

(2016) 07 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 2389 of 2001

Noble Rubber Industries

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling And Regulation) Act, 1976 — Section 10(3), Section 10(5)

Citation : (2017) 173 AIC 318 : (2017) 1 GLR 479

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. A.J. Patel, and Ms. Shivani Trivedi, Advocates, for the Petitioner No. 1; Mr. Venugopal Patel, AGP, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J.—The present petition has been filed by the petitioner M/s. Noble Rubber Industries through its constituted Power of Attorney Holder Mr. Chhabildas C. Sheth seeking declaration that the proceedings initiated under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the said Act"), in respect of the land of the petitioner have been abated on coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as "the Repeal Act"), consequently for the declaration that the petitioner continued to be the owner, and in possession of the land in question. The petitioner has also prayed for the directions restraining the respondents from acting upon the orders passed or notifications issued by the respondent No.2, and the mutation entry effected in the revenue record in respect of the land in question, and from taking possession of the land in question from the petitioner or from Compack Private Limited.

2. As per the case of the petitioner, the petitioner owned and possessed the land bearing Survey No. 39 admeasuring 3845 sq. mtrs. of village Atladara, Taluka and District Baroda. The petitioner had entered into an agreement to sell the said

land to M/s. Compack Private Limited on 19.05.1979 (Annexure "A"). The possession of the land was also handed over to M/s. Compack Private Limited as per the separate agreement (Annexure "B"). The petitioner, on coming into force of the said Act, had filled in the Form No. 1 under Section 6 of the said Act. The said form having been processed by the competent authority and Deputy Collector, it was held that the petitioner was having 2243 sq. mtrs. of land as the excess vacant land, as per the order dated 31.05.1984 (Annexure "C"). It is further case of the petitioner that thereafter the competent authority fixed the compensation for the said land as per the order dated 01.06.1985 passed under Section 11 of the said Act (Annexure "D"). According to the petitioner, the petitioner was neither served with any notice under Section 10 (5) of the said Act nor was paid any compensation, nor the possession of the land in question was taken by the respondents at any point of time, however, a panchnama was prepared by the respondent No.2 with a view to show that the possession was taken over from the petitioner on 26.02.1985. It is further the case of the petitioner that the name of the petitioner had continued in the Village Form Nos. 7 and 12 in respect of the land in question till the year 2000, and in the meantime, the Repeal Act came into force. According to the petitioner, since the actual physical possession of the land in question was not taken over from the petitioner by the respondent authorities on the date of coming into force of the Repeal Act, the proceedings under the said Act had stood abated, and therefore, the present petition for declaration and other reliefs was filed.

3. The petition was resisted by the respondents by filing reply contending inter alia that the land had already vested in the Government pursuant to the notification issued under Section 10 (3) of the said Act, and the possession thereof was also taken over by the respondent - State after following the due process of law under Section 10(5) of the said Act as back as on 26.02.1985 by drawing the panchnama (Annexure "G"). It is also further contended that the competent authority had passed an order on 01.06.1985 for awarding compensation, and prior to the said proceedings, the petitioner was served with the notice by registered post which was served on the petitioner, as per Annexure "R-IV". According to the respondents, the relevant entries with regard to the orders passed by the competent authority were also made in the revenue record.

4. The learned Senior Advocate Mr. A.J. Patel for the petitioner, taking the Court to the documents on record, submitted that the petitioner was not served with any notices under Section 10(1), 10(3) or 10(5) of the said Act, and that the possession of the land in question was neither handed over by the petitioner nor was taken over by the respondents. According to him, panchnama was drawn on 26.02.1985 to make a show that the possession was taken. Relying on the various judgments of this Court in the case of *Indrajitsing P. Geel v. Competent Authority & Deputy Collector, Ahmedabad & Another* reported in 2007 (1) GLR 677 and *Laxmanbhai K. Chokshi v. Competent Authority & Additional Collector (U.L.C.)* reported in 2007 (3) GLR 2231, he submitted that if the possession was

taken over by the competent authority without serving notice on the person who is in actual possession, such act of the officer was illegal. He also relied upon the decision of Supreme Court in the case of State of Maharashtra and another v. B.E. Billimoria and others reported in (2003) 7 SCC 336 to submit that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. In respect of the Power of Attorney executed by the petitioner, he submitted that the said Power of Attorney was never challenged by the other side at the time of admission of the petition, and the Power of Attorney Holder had the authority to file the petition. Lastly, he submitted that the name of the petitioner was shown as the occupier of the land in question in the revenue records till the year 2001, and the Repeal Act having come into force in the March, 1999, all proceedings under the U.L.C. Act had stood abated.

