

(1986) 06 GUJ CK 0004
In the Gujarat High Court

Case No : Spl. Civil Application No's. 1702, 2635 and 2660 of 1986

Shivlal Thakershi Gotecha and Others	APPELLANT
Vs	
The Competent Authority and Others	RESPONDENT

Date of Decision : 20-06-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 31, 33, 46
Urban Land (Ceiling and Regulation) Act, 1976 — Section 12(5), 13, 31

Citation : AIR 1987 Guj 155 : (1987) 1 GLR 267

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Suresh M. Shah and K.A. Mehta, for the Appellant; M.I. Hava, of M.I. Hava and Co., for the Respondent

Judgement

1. In these three petitions the common question which requires determination is whether the Urban Land Tribunal constituted under S. 33, Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the Urban Land Ceiling Act", has jurisdiction to dismiss the appeal for default or whether the provisions of O. 41, R. 17, Civil P.C., are applicable to the Tribunal and that the Tribunal can dismiss the appeal for default.

2. In . Special Civil Application No. 2635/86 the Additional Urban Land Tribunal and Ex-Officio Secretary to the Government, Revenue Department, Ahmedabad, by the order dt. 15th Mar., 1986 dismissed the appeal No. APL/UL/RAJKOT138/1983 filed under S. 33, Urban Land Ceiling Act on the ground that when the appeal was called out, neither the appellants nor their advocate were present. Restoration application was filed by the petitioner. In the said application number of grounds for restoration were given. The Tribunal dismissed the said application by holding that there was no sufficient ground shown for readmitting the appeal.

3. In Special Civil Application No. 2660/86 the same Tribunal by the order dated 15th March, 1986 dismissed the Appeal No. APL/UL/RAJKOT-14/1983 as neither

the appellants nor their advocate remained present at the hearing of the appeal. It is the contention of the learned advocate for the petitioners that the petitioners' advocate had sent a telegram requesting the Tribunal to adjourn the matter. Thereafter the petitioners filed an application dt. 19/20th March, 1986 requesting the Tribunal to restore the appeal by pointing out various grounds for restoration. The Tribunal dismissed the said application by holding that no sufficient cause was shown for readmitting the appeal. It be noted that no hearing was given to the petitioners before dismissing the restoration application.

4. Special Civil Application No. 1702/86 against the judgment and order dated 18th January, 1980 passed by the same Tribunal in Appeal No. APL/UL/SURAT-107/1983. The Tribunal has dismissed the appeal on the ground that the appellant was absent when the appeal was called out for hearing and no application for adjournment of hearing was received. The Tribunal thereafter relied upon O. 41, R. 11(2), Civil P.C. and dismissed the appeal and vacated the stay order. It is the contention of the learned advocate for the petitioner that telegram was sent on 17-1-86 requesting the Tribunal to adjourn the matter.

5. Against the aforesaid orders, the petitioners have filed these Special Civil Applications.

6. As the Tribunal had dismissed the appeal for default, the learned advocates for both the sides requested that the hearing of the matters be expedited as it was a pure question of law. All the three Special Civil Applications are therefore taken up for hearing today.

7. The learned advocates for the petitioners vehemently submitted that there is no provision under the Urban Land Ceiling Act which empowers the Tribunal exercising power under S. 33 of the Act to dismiss the appeal for default and, therefore, the Tribunal has no jurisdiction to dismiss the appeal for non-appearance of the parties. It is the duty of the Tribunal to decide the appeal on merits even in absence of parties or their advocates. The proceeding before the Tribunal is in the nature of inquisitorial inquiry. In my view, this contention of the learned advocates deserves to be accepted. For this purpose it would be worthwhile to refer to certain provisions of the Act. The relevant part of S. 12 reads as under :

"12. (1) The State Government may, by notification in the Official Gazette, constitute one or more Urban Land Tribunal or Tribunals.

