
(1995) 05 GUJ CK 0002
In the Gujarat High Court

Smt. Shirinbai Dungaji Daruwala Since Decd. By Her Heirs
ASPI Dungaji Daruwala

APPELLANT

Vs

Competent Authority and Dy. Collector and Another

RESPONDENT

Date of Decision : 02-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 8(4), 8(4)

Citation : (1996) 4 GLR 455

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the competent authority at Ahmedabad (respondent No. 1 herein) on 20th January 1986 u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 6th January 1989 in Appeal No. Ahmedabad-164 of 1986 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the deceased predecessor-in-title of the petitioners to be in excess of the ceiling limit by 595.51 sq. mtrs.

2. The facts giving rise to this petition move in a narrow compass. The petitioners are heirs and legal representatives of one Smt. Shirinbai Dungaji Daruwala (the deceased for convenience). She held certain properties within the urban agglomeration of Ahmedabad on the date of the coming into force of the Act. She, therefore, filed the necessary declaration in the prescribed form u/s 6(1) thereof. It was duly processed by respondent No. 1 herein. After observing the necessary formalities under the Act, by his order passed on 20th January 1986 u/s 8(4) thereof, respondent No. 1 declared the holding of the deceased to be in excess of the ceiling limit by 595.51 sq. mtrs. Its copy is at Annexure-A to this petition. It may be mentioned that the deceased breathed her last during the pendency of the proceedings before respondent No. 1. That fact was brought to

the notice of respondent No.1 by the concerned Advocate through his application made on 1st August 1985. The concerned Advocate had also brought on record the heirs of the deceased. It appears that petitioner No. 1 alone carried the matter in appeal before respondent No. 2 u/s 33 of the Act. It came to be registered as Appeal No. Ahmedabad-164 of 1986. By his order passed on 6th January 1989 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure-B to this petition. That aggrieved all the petitioners herein as heirs and legal representatives of the deceased. They have, therefore, approached this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. Shri Thakker for the respondents has on the basis of the record available with him raised two preliminary objections against maintainability of this petition. His first objection has been that this petition suffers from the vice of inordinate delay on the part of the petitioners and such inordinate delay has not properly been explained in the memo of petition. The second objection raised by Shri Thakker for the respondents is based on suppression of certain material facts from this Court on the part of the petitioners herein.

4. In order to appreciate Shri Thakker's submissions, it would be quite proper to look at certain facts as transpiring from the record of the concerned authorities with which an officer from the office of respondent No. 1 is present. The appellate order at Annexure-B to this petition was passed on 6th January 1989. It appears that the notification u/s 10(1) of the Act was issued on 2nd April 1986 and published in the official gazette on 7th August 1986 pursuant to the final statement prepared by respondent No. 1 herein in terms of the order at Annexure-A to this petition. After the appellate order at Annexure-B to this petition came to be passed, the Notification u/s 10(3) of the Act came to be issued on 2nd February 1989 and published in the official gazette on 11th May 1989. Thereafter the notice for possession was issued on 1st June 1990 and it was served to petitioner No. 3 on 15th July 1990 as an heir of the deceased. Simultaneously therewith was served to him a notice of the proceeding u/s 11 of the Act. It may be mentioned that the notice u/s 10(5) and Section 11 of the Act each was served on 19th July 1990 to the Advocate appearing on behalf of the deceased before respondent No. 1 for and on behalf of the appellant before respondent No. 2. That was perhaps done by way of abundant caution. Thereafter the possession of this surplus land was taken on 10th September 1990 u/s 10(6) of the Act. Thereafter a notice was issued to the petitioners in the name of the deceased on 26th September 1990 calling upon them not to enter the land of which possession was taken on 10th September 1990.

5. According to Shri Thakker, all the aforesaid facts have been suppressed by and on behalf of the petitioners and they would, therefore, be disentitled to claim any discretionary relief from this Court either under Article 226 or under Article 227 of the Constitution of India. Besides, runs the submission of Shri Thakker for the

respondents, this petition suffers from the vice of inordinate delay as the effect of the notification u/s 10(3) of the Act is vesting of the subject-matter thereof absolutely in the State Government free from all encumbrances. According to Shri Thakker, the hands of the clock cannot and need not move backward now after lapse of such a long period.

6. As against this, Shri Nanavati for the petitioners has urged that the notices u/s 10(5) and Section 11 of the Act were issued in the name of the deceased and such notices cannot be termed as notices in the eyes of law. According to Shri Nanavati for the petitioners, suppression of such notices would be of no consequence as it would not amount to suppression of any material or vital fact. Shri Nanavati for the petitioners has urged that the delay in preferring this petition was on account of the change in law as represented by the ruling of the Supreme Court in the case of Smt. Meera Gupta Vs. State of West Bengal and others, . In that view of the matter, runs the submission of Shri Nanavati for the petitioners, this petition cannot be said to be suffering from any vice of inordinate delay on the part of the petitioners.

