
(2008) 12 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 2836 of 1997

Vijaygauri Bhatt and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 11
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 3(1), 4
Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 5

Citation : (2009) 2 GLR 952

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : A.J. Patel, for Petitioner Nos. 1 to 6, 6.2.1, 6.2.2, 6.2.3, 6.2.4 and 8, for the Appellant; Maithili Mehta, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition has been preferred challenging the action of respondent competent authority as confirmed by the Urban Land Tribunal under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act).

2. The facts which are not in dispute are that one deceased Vishnuprasad Nathalal Bhatt filed Form No. 1 as required under the provisions of Section 6(1) of the Act on 13-8-1976. Though, the said statement was relatable to 12 different properties, the dispute for the present is only in relation to land bearing Survey No. 692/1, admeasuring 6880 sq.mtrs. of Naroda Taluka City District Ahmedabad. The competent authority forwarded draft statement with notice u/s 8(3) of the Act to deceased Vishnuprasad Nathalal Bhatt and objections thereof were filed on 3-12-1992. After hearing the said gentleman, the competent authority made an order u/s 8(4) of the Act on 27-1-1988 declaring the land admeasuring 6649 sq. mtrs. of land as excess vacant land. Subsequently, the competent authority followed this up by issuing final statement u/s 9 of the Act

on 6-2-1988, notification u/s 10(1) of the Act on 29-2-1988 and the same was published in the Gazette on 28-4-1988.

3. The petitioners carried the matter in appeal before the Urban Land Tribunal (the Tribunal) being Appeal No. 164 of 1988. The said appeal came to be dismissed vide order dated 25-4-1990. It is at this stage that the petitioners have approached this Court raising following three questions:

(1) Whether the authorities below are right in not considering the property bearing Survey No. 692/1, admeasuring 692/1, admeasuring 6880 sq.mtrs. of Naroda, Taluka City, District Ahmedabad as ancestral property?

(2) Whether the authorities below are right in law in including the properties bearing Survey Nos. 1137, 1137/2, 1137/1, 1116/B, 1140 and 1140/B of village Naroda, Taluka City, District Ahmedabad which were constructed long before 1976 in the holdings of the petitioners?

(3) Whether the authorities below committed an error in ignoring the documentary evidence on record which clearly proved the nature of the holding of the properties in the hands of deceased Vishnuprasad as ancestral properties and not as his self-acquired properties?

4. On behalf of the petitioners learned Advocate submitted that the Tribunal and the competent authority have failed to appreciate that the land was ancestral land and other brothers had an interest in the said land. That the said fact was clearly shown in the Form No. 1 filed before the competent authority, and therefore, only deceased Vishnuprasad Nathalal Bhatt could not have been held to be the land owner for the purposes of working out excess vacant land. It was submitted that in fact the competent authority had failed to comply with requirements of Section 8(3) of the Act read with the Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules), more particularly Rule 5 of the Rules which specifically enjoined upon the competent authority to issue notice envisaged by Section 8(3) of the Act to all interested persons. That the reliance by the Tribunal on subsequent entries in the record of rights, namely, Entry No. 9696 dated 5-9-1996 was unwarranted because the competent authority was required to ascertain the position as on the date when the Act came into force viz. 17-2-1976 when the property was jointly held by all the persons. Subsequent relinquishment of shares by some of the others could not be made basis by the competent authority and the Tribunal to hold that there was excess vacant land.

5. Referring to the provisions of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (the Repeal Act), it was submitted that as laid down by Division Bench of this Court in the case of Rameshchandra Shamjibhai Raniga v. State of Gujarat and Ors. 2000 (4) GLR 2777 the High Court was entitled to look into validity of the proceedings under the Act despite the Act having been repealed w.e.f. 30-3-1999, and therefore, the petition was not only maintainable but was required to be allowed.