5. Learned AGP Mr. Patel for the respondents however submitted that the respondent authorities had taken the possession of the land in question after issuing the notices to the petitioner under Section 10(3) and 10(5) of the said Act. Though the said notices were duly served, nobody had remained present before the respondent authority, and therefore, the possession of the land in question was taken over by the State Government, after drawing the panchnama in presence of the panch witnesses. He further submitted that the amount of compensation was also fixed under Section 11 of the said Act after due service of the notice to the petitioner. According to him, merely because the name of the petitioner was continued in the Form Nos. 7 and 12, it could not be said that the petitioner was in legal possession of the land in question.

6. At the outset, it is required to be noted that the present petition has been filed by the petitioner M/s. Noble Rubber Industries, a partnership firm through its constituted Power of Attorney Holder Mr. Chhabildas C. Sheth. It appears that the petitioner had produced a copy of the said Power of Attorney, executed on 05.12.1981, along with the petition filed in 2001. The said document of Power of Attorney was also relied upon by the learned advocate Mr. A.J. Patel during the course of the arguments. Now, if the said document namely the Power of Attorney is closely read, it appears that the same was executed by one of the partners of M/s. Noble Rubber Industries i.e. Muljibhai Maganlal Trivedi only, and that it was mentioned therein inter alia that the land in question was already sold out to one M/s. Compack Private Limited by executing an agreement on 10.05.1979, and the petitioner had received the amount of consideration, and that the petitioner had also handed over the possession of the land in question to the said purchaser. Apart from the fact that there is nothing on record to show that the said so called Power of Attorney executed in 1981 was in force in 2001 when the petition was filed, there is no power given by the executant to the so called Power of Attorney Holder to file the present petition. From the bare reading of the said Power of Attorney, it clearly transpires that the petitioner had handed over the possession of the land in question to the proposed purchaser M/s. Compack Private Limited by executing the Agreement to Sell on 19.05.1979,

and received the entire sale consideration. The said facts have also been stated by the petitioner in the petition. The said M/s. Compack Private Limited, who was admittedly in possession of the land in question since May, 1979, has neither been made party - respondent in the present petition nor has come forward to challenge any of the proceedings undertaken by the respondent authorities against the petitioner. It is also pertinent to note that there are three affidavits in rejoinder filed on behalf of the petitioners, out of which one is filed by one Shri Mehul H. Desai in the year 2001, and other two by one Shri Gaurang H. Desai in the year 2013 and 2014. None of these affidavits has been filed by the said Power of Attorney Holder of the petitioner. The persons who have filed the said affidavits, have not stated anything as to in what capacity or under whose power such affidavits were filed. The so called Power of Attorney Holder appears to have disappeared pending the petition. Under the circumstances, the petition having been filed by the petitioner who had given up its rights in the land in question in favour of the third party, and the petition having been filed through the Power of Attorney Holder, who had no authority to file the petition, and even otherwise he also having abandoned the interest in the petition, the petition deserves to be dismissed on that ground alone. It cannot be gainsaid that writs or directions could be issued by the High Court only on the decision that there was existence of right of the aggrieved party and such right was infringed. In the instant case, the petitioner has failed to prove existence of its right over the land in question, much less its infringement.

7. Though, it has been vehemently contended by the learned advocate Mr. Patel for the petitioner that the petitioner was not served with any notice under Section 10(5) of the said Act prior to taking possession of the land in question, the said contention does not deserve any consideration, for the simple reason that admittedly the petitioner was not in possession of the land in question since May, 1979. As stated in the petition itself, the petitioner had handed over possession of the land to the proposed purchaser M/s. Compack Private Limited after receiving full consideration from it. As such, the title having not passed to the said M/s. Compack Private Limited, there being no registered sale deed having been executed in its favour, no right, title or interest was created in favour of the said company by the petitioner firm. As against that the respondent authorities have categorically stated that nobody had remained present on the spot despite the service of notice to the petitioner under Section 10(5) of the said Act, and therefore, possession was taken over by drawing the panchnama in presence of two panch witnesses.

