

(1995) 08 GUJ CK 0014

In the Gujarat High Court

Case No : Spl. Civil Application No. 13315 of 1994

Sushilaben Rameschandra Doshi and Others

APPELLANT

Vs

Competent Officer and Addl. Collector, Urban Land Ceiling,
Rajkot

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 8(2)
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21, 21(1)
Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 11

Citation : AIR 1996 Guj 117 : (1995) 2 GLR 1599

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

**Advocate : S.M. Shah, for the Appellant; Tushar H. Sompura, Asst. Govt.
Pleader, for the Respondent**

Final Decision : Dismissed

Judgement

R.K. Abichandani, J.—The petitioners who are the co-owners of the lands in question have challenged the orders at Annexure "C" and "E" to the petition passed by the Competent Authority and confirmed by the appellate Tribunal rejecting the application of the petitioners which was made u/s 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the said Act"), for sanctioning the scheme on the ground that the application was made much beyond the time limit of 1139 days prescribed by Rule 11 of the Rules framed under the said Act.

2. The petitioners had earlier applied for exemption u/s 20 of the said Act which was granted on 25-2-1978 by the State Government, but was withdrawn on 5-6-1986. Thereafter, the petitioners made an application on 5th July, 1990 for sanction of a scheme for weaker section over the land in question under the provisions of Section 21 of the said Act. An application for condonation of delay

was made as the declaration for the proposed scheme was not made in the prescribed time.

3. It was contended on behalf of the petitioners by the learned Counsel that under the provisions of the said Act or the Rules framed thereunder there was no specific provision that the application u/s 21(1) should be rejected and should not be considered if it is filed beyond the prescribed time limit. It was argued that u/s 3 of the Limitation Act, 1963 it was provided that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. He submitted that whenever the legislature did not want the matter to be considered beyond the prescribed period of limitation, it was provided as has been done u/s 3 of the Limitation Act, that such matter should be dismissed if filed after the prescribed period. It was further contended that the provision prescribing time limit under Rule 11 of the Rules framed under the said Act was only directory and not mandatory and therefore, it was open to the authorities to condone the delay in making of an application u/s 21(1) of the said Act. Reliance was placed on a decision of this Court in *Madha Lala Patel v. State of Gujarat*, ratio of which is reported in XXII Guj LT 1980 (Special Civil Application No. 1045 of 1978 decided on 5th Oct. 1979 by Hon"ble Mr. Justice A.N. Surti), in which it was held in context of the provisions of the Gujarat Agricultural Lands Ceiling Act that by virtue of Section 29(2) of the Limitation Act, 1963, the provisions of Sections 4 to 24 were applicable in respect of the applications made u/s 8(2) of the Gujarat Agricultural Lands Ceiling Act, 1960 read with Rule 5 of the Rules framed thereunder which prescribed the period of six months for the purpose of making the application. It was observed that the application of Sections 4 to 24 was not expressly excluded under those Rules.

4. Section 21(1) of the said Act enables holder of any vacant land in excess of the ceiling limit, to declare within such time in such form and in such manner as may be prescribed, before the competent authority that such land is to be utilised for construction of dwelling units for the accommodation of the weaker sections of the society in accordance with any approved scheme.

5. As provided by Rule 11 proviso (b) where any vacant land exempted u/s 20(1) ceases to be so exempted, the declaration referred to u/s 21(1) is required to be filed within 1139 days from the date on which such vacant land ceases to be so exempted. Neither the Act nor the Rules provide for condonation of delay in making as declaration u/s 21(1). Fixation of a specific time limit for filing a declaration u/s 21(1) clearly implies that a declaration made beyond the prescribed time cannot be taken into consideration. This would be so even in absence of a specific provision like Section 3 of the Limitation Act which requires a suit, appeal or an application after the prescribed period to be dismissed. The power u/s 21(1) can be exercised by the competent authority only when the declaration is made within the prescribed time. In Rule 11 of the Rules the words "declaration shall be made within 1139 days from" clearly indicate that

the prescription of time limit is not merely directory but is mandatory and therefore, the competent authority cannot take into consideration any declaration which is made beyond the prescribed time.