6. On behalf of the respondents learned Assistant Government Pleader has placed reliance on Entry No. 9696 dated 5-9-1996 appearing in Form No. 6 to submit that on the date when the competent authority made the order the position was that all other persons had relinquished their share in favour of deceased Vishnuprasad Nathalal Bhatt, and therefore, the competent authority was justified in considering the said aspect while determining the excess vacant land. It was further submitted that in fact pursuant to the order made by the competent authority not only possession of the land in question had been taken over, but the said land had been parted with in favour of Gujarat Housing Board as required by Section 23 of the Act and Gujarat Housing Board has put up 63 dwelling units on the said parcel of land. That in the circumstances, the Court should not interfere. Placing reliance on provisions of Section 3 of the Repeal Act, it was submitted that even if the act of the competent authority was found to be bad in law to a certain extent yet once the land had vested in the State Government and possession had been taken over by the State Government the said action would be saved despite the repeal of the principal Act. That even if a judicial review was permissible as laid down by this Court in the case of *Rameshchandra Shamjibhai Raniga v. State of Gujarat and Ors.* (supra) for exercising such powers of judicial review the principles laid down in the case of *Jayrajibhai Jayantibhai Patel v. Anilbhai Nathubhai Patel and Ors.* 2006 (8) SCC 200 more particularly the observations made from Paragraph No. 12 onwards of the said judgment, were applicable, and on applying the said ratio read with the provisions of the Repeal Act all relevant factors had to be taken into consideration to hold that the petitioners could not be granted any relief at this stage. The judgment of this Court in the case *Vasantlal Ratilal Jasani Vs. The State of Gujarat*, was also pressed into service to submit that in view of change of situation the petitioners were not entitled to any relief.

7. In rejoinder, the learned Advocate for the petitioners placed reliance on decision of this Court in the case of *Rajeshkumar Bhikhabhai Patel and Another Vs. State of Gujarat and Others*, to point out that if Section 4 of the Repeal Act was applied all proceedings would abate and the same would mean that there was no declaration of surplus land and the Court was entitled to order restoration of possession. That if it was not possible to restore possession of the same land the Court could direct allotment of some other parcel of land from the land bank envisaged by Section 23 of the Act, or in the alternative direct payment of monetary compensation. The decision of the Apex Court in the case of *B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others*, was pressed into service to submit that in an action where a party has prayed for a larger relief it is always open to the Court to grant any smaller relief that may be found to be available in law so as to render substantial justice after taking into account the changed circumstances. In other words, the relief should be suitably moulded so as to mete out justice to the party concerned rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

8. The facts are not in dispute. During pendency of the petition the Repeal Act has intervened. Therefore, one will have to consider the effect thereof. Provisions of Sections 3 and 4 of the Repeal Act read as under:

3. Savings.:

(1) The repeal of the principal Act shall not affect:

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

(2) Where:

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act, but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land,

then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings :- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate:

Provided that this Section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

9. On a plain reading, it becomes clear that despite the repeal of the principal Act Section 3 saves - (i) the vesting of any vacant land, possession of which has been taken over by the State Government; AND (ii) a case where any land deemed to have vested in the State Government u/s 10(3) of the principal Act, but possession of which has not been taken over by the State Government and any amount has been paid by the State Government in respect of such land, but such land shall be restored if the amount paid by the State Government is

refunded to the State Government. In other words, all acts where vesting and possession by the State Government are complete the said Acts will be saved; moreover, when vesting has taken place and payment has been made by the State Government but possession has not been taken over, even such vesting will be saved subject to the land holder refunding the amount to the State Government, in which eventuality, the land shall be restored to the land holder by the State Government. Therefore, in the facts of the present case if one reads Section 3 of the Repeal Act as a stand alone provision, the petitioners cannot claim any restoration as the act of vesting, taking possession has been saved by provisions of Section 3 of the Repeal Act.

10. However, Section 4 of the Repeal Act provides for abatement of legal proceedings and states that all proceedings relating to or made or purported to be made under the principal Act pending immediately before the commencement of the Repeal Act, before any Court, Tribunal or any authority shall abate. The Proviso has carved out a limited exception in relation to Sections 11, 12, 13 and 14 of the principal Act subject to fulfilment of the conditions stipulated therein.

11. The validity of both these provisions was challenged before this Court in case of *Rameshchandra Shamjibhai Raniga v. State of Gujarat and Ors.* (supra). A Division Bench of this Court held that - (i) Section 3(1)(a) of the Repeal Act is a constitutionally valid piece of legislation; (ii) the provisions of Section 4 of the Repeal Act are also valid, but construed reasonably the said provisions mean that the question whether, on the facts and law, in a given case, the pending proceedings before a Court, etc. would abate or not, is a question open to judicial scrutiny. Hence, the interplay of provisions of Sections 3 and 4 of the Repeal Act will have to be considered in light of the following observations made by this Court in the aforesaid case of *Rameshchandra Shamjibhai Raniga v. State of Gujarat and Ors.* (supra):

