
(1998) 03 GUJ CK 0024

In the Gujarat High Court

Case No : Spl. Civil Application No. 9212 of 1993

Natwarlal B. Patel and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 66

Citation : AIR 1998 Guj 218 : (1998) 3 GLR 2101

Hon'ble Judges : K.G. Balakrishnan, J;J.M. Panchal, J

Bench : Division Bench

Advocate : K.J. Brahmbhatt, for the Appellant; U.A. Trivedi, Asst. G.P. for No. 1 and D.J. Bhatt, for No. 10, for the Respondent

Judgement

J.M. Panchal, J.

1 to 6. xxx xxx.

7. In view of the rival contentions advanced at the bar, the question which falls for the consideration of the Court is, whether the occupant is primarily liable for unauthorised use of the land by himself or by his tenant or the person holding under or through him. Section 65 of the Bombay Land Revenue Code, 1879 provides that an occupant of land assessed or held for the purpose of agriculture, is entitled by himself, his servants, tenants, agents or other legal representatives to erect farm, buildings, construct wells or tanks, make any other improvements thereon for the better cultivating of the land or its more convenient use for the purpose aforesaid, but, if any occupant wishes to use the land or any part thereof for any other purpose, he has to obtain necessary permission from the Collector. Section 66 of the Bombay Land Revenue Code makes provision for penalty for using land with- out permission of the Collector and it reads as under :

"If any such land be so used without the permission of the Collector being first obtained, or before the expiry of the period prescribed by Section 65, the

occupant and any tenant or other person holding under or through him shall be liable to be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part, and the occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of Section 48 for the period during which the said land has been so used such fine as the Collector may, subject to the general orders of the State Government, direct.

Any tenant or any occupant or any other person holding under or through an occupant, who shall without the occupant's consent use any such land for any such purpose and thereby render the said occupant liable to the penalties aforesaid shall be responsible to the said occupant in damages."

A bare reading of Section 66 makes it abundantly clear that, if any land referred to in Section 65, is used for any purpose other than the purpose for which the said land is assessed, or held without the permission of the Collector being first obtained, then the occupant is liable to pay the new assessment leviable u/s 48 as well as the conversion tax leviable under Section 67-A of the Code. Clause (a) of Section 66 in terms lays down that the occupant and any tenant or other person holding under or through him shall be liable to be summarily evicted by the Collector from the land so used and from the entire survey number or subdivision of the survey number of which it may form a part, whereas Clause (b) of Section 66 provides that the occupant shall also be liable to pay for the period during which the said land has been so used such fine as the Collector may direct. Therefore, Section 66 not only makes servants, tenants, agents or other legal representatives of the occupant liable for payment of new assessment, conversion tax and penalty, but also makes the occupant liable to pay the new assessment leviable u/s 48 as well as the conversion tax and penalty which may be determined by the Collector. The submission that respondents Nos. 4 to 10, as trespassers, have unauthorisedly used the land for non-agricultural purpose and therefore fine could not have been imposed on the petitioners as occupants of the land is devoid of merits. Admittedly, the petitioners have executed an agreement to sell the land in favour of the respondents and inducted them into possession of land. Though the respondents have not acquired title to the land, they cannot be treated as trespassers. In fact, respondents Nos. 4 to 8 will have to be treated as persons holding the land under or through the petitioners. It is evident that the respondents Nos. 4 to 8 permitted a co-operative society to be formed and respondent No. 10 who is a builder has constructed residential units on the land for use by members of the society. Having regard to totality of the facts and circumstances of the case, it cannot be said that unauthorised use of the land is made by trespassers and therefore, the petitioners are not liable to pay fine. Even if it is held that unauthorised use of the land was made by the trespassers without consent and knowledge of the petitioners, the petitioners cannot avoid their liability to pay the fine. In *Vasudev S. Modi v. Special Secretary, Revenue Department* (1985) 1 GLR 33 the learned single Judge, on interpretation of Section 66 has held that penalty cannot be imposed on the