6. The contention that the provisions of Sections 4 to 24 of the Limitation Act should be invoked in context of the filing of declaration u/s 21(1) by virtue of Section 29(2) thereof and it should be held that the competent authority can condone delay in the making of a declaration u/s 21(1) read with Rule 11 runs counter to the settled legal position that the provisions of Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than the Courts, such as quasi-judicial Tribunals or Executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the CPC or Code of Criminal Procedure. In *Smt. Sushila Devi v. Ramanandan Prasad* reported in AIR 1976 SC 117 it was held by the Supreme Court that Section 5 of the Limitation Act, 1963 empowering the Courts to condone delay in preferring an appeal or an application was not applicable to an application made to the Collector under the provisions of (A) Kosi Area (Restoration of Lands of Raiyats) Act, 1951 because the Collector to whom the application was to be made was not a court. It was held that the High Court misdirected itself in referring to Section 5 of the Limitation Act in that context. A Full Bench of this Court in *Memon Ibrahim Haji Latif Sukhediwala Vs. Officer on Special Duty (Land Acquisition) and Another*, in context of the powers of the Collector u/s 18 of the Land Acquisition Act held that the Collector was not a Court and the provisions of the Limitation Act, 1963 applied only to proceedings in Courts and not do appeals or applications before the bodies other than Courts. It is therefore, clear that the competent authority not being a Court cannot by virtue of the provisions of Section 29(2) of the Limitation Act resort to Section 5 thereof for condoning any delay in filing of a declaration u/s 21(1) of the said Act. In *Puriben Manilal Patel (Decd.) through her Heirs Pramilaben Madhubhai Patel and Others Vs. Competent Authority and Addl. Collector, (U.L.C.) and Others*, it was in terms held that from the perusal of the provisions of Rule 1) it becomes clear that a declaration u/s 21(1) is required to be made by a person holding vacant land within 1139 days from the commencement of the Act.

7. The learned Counsel for the petitioner however, referred to a decision of the learned single Judge of this Court (Hon"ble Mr. Justice A.N. Surti) in Special Civil Application No. 1045 of 1978 decided on 5th October, 1979 in *Madha Lala Patel v. State of Gujarat* (17 GLT 1980) pointing out that in context of an application u/s 8(2) of the Gujarat Agricultural Lands Ceiling Act, 1960, it was held that "by virtue of Section 29(2) of the Limitation Act it is clear that in the instant case the provisions of Sections 4 to 24 shall apply". Under Rule 5 of the Rules framed under the Gujarat Agricultural Lands Ceiling Act it was provided that the application u/s 8(2) shall be made within six months from the appointed day or as, the case may be specified date in form I. The application was however, submitted beyond the period of limitation prescribed under the said Rule and

consequently was rejected by the Deputy Collector (Ceiling) on that ground holding that there was no provision for condonation of delay. Referring to the provisions of Section 29(2) of the Limitation Act the Hon"ble single Judge held that on its plain reading it was clear that the provisions of Sections 4 to 24 applied to the case before the Court and therefore, delay could be condoned by the Deputy Collector (Ceiling) in entertaining application u/s 8(2) of that Act even though Rule 5 prescribed six months time limit without making any provision for condonation of delay. The ratio of this decision is with respect, diametrically opposite to the ratio of the decisions of the Supreme Court culled out in paragraph 12 of the Judgment of the Full Bench in Memon Ibrahim (1994 (35) I Guj LR 296) (supra) in the following terms:--

"Broadly speaking from the analysis of the principles settled by the pronouncements of the Apex Court, they can be summarised as follows :--

(i) The provisions of the Limitation Act, 1963 do not, by themselves apply to quasi-judicial Tribunals of Executive Authorities;

(ii) The provisions of Limitation Act, 1963 apply only to Courts governed by the Codes of Civil or Criminal Procedure"

8. The decision of the learned single Judge in Madha Lala Patel (17 Guj LT 1980) (supra) in so far as it lays down the proposition that on a plain reading of Section 29(2) of the Limitation Act 1963, the provisions of Sections 4 to 24 were applicable enabling the Deputy Collector (Ceiling) to condone delay in filing of an application u/s 8(2) of that Act though it was filed beyond the period of limitation prescribed under Rule 5(2) of the Rules framed under that Act, being contrary to what is laid down by the Full Bench in Memon Ibrahim (supra) therefore stands impliedly overruled.

