

**(1994) 04 GUJ CK 0014**  
**In the Gujarat High Court**

Maneklal Mulchand Patel and Others

APPELLANT

Vs

Competent Authority and Additional Collector, U.L.C. and  
Another

RESPONDENT

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**Date of Decision :** 08-04-1994

**Acts Referred:**

Constitution of India, 1950 — Article 226, 300A  
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(2), 10(3), 10(5),  
20(1)

**Citation :** (1995) 1 GLR 457

**Hon'ble Judges :** Akbar Nanjibhai Divecha, J

**Bench :** Single Bench

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**Judgement**

A.N. Divecha, J.—Article 300A of the Constitution of India prohibits acquisition of any property of any person without any authority of law. Unfortunately, that salutary constitutional provision has come to be contravened in the instant case. The grievance of the petitioners in this petition under Article 226 of the Constitution of India is that the share of their father in one parcel of land bearing Survey No. 972/2 (Part) situated at village Vastral (the disputed land for convenience) within the urban agglomeration of Ahmedabad has been declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (the "Act" for brief) without affording any opportunity of hearing to them or to their deceased predecessor-in-title.

2. The facts giving rise to this petition move in a narrow compass. The disputed land in its entirety admeasures 12 acres. It was purchased by the deceased predecessor-in-title of the petitioners, named, Mulchandbhai Bapubhai Patel (the deceased for convenience) along with Jasubhai Kasibhai Patel, Narottamdas Motidas Patel and Somabhai Magandas Patel some time in 1967. It appears that the area of the disputed land was incorrectly mentioned therein. Thereupon by a deed of rectification executed on 9th October 1975, the area of the disputed land in the aforesaid sale deed came to be corrected. Copies of the aforesaid sale deed and the aforesaid rectification deed are collectively at Annexure-B to this

petition. It transpires therefrom that the share of the deceased therein was 33%, the share of Jasubhai Kasibhai Patel was also 33% and the share of the remaining two co-owners was 17% each. On coming into force of the Act, the deceased filed his declaration in the prescribed form u/s 6(1) of the Act on 17th August 1976. Strangely enough, it has admittedly remained unprocessed so far. Shri Dave for the respondents on instructions states that after demise of the deceased the present petitioners made an application for exemption u/s 20(1) of the Act some time in 1984. It remained pending with the State Government till 1992 and that was the reason why the declaration filed by the deceased u/s 6(1) of the Act remained unprocessed. Shri Dave for the respondents states on instructions that the aforesaid application for exemption made by the petitioners has come to be rejected by the State Government some time in 1992. Shri Dave has, however, not been able to explain why the declaration filed by the deceased u/s 6(1) of the Act remained unprocessed for as many as eight years. Surprisingly enough, another co-owner of the disputed land, named, Jasubhai Kasibhai Patel, also filed his declaration in the prescribed form u/s 6(1) of the Act on 14th September 1976. In that declaration, the declarant showed the holding of the disputed land to be with other co-owners. Pursuant thereto, a draft statement was prepared and caused to be served to the said declarant some time on or about 28th December 1982. He filed his objections thereto. After hearing the parties, by his order passed on 5th July 1984 pursuant to the declaration in the prescribed form made by said Jasubhai Kasibhai Patel u/s 6(1) of the Act, the Competent Authority at Ahmedabad (respondent No. 1 herein) declared the holding of that declarant to be in excess of the ceiling limit by 61,446 square metres and the excess was declared surplus. The surplus declared thereunder included the disputed land in its entirety. Its copy is at Annexure-C to this petition. Pursuant thereto, a notification u/s 10(3) of the Act came to be issued and published in due course and a notice u/s 10(5) thereof also came to be issued. Pursuant thereto, an attempt to take possession of the disputed land inter alia from the petitioners was made and at that stage the petitioners came to know that their share in the disputed land was declared surplus without affording any opportunity of hearing to them and without getting processed the declaration filled in by their deceased father. They have, therefore, moved this Court by means of this petition under Article 226 of the Constitution of India for questioning the validity of the action of the respondents in recovering possession of their share of the disputed land.