(2) and (3) xx xx xx xx xx xx xx

(4) If any person is aggrieved by an order of the competent authority under S. 11, he may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the Tribunal having jurisdiction over the area in which the vacant land (in relation to which the amount has been determined) is situated or where such land is situated within the jurisdiction of more than one Tribunal to the Tribunal having Jurisdiction over the area in which a major part of

such land is situated or where the extent of" such land situated within the jurisdiction of two or more Tribunals is equal, to any of those Tribunals :

Provided that the Tribunal may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) In deciding appeals the Tribunal shall exercise all the powers which a Civil Court has and follow the same procedure which a Civil Court follows in deciding appeals against the decree of an original Court under the Code of Civil Procedure, 1908."

Section 12(1) empowers the State Government to constitute one or more Urban Land Tribunal or Tribunals. Sub-section (4) of S. 12 provides that if any person is aggrieved by an order of the competent authority under S. 11, he may prefer an appeal to the Tribunal. Sub-section (5) provides that in deciding appeals the Tribunal shall exercise all the powers which a Civil Court has and follow the same procedure which a Civil Court follows in deciding appeals against the decree of an original Court under the Code of Civil Procedure, 1908. Because of this sub-s. (5) the Urban Land Tribunal while deciding the appeal filed against the order which is passed under S. 11 of the Act, is required to follow the procedure prescribed under the Civil P.C. Section 13 provides that subject to the provisions of Civil P.C., 1908, applicable to appeals from original decree, an appeal shall lie to the High Court from the decision of the Tribunal under S. 12. Therefore, these Ss. 12 and 13 categorically provide that the provisions of entire Civil P.C. would be applicable to the Urban Land Tribunal while deciding the appeal against the order which is passed under S. 11. It should be noted that S. 11 provides payment of amount for vacant land acquired by the State Government under sub-s. (3) of S. 10. Further S. 29, Urban Ceiling Act provides that no person shall construct any building with a dwelling unit having a plinth area,-

(a) where the building proposed to be constructed is situated in an urban agglomeration falling within Category A or Category B specified in Schedule 1, in excess of three hundred square metres;

(b) where the building proposed to be constructed is situated in an urban agglomeration falling within Category C or Category D specified in Schedule 1, in excess of five hundred square metres.

Section 30(1), Urban Ceiling Act, empowers the competent authority to pass an order directing demolition and stoppage of building in certain cases. Sub-section (2) of S. 30 empowers any person aggrieved by an order of the competent authority passed under subsection (1) to prefer an appeal against the order to the Tribunal. Sub-section (4) provides that the provisions of sub-section (5) of S. 12 and of S. 13 shall apply to or in relation to an appeal preferred under sub-sec. (2) as they apply to or in relation to an appeal preferred under sub-section (4) of S. 12. This would mean that the Tribunal would be required to follow the procedure prescribed under the Civil P.C. while determining the appeal which is

filed against an order passed by the competent authority under S. 30(1), Urban Ceiling Act.

8. As against this, if we refer to the provisions of Ss. 31 and 33 it would be abundantly clear that the Legislature has not provided that while deciding the appeal under S. 33 the authority is required to follow the procedure prescribed under the CPC for deciding the appeal. Section 31 reads as under:

"31. The competent authority shall have all the powers of a Civil Court, while trying a suit under Civil P.C., 1908, in respect of the following matters, namely : -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed."

