

(1993) 06 GUJ CK 0014
In the Gujarat High Court

Samrathben Manilal Chokshi and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 08-06-1993

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(5), 20, 20, 21, 21

Citation : (1994) 1 GLR 203

Hon'ble Judges : S. Nainar Sundaram, C.J;S.D. Dave, J

Bench : Division Bench

Judgement

S. Nainar Sundaram, C.J.—This Letters Patent Appeal is directed against the order of the learned single Judge in Special Civil Application No. 1735 of 1984. The petitioners in the Special Civil Application are the appellants in this Letters Patent Appeal. The respondents in the Special Civil Application are the respondents in this Letters Patent Appeal. Proceedings got prosecuted against the appellants under the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the Act. Such proceedings have come up to the stage of taking possession of the surplus land, declared under the Act, as per Section 10(5) of the Act. There is no dispute that the appellants have moved the process u/s 21 of the Act desiring not to treat the excess vacant land as excess. The appellants challenged the proceedings under the Act by preferring the Special Civil Application. The primary contention that was placed for consideration before the learned single Judge who dealt with the Special Civil Application was that the application u/s 21 of the Act is pending and without disposing of the said application, there ought not be prosecution of further process under the Act. On behalf of the appellants herein, the petitioners in the Special Civil Application, reliance was placed on a pronouncement of a Bench of this Court in Nirmalaben Manilal Doshi (Heirs of Manilal Hiralal) and Others Vs. State of Gujarat, , to state that it is the duty of the State to deal with the application for exemption first and then only proceed to resort to the other provisions of the Act. The learned single Judge opined that the decision of the Bench related to the provisions of Section 20 of the Act and hence the ratio of the decision could not be invoked and

applied to a case where there is only an application u/s 21 of the Act. In this view, the learned single Judge did not countenance this contention and repelling the other contention that the excess is a very small piece of land, and hence there has got to be exclusion of this piece of land from the purview of the Act, rejected the Special Civil Application.

2. Mr. G.N. Desai, learned Counsel appearing for the appellants submits that the concept entertained by the learned single Judge that the ratio of the Bench in Nirmalaben Manilal Doshi (Heirs of Manilal Hiralal) and Others Vs. State of Gujarat, could not be invoked in respect of an application u/s 21, is not a sound one and both Sections 20 and 21 in substance only deal with the question of taking away the concerned extent of the land from the purview of the Act and when that question is subjudice by the application for reliefs under either of the provisions pending, there ought not have been further prosecution of the other processes under the Act. It is true that the Bench in Nirmalaben Manilal Doshi (Heirs of Manilal Hiralal) and Others Vs. State of Gujarat, was concerned with the case where an application u/s 20 of the Act for exemption was taken and was pending at the time when the further processes under the Act were prosecuted. But we find that there is no warrant to make a distinction between a case where an application u/s 20 is pending and a case where an application u/s 21 is pending. Section 20 deals with the general power to exempt. Section 21 deals with the power to treat and declare as not excess land even though the person holds the land in excess of the Ceiling limit, in the contingencies set forth therein. The provisions of Sections 20 and 21 of the Act stand extracted below:

Section 20. Power to exempt: 0) Notwithstanding anything contained in any of the foregoing provisions of this Chapter-

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this Clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions

subject to which any exemption under Clause (a) or Clause (b) of Sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.

Section 21. Excess vacant land not to be treated as excess in certain cases:

(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square metres) for the accommodation of the weaker Sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purposes of this chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such buildings are to be constructed.

(2) Where any person contravenes any of the conditions subject to which the permission, has been granted under sub-sec (1), the competent authority shall, by order, and after giving such person an opportunity of being heard, declare such land to be excess land and thereupon all the provisions of this chapter shall apply accordingly.

