
(1996) 09 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 5905 of 1996

Navneetlal Keshavram Hathiwala

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 34, 6(1)

Citation : (1996) 09 GUJ CK 0006

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Advocate : M.I. Hava, for the Appellant; T.H. Sompura, Assistant Government Pleader, for the Respondent

Judgement

A.N. Divecha, J.—The order passed by the State Government (the respondent herein) on 27th February 1996 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By its impugned order, the respondent set aside the order passed by the Competent Authority at Surat on 23rd February 1988 under sec. 8(4) thereof. Thereby the Competent Authority at Surat declared the holding of the present petitioner to be in excess of the ceiling limit by 141.23 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat. It was duly processed by the Competent Authority at Surat. After observing necessary formalities under sec. 8 of the Act, by his order passed on 23rd February 1988 under sub-section (4) thereof, the Competent Authority at Surat declared the holding of the petitioner to be in excess of the ceiling limit by 141.23 square meters. Its copy is at Annexure B to this petition. It appears to have come to the notice of the concerned officer of the State Government. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore

contemplated. A show-cause notice thereupon came to be issued on 3rd December 1991 calling upon the petitioner to show cause why the order at Annexure B to this petition should not be revised. The petitioner filed his reply thereto on 8th January 1992. Its copy is at Annexure C to this petition. Thereafter, by the order passed on 27th February 1996 under sec. 34 of the Act by and on behalf of the respondent, the order at Annexure B to this petition came to be set aside and the petitioner's holding was declared to be in excess of the ceiling limit by 2139 square meters. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under article 226 of the Constitution of India for questioning its correctness.

3. The dispute centres round one parcel of land bearing survey No. 73 admeasuring 3541 square meters situated at village Bestan within the urban agglomeration of Surat (the disputed land for convenience). The Competent Authority at Surat excluded from the holding of the petitioner qua it an area of 1976 square meters on the ground that one road shown by the Surat Urban Development Authority (the SUDA for convenience) was passing through it and the area covered by the road together with the margin area together with the inconstructible area on account of the high tension grid line passing through it would be 1976 square meters. That was objected to by the author of the impugned order at Annexure D to this petition. The ground of objection so far as the road by the SUDA and the road margin are concerned is that no evidence in that regard was led. It transpires from the order of the Competent Authority at Annexure B to this petition that the Maintenance Surveyor's report was relied on for the purpose. Ordinarily, the Maintenance Surveyor's report should be held reliable. Even if it is not found reliable, the petitioner's case ought not to have been disbelieved on the ground that no material in that regard was brought by him or on his behalf. In that case the author of the impugned order at Annexure D to this petition ought to have remanded the matter to the Competent Authority for restoration of the proceeding to file and for his fresh decision according to law after permitting the petitioner to bring any other relevant material on record. If the Competent Authority had accepted certain material brought on record by and on behalf of a party and if that material is found not to be sufficient, it would be a sound exercise of discretion to permit the party to bring some other reliable material on record by remanding the matter. No party should be penalised or made to suffer simply because the material produced by him before the Competent Authority is disbelieved by the revisional authority without giving an opportunity of bringing some other material, if any, in that regard on record. It was not the case of the author of the impugned order at Annexure D to this petition that the petitioner had no other material in that regard or that he could not have brought on record any other material in that regard. In that view of the matter, the approach of the author of the impugned order at Annexure D to this petition in simply disbelieving the petitioner's case after finding the Maintenance Surveyor's report not to be sufficient for the purpose of deciding the case cannot

be sustained in law.

4. Similarly, the Competent Authority found some area of the disputed land inconstructible in view of the passing of the high tension grid line through it. Learned Assistant Government Pleader Shri Sompura has relied on the ruling of this Court in the case of Raiyabhai Arjanbhai v. State of Gujarat and another reported in 1993(1) GCD 752 to justify the aforesaid conclusion of the author of the order at Annexure D to this petition. It appears that the aforesaid view taken by this Court in its aforesaid ruling has not been accepted in toto by the Division Bench of this Court in its unreported ruling in Letters Patent Appeal No. 450 of 1993 decided on 8th April 1994. That appeal arose from the decision in Special Civil Application No. 2970 of 1991. It transpires from the record that the decision in the aforesaid writ petition was passed on placing reliance on the aforesaid ruling of this Court in the case of Raiyabhai Arjanbhai (supra). The Division Bench of this Court in its aforesaid unreported ruling has held that certain area would be inconstructible if a high tension grid line of 66 KV is passing through a parcel of land. The aforesaid Division Bench ruling of this Court is obviously binding to this Court. It has taken a view different from the aforesaid ruling of this Court in Raiyabhai Arjanbhai (supra) decided by the learned single Judge of this Court. I am required to follow the aforesaid Division Bench ruling of this Court sitting as a single Judge. Even otherwise, I am in respectful agreement therewith.

5. The petitioner in this case has produced at Annexure E to this petition one certificate issued on 5th September 1988 by the Deputy Engineer (O&M) of Gujarat Electricity Board at Pandesara. I am informed at the Bar that it was produced before the Competent Authority as well. It transpires therefrom that a high tension grid line of 66 KV is passing through the disputed land. It has also been mentioned therein about inconstructible area to certain extent therein in view of Rules 79 and 80 of the Indian Electricity Rules, 1956. The exact inconstructible area in that context will have to be ascertained afresh in the context of the aforesaid Division Bench ruling of this Court.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition cannot be sustained in law. It has to be quashed and set aside. However, in view of peculiar facts and circumstances of the case, it is not desirable to restore the order at Annexure B after upsetting the impugned order at Annexure D to this petition. Instead, it will be in the fitness of things to remand the matter to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It will be open to the petitioner to bring on record the relevant material for showing the exact inconstructible area on account of passing of the high tension grid line through the disputed land as also the material regarding passing of the road laid by the SUDA together with the margin which would render certain area from the disputed land inconstructible. The order at Annexure B to this petition will have therefore be set aside for the

purpose. It will also be open to the petitioner to contend that the properties held by the petitioner were joint Hindu family properties in his hand and other coparceners have interest therein.

7. In the result, this petition is accepted. The order passed by the State Government on 27th February 1996 at Annexure D to this petition is quashed and set aside. The order passed by the Competent Authority at Surat on 23rd February 1988 at Annexure B to this petition is also quashed and set aside. The matter is remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.