9. It was submitted by the learned counsel for the petitioner that if this Court is taking a view different from a view taken by the Hon"ble Mr. Justice A.N. Surti in Madha Lala v. State of Gujarat (17 GLT 1980) (supra) then the proper course for this court would be to refer the matter to a larger Bench. In support of his submission he relied upon a case in Somabhal Madhavbhai v. New Shorrock, reported in 1983 GLH 273 in which the Supreme Court had laid down that it was not open to a single Judge to reject the ratio of another single Judge of the same High Court by merely saying that attention of that single Judge was not invited to the decision of the Supreme Court which may have an impact on the point under examination. There can be no dispute about this proposition that a decision of a single Judge of a Court is binding on another single Judge in a later case. In the present case however, the decision of the learned single Judge in Madha Lala's case (17 GLT 1980) is impliedly overruled by the decision of the Full Bench of this Court in Memon Ibrahim Haji Latif Sukhediwala Vs. Officer on Special Duty (Land Acquisition) and Another, . Therefore, when a decision of the single Judge stands overruled by a later decision of the larger Bench or of the Supreme Court, then there remains nothing to be followed or which can be said to be binding on

a single Judge deciding the matter at a later point of time. A decision which is expressly or impliedly overruled by a larger Bench or a higher forum cannot be said to be laying down any ratio decidendi which is required to be followed in a later case. This is not a case where a different view is being taken from any view expressed by the learned single Judge earlier, but this is a case where the view which was expressed by the learned single Judge no longer remains valid, having been impliedly overruled by the Full Bench of this Court. This Court as a single Judge is bound to follow the law laid down by the Full Bench as also the law laid down by the Supreme Court, "the ratio of which the been pithily stated in the judgment of the Full Bench in Memon Ibrahim (supra). When a single Judge is faced with earlier decision of a single Judge which is manifestly inconsistent with the later decision of a larger Bench or a higher Court. I incline to think that it should apply the law laid down by the larger Bench or the higher Court and refuse to follow the erroneous decision which has been overruled expressly or impliedly. The prerogative of overruling a case is primarily that of the higher Court or a larger Bench of the same Court. Therefore, when the Full Bench has in clear terms laid down that the provisions of Sections 4 to 24 of the Limitation Act, 1963 do not apply themselves to quasi-judicial Tribunals or Executive Authorities and they apply to only to Courts governed by the Codes of Civil or Criminal Procedure, there remains no scope for this Court as a single Judge to take any different view of the matter or to take cognizance of a contrary view expressed by the learned single Judge in Madha Lala's case (17 GLT 1980) (supra) which stands impliedly overruled by the decision of the Full Bench. Therefore, the ratio of the decision of the Supreme Court in Somabhai Madhvbhai (1983 GLH 273) (supra) that it is not open to a single Judge to reject the ratio of another single Judge of the same High Court will not apply to a decision of the single Judge, which is expressly or impliedly overruled by the larger Bench. Therefore, there is no question of making any reference to a larger Bench on the ground that a different view is being taken by this Court. As clarified above, this Court is not following any different view but only following the ratio laid down by a Full Bench of this Court, which it is bound to do.

10. In this view of the matter, the impugned decision of the Urban Land Ceiling Tribunal holding that delay in filing a declaration u/s 21(1) of the said Act cannot be condoned in view of the specific period of 1139 days prescribed by Rule 11, cannot be faulted with. The Tribunal has therefore rightly rejected the appeal of the petitioners. This petition is therefore, rejected. Notice is discharged with no order as to costs. Ad interim relief stands vacated.