Referring to this section it is clear that certain specific powers under the Civil P.C. on certain specified matters are conferred on the competent authority but not that the competent authority is entitled to exercise all powers which the Civil Court has while trying a civil suit under the Code of Civil Procedure. Section 31(f) provides that for other specified matters also it can be prescribed that some other provisions of the Civil P.C. would be applicable. This by implication shows that entire provisions of Civil P.C. are not made applicable. Under S. 46 the Central Government has jurisdiction to make rules for conferring further powers on the competent authority. It is an admitted fact that no such rule is framed by the Central Government or that the entire Civil P.C. is not made applicable. Therefore, the provisions of O. 9 which provide the consequences of non-appearance by the parties are not made applicable. In my view, this is done for a valid reason. Suppose after filling the necessary form the party fails to remain present. Then it cannot be said that the competent authority would dismiss the matter without deciding that the person is holding land in excess of the ceiling area. This would mean that even if the parties are not present before the competent authority, it would be the duty of the competent authority to decide the question which he is required to decide by taking into consideration the material before him. Hence the inquiry would be in the nature of inquisitorial one. He has to inquire and find out whether the person is holding the land in excess of the ceiling area and to what extent. He has to decide after taking into consideration the relevant factors laid down under the Act.

9. Same is the position with regard to the powers of the appellate authority under S. 33. Section 33 reads as under :

"33(1) Any person aggrieved by an order made by the competent authority under this Act, not being an order under S. 11 or an order under sub-section (1) of S. 30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereafter in this section referred to as the appellate authority) :

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-s. (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as it deems fit as expeditiously as possible.

(3) Every order passed by the appellate authority under this section shall be final."

Sub-section (1) in terms provides that any person aggrieved by an order made by the competent authority under the Act and the order not being an order under S. 11 or an order under sub-section (1) of S. 30, may prefer an appeal to the appellate authority as may be prescribed. Sub-section (2) provides that the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as it deems fit as expeditiously as possible. Therefore, under S. 2 the appellate authority is required to afford an opportunity of hearing to the appellant and is also further required to pass reasonable orders as expeditiously as possible. Section 33 nowhere provides that the procedure prescribed under Civil P.C. for deciding the appeals would be applicable to the appellate authority. It is not provided that the provision of S. 12(2) would be applicable when appeal under S. 33 is decided. Section 12, sub-s. (5) in terms provides that the Tribunal while deciding the appeal against the order under S. 11 shall follow the same procedure which a Civil Court is required to follow in deciding the appeal against the decree of an original Court under the Civil P.C. In my view, when the Legislature has made a clear distinction and provided two separate procedures, one for the Urban Land Tribunal constituted under S. 12(1) and another for the appellate authority under S. 33, it cannot be said that the appellate authority (may be, it may be Urban Land Tribunal itself) is entitled to exercise the same powers as those of a Civil Court while deciding the appeal under the Civil P.C.

10. While dealing with it similar question under S. 74 of the Bombay Tenancy and Agricultural Lands Act the Division Bench of the Bombay High Court in the case of Kallappa Joteppa Ajur Vs. Murigeppa Rudrappa Gugwad, , held its under :

"It is clear that an appellate authority can only exercise its power of dismissing an appeal for default provided it notice is given to the appellant and there is an obligation upon the appellant to appear in answer to that notice. It is sometimes forgotten that powers to dismiss appeals for default are not powers which are inherent in a tribunal. It is precisely because they are not inherent that the CPC

has made specific provision for dismissal of appeals for default. Now, we have often been told that Revenue Tribunals are riot bound to hear advocates in support of their clients; we have been told that Revenue Tribunals are not bound to hear parties and they can dispose of appeals by perusing the papers at home or even by circulating them. But today for the first time an argument is advanced that Revenue Tribunals are entitled to dismiss appeals even without applying their minds to them. At least we are on strong ground when we reject the last argument. Therefore, in our opinion, the Prant Officer was clearly in error in disposing of this appeal for default without going into the merits."

In the case of *Hiralal Virchand v. Vithalbhai* 2 Gui LR 548 : (AI R 1961 Guj 189) the similar view has been taken while interpreting the provisions of S. 72, Bombay Public Trusts Act, 1950. The Division Bench after taking into consideration the similar provision held that even though there are some powers with the Charity Commissioner as provided under S. 73, Bombay Public Trusts Act, which states that the officers, acting under the Act, shall have certain specific powers under the CPC on certain specified matters, yet these powers do not include the power of dismissing a proceeding or an appeal for default of appearance. The Court emphasized that the provisions of S. 73, Bombay Public Trusts Act, by implication, show that the whole of the Civil P.C. is not applicable to proceedings before these officers and that the Code only applies to certain specified matters. That being the position, it was clear that O. 41, R. 17, Civil P.C., was not applicable to the proceedings before the Charity Commissioner. Order 41, Rule 17 provides dismissal of appeals for appellant's default in appearing when the appeal is called on for hearing.

