. mtrs, totalling 63680 sq. mtrs and the remaining area has gone in reservation. The T.P. Officer has also fixed the compensation and against the decision of the T.P. Officer the appeal is preferred before the District Court, Jamnagar u/s 54 of the Act.

2. After the preliminary scheme was sanctioned and the decision was taken by the T.P. Officer, when the respondent No. 3 Corporation issued notice for enforcement of the Scheme (Annexure "D"), the petitioners have approached this Court by preferring the present petition.

3. It may be recorded that earlier this petition came to be disposed of as per the order dated 15.4.1991 passed by the Division Bench of this Court. Thereafter the Misc. Civil Application being No. 973 of 1991 for restoration was filed by the applicant, which came to be dismissed vide order dated 16.8.1991 of the Division Bench of this Court since the earlier order was after examining the merits of the case. However, in the appeal before the Apex Court in SLP No. 1-2 of 1992 vide order dated 22.7.1996, the order dated 15.4.1991 and the order dated 26.8.1991 of this Court were set aside and the matter was remanded to this Court for consideration on merits and hence the matters are placed for hearing before this Court.

4. I have heard Mr. Shah, learned Counsel for the petitioners, Mr. Gori, learned AGP for the State Authorities and Mr. J.R. Nanavati, learned Counsel for respondent No. 3.

5. At the outset, Mr. Shah, learned Counsel appearing for the petitioners, submitted that in view of the prevailing position of law, the petitioners are not pressing the point for individual notice at the stage of consideration of the matter by the T.P. Officer u/s 52 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"). Therefore, under these circumstances, in view of the aforesaid declaration, this Court is not required to examine the challenge made to the preliminary Scheme and the decision of the T.P. Officer u/s 52 of the Act. Even otherwise also, the appeal is pending before the District Court as stated by the petitioners and, therefore, the rights of the parties, as may be permissible in law, qua the compensation or otherwise will be required to be examined decided in accordance with law in the said proceedings.

6. Mr. Shah, learned Counsel appearing for the petitioners, however, contended that even if the Scheme is treated as on record, then also before exercise of the powers u/s 68 read with Section 69 of the Act read with Rule 34 of the Rules are concerned, the said powers are to be read with principles of natural justice in view of the decision of the Apex Court in case of Municipal Corporation Vs. M/s. Chelaram and Sons and another, , wherein the Apex Court has followed its earlier view in case of Babubhai and Co. and Others Vs. State of Gujarat and Others,

He, therefore, submitted that as the summary eviction is ordered without considering the objections and in breach of the principles of natural justice, the impugned action of summary eviction by the Corporation deserves to be quashed and set aside.

7. Mr. Nanavati, learned Counsel appearing for the Commissioner of the Corporation, respondent No. 3 herein, contended that as per the decision of this Court in case of Shilpa Park Co.-op. Housing Society Ltd. Vs. Surat Urban Development Authority and Others, which is subsequently confirmed by the Division Bench of this Court in case of Chandravadan Chunilal Shah and Ors. v. State of Gujarat and Ors. reported in 2002(3) GLR 1849, the individual notice to the person affected u/s 52 of the Act read with Rule 26 of the Rules is not required to be served and, therefore, Mr. Nanavati, learned Counsel appearing for the Corporation attempted to submit that the same analogy and principle may be applicable for exercise of the power by the Corporation u/s 68 or Section 69 of the Act for summary eviction. He further submitted that the procedure as prescribed does not provide for any principles of natural justice or opportunity of hearing and, therefore, if within stipulated period the person has not vacated, it is within the power of the local authority implementing the scheme to evict the person concerned, who is in occupation in contravention to the T.P. Scheme and, therefore, he submitted that the action as that of summary eviction can be maintained in the eye of law.

8. As per the provisions of the Act, finalization of the Scheme by the T.P. Officer and its subsequent sanction by the Government stands on one part and the enforcement of the Scheme by the enforcing agency, rather the Corporation in the present case or local authority, is another part. Even if the matter is considered on the basis that while exercising power u/s 52 of the Act, the T.P. Officer is not required to serve individual notice, and a common notice is sufficient, then also the matter would not end there. Even after the decision of the T.P. Officer and finalization of the Scheme, the next stage would be the enforcement of the Scheme by the appropriate authority as per the provisions of Section 68 read with Section 69 of the Act. Section 68 of the Act provides for exercise of the power by the appropriate authority for summary eviction in accordance with the prescribed procedure. Section 69 of the Act provides for enforcement of the Scheme by the appropriate authority after giving prescribed notice and in accordance with the provisions of the Scheme. Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as "the Rules") provides for procedure for eviction u/s 68 and Rule 34 provides for the notice before enforcement of the Scheme. It is true that while exercising the power u/s 68 read with Section 69 read with relevant Rule 33 or 34 of the Rules, the appropriate authority or rather enforcing agency may not be in a position to go beyond the Scheme, nor can examine the aspects regarding legality and validity of the Scheme, which is sanctioned by the Government, but even for enforcement of the Scheme, the appropriate authority may be required to examine as to whether the person in occupation is really or genuinely