3. The sale deed and the rectification deed at Annexure-D (collectively) to this petition leave no room for doubt that the share of the deceased in the disputed land was 33%. He had admittedly filled in his prescribed form prior to the one filed by said Jasubhai Kasibhai Patel. For certain mysterious reasons, the form filed by the deceased remained unprocessed. It could be on justifiable grounds as well. Be that as it may, the fact remains that the declaration in the prescribed form filed by the deceased u/s 6(1) of the Act remained unprocessed. Shri Dave for the respondents informs me that he is in custody of the record of the case

and certain officials from the office of respondent No. 1 are also present to give the necessary instructions in that regard to him. On perusal of the record and on the strength of instructions given to him, Shri Dave for the respondents states that the deceased did show as his holding his 33% share equivalent to 5,324 square yards after showing the share of said Jasubhai Kasibhai Patel to be of 4 acres and the share of the other two co-owners to be two acres each in the disputed land in the declaration in the prescribed form made by him u/s 6(1) of the Act. It is also not in dispute that said Jasubhai Kasibhai Patel in his declaration in the prescribed form u/s 6(1) of the Act did show his holding of the disputed land to be with co-owners. In that view of the matter, it would have been desirable on the part of respondent No. 1 to have heard the proceedings of both the declarants together if there was no other declarations in the prescribed form filed by the other two co-owners or either of them. I am informed by Shri Dave for the respondents on instructions that both the proceedings were taken up by different Competent Authorities and that was the reason why the declaration made by said Jasubhai Kasibhai Patel was processed earlier. That might be so. However, while preparing a draft statement in accordance with Section 8 of the Act, the concerned Competent Authority ought to have scrutinised the declaration and ought to have realised that the holding of the disputed land by Jasubhai Kasibhai Patel was along with the other co-owners as mentioned in the declaration. The approach of the said Competent Authority to the declaration of said Jasubhai Kasibhai Patel while preparing the draft statement pursuant thereto can be styled only as casual, canalier and cursory. The concerned Competent Authority ought to have remained very vigilant and alive to his duties and responsibilities. The fact, however, remains that, without application of mind, he showed the entire disputed land to be the holding of said Jasubhai Kasibhai Patel. Shri Dave for the respondents has, however, urged that, since said Jasubhai Kasibhai Patel did not point out to the concerned Competent Authority either in his objections or at the time of hearing that his holding of the disputed land was along with the other co-owners including the deceased father of the present petitioners, the concerned Competent Authority could not know that the disputed land was of co-ownership of said Jasubhai Kasibhai Patel along with others including the deceased. That might be so. The fact, however, remains that, while preparing a draft statement in accordance with Section 8 of the Act pursuant to the declaration in the prescribed form u/s 6(1) of the Act filed by said Jasubhai Kasibhai Patel, the concerned Competent Authority remained negligent. His negligence should not result into deprivation of the property of the deceased (now of the petitioners after his death) without giving an opportunity of hearing. The order at Annexure-C to this petition has been passed by respondent No. 1. That action of his cannot, therefore, be sustained in law.

4. Shri Dave for the respondents has strenuously urged that the matter has proceeded upto the stage of the process of allotment inter alia of the disputed land u/s 23 of the Act. Relying on this fact-situation, Shri Dave for the respondents has urged that the hands of the clock cannot and need not be put

back at the instance of the present petitioners at this belated stage. Shri Dave for the respondents on instructions has stated that after vacating the ad-interim relief in this case by the order passed by this Court on 24th February 1994, some small pieces of land out of the disputed land have come to be allotted to some 450 needy persons in accordance with Section 23 of the Act. Shri Dave for the respondents, however, on instruction hastens to add that the entire area of 12 acres of the disputed land has not come to be allotted. It may be noted at this stage that the notification u/s 10(3) of the Act was published on 25th October 1990 and the notice u/s 10(5) thereof, was issued on 20th November 1990 and the possession of the disputed land was taken on 28th April 1992. Shri Oza for the petitioners states that the paper-possession of the share of the petitioners in the disputed land might have been taken but in reality the petitioners are in possession of the disputed land so far as their share is concerned. This petition has been filed in 1992 only after an attempt to take possession of the share of the petitioners in the disputed land was made. That could have been made only around 28th April 1992.

