

(2003) 11 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 9331 of 2000

State of Gujarat

APPELLANT

Vs

Kannubhai @ Navinbhai Pathiyara Heirs of dec

RESPONDENT

Date of Decision : 01-11-2003

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(2), 10(3), 10(5), 11

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2003) 11 GUJ CK 0029

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : D.S. Pandit, AGP for Petitioner Nos. 1-2, for the Appellant; A.J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—RULE. Mr. A.J. Patel, learned advocate waives service of rule on behalf of respondent. Since the matter was fixed for final hearing and with the joint request of the parties, the matter is taken up for final hearing.

2. The present petition is filed under Article 226 and 227 of the Constitution of India seeking prayer for quashing and setting aside the order passed by the Urban Land Ceiling Tribunal in Appeal No. 7/1997 on 27.02.1998, whereby the Tribunal has allowed the appeal of the present respondent and reversed the order passed by the competent authority on 01.08.1983 and remanded the matter for a fresh decision on merits.

3. It is the case of the petitioner that one Mr. Ranchhodbhai Bhathabhai was the owner of the land bearing Survey No. 393/1 paiki 14,265 Sq. Mtrs. + 98 Sq. Mtrs. land of Baroda city Survey No.51, totalling 14,363 Sq. Mtrs. situated at Kapuri village of Baroda agglomeration. The said owner of the land had filed Form No.1 u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976. The said form was processed and draft statement was prepared u/s 8(3) of the Act on

10.05.1982. Thereafter, as per the provisions contained in Section 8(4) of the Act, land admeasuring 1500 Sq. Mtrs. of Survey No. 399/1 was decided to be the land retained by the holder and rest of the land admeasuring about 12,863 Sq. Mtrs. was declared to be excess land. The said order was passed on 22.07.1982.

4. Being aggrieved and dissatisfied with the said order of the Competent Authority, Smt. Laxmiben, the widow of late Shri Ranchhodbhai had filed an Appeal No. 37 of 1982 before the Urban Land Tribunal, wherein it was contended that even though the deceased had left his major sons and daughters as his heirs and legal representatives, the Competent Authority had not granted any unit to each of them separately. The Urban Land Tribunal by its order dtd. 31.05.1983 allowed the said appeal, set aside the order of the Competent Authority and remanded the matter to the Competent Authority for a fresh decision after hearing the appellant in the said Appeal and after permitting her to lead evidence in support of her case.

5. Pursuant to the said order of the Tribunal, hearing was fixed by the competent authority on 16.07.1983. However, neither the land owner nor his advocate remained present and the order was passed by the competent authority on 01.08.1983. On the basis of this order, further proceedings were initiated u/s 10(1), 10(3) and 10(5) of the Act. Ultimately, the possession of the said land was taken over on 11.07.1984 by the Government by making Panchnama in presence of Panchas and thereafter, the order u/s 11 was passed on 10.12.1984. The excess land so taken over was further divided into 133 Plots of 40 Sq. Mtrs. each and was subsequently allotted to urban poorers as provided in the Act.

6. It is also the case of the petitioner that the present respondent, after a lapse of about 14 years, has once again challenged the order dtd. 01.08.1983 in Appeal No. 07/1997 before the Tribunal. The said appeal was filed on 01.02.1997. The Tribunal vide its order dtd. 27.02.1998 quashed and set aside the order of the competent authority passed on 01.08.1983 on the ground that no sufficient opportunity was given to the land owners and the matter was therefore remanded back to the competent authority for a fresh decision on merits.

7. It is this order which is under challenge in the present petition which was filed after about two years from the date of the order passed by the Tribunal.

8. Ms. D.S. Pandit, learned AGP appearing for the petitioner submits that the land owners were given sufficient opportunity before the competent authority and that was not availed of by them. The Tribunal has, therefore, committed a grave error in remanding the matter once again after the expiry of more than 14 years. She has further submitted that there was enough material available on record for deciding the matter on merits before the Tribunal. She has further submitted that as per Form No. I filed by Shri Ranchhodbhai, there were five members mentioned therein and all of them were minors. The said Shri Ranchhodbhai expired on 03.04.1978 and his widow, namely, Laxmiben was

brought on record. When the Act came into force, there was no major son entitled for the separate unit and on this short point, the matter was not worth remanding and that too after expiry of 14 long years. She has further submitted that after the receipt of the judgment from the Tribunal remanding the matter back to the competent authority, the matter was diligently pursued by the State Government. She has further submitted that in view of the fact that Repeal Act came into force and various litigations were cropped up, the State Government was unable to take prompt action on account of pressure of work and after enactment of the Act, the staff of the concerned department at the district levels and even at the State level was reduced to a considerable extent and that has resulted into delay in filing the present petition before this Court. In any case, there was no justification on the part of the Tribunal to entertain the appeal filed by the respondent after the expiry of 14 years and to remand the same to the competent authority for deciding afresh on merits.