occupier for non-agricultural use of land by trespassers. In that case, the property belonging to the occupier was placed under the management of the Receiver and thereafter, under the management of the Court Commissioner, but during such management, number of trespassers had entered into the land and put the land to non-agricultural use by constructing hutments thereon. The question considered by the learned single Judge was, whether the occupier of the land was liable to pay penalty. On interpretation of Section 66 of the Code, the learned single Judge held that Section 66 nowhwre creates any liability on the occupant for the act of trespasser and therefore, penalty cannot be imposed on the occupier for the said use by the trespasser. However, we find that the learned single Judge, while delivering the judgment in the case of Vasudev S. Modi (supra), had not noticed the judgment of the Division Bench of Bombay High Court rendered in case of The Secretary of State for India Vs. Ganesh Narayan Gadgil, , wherein a contrary view has been expressed by the Division Bench of Bombay High Court. In the case of Secretary of State (supra), the respondent was the occupant of certain land assessed for agricultural purpose. A trespasser had entered upon the land without the knowledge or consent of the occupant, and quarried stones from the land. Thus the land was used for a non-agricultural purpose by the trespasser. The question which was considered by the Division Bench of the Bombay High Court was, whether such use by a trespasser would subject the occupant to liability to a fine u/s 66 of the Bombay Land Revenue Code. On consideration of the provisions of Section 65 read with Section 66 of the Bombay Land Revenue Code, the Division Bench has held that the words "so used" in Section 66, do not import user by any particular class of persons such as those mentioned in Section 65 and an occupant of agricultural land is liable to fine u/s 66 of the Act, if there is any use of his land for non-agricultural purpose, irrespective of whether the conversion has been made by the occupant or his tenants or agents or by some trespasser without the occupant's knowledge or consent.

8. A special Full Bench of this Court in State of Gujarat Vs. Gordhandas Keshavji Gandhi and Others, has considered the question regarding binding nature of judicial precedents and observed as under (at page 171 of AIR) :

"Judicial precedents are divisible into two classes, those which are authoritative and those which are persuasive. An authoritative precedent is one which Judges must follow whether they approve Of it or not. It is binding upon them, A persuasive precedent is one which the judges are under no obligation to follow, but which they will take into consideration and to which they will attach such weight as they consider proper, A persuasive precedent depends for its influence upon its own merits..... A decision of a High Court Judge of a State is regarded as binding on all the subordinate Courts in that State. A decision of a Division Bench of a High Court is regarded as binding on Judges of the same High Court sitting singly in the High Court A decision of a Full Bench i.e. a Bench of at least 3 Judges of a High Court is considered binding on all Division Benches of the same High Court..... A decision of a High Court sitting singly is not legally binding

on another judge of the same High Court sitting singly. So also a decision of a Division Bench of a High Court is not legally binding on another Division Bench of the same High Court. A decision of Full Bench is not legally binding on another Full Bench of the same Court. One Judge of a High Court has however no right to overrule the decision of another Judge of the same High Court, nor has one Division Bench of the same High Court..... The rule that a Court should follow the decision of another Court of co-ordinate jurisdiction is subject however to several exceptions which have been dealt with in Salmond's jurisprudence, 11th Edn. at pages 199 to 217.

(1) A decision ceases to be binding if a statute or statutory rule inconsistent with it is subsequently enacted, or if it is reversed or overruled by a higher Court.

(2) A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute.

(3) A precedent loses its binding force if Court that decided it overlooked an inconsistent decision of higher Court.

(4).....

(5) Precedents sub silentio are not regarded as authoritative. A decision passed sub silentio when the particular point of law involved in the decision is not perceived by the Court or present to its mind".

From the principles enunciated by the Special Full Bench in the above referred to case, there is no manner of doubt that the judgment rendered by the Division Bench of Bombay High Court was binding on the learned single Judge but, the learned single Judge, delivered the judgment in ignorance of the law laid down by the Division Bench. The consequence is that, the decision rendered by the learned single Judge is per incuriam and loses its importance as a binding authority. The Latin expression "per incuriam" means through inadvertence. A decision can be, generally, said to be given per incuriam when the High Court has acted in ignorance of a previous binding decision of its own or when the High Court has acted in ignorance of a decision of the Supreme Court. "Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some steps in the reasoning on which it is based, is found, on that account to be demonstrably wrong. If a decision has been given per incuriam, the Court can ignore it. The circumstance that a decision is reached per incuriam merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such a decision. In view of the binding decision of the Division Bench of Bombay High Court rendered in the case of Secretary of State (supra), we are of the opinion that the judgment delivered by the learned single Judge in the case of Vasudev S. Modi (supra) is a judgment per incuriam and does not lay down the correct position of law and we overrule the same. Having regard to the

language of Section 66 and the interpretation put by the Division Bench of the Bombay High Court on Section 66 of the Bombay Land Revenue Code, we are of the opinion that the petitioners, as occupants of agricultural land, are liable to pay fine u/s 66 of the Code as there was/is user of their land for non agricultural purpose by respondents Nos. 4 to 8 who are agents of the petitioners or who are claiming through the petitioners. The submission that the petitioners, as occupants, are not liable to pay fine, therefore, cannot be accepted and is rejected.

9. to 11. xxx xxx