43. We have given our thoughtful consideration to the points urged and carefully examined the ratio of the decision of the learned Single Judge in the case of *Maganlal Patel* (supra). On a bare reading of the provision and particularly the language used in opening part of Section 4 "all proceedings relating to any order made or purported to be made...shall abate" only means that such proceedings pending before any Court, Tribunal or authority shall not be continued and would come to an end. The language used aforesaid can never mean that the power of the Court, Tribunal or authority to examine whether the order passed or purported to have been passed under the principal Act, while it was in operation, was valid or not, has been taken away. Any other interpretation on the language of Section 4 would be unconstitutional, because the legislature by no provision can completely take away the power of judicial review. The learned single Judge, in the portion of his judgment quoted above, has taken a view that as an effect of Section 4 of the Act of 1999, even writ proceedings before the High Court would abate. We find no ground to take a contrary view and overrule his judgment on the interpretation of Section 4, but we consider it necessary to add

a rider or explanation so as to construe the provision in a manner to make it constitutionally valid. In the impugned provision of Section 4, the word "abate" if construed harmoniously in the light of the constitutional provisions, would mean that the proceedings under the Repealed Act would not be continued on the repeal because as a result of repeal of the principal Act, the proceedings thereunder are rendered infructuous. In our considered opinion, provisions of Section 4 cannot be read and construed to infer that the effect of abatement would be that even validity of actions taken under the Repealed Act and examination of its provisions for the purpose of ascertaining whether any rights and liabilities thereunder are saved, would be outside the scrutiny of Courts, Tribunals or authorities. The inference of such effect of Section 4, as to take away completely power of judicial scrutiny, would be a clear negation of the legal and constitutional powers of the Courts, Tribunals and authorities under the two enactments. Such interpretation would militate against the theory of basic structure of the Constitution as propounded by the Constitution Bench of the Supreme Court in the case of *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, which is followed and reiterated by recognising the power of superintendence of the High Court under Article 227 of the Constitution over Administrative Tribunals in case of *L. Chandra Kumar v. Union of India and Ors.* AIR 1987 SC 1125. In the case of *Chandra Kumar*, the Supreme Court has reiterated that the power of judicial review under Article 226 of the High Court and Article 32 of the Supreme Court is an integral and essential feature of the Constitution, constituting part of its basic structure. The independence of judiciary is also a basic part of the Constitution. The provisions of Section 4 having an effect of abatement of pending proceedings in relation to an "order made or purported to be made" under the Repealed Act, cannot be construed to completely take away the power of the Courts, Tribunals and authorities as judicial and quasi-judicial bodies to examine the validity of the order or action taken under the Repealed Act and to find out the impact of repealing Act on the rights and liabilities of the land owners and the State. An example will make the legal position clear. Under Repealed Act, suppose an agricultural land which is not covered by the definition of "urban land" u/s 2(o) of the Repealed Act of 1976 is clubbed with other urban land of an owner and declared excess to be deemed to have been acquired and vested in the State. Thereafter, it is taken possession of. It would be saved and retained by the State as an effect of Section 3(1)(a) of the Repealing Act of 1999. Construction as sought to be put on Section 4 would result in abatement of case of such owner pending before any authority, Court or Tribunal and would deprive the land owner from contending that he did not hold any excess urban land, such land was not governed by the Repealed Act of 1976, and was wrongly treated to have been acquired and vested in the State and its possession was wrongly taken from him by force and coercive methods. Such unjust result cannot be intended to have been provided in Section 4 of the Act of 1999.

44. The provisions of Section 4 providing for abatement of all proceedings under

the Repealed Act, can only mean that on repeal of the principal Act, all proceedings under it, to the extent they are not saved and left unaffected by the Repealing Act, would not be proceeded with as having been rendered infructuous. All such pending proceedings in which previous operation of the Repealed Act is challenged can never be deemed to have been abated, as the pending cases would require some adjudication and decision on the question of legal effect of the abatement provided in Section 4 of the Act. "Purport" is a well known word in legal usage and has many shades of meaning to be ascertained in the context of the provisions under construction. In the present context, it cannot be construed to mean that proceedings found to be de hors the Repealed Act, or beyond jurisdiction of the concerned authorities, who had undertaken it, although prima facie invalid, would be beyond the scope of judicial scrutiny. The use of word "purport" in Section 4 is to be read down in the manner not to render it unconstitutional. The Legislature can never be presumed to have intended that even an order passed de hors the Act or beyond jurisdiction of the authorities under the Repealed Act would be outside judicial scrutiny. Every law is presumed to be prospective in operation unless a contrary intention is expressed in that law. By repeal of principal Act, its previous operation cannot be held to be beyond judicial scrutiny where such previous orders and proceedings are found to have adversely and prejudicially affected the parties. The right of land owners to challenge the validity of such proceedings cannot be intended to have been taken away by providing abatement of such proceedings. As observed by us above, "the basic structure" theory of the Constitution in Kesavananda Bharati's case (supra) and reiterated in L. Chandra Kumar's case (supra) does not countenance such an unconstitutional and unjust situation. An interpretation of the provisions, therefore, that such law does not deprive the power of independent judiciary has to be preferred.