5. It is true that, as submitted by Shri Dave for the respondents, the notification u/s 10(1) of the Act was published in the Government Gazette and the petitioners could have very well lodged their claim with respect to their share in the disputed land u/s 10(2) of the Act and, since the petitioners have not done so, the hands of the clock cannot and need not be put back at the instance of such petitioners. The Government Gazette might not be enjoying such a wide circulation as a daily newspaper in the regional language. If a judicial notice of one notorious fact is required to be taken, no layman looks at any Government Gazette unless he has some special interest therein. In that view of the matter, the gazetted notifications u/s 10(1) or 10(3) of the Act might not have come to the notice of the present petitioners. Since the notification u/s 10(1) of the Act was not known by them, they could not avail of the opportunity to lodge their claim u/s 10(2) of the Act qua their share in the disputed land. So would be the case with publication of the notification u/s 10(3) of the Act. In that view of the matter, no fault can be found with the petitioners for their approaching this Court only when an attempt to take possession of the disputed land qua their share was made. In fact, it does not lie in the mouth of the respondents to urge such contention before this Court in view of the aforesaid constitutional guarantee incorporated in Article 300A of the Constitution of India. The reason, therefore, is quite simple. The disputed land has been declared surplus without giving any opportunity of hearing to the deceased or the present petitioners. The share of the deceased and now of the petitioners in the disputed land has been declared surplus and it would mean that the petitioners are deprived of their property without getting an opportunity of hearing. Such an action on the part of the concerned Competent Authority would amount to deprivation of the petitioners of their property without any authority of law. The Act provides for giving an opportunity of hearing to the concerned landholder before declaration of his land to be surplus. In the present case, even at the cost of repetition it may be

reiterated that neither the deceased nor the present petitioners got an opportunity of hearing before their share in the disputed land was declared surplus. That can certainly be styled as deprivation of the property of the deceased and now of the present petitioners without any authority of law. Such action on the part of the concerned authority cannot be sustained in law even for a moment. If that means putting the hands of the clock to the original position, it has to be done unless an irreversible situation had arisen by allotment of the entire area of the disputed land in favour of other persons/on account of default, lapse, laches or negligence on the part of the landholder.

As aforesaid, in the instant case, the petitioners are not found guilty of delay or laches in any manner. As pointed out hereinabove, Shri Dave for the respondents on instructions has clearly stated that the entire land has not come to be allotted so far.

7. In view of my aforesaid discussion, there is no escape from the conclusion that the share of the petitioners in the disputed land could not have been declared surplus under the impugned order at Annexure-C to this petition. That part of the order qua the share of the petitioners in the disputed land to the extent of 33% of the area has to be quashed and set aside. It is clarified that the entire order at Annexure-C to this petition is not disturbed. It will remain operative except the share of the petitioners in the disputed land to the extent of 33% of its area.

8. In the result, this petition is accepted. The declaration of the disputed land as surplus qua the share of the petitioners to the extent of 33% of the area thereof in the impugned order at Annexure-C to this petition is quashed and set aside. It is clarified that the impugned order at Annexure-C to this petition, except with respect to the share of the petitioners in the disputed land to the extent of 33% of its area, is not disturbed and would remain in operation. The notification u/s 10(3) and the notice u/s 10(5) of the Act with respect to the share of the petitioners in the disputed land to the extent of 33% of its area are also quashed and set aside. The revised notification u/s 10(3) of the Act with respect to the subject-matter of the impugned order at Annexure-C to this petition may be issued in the light of this judgment of mine unless the impugned order at Annexure-C to this petition is otherwise under challenge or is disturbed in any other proceeding. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.