9. In support of her submission that the possession of the land in question was already taken over by the State Government before the order of remand was passed by the Tribunal, Ms. D.S. Pandit, learned AGP relied on the decision of the Hon"ble Supreme Court in the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, wherein in para 13 of the judgment, the Hon"ble Supreme Court has held that " The affidavits of the Panchas filed in the High Court which contained statements contrary to what was recorded in the Panchnama and against the revenue entries are quite meaningless and in our opinion High Court unnecessarily put undue reliance on the same. High Court could not convert itself into a revenue Court and hold that inspite of the Panchnama and the revenue records actual physical possession of the acquired land had not been handed over to the acquiring body. High Court, in our opinion, has not correctly analysed the two judgments of this Court in Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, and Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, to come to the conclusion that actual physical possession of the land was not taken over by the State."

10. Ms. D.S. Pandit has further relied on the decision of the Hon"ble Supreme Court in the case of Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., wherein in para 9 of the judgment, the Hon"ble Supreme Court has held that "It is settled law of series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum of a Panchnama by the Land Acquisition Officer in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

11. Mr. A.J. Patel, learned advocate appearing for the respondent, on the other hand, submitted that the petition deserves to be dismissed only on the ground that it is heavily time barred, in as much as, it is filed after the expiry of two

years period from the date of the impugned order. He has submitted that the impugned order was passed on 27.02.1998 whereas the present petition was filed on 02.08.2000. He has further submitted that simultaneously with the filling in the Form u/s 6 of the Act on 13.08.1976, the deceased Ranchhodbhai had also made an application to the competent authority for exemption of the land held by him u/s 20 of the Act from the operation of the Provisions on the ground that he would like to continue to cultivate the said land. The said application was not disposed of and was pending for consideration by the State Government. During the pendency of the said application, all subsequent action taken by the respondent authorities are not in accordance with law and hence, the same are required to be quashed and set aside. Mr. Patel has further submitted that after the remand order passed by the Tribunal at the first instance, the competent authority served a notice to Laxmiben alone notwithstanding the fact that the Tribunal had directed to give an opportunity of being heard to all the legal heirs of deceased Ranchhodbhai. He has further submitted that the heirs of deceased Ranchhodbhai did not know about the order passed by the competent authority on 01.08.1983 for about 13 years and as soon as they came to know about the said order, they filed Appeal No. 07/1997 before the Tribunal and the Tribunal has rightly passed the order on 27.02.1998 again giving direction to the competent authority to decide the matter afresh on merit.

12. Mr. Patel has further submitted that after the order of the Tribunal was passed on 27.02.1998, the State Government has not taken any lawful action to take over the possession of the land in question and hence, there was no adjudication of the rights of the parties and in the meanwhile, the Urban Land (Ceiling and Regulation) Repealed Act, 1999 came into force with effect from 03.03.1999, with the result that the original Form filled in by deceased Ranchhodbhai remained unpursued and the land in question came to be governed by the provision of the Repealed Act. He has, therefore, submitted that the entire area of the land admeasuring about 14,363/- Sq. Mtrs. continued to be free hold land notwithstanding the false claim of the State Government that they had taken over the possession of the said land and the land has already been disposed of by them in accordance with the Provisions of the Act.

13. Mr. Patel has further submitted that the Panchnama which was alleged to have been made with a view to show that the possession of the land in question was taken over by the State Government, is totally false and bogus as the possession of the land was never taken over by the State Government in accordance with law. He has further submitted that the Panchas whose names have been shown in the Panchnama have filed Affidavits stating on oath that they have never gone to the site and the Panchnama was never prepared in their presence. He has further submitted that in Village Form No. 7 & 12 in respect of the land in question, the name of the deceased Ranchhodbhai or his widow Laxmiben have been shown as in the occupation of the land right from 1972 to 1999. The entries made in the village Form show that the possession of the land in question continued to remain with the owners right from 1972 to 1999 and

that the land in question was never entered in the name of the Government or anybody else.