45. The judgment of the learned single Judge in the case of Maganlal Patel (supra) does not appear to us to have laid down anything contrary to the constitutional scheme. As held by the learned single Judge, the word "proceedings" as used in Section 4 of 1999 Act may include writ proceedings in the High Court and the law can be made to render them infructuous but the power of the Constitutional Court of judicial scrutiny cannot be held to have been taken away by such legislation. The constitutional power of High Court or Supreme Court to decide whether, on the facts and legal position in a given case, the proceedings before it would abate or not, can never be taken away by ordinary law. We also do not find any such intention of the legislature in enacting Section 4 in the Act of 1999. Judicial scrutiny of actions taken and order passed under Repealed or Repealing Act would always be permissible and the Court, Tribunals and authorities can decide whether on the facts and law in a given case, the proceedings before it had abated or been rendered infructuous or not. To the above extent, the provision u/s 4 have to be read down. The judgment of the learned Single Judge (supra) has to be understood and the provisions construed in a reasonable manner accordingly.

(Emphasis supplied)

12. The effect therefore is that the provisions of Sections 3 and 4 of the Repeal Act are held to be constitutionally valid piece of legislation, but though the writ proceedings before the High Court would abate, the powers of the High Court to examine, whether in the facts of a given case such abatement will take place or not, are left intact and provisions of Section 4 have been read down to the said extent.

13. In the facts of the present case, admittedly Form No. 1 filed by deceased Vishnuprasad Nathalal Bhatt contained details of other persons having interest in the land in question. Therefore, whether the contention of the respondent authority that Shri Vishnuprasad Nathalal Bhatt, who was claiming to be the vahivatkarta of the property, was the only person to whom the notice was required to be issued, should be accepted or not, is open for judicial scrutiny. If one comes to the conclusion that by virtue of provisions of Section 3 of the Repeal Act, the action of vesting, taking possession of the land by the State Government is not open to be considered despite abatement of proceedings then nothing would survive. However, what would be the scope and the extent of the powers of judicial scrutiny in such circumstances is a moot question, and whether in exercise of jurisdiction under Article 226 of the Constitution the Court would like to exercise the said jurisdiction.

14. The following averments made in Paragraph Nos. 9 to 12 of the affidavit-in-reply dated 10-8-2007 have not been controverted by the petitioners.

9. I say that on 22nd September, 1990, notification u/s 10(3) of the Act was issued by the Competent Authority, Urban Land Ceiling and Deputy Collector, Ahmedabad and the same was published in the Government Official Gazette on 21st February, 1991 and declared that the land in question referred to in the notification published u/s 10(1) shall with effect from such date as may be specified in the declaration be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified (Annexure "F" of petition). Thereafter, on 25th March, 1991 notice u/s 10(5) of the Act was sent to the land-holders to surrender or deliver possession of the land in question to the State Government or to any person duly authorized by the State Government within 30 days of the service of the notice by Registered Post A.D. and the same was received by the land-holders. I say that as the land-holders not surrendered or delivered possession of the land in question to the State Government or to any person duly authorized by the State Government within 30 days of the notice. Therefore, on 20th January, 1992 the State Government took the possession by drawing panchnama in the presence of panchas. A copy of the panchnama is annexed hereto and marked Annexure-R-1.

10. I say that thereafter on 29th September, 1992 the Competent Authority and

Deputy Collector, Ahmedabad passed order u/s 11 of the Act and determined the amount to be paid to the interested persons. A copy of the order dated 29th September, 1992 passed the Competent Authority u/s 11 of the Act is annexed hereto and marked Annexure-R-2.

