

(2016) 08 GUJ CK 0096

In the Gujarat High Court

Case No : Special Civil Application No. 11205 of 2000

Urvashiben Kanubhai Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Urban Land (Ceiling And Regulation) Act, 1976 — Section 10(3), Section 10(5)
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3

Citation : (2017) AIRCC 758

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr Nilesh A. Pandya, Advocate, for the Petitioner Nos. 1-3; Ms. Jyoti Bhatt, AGP, for the Respondent No. 1; Rule Served, for the Respondent Nos. 2-3

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J. (Oral)—The petitioners, by way of present petition have sought direction against the respondents not to initiate proceedings for taking over possession of the land bearing Revenue Survey No. 1001/A of Plot No. 1, 2, 5, 6, 7 and Survey No. 1001/B, in all admeasuring 3427 sq. mtrs. in Final Plot No. 87 at village Bapod, Taluka and District Vadodara, and sought further declaration that the respondents have no authority or right to initiate the proceedings under the Urban Land (Ceiling and Regulation), Act, 1976 (hereinafter referred to as "the said Act").

2. In the instant case it appears that the deceased petitioner Urvashiben had filled in form No.1 under Section 6 of the said Act declaring her holdings, which form was processed by the competent authority and Deputy Collector, who vide the order dated 27.07.1983 held that the said petitioner was holding 2428 sq. mtrs of land out of Survey No. 1001/A (Plot No. 1, 2, 5, 6, 7), and 64 sq. mtrs. of land out of Survey No. 1001/B, in all was holding 2492 sq. mtrs. of the land as the excess vacant land. The said petitioner being aggrieved by the said order passed by the competent authority had filed an appeal before the Urban Land

Tribunal under Section 33 of the said Act, who vide the order dated 08.06.1987 dismissed the said appeal, and confirmed the order passed by the competent authority. The said petitioner, therefore, had preferred a Special Civil Application being No. 6030 of 1987 before this Court, which also came to be dismissed vide the order dated 03.04.1989. In the meantime, on 26.06.1987, a notification under Section 10(3) of the said Act, and notice under Section 10(5) was issued on 07.11.1987. It further appears that after the dismissal of the petition by the High Court, the possession of the land declared as excess vacant land, was taken over by the Government on 16.01.1980, and the order in respect of compensation was also passed by the competent authority on 24.09.1993. However, the said petitioner again preferred an appeal before the Tribunal challenging the order dated 27.07.1983 passed by the competent authority on the ground that she was not given choice for selecting suitable piece of land. The Tribunal entertained the said appeal, and remanded the matter to the competent authority directing it to give the said petitioner choice of selection of land as per the prevailing Rules of the TP Scheme. The competent authority passed the order dated 23.03.1999 to the effect that the said petitioner was entitled to retain 1,500 sq. mtrs. of the land out of the Survey No. 1001/A, plot No. 1, 2, 5, 6, 7 (Final Plot No. 87 paiki), and declared 363 sq. mtrs. from Survey No. 1001/A and 1564 sq. mtrs. out of the survey No. 1001/B. Thereafter, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force on 30.03.1999. The petitioner, therefore, filed the present petition seeking declaration that the respondents have no authority to initiate the proceedings under the said Act.

3. The petition has been resisted by the respondents by filing reply, and placing on record the relevant orders including the order passed by the competent authority dated 27.07.1983, the order dated 08.06.1987 passed by the Urban Land Tribunal, and the order dated 03.04.1989 passed by this Court dismissing the Special Civil Application No. 6030 of 1987, which were not produced by the petitioners along with the petition.

4. It was vehemently sought to be submitted by Mr. Nilesh Pandya, learned counsel for the petitioners that the competent authority having passed the order dated 23.03.1999 pursuant to the direction given by the Urban Land Tribunal, vide order dated 20.08.1998 giving the petitioner's selection of land, and thereafter, the said Act having been repealed by the Act of 1999, which came into force on 30.03.1999, the respondents authorities could not have proceeded further under the said Act. The said submission cannot be accepted. It is pertinent to note that the initial order passed by the competent authority on 27.07.1983 declaring 2428 sq. mtrs. of land out of Survey No. 1001/A, Plot No. 1, 2, 5, 6, 7, and 64 sq. mtrs. of land out of survey No. 1001/B, as the excess vacant land was confirmed by the Tribunal vide the order dated 08.06.1987. The said orders of competent authority and the Tribunal were challenged before this Court by the petitioner by filing the Special Civil Application No. 6030 of 1987. The said Special Civil Application was dismissed by this Court vide order dated 03.04.1989. The said order passed by this Court reads as under :

"Authorities below have arrived at the conclusion that Survey No. 1001 is located in residential zone and therefore there is no question of non-application of the Urban Land (Ceiling & Regulation) Act, 1976 on the ground that the said land was situated in Agricultural land and in green belt area. For verification of this finding, record and proceedings of the appellate authority was called for. In the proceedings there is a certificate issued by the Town Planning Officer to the effect that S. No. 1001 was located in residential zone.

In this view of the matter, there is no substance in this matter. Hence, this petition is rejected. Notice discharged. Ad interim relief stands vacated."

