

(2010) 12 GUJ CK 0088

Gujarat High Court

Case No: Letters Patent Appeal No's. 2206, 2207 and 2209 of 2007 in Special Civil Application No. 7342, 7344 and 7346 of 2007

Bhikhiben (Since
Deceased)

APPELLANT

Vs

State of Gujarat and
Another

RESPONDENT

Date of Decision: Dec. 15, 2010

Acts Referred:

- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 10(3), 10(5), 11, 6(1)
- Urban Land (Ceiling and Regulation) Repeal Act, 1999 - Section 4

Hon'ble Judges: S.J. Mukhopadhaya, C.J; Akil Abdul Hamid Kureshi, J

Bench: Division Bench

Advocate: K.K. Trivedi, for the Appellant; J.K. Shah, AGP for Respondents 1 and 2, for the Respondent

Judgement

Akil Kureshi, J.

Appellants are the original Petitioners. In the present appeals, they have challenged an order dated 17.7.2007 passed by the learned Single Judge in Special Civil Application No. 7342 of 2007 and connected matters. The order reads as under:

The petitions are thoroughly misconceived and suffer from delay and latches, hence dismissed. Notice is discharged with no order as to costs.

It will be open for the Petitioners to continue to make representations infinitely.

2. Facts leading to the present group of appeals can be noticed from SCA No. 7342 of 2007. The Petitioners are the legal heirs of original land holder one Devjibhai Ramjibhai Patel. Deceased Devjibhai at the relevant time was holding land in excess of ceiling limit. He, therefore, filed necessary form u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter to be referred to as "the ULC Act") before the Competent Authority.

Ultimately, the Competent Authority passed order declaring 7909 sq. meters of land as excess vacant land. Further proceedings in terms of Section 10 of the ULC Act were undertaken. It is the case of the Government that after issuance of notice and notification u/s 10(3) and 10(5) of the ULC Act possession of the excess vacant land was also taken over.

3. The land-holder, however, did not admit the above position. He carried the matter further before the Urban Land Tribunal. The Urban Land Tribunal by its judgment dated 31st December 1994 allowed the appeal of the land holder. The impugned orders u/s 8(4) and the subsequent proceedings u/s 10(3) and 10(5) as well as u/s 11 of the ULC Act were set aside. The proceedings were remanded for verification of the evidence with the record taking into consideration the provisions of law, for taking a fresh decision by the Competent Authority.

4. The State appealed against the said decision of the Urban Land Tribunal. However, in the meantime, the ULC Act was repealed with effect from 30th March 1999. The learned Single Judge, therefore, in Special Civil Application No. 237 of 1996 passed the following order:

1. This petition arises from orders passed under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976.

2. It is common ground on both sides that the State of Gujarat adopted the Urban Land (Ceiling & Regulation) Repeal Act, 1999 on 30th March 1999.

3. It is also common ground on both sides that by virtue of Section 4 of the Repeal Act, all proceedings pending on the said date shall abate.

4. It is so found and accordingly held, and the present petition is disposed of accordingly.

5. Learned AGP states on instructions that the State of Gujarat will abide by the Circular issued by the State Government in the Revenue Department No. ULC/1099-602/V1 dated 15th April 1999.

6. Rule is accordingly discharged with no order as to costs. Interim relief if any stands vacated.

5. It is not in dispute that such decision of the learned Single Judge was not carried in appeal by the Government. The said order thus achieved finality.

6. The original land-holder in the meantime having expired, his heirs approached the Government and requested that in the land revenue records, entry that the land is under the Urban Land Proceedings be deleted. The Government refused to accept the request. Thereupon, heirs of the land holders filed the present group of petitions being Special Civil Application No. 7342 of 2007 and connected matters, in which the learned Single

Judge was pleased to pass the impugned order dated 17.7.2007 dismissing the petitions on the ground of delay and laches.

7. Having heard the learned advocates for the parties and having perused the documents, we are of the opinion that the learned Single Judge committed an error in not entertaining the petitions on merits. The owners of the land had approached the Government with a request to update the entries in the land revenue records pursuant to the decision of the Urban Land Tribunal and the learned Single Judge of the High Court which had achieved finality. Instead of accepting the request, the Government continued such entries whereupon the land-owners were compelled to approach the High Court. Such petitions ought not have been rejected on the ground of delay which otherwise also we feel did not exist.

8. Learned AGP, however, vehemently contended that the decision of the Urban Land Tribunal was never tested on merits. The learned Single Judge having dismissed the petition as having been abated and the Government having already taken over the possession of the land, the possession of the land would remain with the Government and the land owners cannot claim any further right, title or interest. We are afraid, the contention cannot be accepted. Firstly, possession was taken pursuant to the order u/s 8(4) of the ULC Act and after issuing necessary notice and notification u/s 10(3) and 10(5) of the ULC Act. All these proceedings and orders were set aside by the Urban Land Tribunal. Even if the possession was bonafide taken over by the Government, by virtue of quashing the orders under which such possession was taken over the possession would no longer be legally tenable. Further, the learned Single Judge came to a definite finding that by virtue of repeal of the ULC Act, the proceedings have abated. If the learned Single Judge was of the opinion that the Government had rightly and legally taken over the possession of the land, there was no question of abating the proceedings and by virtue of the provisions of the Urban Land (Ceiling & Regulation) Repeal Act, 1999, the issues had to be decided on merits. If the Government was of the opinion that the possession was legally taken over and that decision of the Tribunal was required to be tested on merits, it had to request the Single Judge to decide the petition on merits, and if the request was not accepted, had to challenge the order of the learned Single Judge. We find the Government did neither. Order of the Single Judge gives an impression that it was an invited order. In any case it was never challenged further.

9. Accepting the stand of the Government would result into an anomalous situation. The land holders would continue to be the legal owners of the land whereas the Government would continue to hold the possession thereof in perpetuity. Such a situation was never envisaged by the Urban Land (Ceiling and Regulation) Repeal Act.

10. Considering all these aspects of the matter, the order of the learned Single Judge is set aside. The Respondents are directed to make necessary entries in their venue records of the land in question in conformity with the decision of the Urban Land Tribunal and the learned Single Judge noted above. This shall be done within four weeks from

the date of receipt of a copy of this order. All these Letters Patent Appeals stand disposed of accordingly.

11. Direct service is permitted.