11. I say that thereafter proceedings u/s 23 of the Act initiated. The Competent Authority and Additional Collector, Ahmedabad sent a proposal to the State Government for allotting the land in question to the weaker sections of the society. I say that the State Government vide order dated 3rd April, 1992 sanctioned the said proposal. A copy of the order dated 3rd April, 1992 is annexed hereto and marked Annexure-R-3. Thereafter a meeting was held between the State Government and Gujarat Housing Board and decided to grant permission to Gujarat Housing Board for constructing houses for the weaker sections of the society in the said land in question. In pursuance to the said decision, the competent authority and Additional Collector, Ahmedabad vide order dated 1st September, 1993 transferred the land in question to the Gujarat Housing Board for constructing houses to the weaker sections of the society. A copy of the order dated 1st September 1993 is annexed hereto and marked Annexure-R-4. Thereafter, the Gujarat Housing Board constructed 63 houses in the said land in question and allotted the same to individuals of the weaker section of the society, which is clear from the panchnama drawn by the Maintenance Surveyor on 8th September, 1997. A copy of the same is annexed hereto and marked Annexure-R-5.

12. I submit that the petitioners filed the present petition in 1997 after a long delay of more than 7 years and whereby challenged the order dated 27th January, 1988 passed by the Competent Authority and Deputy Collector, Ahmedabad and order dated 25th April, 1990 passed by the Urban Land Tribunal and subsequent notifications issued thereafter. I submit that before filing the present petition, third party rights were already created and if any relief prayed by the petitioners are given, then it will affect the interest of that persons as they are staying there since last more than 10 years. It is not true that the petitioners came to know about the proceedings recently, i.e. before filing the petition in 1997. I say that the petitioner filed the present petition in March, 1997. This Hon"ble Court granted order of status quo on 5th May, 1997. On 8th September, 1997 a panchnama was taken by the Maintenance Surveyor. From that it is very clear that 63 houses were constructed in the said land in question and people already started staying there. A copy of the panchnama draw on 8th September, 1997 is annexed hereto and marked Annexure-6. Therefore the contention that the petitioners came to know about the proceeding only before filing of the present petition is not correct. Therefore, on the ground of delay itself the petition is not maintainable.

To the contrary, the submission was that the relief may be moulded accordingly and the respondents be directed to allot some other land or make payment of monetary compensation for having acted in a manner not warranted by law.

15. Thus, on the facts of the present case one can safely conclude that provisions of Section 8(3) of the Act read with Rule 5 of the Rules were not complied with by the competent authority. The plea that as deceased Vishnuprasad Nathalal Bhatt was served with a notice u/s 8(3) of the Act as a vahivatकर्ता of the family no other individual notice is necessary cannot be countenanced, because Rule 5 of the Rules categorically enjoins the competent authority to issue notice to all persons having interest in the property in question. To the said extent, therefore, there was definite failure on the part of the competent authority to act in accordance with law.

16. However, the question that would then arise is if provisions of Section 3 of the Repeal Act are permitted to operate whether the Court can go beyond the said provisions while exercising powers of judicial scrutiny u/s 4 of the Repeal Act to hold that even if there is vesting of land in favour of the State Government and possession of the land has been actually taken over by the State Government yet the proceedings should fail. In other words, whether provisions of Section 4 of the Repeal Act, to the extent the powers of judicial review are available, despite apparent abatement, can be so read and exercised so as to negate the effect of the savings provisions in Section 3 of the Repeal Act.

17. In the facts of the present case, however, the Court is not required to go this far. Admittedly, the land in question has, after vesting and taking over possession by the State Government, been divested by the State Government in favour of the Gujarat Housing Board, who has put up 63 dwelling units which have been allotted in turn to different persons, and hence, third party rights have come into existence. The impugned order of Tribunal was made on 25-4-1990 and the petition was preferred after seven years on 9-4-1997. In this context the petitioners have tried to explain the delay by stating that the petitioners were not aware of the proceedings as only deceased Vishnuprasad Nathalal Bhatt was managing the property and handling the proceedings in respect of the properties. However, it is a fact that Shri Vishnuprasad Nathalal Bhatt expired on 24-9-1991. Therefore, the explanation rendered by the petitioners does not inspire confidence and cannot be accepted.

18. In the aforesaid circumstances, in light of the fact that provisions of Section 3 of the Repeal Act operate and the land has already been parted with by the State Government in favour of the third party the Court does not find it necessary to interfere in the matter. The petition is accordingly rejected. Rule discharged. There shall be no order as to costs.