
(2014) 08 GUJ CK 0100

In the Gujarat High Court

Case No : Special Civil Application No. 404 of 1996 and Special Civil Application No. 405 of 1996

State of Gujarat

APPELLANT

Vs

Popat Jadav Patel Decd. and Others

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 08 GUJ CK 0100

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Bharat Vyas, A.G.P, Advocates for the Appellant; N.K. Majmudar and Vimal M. Patel, Advocates for the Respondent

Judgement

Rajesh H. Shukla, J.—The present petitions are filed by the petitioner-State for the prayers that, the impugned order passed by the Urban Land Ceiling Tribunal At Ahmedabad in Appeal Nos. 20/1993 & 64/1994 respectively produced at Annexure-A in both petitions may be quashed and set aside on the grounds stated in the memo of petition.

2. Learned AGP Shri Vyas referred to the papers and the additional affidavit filed on behalf of the petitioners. He submitted that form No. 6 produced with the additional affidavit clearly suggests that it was claimed to be an independent land and entire basis to claim it as an HUF property is erroneous. He has referred to the papers and also the notice dated 30.04.1984 under Section 10(5) of the Act and the draft statement has also been sent to the respondent, Popat Jadav, which was received as per the RPAD acknowledgment. It was submitted that the notice has been served regarding the declaration and surplus land and notice under Section 10(5) of the Act is also served. He has also submitted that the panchnama regarding taking over the possession is also produced. Learned AGP, Shri Vyas therefore submitted that it would suggest that the possession of the land in question has been taken over. He therefore submitted that the impugned

order passed by the Tribunal is erroneous. Learned AGP Shri Vyas has also submitted that the possession is taken over in November, 1992 and possession has been taken, for which, notice under Section 10(1) of the Act issued on April, 1982 produced at Annexure-IV of Special Civil Application No. 404/1996. Learned AGP Shri Vyas submitted that as the possession has been handed over, notice under Section 10(6) of the Act would not be relevance. Therefore, the Tribunal after 12 years has set aside the order of the competent authority, which is bad in law. Learned AGP Shri Vyas submitted that there is no application for condonation of delay and, therefore, delay could not have been condoned without any such application. He submitted that such a gross delay could not have been condoned without providing the opportunity of hearing. Learned AGP Shri Vyas submitted that the Tribunal ought not to have exercised such jurisdiction in such a fashion and, therefore, it requires to be quashed and set aside. Learned AGP Shri Vyas submitted that there is no evidence on record and in fact, form No. 6 does not reflect that it was an HUF property.

3. Learned AGP Shri Vyas submitted that at the most, the Tribunal could have set aside the order passed by the competent authority and could have remanded the matter back to the competent authority but it could not have itself decided the matter and thereby has committed jurisdictional error.

4. Learned AGP Shri Vyas submitted that once the land has been vested in the Government, the person has no right, title, interest. In support of his submission, he has referred to and relied upon the judgment of the Hon"ble Apex Court in case of Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, . He has referred to and relied upon the judgment of the Hon"ble Apex Court in case of State of U.P. Vs. Hari Ram, .

5. Per contra, learned advocate, Shri Majmudar referred to the papers and submitted that the rojkam for taking over the possession, which is shown at page Nos. 94 of Special Civil Application No. 404/1996 is of the year 1999/1997, is not legible. He therefore submitted that in respect of the notice given under Section 10(5) of the Act in or around 1983-84, the possession is sought to be taken over in the year 1997, which itself suggest that the possession has not been taken over. He emphasized that there is no clear evidence that the actual physical possession has been taken over by the Government before the Repealed Act came into force. He submitted that if the notice is issued in 1984 and the possession is not taken over in 1993 or 1997 then, it raises doubt as to whether actual physical possession has been taken over or it was merely a paper possession. He submitted that even the notice under Section 10(5) of the Act refers to the fact that the Government has right of taking over the possession on the basis of the notice under Section 10(5) of the Act after the period is over. Learned advocate, Shri Majmudar submitted that when the notice provides that the possession could be taken over within 30 days, there is no explanation as to delay for all such long years in taking the possession. Learned advocate, Shri Majmudar submitted that even if it is not taking over the possession after the

notice, it could have been taken within reasonable time. He submitted that what could be a reasonable period could be considered by the courts and if the possession is not taken over within reasonable period after the issuance of the notice in or around 1983-84, it would lapse and there is no fresh notice before taking over the possession. Learned advocate, Shri Kapadia therefore submitted that if the possession is not taken as provided in the notice within a reasonable period, after 15 days, consequence would follow. He has also referred to the rojkam and other papers. Learned advocate, Shri Majmudar submitted that once the Tribunal has rightly or wrongly allowed the appeal, the order and the notification have been set aside and denovo publication would be required. He has also referred to and relied upon the judgment in case of Bharatkumar Lalbhai Vasa and Others Vs. State of Gujarat and Others .