11. While dealing with the provisions of Ss. 32-G and 63-A, Bombay Tenancy and Agricultural Lands Act, in the case of *Haji Begum v. Raisang* (1965) 6 Guj LR 810 the Division Bench of this Court held that the inquiry under S. 32-G is of entirely different nature and it is the duty of the Agricultural Lands Tribunal to decide it according to law having regard to the factors laid down by the Act and the Rules. The Court held as under :

"The inquiry before the Agricultural Lands Tribunal is not initiated as a result of any application made by a party moving the Agricultural Lands Tribunal for redress and the other party opposing such application. If such were the case it would be possible to say that the burden of leading the evidence relevant to the issues in the inquiry would be on the parties and if any party on whom the burden of proving a particular issue lies does not lead evidence to prove such issue, he must fail. But the inquiry which is to be held by the Agricultural Lands Tribunal is of a different character and the purpose of the inquiry is to fix the purchase price consequent upon the tenant being declared to be the owner of the land tilled by him. Section 32-G lays an obligation on the Agricultural Lands Tribunal to determine the purchase price of the land and in doing so the Agricultural Lands Tribunal is required to give an opportunity to the tenant and landlord and all other persons interested in the land to be heard and to hold an

inquiry for the purpose. The section also lays down the method of computation of the purchase price and the factors which are required to be taken into by the Agricultural Lands Tribunal in determining the purchase price. The Agricultural Lands Tribunal is, therefore, not tied down to the evidence which may be adduced before it by the parties but can also rely on other material before it, provided of course the parties are given an opportunity to say whatever they want to in regard to such material and to render their explanation in regard to it. This last qualification is plainly nothing but a requirement of the principles of natural justice which must be observed by Agricultural Lands Tribunal as a quasi-judicial body. If neither the landlord nor the tenant appears at the hearing of the inquiry or leads evidence relating to the factors set out in S. 63-A, sub-s. (3), the Agricultural Lands Tribunal cannot refuse to determine the purchase price on the ground that no material has been placed before it by the parties. The purchase price has got to be determined by the Agricultural Lands Tribunal and the material on the basis of which the purchase price is fixed may be material produced by the parties or material which is otherwise available to the Agricultural Lands Tribunal. The Collector was, therefore, clearly in error in observing that since the parties had not led any evidence in regard to the factors set out in Cls. (c) and (d) of sub-s. (3) of S. 63-A she was not bound to take those factors into account."

In my view, same would be the position with regard to the Urban Land Ceiling Act and, the competent authority or the appellate authority also would be required to determine the matter on merits after taking into consideration the relevant factors laid down by law. The Division Bench in the aforesaid, Judgment in terms had held that the inquiry before the authority was a statutory inquiry and that this was not an adversary system but an inquisitorial inquiry where the authority could not refuse to determine the question on the ground that no material had been placed before it by the parties or that the parties had failed to appear before the authority. The aforesaid decision is followed in the case of *Mafatalal v. Girdharilal* (1970) 11 Guj LR 186. In this view of the matter, it is abundantly clear that the appellate authority while deciding the appeal under S. 33, Urban Land Ceiling Act, had no jurisdiction to dismiss the appeal for non-appearance of the parties. The authority was required to determine the appeal on merits even in absence of the appellant or appellant's advocate.

12. In the result, all the three Special Civil Applications are allowed. The impugned orders are quashed and set aside. Rule made absolute in each matter with no order as to costs.

13. Applications allowed.