

(2012) 09 GUJ CK 0098
In the Gujarat High Court

Case No : Special Civil Application No. 4229 of 2012

Keyur Enterprise and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

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

Citation : (2012) 09 GUJ CK 0098

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

Bench : Single Bench

Advocate : D K. Puj for Petitioners 1 - 3, for the Appellant; Nisha M Thakore, AGP for Respondent(s) 1 and 3, Ms. Shivya A Desai for and M/s. RJ. Rawal Assoc. for Respondent(s) 2, for the Respondent

Judgement

Honourable Mr. Justice R.M. Chhaya

1. Heard Mr. D.K. Puj, learned advocate for the petitioners, Ms. Nisha M. Thakore, learned AGP for respondent Nos.1 and 3 and Ms. Shivya A. Desai, learned advocate for M/s. R.J. Rawal Associates for respondent No.2. By way of this petition, the petitioners have challenged the notice issued by the Corporation as provided u/s 68 of the Gujarat Town Planning and Urban Development Act, 1976 read with Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 dated 18.11.2006 and have further prayed to give possession of Final Plot No.88 on the land bearing original survey No.50/5, original plot No.52/2, which according to the petitioners, is in possession of the petitioners as owners of part thereof.

2. The respondent Corporation has filed a detailed affidavit in reply.

3. In view of the fact that the petition is filed at the notice stage, the same is not entertained.

4. It is, however, observed that respondent No.2 as implementing authority is duty bound to implement the scheme strictly in accordance with law as held by

the Hon''ble Supreme Court in the case of Babubhai and Co. and Others Vs. State of Gujarat and Others, , wherein in para 8, the Hon''ble Supreme Court has observed thus :-

8. In the instant case on an examination of the Scheme of the Act as also the purpose sought to be achieved by S. 54 it will appear clear that the topic of making of town planning schemes is dealt with in Ss. 21 to 53 while S. 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 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. lands which they are not entitled to occupy). 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.

5. In view of the aforesaid ratio laid down by the Hon''ble Supreme Court, respondent No.2 is directed to give an opportunity of being heard to the petitioners and after considering the submissions as well as the documentary evidence produced by the petitioners, shall pass a reasoned order before implementing the impugned notice dated 18.11.2006. It would be open for the petitioners to produce before the respondent Corporation relevant documents establishing their ownership so as to claim their share in the Final Plot and while deciding the impugned notice, as per the above direction, the respondent Corporation shall is disposed Notice mrpandya.