3. If the power to exempt is exercised u/s 20 of the Act, the land does not come within the purview of Chapter III of the Act. The implication of an order, if that comes to be made u/s 21 of the Act, is that though there is vacant land in excess of the ceiling limit, yet it would not be treated as excess, for the purposes of Chapter HI of the Act. That chapter is the blood stream of the Act and it contains the operative provisions for ceiling on vacant land. The result of the order under either of the Sections 20 or 21 is the land goes out of the mischief of Chapter HI of the Act. The result is one and the same though the process and the scope of the consideration may be different. The opinion of ours has got a limited scope to answer the present question as to whether there could be prosecution of further processes under the Act, when an application under either of the provisions is pending and is awaiting decision. Otherwise there is bound to be difference with regard to the scope of the consideration of the matter under the provisions.

4. The Bench in *Nirmalaben Manilal Doshi (Heirs of Manilal Hiralal) and Others Vs. State of Gujarat*, expressed the opinion in the following terms (at page No. 324):

The overall consideration of the provisions of Chapter 111 pre-supposes that the full effect will be given to all the provisions so that a coherent system of working out the problem is evolved. If a declaration under Sections 8(1) and 8(3) proceeds one way or the other, decision of an application for exemption, it will be tantamount to putting a cart before a horse and if the application (covered under that declaration) would ultimately come to be granted and it will be a meaningless exercise, that is why we say that after filing of a statement u/s 6 of the Act, if a citizen applies for exemption u/s 20 of the Act, it is the duty of the Government to deal with that application first and then proceed to resort to Sections 8(1) and 8(3) of the Act. In the petitions Nos. 2941 and 2161 of 1983 the grievance of the petitioners is that the Government slept over their applications u/s 20 of the Act for exemption and the competent authority actually went to issue the declarations in question under those provisions. As per the scheme understood and stated to be underlined, the provisions of Chapter III of the Act such an exercise of power is contrary to the spirit of the Act and we, therefore, allow both these petitions by quashing the said declarations in those two petitions and we direct that the Government shall take up their applications for exemption first on hand, decide them in accordance with law that we are laying down in other matter (i.e. hear and then decide) and then the competent authority can take up the question one way or the other under the provisions of Sections 8(1) and 8(3) of the Act. The Special Civil Applications Nos. 2941 and 2161 of 1983 accordingly stand allowed by making the rule absolute with no order as to costs.

4.1. But we find that the above view of the Bench has not found total acceptance at the hands of the Full Bench of this Court in *Avanti Organisation, Rajkot and etc. Vs. The Competent Authority and Additional Collector, Rajkot and Another*, . With regard to the ratio expressed by the Bench in *Nirmalaben Manilal Doshi (Heirs of Manilal Hiralal) and Others Vs. State of Gujarat*, , the Full Bench took the view that merely because an application u/s 20 for exemption is pending, the entire process beyond the Section 6 stage should grind to a halt till such application is decided. The Full Bench expressed the opinion that the process can be carried upto the Section 8(3) stage and at that stage the competent authority must apply its mind whether having regard to the nature of the objections it would be desirable to pass an order adverse to the objector u/s 8(4) notwithstanding the pendency of the exemption application and if the objection has no relevance to the lands in respect of which exemption is sought, there is no reason why the competent authority should not proceed further upto the Section 10(2) stage. It would be pertinent if We extract the relevant passage from the pronouncement of the Full Bench (at page No. 606):

After referring to the non-obstante Clause in Section 20 of the Act, the Division Bench has observed that the declaration about the lands being surplus can only be made after the decision on the application u/s 20 of the Act is taken. The Court then proceeds to add that the overall consideration of the provisions of Chapter III pre-supposes that the full effect will be given to all the provisions so