6. In view of these rival submissions, it is required to be considered whether the present petition can be entertained and the order passed by the Tribunal could be sustained.

7. As it transpires from the record, particularly, additional affidavit, basis for the submission made by learned AGP Shri Vyas requires a close scrutiny. Admittedly, the notices under Section 10(5) of the Act have been issued in or about year 1983-84 and the possession is claimed to have been taken much thereafter in the year 1997. There is no justification or explanation for such delay. Therefore, the moot question is whether the possession is taken over pursuant to such notice issued way back in the year 1983-84 or not. Law in this aspect has been very well settled that if the actual physical possession is not taken over when the Repealed Act came into force with effect from 18.03.1999 then, the petitioners would have the benefit of such Repeat Act as the proceedings would stand abated.

8. Again at the time of taking over possession, whether the procedure as required under the Act has been followed or not. The possession is not handed over voluntarily and, therefore, when the possession is claimed to have been taken over as per the notice under Section 10(5) or 10(6) in purported exercise of powers, it has to be shown that the notice under Section 10(5) of the Act was issued and when the original owner failed to comply with the notice regarding the handing over the possession, the notice under Section 10(6) of the Act has been issued and, thereafter, the possession has been taken over by the Government. There is no such record and in fact, admittedly no notice under Section 10(6) of the Act is issued. Therefore, considering the broad guidelines laid down by the Hon"ble Apex Court including the observations made by the Hon"ble Apex Court in case of Hari Ram (supra), wherein it has been observed.

"Requirement of giving notice under Sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of

non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

9. Again word "vest" has also been considered with reference to the provisions of the Act. Again referring to the scheme of the Act, the observations have been made for interpreting the statute of the object as well as interpreting such provisions of law. Further, it has been clearly provided that if the owner does not hand over the vacant and peaceful possession in compliance with the notice under Section 10(5) of the Act, the provision of Section 10(6) of the Act could be resorted for taking over the possession forcefully. However at that stage, the notice as required under Section 10(6) of the Act has to be served and, thereafter, the possession could be taken over. Admittedly, there is no such procedure followed.

10. This aspect is also required to be considered in background of the development of facts and the fact that the notice is said to have been issued in the year 1983-84 and on the basis of such, possession is claimed to have been taken over after long years in 1993-97. Thus, even after the notice, it has not been followed up. There is nothing on record go suggest that after the period expire as per the notice under Section 10(5) of the Act, steps have been taken by the Government. It is also not evident that the respondent-original owner has handed over the possession voluntarily in compliance with the notice under Section 10(5) of the Act. Therefore, it is at this stage, it has to be examined whether on non-compliance with the notice under Section 10(5) of the Act, the Government can take possession after following procedure including the notice under Section 10(6) of the Act. This aspect has not been considered and the Tribunal having relied upon this aspect has referred to the same though it may not have given a detailed reason or cogent reasons. It is required to be mentioned that as per Law declared by the Apex Court as stated above, the possession could be taken over after the land is declared surplus in the manner provided in the statute. Therefore, the stages as well as notice as required under Section 10(5) of the Act is required to be issued after such notice and when the original owner fails to comply with the same, the powers could be exercised for taking over the possession by the panchnama after the service of notice under Section 19(6) of the Act. In the facts of the case, admittedly there is no such notice issued under Section 10(6) of the Act. The aspect of delay has also some relevance but even after the delay, when the exercise of powers are inconsonance with the broad guidelines laid down by the Hon"ble Apex Court, it cannot be said to be erroneous, which would call for any interference in the present petition under Articles 226 and 227 of the Constitution of India.

11. As rightly submitted by learned advocate, Shri Majmudar, when there is no justification for the delayed exercise of the discretion after the notice is issued in or about 1983-84, the Tribunal is bound to consider the same. The notice has to be implemented within a reasonable period, particularly, when it provides for the

time period and if it is not given effect to for a long period, it could not be revived at any time. In fact, the Hon''ble Apex Court has made observations with regard to the reasonable period or exercise of power within a reasonable period. Similarly, the Hon''ble Division Bench in a judgment in case of in a judgment in case of Chandulal Gordhandas Ranodriya and Others Vs. State of Gujarat and Others, has also made observations with regard to the exercise of power within reasonable period. Though in this judgment, reference is made to exercise of powers within reasonable period, same analogy would be applicable for the exercise of powers for implementation of the notice or statutory notice, which is sought to be implemented. Therefore any such notice, which is said to have been implemented, cannot be readily accepted.

12. Therefore having regard to the background of the facts, as stated above, the present petition cannot be entertained and deserves to be dismissed and accordingly stands dismissed.