

(1987) 10 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 347 of 1986

Muktinagar Co-operative Housing Society Ltd.

APPELLANT

Vs

Competent Authority and Deputy Collector, Ahmedabad and Others

RESPONDENT

Date of Decision : 05-10-1987

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(2), 5, 6

Citation : AIR 1988 Guj 224 : (1988) 1 GLR 49

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : S.B. Vakil and H.S. Munshaw, for the Appellant; M.I. Bawa, for the Respondent

Judgement

1. Petitioner is a cooperative housing society registered on August 31, 1981. The petitioner purchased land bearing S. No. 20/3/A of village Thaltej from original owner Bhikaji Chhaganji and Manguben Chaganji. According to the petitioner exemption under S. 20 of the Urban Land (Ceiling and Regulation) Act (hereinafter referred to as "the Act") was granted by order dated May 26, 1981 in respect of the land. Hence the petitioner had purchased the land and executed a sale deed on September 23, 1981. In respect of the land, the owner of the land had filled in form under S. 6 of the Act. The Competent Authority held as per order Annexure G dated January 31, 1984 that land admeasuring 1327 sq. mts. of Survey No. 210/ 3/A of village Thaltej was in excess of the ceiling limit. The competent authority also issued notice under S. 10(6) of the Act dated December 10, 1985. .By this notice under S. 10(6) of the Act, the landholder was directed to remain present for handing over possession of the land declared surplus. The petitioner has challenged the legality and validity of the aforesaid order Annexure G dated January 31, 1984 and notice Annexure H dated December 10, 1985.

2 to 14. [X X X X X X X X X X]

15. It is contended that as disclosed in order dated 31-1-1984 Annexure G to the

petition the petitioner society had purchased the land. It also transpires from the order that the petitioner society had put up construction on the land in question. Therefore, it is contended by the learned counsel for the petitioner that the petitioner ought to have been given an opportunity of being heard before passing the final order. The contention cannot be accepted. It is an admitted position that the petitioner society was not even in existence on the date of commencement of the Act. The petitioner has come into existence on August 31, 1981, that is, the date of the registration of the petitioner society. On the date of commencement of the Act, there was no agreement with the petitioner society nor was the petitioner society in possession of the land. Thus, admittedly the petitioner society had no interest in the land on the date of commencement of the Act. The scheme the Act clearly indicates that after the Act came into force, no interest in the vacant land can be transferred except in accordance with law. If any such transfer takes place otherwise than in accordance with law, the transfer is void. This is so provided in S. 5 of the Act. Therefore even if the competent authority came to know about the alleged sale deed and unlawful construction put up by the petitioner society on the land question it was not at all necessary for the competent authority to issue notice to it and afford an opportunity of being heard to it.

16. The learned counsel for the petitioner submitted that even for showing that the transfer was not void, the petitioner should have been afforded an opportunity of being heard. This contention also cannot be accepted. If the petitioner felt that it had interest in the land, it was for the petitioner to submit its claim at the appropriate stage. Here reference may be made to provisions of S. 10 of the Act. After the final statement under S. 9 of the Act is served upon the landholder, the competent authority is required to publish a Notification in official

Gazette under S. 10(1) of the Act. In this notification, the competent authority is required to state that the vacant land in question is to be acquired by the State Government and that "claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interest in such land." Thereafter the competent authority is required to take into consideration the claims that may be made by persons interested in the vacant land. On consideration of the claims made by the persons interested in the vacant land, the competent authority is required to determine "the nature and extent of such claims and pass such orders as it deems fit". An order passed by the competent authority under S. 10(2) of the Act is an appealable order. If any person feels aggrieved by order passed by the competent authority under S. 10(2) of the Act, the same can be challenged in appeal under S. 33 of the Act (see judgment in S.C.A. No. 813 of 1987 decided on August 1, 1987). It is not the case of the petitioner that the competent authority had not issued Notification under S. 10(1) of the Act and that the petitioner could not prefer its claim because no such notification was issued. In fact, without issuing this Notification, the competent authority could not have proceeded further and could

not have issued Notification under S. 10(6) of the Act which is produced at Annexure H to the petition. In view of the aforesaid position, it is clear that while passing the order Annexure G to the petition, the competent authority was not required to issue notice to the petitioner and afford an opportunity of being heard to it. However, it was open to the petitioner to lodge its claim pursuant to notification under S. 10(1) of the Act. The petitioner has not lodged any such claim. Had the petitioner lodged its claim the competent authority would have decided it in accordance with law. Therefore, the petitioner cannot be heard to say that order Annexure G to the petition, declaring 1327 sq. mts. of land of S. No. 20/3/A of village Thaltej is in excess of the land be held to be illegal and void.

17. Now it is interesting to note that during the pendency of the petition, by order of this Court, the Government was directed to make inquiry with regard to the existence or non-existence of the order under S. 20 of the Act granting exemption from the operation of the Act in respect of the land in question. That inquiry has been held by the Government and the petitioner was given an opportunity of being heard before passing the order Annexure A to the affidavit in reply filed on behalf of the Government. Thus, in the facts and circumstances of the case, the petitioner could have made grievance only with regard to the existence or non-existence of the order under S. 20 of the Act. In this regard, the petitioner has been afforded an opportunity of being heard and the Government has passed appropriate order produced at Annexure A to the affidavit in reply. The order has become final in view of the fact that the challenge made to the same on the ground of violation of principles of natural justice has been given up by the learned counsel for the petitioner because the challenge was not based on correct factual date.

18. No other contention is raised. There is no substance in the petition. Hence the petition is rejected. Notice discharged.

19. Petition dismissed.