occupying the land in contravention to the Scheme. The same would be the overall aspects to be examined while exercising power u/s 68 of the Act. For pulling down of any construction same situation may prevail, but the exercise of power u/s 69 of the Act by the enforcing agency/appropriate authority shall be subject to the provisions of Sub-section 3 of Section 69 of the Act, which provides for reference of the matter to the State Government and the finality of the decision of the State Government. But in both the cases for exercising power u/s 68 or 69 of the Act, it is not possible to accept the contention of Mr. Nanavati that no principles of natural justice are required to be followed by the appropriate authority while enforcing the Scheme. In my view, the position of law is settled by the Apex Court in its decision in case of M/s. Babubhai and Company (supra). In the decision of the Apex Court in case of Babubhai and Company (Supra) at para 8, it was inter alia observed by the Apex Court as under:

8. In the instant case on an examination of the Scheme of the Act as also the purpose sought to be achieved by Section 54 it will appear clear that the topic of making of town planning schemes is dealt with in Sections 21 to 53 while Section 54 (and some of the following sections like 55 and 71 to 78) deal with the aspect of the execution of town planning schemes and it is at the stage of execution of a town planning scheme that the power of summary eviction of occupants who have ceased to be entitled to occupy the plots in their occupation has been conferred upon the Local Authority itself - a highly responsible body, and that the power is required to be exercised by it in objective manner (it is to be found by reference to the Final Scheme and its interpretation whether the occupants are occupying lands which they are not entitled to occupy).

9. While upholding the constitutional validity of Section 54 of the Bombay Town Planning Act read with Rule 27 of the Bombay Town Planning Rules it was observed thus:

Further we are in agreement with the High Court that the power conferred upon the Local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record eschewing matter extraneous and irrelevant. Moreover any order of summary eviction based on any extraneous, non-germane, irrelevant or mala fide considerations would be subject to the writ jurisdiction of Court. Having regard to these aspects, mere absence of corrective machinery by way of appeal or review would not in our view render the provision invalid.

10. Therefore, the powers of the local authority are held as that of quasi-judicial powers and while exercise of such powers the Apex Court has read the implied application of principles of natural justice. Even in the subsequent decision of the Apex Court in case of "Municipal Corporation" (Supra) the earlier view is

reaffirmed. Therefore, Mr. Shah, learned Counsel is right in submitting that the principles of natural justice are applicable while exercise of the power u/s 68 read with Section 69 of the Act.

11. Mr. Nanavati, learned Counsel appearing for the Corporation attempted to distinguish the judgment of the Apex Court in case of M/s. Babubhai and Co. (supra) as well as Municipal Corporation (supra) on the basis that such were the cases under Bombay Town Planning Act and Bombay Town Planning Rules. However, Mr. Nanavati has not been able to satisfactorily demonstrate before the Court that the language of Section 54 or Rule 23 is substantially different so as to exclude all the character of the exercise of the power as that of quasi-judicial authority or the applicability of the principles of natural justice.

12. If the facts of the present case are examined in light of the aforesaid legal position, it is not even the case of the respondent Corporation that the objections filed by the petitioner are considered and the decision is rendered and is communicated to the petitioner. It appears that the notices were issued by the Corporation u/s 68 read with Section 69 of the Act read with the relevant Rules and the petitioner did file the objections before the Corporation, copy whereof is produced at page 27 dated 6.10.1988 and even the factum of filing of objections is admitted in the affidavit-in-reply filed by Shri P.S. Shah, Sr. Town Planner in para 16. There is no reference either in the affidavit-in-reply filed by the Sr. Town Planner, nor was any pleading placed on record by the Corporation contending that the objections filed by the petitioners were considered and the decision was taken by the competent authority of the Corporation and was communicated. Under these circumstances, until the Corporation which is an implementing agency of the Town Planning Scheme considers the matter after considering the objections of the petitioners, the action of summary eviction cannot be sustained in the eye of law.

13. Under the above circumstances, the impugned notices issued by the Corporation are not quashed and set aside, but it is directed that the Corporation shall consider the objections filed by the petitioner in response to the impugned notices and, if required, opportunity of hearing may also be given to the petitioner and shall pass appropriate orders in accordance with law, as early as possible, preferably within a period of three months from the date of receipt of the order of this Court. Until the final decision is taken by the Corporation and duly communicated to the petitioner by the Registered A.D. Post, the ad-interim relief granted earlier by this Court pending the petition shall continue to operate.

14. The petition is allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.