5. In spite of the afore stated position, the petitioner Urvashiben again filed the appeal before the Tribunal on 09.05.1997 under Section 33 of the said Act challenging the order dated 27.07.1983 passed by the competent authority on the ground that she was required to be given choice considering the TP scheme which had come into force. Apart from the fact that the said appeal was grossly time barred, and was not maintainable in the eyes of law under Section 33 of the said Act, the Tribunal had committed grave error in ignoring the earlier proceedings as confirmed by the High Court. When the order dated 27.07.1983 passed by the competent authority was confirmed by the Tribunal and also by this Court in the Special Civil Application No. 6030 of 1987, the order of Tribunal remanding the case to the competent authority was in utter disregard of the order passed by this Court in the said Special Civil Application. The issue with regard to the TP scheme having come into force, was already raised by the petitioner Urvashiben in the said Special Civil Application, and not accepted by this Court, and therefore, it was not open to the said petitioner to again file the appeal before the Tribunal challenging the same order of the competent authority under the guise that she was not given choice of land. It was highly improper and illegal on the part of the Tribunal to ignore the order passed by this Court, and to review the order passed by the competent authority which was already confirmed by this Court, and again to direct the competent authority to reconsider the case of the petitioner for giving choice of selection of land. The order of competent authority and of the Tribunal having been confirmed in the Special Civil Application No. 6030 of 1987, all the issues involved in the said proceedings had attained finality, and there was no question of the Tribunal again reopening the case and remanding it to the competent authority. The said order dated 20.08.1998 passed by the Tribunal and subsequent order dated 23.03.1999 passed by the competent authority being illegal and non est in the eyes of law, the petitioners could not take resort to such orders and seek declaration as prayed for in the present petition.

6. It is pertinent to note that when the competent authority passed the order on 27.07.1983 declaring 2428 sq. mtrs of land out of Survey No. 1001/A, and 64 sq. mtrs. out of Survey No. 1001/B, and the said order having been confirmed by the Tribunal as well as by this Court, it was not open for the Tribunal again to revise the said order, more particularly, when the possession of the excess

vacant was already taken over by the State Government after issuing notification under Section 10(3) and the notice under Section 10(5) of the said Act, and drawing panchnama in the presence of panch witnesses.

7. Mr. Pandya, learned counsel for the petitioners has relied upon the decision of the Supreme Court in the case of State of Uttar Pradesh v. Hari Ram reported in 2013 (4) SCC 210, to submit that the land had not vested in the Government under Section 10 (3) of the said Act, and the possession having not been taken under Section 10(5) after following the due process of law, the so called possession, if any, taken by the State Government, could not be said to be valid. The said submission also has no force in view of the latest decision of the Supreme Court in the case of State of Assam v. Bhaskar Jyoti Sarma and Others reported in (2015) 5 SCC 321. The Supreme Court dealing with the issue with regard to challenge of dispossession after the Repeal Act came into force observed as under :

"12. The question, however, is whether actual physical possession of the land in dispute has been taken over in the case at hand by the competent authority or by the State Government or an officer authorised in that behalf by the State Government.

13. The case of the appellant is that actual physical possession of the land was taken over on 7th December, 1991 no matter unilaterally and without notice to the erstwhile land owner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under Article 226 of the constitution, what needs examination is whether the failure of the Government or the authorised officer or the competent authority to issue a notice to the land owners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative.

14. We say so because in the ordinary course actual physical possession can be taken from the person in occupation only after notice under Section 10(5) is issued to him to surrender such possession to the State Government, or the authorised officer or the competent authority. There is enough good sense in that procedure inasmuch as the need for using force to dispossess a person in possession should ordinarily arise only if the person concerned refuses to cooperate and surrender or deliver possession of the lands in question. That is the rationale behind Sections 10(5) and 10(6) of the Act. But what would be the position if for any reason the competent authority or the Government or the authorised officer resorts to forcible dispossession of the erstwhile owner even without exploring the possibility of a voluntary surrender or delivery of such possession on demand. Could such use of force vitiate the dispossession itself or would it only amount to an irregularity that would give rise to a cause of action for the aggrieved owner or the person in possession to seek restoration only to

be dispossessed again after issuing a notice to him. It is this aspect that has to an extent bothered us.

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without

notice would vitiate the act of dispossession itself or render it non est in the eye of law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarmaerstwhile owner had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so."

8. In the instant case, the possession of the excess vacant land having been already taken over by the State Government after following the due process of law, after issuing the notification under Section 10(3) of the said Act, and the notice under Section 10(5) and the same having remained unchallenged till the Repeal Act came into force, it was not open for the petitioners to raise the dispute in the present petition that the possession of excess vacant land taken over by the State Government was not in accordance with law.

9. In that view of the matter, the Court does not find any substance in the present petition. The petition, therefore, is dismissed. The request of Mr. Pandya, learned counsel for the petitioners to continue the interim relief for some time to enable the petitioners to approach the higher Forum, is rejected for the reasons stated above.

10. Interim relief, if any, stands vacated forthwith. Rule is discharged.