

(1999) 11 GUJ CK 0009

In the Gujarat High Court

Case No : Letters Patent Appeal No. 627 of 1997 in Special Civil Application No. 2264 of 1988

State of Gujarat

APPELLANT

Vs

Heirs of Decd. Pashabhai bhanabhai vankar

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Gujarat Town Planning and Urban Development (Amendment) Act, 1999 — Section 21
Gujarat Town Planning and Urban Development Act, 1976 — Section 117(a)

Citation : (1999) 11 GUJ CK 0009

Hon'ble Judges : P.B. Majmudar, J; J.M. Panchal, J

Bench : Division Bench

Advocate : S.D. Talati, A.G.P, for the Appellant; A.J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated June 28, 1996 rendered by the learned Single Judge in Special Civil Application No. 2264/88, by which order passed by the Collector, Vadodara on June 27, 1986 as confirmed in revision by the State Government vide order dated February 12, 1988 requiring the respondents to obtain N.A. permission u/s 65 of the Bombay Land Revenue Code, is set aside.

2. The predecessor in title of the respondents was regranted land by order dated January 12/23, 1964 on certain terms and conditions. The predecessor-in-title of the respondents expired in November, 1983. The respondents had obtained necessary building permission u/s 29 of the Gujarat Town Planning and Urban Development Act, 1976 ("Act" for short). Pursuant thereto, they had started raising constructions on the land. The Collector, Vadodara issued notice dated March 11, 1985 calling upon the respondents to show cause as to why the constructions raised on the land should not be ordered to be removed u/s 66 of the Code, as no N.A. permission was obtained u/s 65 of the Code. The

respondents filed reply to the said notice on March 30, 1985. The Collector by his order dated June 27, 1986 directed the respondents to remove the constructions made on the disputed land and eviction of the respondents there-from. Feeling aggrieved by the said order, the respondents preferred revision before the State Government u/s 211 of the Bombay Land Revenue Code. The revision came to be rejected vide order dated February 12, 1988. Therefore, the respondents moved the High Court by way of filing Special Civil Application No. 2264/88 and prayed the Court to set aside the above referred to two orders. The learned Single Judge took the view that as the respondents had obtained building permission u/s 29 of the Act, it was not necessary for them to obtain N.A. Permission u/s 65 of the Bombay Land Revenue Code. Therefore, the learned Single Judge allowed the petition by judgment dated June 28, 1996, which has given rise to the present appeal.

3. We may state that similar view was expressed by the learned Single Judge in several other matters and the judgments rendered in some of the matters were subjected to appeal. In Letters Patent Appeal No. 151/96 arising out of Special Civil Application No. 7735/95, Division Bench had passed following order on October 30, 1996 :-

" IN THE HIGH COURT OF GUJARAT AT AHMEDABAD ORDER PASSED BY THE HIGH COURT IN THE CASE OF

1. State of Gujarat through Collector, Baroda. ... Appellants

Versus

1. Patel Kantibhai Mohanbhai, through constituted power of attorney Chhotabhai Patel, 72, Shrijidhan Co-operative Housing Society, Manjalpur, Baroda. Respondents

BEING LETTERS PATENT APPEAL NO. 151 OF 1996: IN SPECIAL CIVIL APPLICATION NO. 7735 OF 1995.

Mr. B.H. Chhatrapati for petitioner no.1

Government Pleader for petitioner no.1

Mr. A.J. Patel for respondent no.1

Notice served for respondent no.1

Mr. P.M. Bat for respondents no.2-3

Date of Decision : 30.10.1996

CORAM : G.D.KAMAT, C.J. AND C.K.THAKKAR,J.

(30.10.1996)

ORAL ORDER :-

We have heard the learned Counsel on admission after disposal of the application for condonation of delay vide Civil Application No. 7797 of 1996. We admit this appeal. Admission is, however, restricted to the interpretation of legal provisions.

Sheri A.J. Patel, learned counsel appearing on behalf of the respondents say that the scheme has been completed. In that multistoreyed building has already come up. We make it clear that even in the event appeal succeeds, the order to be made shall not in any way affect the buildings which are already erected.

Sd/- Sd/- G.D. Kamat, J. C.K. Thakkar, J"

Again, in Civil Application No. 7798/96, which was filed in Letters Patent Appeal No. 151/96, following order was passed :-

"IN THE HIGH COURT OF GUJARAT AT AHMEDABAD CIVIL APPLICATION NO. 7798 OF 1996

IN

LETTERS PATENT APPEAL NO. 151 OF 1996

State of Gujarat Petitioner

Versus

Patel Kantibhai Mohanbhai, through his power of attorney Chhotabhai Kishorebhai Patel Opponent

To

1. The State of Gujarat through Collector, Baroda.

2. Patel Kantibhai Mohanbhai, through P.O.A. Chhotabhai Kishorebhai 72, Shrijidhan Co.operative Housing Society, Manjalpur, Baroda.

