

Shree Gujarati Harijan Co-operative Housing Society Ltd. Vs Additional Collector, Bombay Suburban District and another

Court: Bombay High Court

Date of Decision: Feb. 14, 1991

Acts Referred: Constitution of India, 1950 " Article 226

Government Grants Act, 1895 " Section 3

Transfer of Property Act, 1882 " Section 8

Citation: AIR 1992 Bom 263 : (1992) 1 BomCR 126

Hon'ble Judges: S.M. Daud, J

Bench: Single Bench

Advocate: F.H.J. Talyarkhan with T.C. Patel instructed by C.R. Patel and Co, for the Appellant; N.T. Saraf, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition under Article 226 of the Constitution is aimed against notice and order dated 2-11-1984 and 6-5-1985 respectively -- being at

Exs. G and H to the petition.

2. The petitioner is a Co-operative Housing Society registered on 18-10-1951 under the Bombay Co-operative Societies Act, 1925 and therefore

deemed to be registered under the Maharashtra Co-operative Societies Act, 1960": On 2-7-1954, the Collector of Bombay Suburban District

addressed Ex.A to the petitioner mentioning therein that the State Government had sanctioned the grant to the Society of land measuring 2541 sq.

yds. from out of plot Nos. 676, 677, 678 and 679 S.S. No. VII Khar. The grant was free of occupancy price on the assumption that the Society

would collect necessary funds in due course and subject to various conditions. Condition No. (ii) was worded as follows :--

that the society shall not sell or in any way transfer by mortgage, lease etc., any of the plots out of the land to any person other than one of their

members or let any tenements to non-members without obtaining previous approval of the Collector in writing".

Condition No. (viii) required the Society to sign an agreement in a particular form as required by the Collector embodying the conditions set out in

Ex.A as also such conditions as would be considered necessary by the Collector. Conditions (ix) and (x) specified what could be done by the

Collector in certain eventualities. Condition (ix) provided for the continuance of the land in the Society's occupation though it had contravened

various conditions on payment of such fine and non-agricultural assessment or rent as the Collector would direct. Condition (x) provided that it

would be lawful for the Collector to direct the removal or alteration of any building or structure erected or used contrary to the provisions of the

grant within the time prescribed by him and on such removal or alteration not being carried out to cause the same to be carried out and recover the

cost of such operation from the grantee as an arrear of land revenue. The agreement executed by the petitioner is at Ex.G and the preface itself

shows the Chairman and Secretary of the Society executing the document ""on behalf of the Society... and assigns"". Clause 2 of the agreement

recites that the land would be used only for building purposes and the structures thereon would be used for residential purposes by the members of

the Society only. One of the two Schedules appended to the agreement being Schedule No. II set out ""special conditions"". The Second Special

Condition is worded as follows :--

That the society shall not sell or in any way transfer by mortgage, lease etc. any of the plots out of the land to any person other than one of their

members or let any tenements to non-members without obtaining previous approval of the Collector in writing. The Collector will permit such

letting provided that in this, behalf preference is given to Backward class persons who have no houses of their own"".

Special Condition No. VII spoke of the entitlement of the grantor to cancel the grant and resume the land to the Government without any

compensation for breach of the conditions subject to the Collector giving notice of the breach and the Society failing to remedy the same within six

months from the date of the notice. Special Condition No. VIII permitted the Collector to continue the grant in the Society's occupation despite

contravention of any of the conditions on the Society paying such fine and non-agricultural assessment or rent as the Collector directed. Special

Condition No. IX permitted the Collector to direct ""the removal or alteration of any building or structure erected or used contrary to the provisions

of the grant within a time prescribed in that behalf"" and on failure of the direction being carried out, to carry it out himself and recover the cost as an

arrear of land revenue from the erring Society.

3. The Collector on 10-10-1968 made a separate grant in favour of the petitioner in respect of 1170 sq. yds. forming part of plot bearing No. 675

from S. S. VII of Khar. The grant is at Ex. B and the purpose of the grant is set out in the document viz. ""for construction of residential buildings

for accommodating its members"". The occupancy price was a concessional one and this was explained in Ex.B as due to ""the Society is of

backward class community personnel"". The occupancy price is calculated at Rs. 1.75 per sq. yd, Conditions were appended to the grant of 10-

10-1988 and Conditions Nos. 2, 3 and 10 require to be looked into. Condition No. 2 prohibited the Society or any member from selling or in any

way transferring by mortgage, lease etc. any plot or block or flat out of the land to any person other than a member without obtaining previous

written approval of the Additional Collector, Bombay Suburban District. Condition No. 3 prohibited the Society from enrolling any additional

members or substituting any member in place of those approved by Government except with the previous written approval of the Government.