8. Further, as transpiring from the A.D. receipt, at Annexure R-IV, the petitioner had received the notice issued by the competent authority prior to fixing the compensation under Section 11 of the said Act, and therefore, the petitioner was well aware about the said proceedings under Section 11 of the said Act. However, the petitioner had never bothered to challenge the said proceedings at the relevant time. The present petition has been filed only after the Repeal Act came into force, alleging that the possession of the land in question was not taken by

the respondent authority in accordance with law. The said contention raised after the repeal of the said Act for the first time in this petition, smacks of ill-intention on the part of the petitioner.

9. At this juncture, it is pertinent to note that the act of taking possession after drawing the panchnama in the presence of panch witnesses has been approved by the Supreme Court in catena of decisions right since 1996 till recent years. In *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* reported in (1996) 4 SCC 212, the Supreme Court held as under : -

"It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

10. In the case of *Sita Ram Bhandar Society v. Govt. of NCT, Delhi* reported in (2009) 10 SCC 501, and in case of *Omprakash Verma v. State of Andhra Pradesh* reported in (2010) 13 SCC 158, it has been held that when the possession is taken over a large tract of land, then it is permissible to take possession by properly executing the panchnama. Similar view was also expressed in the case of *Brij Pal Bhargava v. State of UP* reported in 2011 (2) SCALE 692, and in the case of *Banda Development Authority, Banda v. Moti Lal Agarwal and Others* reported in (2011) 5 SCC 394.

11. In view of afore stated legal position, the Court is of the opinion that the respondent authorities were justified in taking over possession of the land in question after drawing the panchnama. As stated in the petition itself, the petitioner was not in possession of the land in question since 1979, and some third party namely M/s. Compack Private Limited, in whose favour the Agreement to Sell was executed by the petitioner was in possession. Therefore, it does not lie in the mouth of the petitioner to say that though the petitioner was in possession of the land in question, the petitioner was not served with the notice under Section 10(5) of the said Act before taking over possession by the State authorities.

12. The Court also does not find any substance in the submission of learned advocate Mr. A.J. Patel for the petitioner that since the name of the petitioner had continued in the revenue record as the occupier till 2000, the possession could not be said to have been taken by the State authorities, and that on the Repeal Act having come into force in March, 1999, all proceedings under the ULC Act had stood abated. In the opinion of the Court, merely because the name of the petitioner has been shown in the Form Nos.7 and 12, till the year 2000-01, that does not mean that the petitioner was in legal possession of the land in question, when the petitioner itself had admitted that the petitioner was not in possession since 1979. Further, it is also settled legal position that the revenue

entries are made only for fiscal purposes, and they do not create any right, title or interest in the land in question. As held by the Supreme Court, in the case of Balmokand Khatri Educational and Industrial Trust (supra), if the person had retained the possession of the land after the possession was taken over by drawing the panchnama, the said retention of possession would tantamount only to illegal and unlawful possession. Hence, if the petitioner or M/s. Compack Private Limited had remained in possession of the land in question, after the possession was taken over by the State authorities, as per the panchnama dated 26.02.1985, such retention of possession, if any, by the petitioner or M/s. Compack Private Limited, could not be treated as the legal possession. It is not disputed that the competent authority had passed the order dated 30.05.1984 after hearing the representative of the petitioner firm, however, the petitioner never bothered to challenge the said order. Similarly, the subsequent proceedings under Section 10 and Section 11 which had stood concluded in the year 1985, had remained unchallenged at the instance of the petitioner. The receipt of notice under Section 11 sent through registered post has also not been disputed by the petitioner. The petitioner filed the present petition raising frivolous contentions only on the Repeal Act having come into force.

13. As stated herein above, the present petition filed through the Power of Attorney Holder, who had no authority to file the petition, was not maintainable. The present petition appears to have been filed by the petitioner as a chance litigation after the Repeal Act had come into force, misusing the process of law. Hence, the petition deserves to be dismissed, and is accordingly dismissed with cost of Rs. 50,000/- to be deposited by the petitioner in the Court within two weeks of this order. On such deposit being made, the respondent authorities shall be at liberty to withdraw the same. If the petitioner fails to deposit the same, the respondent authorities shall be at liberty to recover the same by way of arrears of land revenue. Interim relief, if any, stands vacated. Rule is discharged.