

(2017) 03 GUJ CK 0182
In the Gujarat High Court
Case No : 1318 of 2016

LILAVANTI JAYANTILAL PAREKH - DECD. THRO HEIRS & ANR. APPELLANT
Vs
COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR OF RAJKOT & ANR. RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

[Urban Land \(Ceiling and Regulation\) Act, 1976](#), [Section 6](#), [Section 9](#), [Section 8\(4\)](#), [Section 10\(3\)](#), [Section 10\(6\)](#), [Section 10\(5\)](#) - Persons holding vacant land in excess of ceiling limit to file statement - Final statement - Preparation of draft statement as regards vacant land held in excess of ceiling limit - Acquisition of vacant land in excess of ceiling limit - Acquisition of vacant land in excess of ceiling limit

Citation : (2017) 03 GUJ CK 0182

Hon'ble Judges : VIPUL M. PANCHOLI

Bench : Single Bench

Advocate : SANDEEP N BHATT, SONAL S BHATT, DHAWAN JAYSWAL

Judgement

1. This appeal is filed under Clause 15 of the Letters Patent aggrieved by the order dated 7.10.2016 passed by the learned Single Judge in Special Civil Application No.3477 of 1991, by which the learned Single Judge has dismissed the petition.

2. The factual matrix of the present case is as under: 2.1 It is the case of the petitioners that the petitioner no.1 as individual and petitioner no.2 as "Karta" of his HUF were holding the lands in the area which are governed by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'ULC Act'). The petitioner no.1 is the owner of her individual private property, two plots of land, one plot in Yoginagar Society admeasuring 354.42 sq.mtrs. and another plot bearing no.15 of survey no.86/1-2 of Raiyya admeasuring 458.94 sq.mtrs. As per the case of the petitioners, the aforesaid were her Sthridhan private property. The petitioner no.2 as 'Karta' of Joint Hindu Family

which consists of five members holds land admeasuring 4682 sq.mtrs at Kothariya. The petitioner no.2 filed a statement under Section 6 of the ULC Act regarding the vacant land held by him. The respondent no.1 declared 3995.69 sq.mtrs of land as excess vacant land. The petitioners, therefore, preferred Special Civil Application No.6357 of 1986 on the ground that the respondent no.1 violated the principles of natural justice as well as the provisions of the ULC Act and the Rules framed thereunder while passing the order. The said petition was disposed off vide order dated 22.6.1987 directing the petitioners to approach the Tribunal by way of appeal and status quo was granted in the meantime. The petitioners approached the ULC Tribunal by filing Appeal No.94 of 1987 which was rejected on 17.11.1990. Pursuant to the same, the possession is taken over by the authority by drawing panchanama on 18.12.1990. Against the said order of the Tribunal in Appeal No.94 of 1987, the petitioners preferred Special Civil Application No.3477 of 1991. The ULC Act was repealed on 23.3.1999, thereafter, the said petition being Special Civil Application 3477 of 1991 was disposed off on 21.1.2000 by ordering that the possession is with the petitioners and the proceedings had abated in 1999. Against the said order, the Letters Patent Appeal No.637 of 2001 was preferred and the Division Bench remanded the matter back for hearing the petition afresh vide order dated 26.2.2014. The learned Single Judge, by the impugned order dated 7.10.2016, dismissed the said petition and therefore the present appeal is filed.

3. Heard learned advocate Mr.Sandeep Bhatt for the appellants-original petitioners and learned Assistant Government Pleader Mr.Jayswal for the respondents.

4. Learned advocate Mr.Bhatt has mainly contended that the respondents had failed to consider the fact that the petitioner no.2 was holding the land in question as 'Karta' of HUF. The petitioners were not in a position to put up any construction on the land declared as vacant land in view of the Ribbon Development Rules and therefore the said land could not have been treated as a vacant land. It is also submitted that though the land in question was Sthridhan land of the petitioner no.1, she was not served with any draft settlement or the notice under the Act and therefore the order passed by the respondents is required to be set aside. However, the learned Single Judge has failed to consider the aforesaid aspect. 4.1 Learned advocate Mr.Bhatt thereafter contended that the respondent-authority has not issued the the notice/intimation under Section 10(6) of the ULC Act and therefore the taking over of the possession of the land in dispute by drawing the panchanama on 18.12.1990 is vitiated. In support of the said contention, the learned advocate has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of State of Uttar Pradesh V/s Hari Ram reported in (2013)4 SCC 280 and the order dated 1.12.2016 passed by the Division Bench of this Court in Letters Patent Appeal No.1458 of 2015 in the case of Mamataben D/o Narottam Chandulal Zaveri v/s Urban Land Tribunal and Ex-Officio Secretary. At this stage, it is also submitted that the respondent-State filed the review application being Miscellaneous Civil Application No.630 of 2017