14. Mr. Patel has further submitted that there was no substance in the claim of the State Government that the land was disposed of u/s 23 of the Act as the land could not have been disposed of u/s 23 in as much as the possession of the land was never taken over from the owner of the land and physical possession continued to be with the land owners. He has further submitted that the claim of the State Government was proved to be false in view of the fact that some of the persons in whose favour the land was distributed have filed Affidavits stating that the State Government has not given possession of the plot to them and that the possession of the land in question still continued to be with the original land owners. He has, therefore, submitted that there was no substance in the present petition and the same requires to be dismissed.

15. Over and above the aforesaid submission, Mr. Patel has further submitted that the petitioner has made an application u/s 20 of the ULC Act and the said application is not disposed of by the competent authority. He has, therefore, submitted that all subsequent actions taken by the competent authority without disposing of the application u/s 20 of the ULC Act are not in accordance with law and they are required to be quashed and set aside. In support of his submission, he relied on the decision of this Court in LPA No. 05/2002 dtd. 25.06.2003 wherein it is held that the application filed by the original petitioner u/s 21 of the Act has remained pending and the authorities could not decide the same eventhough, they were directed to do so by this Court vide order dtd. 04.10.1991. It is further stated that the authorities are not competent to initiate proceedings beyond the stage of Section 10(2) and prepare statement u/s 10(3) and 10(5) of the Act, in view of the fact that the appeal against the rejection of the order passed by the competent authority dtd. 11.02.1987 was allowed on 15.01.1991 whereby the competent authority was directed to decide the application u/s 21 of the Act in accordance with law. The Court has therefore held that unless and until the application u/s 21 of the Act is decided in accordance with law, all proceedings initiated by the competent authority of taking possession u/s 10(2) of the Act are illegal and bad in law.

16. Mr. Patel has further submitted that the alleged possession taken over by the respondent authorities is not in accordance with the statutory provision. As per the provisions contained in Section 10(5) of the Act, the possession was to be taken within one month by calling a person after issuing the notice u/s 10(5). The notice was issued on 15.02.1984 and the alleged possession was taken on 11.07.1984. It is, therefore, submitted that the possession was admittedly taken after the expiry of 30 days. In this connection, Mr. Patel has relied on the decision of this Court in LPA No. 498 and 699 of 1995 decided on 04.10.2001.

17. Mr. Patel has further submitted that the Tribunal has rightly condoned the delay of 14 years as there was basic infirmity in the order passed by the competent authority and directions given by the Tribunal in earlier order were not

complied with while deciding the matter afresh and in this view of the matter, the remand order passed by the Tribunal was quite justified and the same cannot be assailed on the ground that it was passed in an appeal after the expiry of 14 years. In this connection, he relied on the decision of this Court in the case of **Rajesh BHIKHABHAI PATEL AND ANOTHER V/S. STATE OF GUJARAT AND OTHERS** (3) G.L.R. 2520 wherein this Court has held that the time for filing the appeal will run from the date of the knowledge of the impugned order to the respondent Nos.1 and 2 and not from the date of the order of the competent authority. Since the order of the competent authority was not communicated to the respondent Nos.1 and 2, they were justified in filing the appeal after the said order came to their knowledge. The Court has, therefore, held that the Tribunal was justified in condoning the delay in filing the appeal. In this case, it was further held that since the competent authority did not proceed to act in accordance with the judgment of the Tribunal dtd. 10.12.1998, and thereafter, the act was repealed with effect from 30.03.1999, it will be deemed that there was no declaration of surplus land. Consequently, the petitioners are entitled to restore possession of surplus land.

18. Lastly, Mr. Patel has submitted that in Form No. 1 filed by late Ranchhodbhai, it was specifically mentioned on page 5 that the said Ranchhodbhai was having major son on the date when the ULC Act has come into force. The said aspect was not taken into consideration by the competent authority and no separate unit was allotted to them. The order is, therefore, absolutely illegal and contrary to the provisions contained in the Act.

19. On the basis of the aforesaid submissions, Mr. Patel has strongly submitted that the present petition filed by the State Government does not inspire any confidence and the order passed by the ULC Tribunal remanding the matter to the competent authority does not call for any interference by this Court. Since the State Government has not taken any action after the Tribunal has passed the impugned order and in the meanwhile, the ULC repealed Act has come into force, the possession was ordered to be restored to the petitioner, as the alleged possession was not validly taken and the same action of the State Government was void-ab-initio and contrary to the relevant statutory provisions. For this proposition, he relied on the decision of the Hon"ble Supreme Court in the case of **SMT. ANGURIDEVI V/S. STATE OF UP AND OTHERS AIR 2001 SCW 5128** wherein it is held that u/s 4 of the Repealed Act, all proceedings under the Act must be held to be abated. Even the Division Bench of this Court in LPA Nos.498 and 699 of 1995 has held that as possession of the plots in question has not been taken in accordance with law, the petitioners or their successors in title are deemed to be in possession of the plots in question. Even in the case of **RAJESH BHIKHABHAI PATEL V/S. STATE OF GUJARAT AND OTHERS (SUPRA)**, it is observed that since the judgment of the competent authority was set aside and the matter was remanded, it will be deemed that fresh proceedings should have been taken by the competent authority, and even if possession was taken prior to that by the State Government, it is of no consequence. It was further held