7. It is an admitted position on record that this petition has been filed on 23rd June 1992. The appellate order at Annexure-B to this petition was passed as back as on 6th January 1989. This petition has, therefore, been filed more than three years after the appellate order at Annexure-B to this petition. The delay in approaching the Court is of more than three years. This delay has not been explained by or on behalf of the petitioners in any manner. The only explanation worth the name is found in paragraph-4 of the memo of petition. It has been averred therein that the impugned orders are without jurisdiction and nullity and the effect thereof would be that they have no existence in the eyes of law. I think this cannot be said to be a good ground for delay in approaching this Court.

8. Shri Nanavati for the petitioners has then submitted that the impugned orders are challenged in view of the binding ruling of the Supreme Court in the case of Mira Gupta (supra). As transpiring from ground (a) on page 4 of the memo of petition, the aforesaid ruling of the Supreme Court was reported sometime in October last and it was noticed by or on behalf of the petitioners around that time. Even thereafter the petitioners appear to have waited for as many as 7 to 8 months in approaching this Court. This delay has not been explained by or on behalf of the petitioners anywhere in the memo of the petition. It would be difficult to agree with Counsel for the petitioners in his submission to the effect that the impugned orders are without jurisdiction. The reason therefore is quite simple. Incorrect application of principle of law does not render an order a nullity. It would be an illegal order but not a nullity. At the best, it could be said to be irregularity in exercise of jurisdiction. It can be said to be an error while acting within the jurisdiction. If the principle of law enunciated by the Supreme Court in its aforesaid binding ruling in the case of Mira Gupta (supra) is not followed by the authorities below (they could not follow it because it saw the light of the day only in October 1991), it was only an error of law, at the most an error apparent

on the face of the record. An error of law cannot be equated with an error in exercise of jurisdiction which would amount to lack of jurisdiction.

9. Even if it is assumed that the impugned orders are without jurisdiction, they will have to be challenged within the prescribed period of limitation in view of the binding ruling of the Supreme Court in the case of State of Punjab and Others Vs. Gurdev Singh, . The prescribed period of limitation for challenging a Government order is one year in view of Article 100 of the Limitation Act, 1963. This petition has been filed more than three years after the appellate order at Annexure-B to this petition. As pointed out hereinabove, such inordinate delay on the part of the petitioners has not been explained. The preliminary objection against maintainability of this petition, therefore, deserves to be accepted.

10. Ordinarily, this Court may not take a very harsh view of such delay of little more than three years on the part of the petitioners in approaching this Court for questioning the correctness of the impugned orders at Annexures A and B to this petition. The delay has, however, resulted in the issuance of the notification u/s 10(3) of the Act. The effect thereof is vesting of the land declared surplus under the impugned orders in the State Government free from all encumbrances. The hands of the clock need not be put back to the original position at the instance of the petitioners who have chosen to approach this Court after unexplained inordinate delay of more than three years from the date of the appellate order at Annexure-B to this petition.

11. Besides, as observed earlier, the notices u/s 10(5) and u/s 11 of the Act have been served to petitioner No. 3 on 15th July 1990. Apart from that he remained indolent thereafter for nearly two years, the fact of service of such notice has been suppressed by the petitioners in this petition. As pointed out hereinabove, it cannot be gainsaid that the recitals in a notice u/s 10(5) of the Act would include the date of the issuance and the publication of the notification u/s 10(3) of the Act with respect to the land declared surplus under the order of the competent authority as affirmed in appeal, if any. Receipt of such notice u/s 10(5) of the Act ought to have put its recipient on his own guard for challenging not only the orders of the competent authority and the appellate authority but also the notification u/s 10(3) of the Act. Petitioner No. 3 has not chosen to do so for nearly two years. He has not chosen to disclose that fact in this petition. The fact of receipt of such notice can be said to be a material and vital fact. If this Court was informed of the issue of such notice, this Court might have been disinclined to entertain this petition at the preliminary stage of admission on the ground that the surplus land had vested in the State Government free from all encumbrances by virtue of the issuance of the notification u/s 10(3) of the Act pursuant to which such notice u/s 10(5) of the Act was issued. I think the preliminary objection against maintainability of this petition on the ground of suppression of this material and vital fact also deserves to be accepted.

In view of my aforesaid discussion, I am of the opinion that this petition deserves not to be accepted on account of the aforesaid preliminary objections. In that

view of the matter, I have not chosen to examine the merits of the case.

12. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.