Condition No. 10 rendered the Society liable to be evicted and the land and buildings resumed by Government without payment of any

compensation in case there was a breach of any of the conditions of grant of land and failure on the part of the Society to remedy the breach within

six months from the date of issue of notice by the Additional Collector, Bombay Suburban District, communicating the breach.

4. The petitioner Society put up six structures within two years of 1954 on the 2541 sq. yds. granted to it in the first instance. These were

occupied by 14 members of the petitioner who had banded together to form the petitioner Society at the time of its registration and on plot No.

675 a multi-storeyed building was put up. It was ready in the year 1976 and tenements therein were allotted to the members of the Society. The

six structures standing on 2541 sq. yds. were demolished and substituted by two multi-storeyed buildings known as "A" and "B" each consisting of

21 flats. Two buildings were ready and occupied by January 1980 -- the occupants being the original 14 members, their enlarged family members

and also new members. For the induction of the new members permission had neither been sought for nor accorded by the Collector.

5. The first respondent on 26-2-1981 addressed a show-cause notice to the Society. This notice is at Ex.D. It alleged that there had been a

violation of Special Condition No. II of Schedule II appended to the agreement dated 2-7-1954(Ex. C) in that the Society had contravened the

prohibition against the transfer of the plots of land or letting out of tenements to non-members without obtaining the previous approval of the

Collector in writing. In fact the tenements constructed for the original 14 members had been replaced by two new buildings. Building "A" was

completely occupied by outsiders who also did not belong to backward class. The Society had not obtained the approval of the Collector before

admitting new members to its rolls and allowing them to occupy flats in building "A". The notice was called upon ""to remedy the breach within six

months"" and threatened that failure would result in the ""grant being liable to be cancelled and the land resumed to Government without payment of

compensation"". Petitioner replied to Ex.C contending that building "A" though occupied by non-backward class people could not be said to be in

breach of the grant of 2-7-1954. The grant of 2-7-1954 did not prohibit the enrolment of non-backward class people as members of the Society.

The occupants of building "A" were all members of the petitioner Society and therefore allowing them to occupy tenements in building "A" did not

amount to a contravention of the terms of the grant entitling the grantor to cancel the grant. There had been no transfer of the plots. The Society

being a Cooperative Housing Society, there was no creation of tenancy as understood under the Bombay Rent Acts. Tenancy of a Co-operative

Housing Society was a partnership to share space and not a lease as understood in legal parlance. As to the original six structures, they had

become outdated and would have collapsed at any time. The needs of the original 14 members had also grown because of the increase in the size

of their families. With a view to solve the problem of additional space and the dilapidated condition of the original structures, the original members

of the petitioner decided to induct more members. Induction of such members was not contrary to the bye-laws of the Society. The representation

had no effect upon the respondents. A hearing was given to the petitioner. In the meantime, an Administrator was appointed for the petitioner-

Society and the said Administrator was intimated by Ex.F about the resumption of land by the Government. The first respondent was informed by

the Government that the grants in favour of the Society should be cancelled and plots of land granted resumed. This was done by communication

Ex.G dated 2-11-1984. The first respondent complied with the direction and passed an order on 6-5-1985 which order is at Ex.H. This order

referred to the two grants, the petitioner having committed a breach of the conditions, cancellation of the grants and taking back the possession of

the land together with the buildings thereon. At this stage, the petitioner came to this Court and on 9-10-1986 rule nisi was issued.

6. Petitioner"s contention is that the grant at Ex. A did not restrict membership of the Society to any particular class of people. Petitioner"s bye-

laws also did not contain any such restriction. In conformity with the terms of Ex. A the petitioner was not at liberty to sell or transfer any plot out

of the granted land to any person other than one of its members. No plots had been sold or otherwise transferred to any one by the Society

including its members. In regards to the letting out of tenements the prohibition was that such letting out should not be to non-members. The

occupants of building "A" though not belonging to the backward class community were members of the petitioner. They were not tenants in the

sense contemplated by the Bombay Rents Act or as ordinarily understood in legal parlance. The nature of the Co-operative Society being what it

was, to wit, a Tenant Partnership Society, the members thereof who became occupants were partners in sharing of space and not tenants.