that a coherent system of working out the problem is evolved. In its opinion "If a declaration under Sections 8(1) and 8(3) proceeds one way or the other, decision of an application for exemption, it will be tantamount to putting a cart before a horse".... Elaboration in this behalf is that if the application is ultimately granted, it will be a meaningless exercise to proceed beyond the filing of the statement u/s 6 of the Act. Since the reasons given by the Division Bench in this behalf are very brief, it is difficult to appreciate the premise on which the Division Bench came, to the conclusion that it would not be proper to proceed beyond the Section 6 stage if an application for exemption is filed and is pending u/s 20(1) of the Act. The Division Bench has failed to appreciate that the draft statement to be prepared u/s 8(1) containing the particulars mentioned in Section 8(2) must be based on the statement filed by the concerned person u/s 6 and is only provisional in nature and can be finalised only after the disposal of the objections, if any, filed by the person concerned. It is at that stage that the competent authority must apply its mind whether the objections can be disposed of notwithstanding the pendency of the exemption application. If the pendency of the exemption application" is likely to influence the decision of the competent authority on the objections raised by the concerned party, the competent authority may in its wisdom decide to arrest the proceedings at that stage and await the decision of the State Government on the exemption application. If the objection has no relevance whatsoever to the lands in respect of which exemption is claimed u/s 20(1), we fail to understand why the competent authority should not proceed to dispose of the objection. Therefore, as stated earlier, we do not see any objection to proceeding upto the Section 8(3) stage as that is not likely to adversely affect the rights of the concerned person. It is only when the competent authority reaches the Section 8(3) stage and receives objections and is required to decide them that it must apply its mind to the question whether it should proceed to pass an order u/s 8(4) notwithstanding the pendency of the exemption application. We are, therefore, not impressed by the argument that if the proceedings are allowed to go beyond the Section 6 stage, it would tantamount to putting a cart before a horse or that it would render the exercise meaningless if ultimately exemption is granted u/s 20(1) of the Act. It is indeed true, as pointed out earlier, that it should be the endeavour of the State Government to dispose of the application u/s 20(1) at an early date but we are not inclined to the view that merely because an application for exemption is pending, the entire process beyond the Section 6 stage should grind to a halt till such application is decided. In our view, ordinarily the process can be carried upto the Section 8(3) stage and at that stage the competent authority must apply its mind whether having regard to the nature of the objections it would be desirable to pass an order adverse to the objector u/s 8(4) notwithstanding the pendency of the exemption application. If the objection has no relevance to the lands in respect of which exemption is sought, we see no reason why the competent authority should not proceed further upto the Section 10(2) stage. For the above reasons we are afraid we cannot subscribe to the view expressed in paragraph 2 of Nirmalaben's case.

5. Once we accept the position that for the purpose of the present question there need not be a distinction between applications for reliefs under Sections 20 and 21 of the Act, the allowing of them leading to the same result, there is no difficulty in applying the ratio of the Full Bench to the facts of the present case. The learned single Judge, in our view, need not have made a distinction between an application u/s 20 and an application u/s 21 of the Act for the purpose of considering the question as to whether during their pendency there could be prosecution of the other processes under the Act. As per our discussion supra, the result in both applications, if that should be the case, in favour of the applications, would be to the same effect, namely, the land in question will not come within the purview of Chapter III of the Act and on the other hand it will go out of purview of the Chapter III of the Act.

6. Thus, we find that we have to apply the ratio of the Full Bench to the facts of the present case and hold that the processes under the Act prosecuted beyond the stage of Section 10(2) of the Act cannot survive and as to the future need to prosecute further processes after the stage of Section 10(2) of the Act it will depend upon the decision in the application u/s 21 of the Act. Accordingly, we allow this Letters Patent Appeal, set aside the order of the learned single Judge dated 18th September, 1984 in Special Civil Application No. 1735 of 1984 and we make the following order in that Special Civil Application:

- (i) The proceedings under the Act in respect of the lands in question prosecuted up to the stage of Section 10(2) of the Act are for the present left untouched;
- (ii) The proceedings prosecuted after the stage of Section 10(2) of the Act do not survive; and
- (iii) The prosecution of further processes under the Act after the stage of Section 10(2) of the Act will depend upon the decision on the application u/s 21 of the Act.

We make no order as to costs.