that the entire action of taking possession was not in accordance with law and such deliberate possession cannot be considered as delivery of possession in accordance with law.

20. I have considered the submissions made by the learned advocates for the respective parties and I have also considered the relevant pleadings of the parties. I have also gone through the documents produced along with the petition as well as Affidavit-in-reply and the rejoinder affidavit. The authorities cited by both the sides were also perused and taken into consideration. On due consideration of the facts of the entire case in the light of the legal position as emerged from the pleadings of the parties, this Court is of the view that though the Urban Land Ceiling Tribunal has entertained the application filed by the present respondent after the expiry of the period of more than 14 years, which may not be held to be justified by this Court in the normal circumstances, the Court is not inclined to interfere in the said order looking to the peculiar facts and circumstances of the case. This Court has found that the present petition is filed by the State after the expiry of the period of about two years. Pursuant to the remand order passed by the Tribunal, the Competent Authority has not taken any action for adjudication of the rights of the parties nor the said order was sought to be challenged before this Court immediately. The Govt. machinery was put into motion only when the Urban Land (Ceiling and Regulation) Repealed Act has come into force with effect from 03.03.1999. It is also found that Late Shri Ranchhodbhai has filed an application u/s 20 of the ULC Act seeking exemption and since there is nothing on record showing that the said application was disposed of by the Competent Authority, all subsequent actions taken without disposal of the said application cannot be held to be justified in view of the decision taken by this Court. There is also found that pursuant to the earlier remand order passed by the Tribunal, the legal heirs were not heard nor they were aware about the order passed by the Competent Authority and after having taken into consideration this aspect of the matter, the Tribunal has entertained the application filed by the respondents even after the expiry of period of 14 years. The contention of the State that at the time when the ULC Act has come into force there was no major Son and hence, only one unit was granted and the rest of land was declared to be excess, was also not found to be correct in view of the fact that in Form No. I itself the name of the Major Son was disclosed. In view of the decision of the Hon'ble Supreme Court in the case of LARSEN & TUBRO LTD. V/S. STATE OF GUJARAT AND OTHERS (SUPRA), it is true that the affidavits filed by the Panchas in the High Court containing contrary statements should not be given much weightage, but it is equally true that in that decision, there were revenue entries too and in that context, the Hon'ble Supreme Court has held that inspite of the Panchnama and the revenue records, the High Court's conclusion that actual physical possession of the land was not taken over by the State was not correct. In the case on hand, the State's contention that the possession was already taken over does not inspire any confidence of the Court for the reasons that the revenue entries show the names of the original

owners all through out upto 1999. The Panchas have filed the affidavit to the effect that they have not gone to the site when the Panchnama was drawn. The contention of the State that after taking over the possession of the land, the same was divided into sub-plots and was allotted to 133 persons was also not found to be correct as some of the allottees have filed the affidavit to the effect that the possession was not handedover to them. In light of this evidence which have come on record, it is difficult to believe that the possession was taken over by the State and the land was allotted to the needy persons u/s 23 of the ULC Act. Since the State has failed to take any action pursuant to the remand order passed by the Tribunal, till the Repealed Act has come into force, it is not open for the State to challenge the said order before this Court after coming into force of the Repealed Act and contend that the possession was already taken over. Mr. Patel has rightly pointed out, on the basis of the judgment in the case of RAJESH BHIKHABHAI PATEL V/S. STATE OF GUJARAT AND OTHERS (SUPRA) that since the order of the Competent Authority was set aside and the matter was remanded by the Tribunal, it will be deemed that fresh proceedings should have been taken by the Competent Authority and evenif possession was taken prior to that by the State Government, it is of no consequence.

21. Taking over all view of the matter and considering the peculiar facts and circumstances of the case, the Court does not see any reason to interfere in the order passed by the Tribunal. The petition is, therefore dismissed. Rule discharged without any order as to costs.