seeking review of the order dated 1.12.2016 passed in Letters Patent Appeal No.1458 of 2015. However, the said review application is also dismissed by this Court by an order dated 2.3.2017. He, therefore, submitted that when the respondents have violated the mandatory provision contained in Section 10(6) of the ULC Act, the taking over of the possession cannot be considered to be legal. It is further submitted that the respondent-authority has never taken over the physical possession of the land in dispute and therefore the impugned order be set aside.

5. On the other hand, learned Assistant Government Pleader has submitted that the possession of the land in question was already taken over by the respondents after issuance of notice under Section 10(5) of the ULC Act to the petitioner no.1 and in presence of the panch witnesses on 18.12.1990 and therefore the land in question was duly vested in the government. It is submitted that it is not obligatory on the part of the respondent authority to issue notice/intimation under Section 10(6) of the ULC Act in every case. It is submitted that in the present case, the petitioners filed Special Civil Application No.6357 of 1986. However, the said petition was subsequently withdrawn with a view to file appeal before the respondent no.2- Tribunal. The said appeal was filed in the year 1987 and in the meantime, after issuance of notice under Section 10(5), possession of the land in question was taken over and therefore learned Single Judge has not committed any error while dismissing the petition. Learned Assistant Government Pleader has submitted that decision rendered by the Hon''ble Supreme Court in the case of Hari Ram (supra) and the decision rendered by the Division Bench in the case of Mamtaben D/o Narottam Chandulal Zaveri (supra) are not applicable in the facts of the present case. He submitted that the learned Single Judge has rightly placed reliance upon the decision rendered by the Hon''ble Supreme Court in the case of State of Assam V/s Bhaskar Jyoti Sarma and Ors. reported in (2015)5 SCC 321. He, therefore, requested that this appeal be dismissed.

6. Having considered the submissions canvassed on behalf of learned advocates appearing for the parties and having gone through the material produced on record, it emerges that the respondent no.1 authority passed an order under Section 8(4) of the ULC Act on 31.12.1985 by declaring 3995.69 sq.mtrs. Of land as excess vacant land. Thereafter, on 30.1.1986, copy of final statement under Section 9 of the ULC Act was issued. Notification under Section 10(1) of ULC Act came to be issued on 22.10.1986 which was published in the government gazette on 6.11.1986. Thereafter, notification under Section 10(3) of the ULC Act was published on 28.1.1987 and notice under Section 10(5) of ULC Act came to be issued on 3.4.1987. However, the petitioners have disputed that the petitioners have received the said notice. The petitioners thereafter filed Special Civil Application No.6357 of 1986. Though, initially this Court passed the order of status-quo, subsequently, the said petition was withdrawn and appeal was filed before the respondent no.2-Tribunal on 4.7.1987. The said appeal came to be dismissed on 17.11.1990. As per the case of the respondents, the panchanama with regard to taking over of the possession of the land in dispute was prepared

on 18.12.1990 and thereafter the captioned petition was filed on 7. 1.1991.

7. It is admitted by learned Assistant Government Pleader, after verifying the original record, that the intimation/notice under Section 10(6) of the ULC Act was not issued to the petitioners before preparing the panchanama dated 18.12.1990 with regard to taking over the possession of the land in dispute. The petitioners have specifically stated that physical possession of the land in dispute was never taken over by the respondent authorities.

8. At this stage, it is relevant to refer to the decision rendered by the Hon'ble Supreme Court in the case of Hari Ram (supra) wherein the Hon'ble Supreme Court has observed and held in paragraphs 34 to 37 as under: "Peaceful dispossession 34.. Sub-section (5) of Section 10, for the first time, speaks of "possession" which says where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorized by the State Government.

35.. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) to Section 10. Surrendering or transfer of possession under subsection (3) to Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) to Section 10 to surrender or deliver possession. Subsection (5) of Section 10 visualizes a situation of surrendering and delivering possession, peacefully while subsection (6) of Section 10 contemplates a situation of forceful dispossession. Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under subsection (5) of Section 10. Sub-section (6) to Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5), the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force - as may be necessary - can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under subsection (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted only in a situation which falls under sub-section (6) and not under subsection (5) to Section 10. Sub-sections (5) and (6), therefore, take care of both the situations, i.e. taking possession by giving notice that is "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), than "forceful dispossession" under sub-section (6) of Section 10.

