

(2013) 11 GUJ CK 0028
In the Gujarat High Court

Case No : Special Civil Application No. 8578 of 1999

Regal Agency

APPELLANT

Vs

State of Gujarat and 1 Another

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0028

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Ketty A. Mehta, for the Petitioners No. 1, for the Appellant; Manan Mehta, AGP for the Respondent(s) No. 1-2, for the Respondent

Judgement

Rajesh H Shukla, J.—The present petition has been filed by the petitioner under Article 226 of the Constitution of India as well as under the Bombay Land Revenue Code read with Bombay Town Planning and Urban Development Act, 1997 for the prayer inter alia quashing and setting aside the order passed by the Collector, Surat dated 21.12.1998 at Annexure-B in purported exercise of powers u/s 66 of the Bombay Land Revenue Code on the grounds stated in the memo of petition. Heard learned Counsel Mrs. Ketty A. Mehta for the petitioner and learned AGP Shri Manan Mehta for the Respondent.

2. Learned Counsel Mrs. Ketty A. Mehta has pointedly referred to the papers and submitted that the interim order, as could be seen from the injunction order produced at Annexure-B, has been on the ground that the permission as required under the provisions of Section 65 of the Bombay Land Revenue Code has not been obtained, and therefore, there is a violation. However, learned Counsel Mrs. Mehta submitted that the issue is no longer res integra as the same has been covered by the judgment of the High Court reported in Karimbhai Kalubhai Belim and Others Vs. State of Gujarat and Another, and Motisen Somaji and Others Vs. State of Gujarat and Another, and also the judgment of the Hon'ble Division Bench of this Court reported in 2012 (2) GLR 1214 - Jyotsanaben C. Patel v. State of Gujarat & Anr., wherein it has been specifically observed:

16. On consideration of the entire materials on record, we, therefore, hold that in this case, once permission has been granted under Sec. 29(1) of the Act, in view of the then provision of Sec. 117(a) of the Act, there was no necessity of taking permission under any other authority and the so-called condition imposed in the revised order under Sec. 29(1) of the Act was not a condition lawfully imposed under Sec. 29(1) of the Act, it being not supported by any reason, disclosure of which was mandatory under Sec. 29(2) of the Act and at the same time, beyond the power of investigation of an authority under the Act; thus, the same should be ignored.

Learned Counsel Mrs. Mehta therefore submitted that the present petition may be allowed.

3. Learned AGP Shri Manan Mehta has made a feeble attempt and submitted that at the relevant time the provision was there, and therefore, the order has been passed.

4. However, having regard to the aforesaid contentions it is evident from the clear observations made by the High Court in earlier judgments, including the judgment of the Hon'ble Division Bench of this Court in case of *Jyotsanaben C. Patel v. State of Gujarat & Anr.* (supra) specifically referring to this very issue, the present petition deserves to be allowed as the order cannot be sustained. It has been observed: According to Mr. Patel, Sec. 117 of the Town Planning Act has overriding effect over other provisions of law or other Statutes and as such, the permission under Sec. 65 of the Code was not required and consequently, the Collector committed substantial error in directing demolition.

Therefore, in view of this observations and the findings, the present petition deserves to be allowed as the impugned order cannot be sustained. The prayer in terms of paragraph 10(A) deserves to be granted. The impugned order passed by the Collector, Surat dated 21.12.1998 at Annexure-B is hereby quashed and set aside. Rule is made absolute. No order as to costs.