Whereas the abovenamed petitioner through his advocate presented the abovenamed application in this Court praying:

And whereas upon hearing Mr. B.H. Chhatrapati for petitioner no.1, Court passed the following order :-

Coram : G.D. Kamat, C .J. and C.K. Thakkar, J.

(30.10.1996)

ORAL ORDER :-

Rule. Heard learned counsel for the interim relief. Stay of the impugned judgment. It shall, however, not affect the cases which are decided and the work relating to construction is executed and completed or under construction. The stay shall cover only those cases which arise in future. Rule made absolute accordingly with no order as to costs.

Sd/- Sd/- G.D. Kamat, C.J. C.K. Thakkar, J. "

4. It is relevant to mention that in Letters Patent Appeal No. 151/96, Court was called upon to interpret section 117 of the Act. Section 117 provided effect of other law and specified that notwithstanding anything contained in any other law for the time being in force -

(a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for development has not been obtained.

(b) xxxxxxxx xxxxxxxx xxxxxxxx"

5. The State Legislature has passed Act No. XV of 1999 i.e. "The Gujarat Town Planning and Urban Development (Amendment) Act, 1999". By section 21 of the amending Act, section 117(a) of the Gujarat Town Planning and Urban Development Act, 1976 is deleted. The amending Act was brought to the notice of the Court hearing Letters Patent Appeal No.151/96 and, therefore, the Bench hearing appeal has passed following order on July 2, 1999 :-

"IN THE HIGH COURT OF GUJARAT AT AHMEDABAD LETTERS PATENT APPEAL NO. 151 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 7735 OF 1995

State of Gujarat. Appellant

vs.

Patel Kantibhai Mohanbhai ... Respondent

Mr. B.H. Chhatrapati for appellant

Mr. A.J. Patel for respondent no.1

Mr. P.M. Bat for respondents no.2 & 3.

CORAM: K.G.BALAKRISHNAN,C.J. AND S.D.DAVE,J. (2.7.1999)

ORAL ORDER : (Per : K.G. Bal Krishnan, C.J.)

This is an appeal preferred by the State against the judgment passed in Spl. C.A. No.7735 of 1995. The respondent herein had obtained development permission and contended that no further N.A. permission was required to be obtained from the State authority. That plea was accepted on the basis of interpretation of section 117(a) of Gujarat Town Planning and Urban Development Act, 1976. While admitting the appeal, it was specifically held that the appeal was being admitted for the purpose of proper interpretation of section 117(a) of the Act. On 30th October, 1996, the Division Bench has passed order to the following effect :-

"Shri A.J. Patel, learned counsel appearing on behalf of the respondent says that

the scheme has been completed. In that multistoreyed building has already come up. We make it clear that even in the event appeal succeeds, the order to be made shall not in any way affect the buildings which are already erected."

It may also be noted that section 117(a) of the Gujarat Town Planning and Urban Development Act, 1976 was deleted by the Amending Act of 1999. Under the aforesaid circumstances, the interpretation of the said provisions is not required. Hence, the appeal is disposed of accordingly, Notice stands discharged.

Date: 2.7.1999

K.G. Bal Krishnan, C. J. S.D. Dave, J."

6. In this appeal, the appellant had filed Civil Application No. 5598/97 praying the appellate court to stay judgment and order dated June 28, 1996 rendered by the learned Single Judge in Special Civil Application No. 2264/8, pending hearing and final disposal of the appeal. It was also prayed that the respondents should be restraining from raising any construction and/or from changing the status of the land in question bearing Survey No. 136 and Final Plot No.69 situated in Vans Saied in Taluka Vadodara. Initially, ad-interim relief was granted and the parties were directed to maintain status-quo as on September 1, 1997. However, interim relief was vacated by an order dated September 22, 1997 and Civil Application No. 5598/97 was disposed of.

7. The orders passed by Division Bench in Letters Patent Appeal No. 151/96 which was filed against judgment passed in Special Civil Application No. 7735/95 as well as Civil Application No. 7798/96 which was filed in Letters Patent Appeal No.151/96 make it manifest that the construction which was raised by the respondents on the disputed land would not to be affected in any manner, even if the appeal is to be allowed. There is no manner of doubt that the appeal involves interpretation of section 117(a) of the Gujarat Town Planning and Urban Development Act, 1976. As section 117(a) of the Gujarat Town Planning and Urban Development Act, 1976 is deleted by section 21 of the Gujarat Town Planning and Urban Development (Amendment) Act, 1999, now it is not necessary for the Court to interpret the said provision and the issue involved in the appeal has become academic. It is ruled by the Supreme Court in several reported decisions that the Court should not decide academic matters. Under the circumstances, we are of the opinion that the appeal has become infructuous and deserves to be disposed of accordingly.

For the foregoing reasons, the appeal fails and is dismissed as having become infructuous. There shall be no orders as to costs.