37. The requirement of giving notice under subsections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub- sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

9. Relying upon the aforesaid decision in the case of Hari Ram (supra), the Division Bench in the case of Mamtaben D/o Narottam Chandulal Zaveri (supra) held that the requirement of giving notice under Section 10(5) and 10(6) of ULC Act is mandatory. While writing the word "may" which is used in Section 10(5) and 10(6) of the ULC Act, the Supreme Court has held that the said expression has to be understood as "shall". The effect of non-issuance of notice under Section 10(5) of the ULC Act will result in the land holder being dispossessed without notice. Therefore, the word "may" has to be read as "shall". The Division Bench of this Court thereafter observed in paragraph 17 as under: "17. We also feel that there is logic behind such provision under section 10(6) of the Act that when declarant failed to deliver possession even after issuance of notice under section 10(5) of the Act. The authorities can notify date for taking possession by issuing notice under section 10(6) of the Act. If such notice under section 10(6) of the Act is not issued, declarant- owner will be in dark as to on which date possession will be taken. In view of the aforesaid provision and having regard to the judgments relied on by the learned counsel for the appellant, we are of the view that the plea of the appellant- petitioner deserves to be accepted. The respondents have not taken possession in accordance with law. As it is not in dispute that the respondent-authorities have not issued notice under section 10(6) of the Act, the alleged taking over of possession on 30.04.1991 by drawing Panchnama is no possession in the eye of law, which can be reckoned to accept the plea of the respondents. Further it is also clear from the material placed on record that in Civil Suit No.1 of 2011 filed by the appellantpetitioner in the City Civil Court at Ahmedabad, Court Commissioner was appointed. The Court Commissioner clearly revealed that the appellant- petitioner is in physical and actual possession of the land in question. For the aforesaid reasons and having regard to the facts and circumstances of the case, we are of the view that the learned Single Judge has committed error in placing reliance on the judgment of the Hon"ble Supreme Court in the case of State of Assam Vs. Bhaskar Jyoti Sarma and others reported in (2015) 5 SCC 321. From perusal of the judgment of the Hon"ble Supreme Court in the aforesaid case of State of Assam, it is to be noticed that the persons claiming possession were third parties and when owners failed to challenge any proceedings taken under section 10(5) of the Act, in the present case when the very declarant before this Court challenging the orders of the authorities, it is also to be noticed that when the order restoring the writ petition and order allowing to raise additional pleas have become final and

merely on the ground that alleged possession was taken by drawing Panchnama about 22 years back, is no ground to deny the statutory benefits conferred on the declarant - appellant under the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. As much as we are of the view that no possession is taken in accordance with law by issuing notice under section 10(6) of the Act, we are of the clear view that the appellant petitioner is entitled to have benefits under the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. No steps can be taken further. All the proceedings stand abated."

10. Keeping in mind the aforesaid decisions, if the facts of the present case are examined, it is not in dispute that notice/intimation under Section 10(6) of the ULC Act has not been issued to the petitioners before preparing panchanama. Thus, we are of the view that the present case is covered by the aforesaid Division Bench decision rendered by this Court. At this stage, it is also relevant to note that the respondent-State filed Review Application being Miscellaneous Civil Application No. 630 of 2017 in Letters Patent Appeal No.1458 of 2015. However, the said review application is also dismissed by Division Bench of this Court by an order dated 2.3.2017.

11. For the reasons recorded hereinabove, this appeal is allowed. The order dated 7.10.2016 passed by the learned Single Judge in Special Civil Application No.3477 of 1991 is set aside. Consequently, Special Civil Application No.3477 of 1991 is allowed by setting aside the order passed by The Competent Authority and Additional Collector, Rajkot-respodent no.1 herein passed on 31.12.1985 under Section 8(4) of ULC Act and the order dated 17.11.1990 passed by the respondent no.2-Tribunal in Appeal No.94 of 1987. Consequently, the proceedings initiated under ULC Act stands abated in terms of Section 4 of Urban Land (Ceiling and Regulation) Repeal Act of 1999.

12. Consequently, the Civil Application is disposed of in the aforesaid terms.