

(1997) 05 GUJ CK 0005
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Urban Land Tribunal

RESPONDENT

Date of Decision : 06-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2(g), 33, 34, 8(1), 8(3)

Citation : (1998) 1 GLR 56

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Judgement

D.G. Karia, J.—The State of Gujarat has questioned the legality and validity of the order passed by the Urban Land Tribunal and Ex-Officio Secretary, Revenue Department, Gujarat State, Ahmedabad, on 17th September 1993 in Appeal No. Ahmedabad - 68 of 1993. By the impugned order, the Tribunal allowed the appeal u/s 33 of the Urban Land Ceiling and Regulation Act, 1976 (for short "the Act") and thereby quashed the order of the Competent Authority dated 23rd March 1993. The Competent Authority, by the said order, had held that the second respondent held more land than the ceiling limit prescribed under the Act.

2. The relevant facts giving rise to the present petition is stated as follows: The second respondent submitted a statement before the Competent Authority under the Act. The necessary notice u/s 8(1) of the Act was thereafter issued and the draft statement as required u/s 8(3) of the Act was served on the second respondent. By the order dated 17th July 1987 final statement as per the details set out in the order was ordered to be issued holding that the total land admeasuring 6,621 sq. mts. was surplus.

3. In view of the aforesaid facts and position, the Competent Authority declared the land admeasuring 5,619.98 sq.mts. as surplus land. The second respondent, therefore, filed appeal before the Urban Land Tribunal u/s 33 of the Act. By the order dated 8th June 1989, the Tribunal remanded the matter to the Competent Authority for fresh decision after giving opportunity of being heard to the second

respondent. The Competent Authority again passed the order on 30th April 1990 on which the Government reviewed the matter u/s 34 of the Act and remanded the matter to the Competent Authority as per the order dated 24th November 1992. The Competent Authority again passed the order dated 15th March 1993 declaring the land admeasuring 1,677.23 sq.mts. as surplus land. The notice u/s 9 of the Act was, therefore, issued and final statement was received by the declarant on 14th May 1993.

4. The second respondent being aggrieved by the aforesaid order declaring the land surplus, preferred appeal u/s 33 of the Act. The Tribunal allowed the appeal on 17th September 1993 holding, inter alia, that the Competent Authority did not consider and appreciate the relevant documentary evidence on record showing that there was construction on the land in question and the constructed land of 764.0 sq.mts. was not taken into consideration and as such the land cannot be said to be a vacant land within the meaning of Section 2(g) of the Act. The State has preferred the present Special civil Application on 8th January 1996 against the aforesaid judgment of the Tribunal pronounced on 17th September 1993.

5. The preliminary objection raised on behalf of the second respondent is that there is inordinate delay in filing the petition on 8th January 1996 against the order dated 17th September 1993. There is no explanation indicating sufficient cause for filing the petition late. The second respondent sold the land to the third respondent somewhere in December 1994 and the possession of the land was handed over to the third respondent in January 1996. Thus, the equity has been created in favour of the third respondent during the pendency of the aforesaid petition which was preferred quite late. It is a settled law that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The present petition is barred by delay and laches. The petitioner, therefore, cannot be permitted to resort to the extraordinary remedy under the writ jurisdiction for the reasons that it is likely to cause confusion and public inconvenience. The right of the third respondent has intervened in this case as the third respondent having purchased the land has started to make construction on the land in question. Thus, the unexplained delay on the part of the petitioner coupled with the creation of third party rights in the meanwhile is an important factor which would weigh with the Court in deciding whether or not to exercise such jurisdiction. In the instant case, there is considerable delay on the part of the petitioner in filing the petition and in the intervening period third respondent acquired the land, constructed houses thereon. These circumstances would be sufficient to dismiss the petition.

6. Considering the merits of the case Mr. Bambhania, learned Advocate

appearing for the petitioner-State has not been able to show as to how the impugned judgment of the Tribunal is illegal or that there is error apparent on the face of it. What is contended by Mr. Bambhania is that the Tribunal should have remanded the matter if the Competent Authority failed to consider some of the documents showing that there was construction on the land. I see no merit in the submission of Mr. Bambhania as the Tribunal having examined the documents on record and having satisfied that the land in question cannot be said to be an open land in view of the construction thereon could very well pass the order quashing the order of the Competent Authority.

7. It is the case of the second respondent that subsequent to passing the impugned order by the Tribunal, many steps were taken by the second respondent in respect of the land in question and the interest of the third respondent has been created before filing of the petition. The said agreement between the second and third respondent in regard to the land in question was executed on 13th December 1994. Pursuant to the said agreement for sale, the appropriate authority u/s 269 U.L. (3) of Income Tax Act, 1961, issued the certificate of No Objection to transfer the property for consideration of Rs. 1.20.00.000- as per his order dated 13th March 1995. Thereafter the supplementary agreement dated 9th December 1995 came to be executed and pursuant to which the land has been handed over to the third respondent-Society. In view of these facts and circumstances of the case and particularly the equity having been created in favour of the third respondent during the pendency of the proceedings, such inordinate delay cannot be viewed lightly. The petition is liable to be rejected on this ground alone.

8. As observed hereinabove, no illegality has been shown in the impugned judgment so as to enable this Court to exercise its extraordinary jurisdiction to interfere with the impugned judgment and order of the Tribunal. The Tribunal has recorded the clear finding that the second respondent held the land admeasuring 692.91 sq.mts. It is less than the prescribed ceiling and as such the proceedings of Form No. 1 filled in by the second respondent was liable to be closed. Having considered the impugned judgment, there is no illegality nor any error apparent on the face of the record. The petition is therefore, liable to be rejected.

In the result, the petition is dismissed. Rule is discharged with costs.