Consequently, there had been no violation of any terms of the grant recorded in Ex.A or the agreement at Ex.C. Assuming that there had been

some contravention in regard to the 2541 sq. yds. of land, respondents could not straightway proceed to cancel the grant and resume the land

along with structures standing thereon. They were required to look into the feasibility of adopting the lesser penalties enumerated in the grant as

also the agreement. The show-cause notice did not specify which penalty the grantor wished to take recourse to and how the breach spoken of in

the said notice could be repaired. The notice being vague, the penalty imposed was void. Thirdly, no reason had been given in support of the order

at Ex.H. Be that as it may, there had been no contravention in respect of plot No. 675. The grant in respect of that plot could not be cancelled for

a lapse alleged vis-a-vis the larger plot of land measuring 2541 sq. yds. For all these reasons, Ex. H deserved to be quashed and an injunction

restraining the respondents from giving effect to Ex. G had to issue.

7. One N. G. Bhansali being a Reserve Deputy Collector attached to the Bombay Suburban District Collectorate has filed a return on behalf of the

respondents. The stand taken therein is that the grant was incorporated in G. R. dated 10-6-1954. This G. R. made it clear that the grant was for a

Society comprising members belonging to the backward communities only. By enrolling non-backward class members and allowing them to

occupy building "A", the petitioner-Society had violated the terms of the grant as also the agreement. For that reason, the grant made in favour of

the petitioner was liable to be cancelled. An opportunity was given to the petitioner to remedy the breach within six months. No action was taken

by the Society to oust the non-backward class members. The resumption of land was perfectly justified and in accordance with the terms of the

grant as also the Jaw.

8. Learned Counsel representing the petitioner has relied upon Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and

Others, and Delhi Development Authority v. Durga Chand Kaushish, AIR 1973 SCT 2600, in support of the submission that the terms of a grant

have to be construed from the language used in the grant and where the grantor be the Sovereign, construed strictly. Counsel submits that Ex. A

did not lay down any condition that the land being granted to the Society was not to be used for the benefit of non-backward class persons

although they had become members of the Society. In terms Ex. A placed two restrictions : First was that petitioner would not sell or transfer by

mortgage, lease etc. any of the plots granted to any person other than one of its members and second that it would not let any tenements to non-

members without obtaining the Collector"s previous approval in writing. None of the plots or any part thereof had been let out to any one by the

petitioner and this included its own members. In so far as the tenements were concerned, the occupants of building "A" were not non-members

and therefore there had been no violation of the second restriction. In any case, occupants of tenements in partnership housing societies were not

tenants as commonly understood, but partners in sharing of space. So far as respondents are concerned, they tried to counter this argument by a

reference to a number of documents as also various provisions of the Maharashtra Land Revenue Code, 1966 (MLR Cbde), Rules Trained

thereunder and Government Resolutions. Mr. Saraf for the respondents submitted that the Code, the Rules, the G.Rs. and the correspondence

which proceeded the grants could not be ignored. The petitioner-Society described itself as a ""Harijan Cooperative Housing Society"". In the

application given by it for granting the land, the nature of the Society was described as a ""Tenant Ownership"" as per the Government scheme for

the backward classes"". Column 5 of the application described members of the Society as ""fourteen Harijan families"" and column 9 stated that the

land applied for had been reserved for backward class people. According to learned Counsel this was the foundation which led to the making of

the grant and therefore the grant could not be considered de hors the recitals appearing in the application. Counsel has also referred to a booklet

brought out by the petitioner-Society and one feature prominently mentioned in the said booklet is that the Society had been granted land under a

P.W.R. Scheme bearing No. 219 which scheme was meant for bettering the lot of Harijans. The original resolution of the Government dated 10-6-

1954 is then relied upon by the learned Counsel. This resolution mentions that the grantee is a Society with fourteen members who belonged to the

backward class. It is this viz. the membership of the Society being of backward class people which is said to be the reason for the grant of land

measuring 2541 sq. yds. free of cost to the petitioner-Society. All this is to be found in the preface to the resolution and significantly a copy of the

resolution was not sent to the grantee. One of the persons to whom the resolution was sent was the Collector of the Bombay Suburban District

who through his Additional issued Ex. A and got executed through the said Additional Ex. C. Be that as it may, there is nothing in the preface or

the resolution of 10-6-1954 to imply that a restriction was placed upon the petitioner from enrolling non-backward class people as its members or

not allowing such non-backward class members to occupy tenements or being purchasers or transferees of plots of land or any part thereof. Mr.

Saraf refers to the G.R. dated 23rd April 1965 which G.R. is prominently mentioned in the G.R. pertaining to the grant of 1170 sq. yds. from plot

No. 675. The mention is in these terms:--

The grant shall also be subject to the terms and conditions prescribed in the Government Resolution, Revenue and Forests Department No. LCS-

43247-B, dated 23rd April 1965.

Now no such reference is to be found in the G.R. pertaining to the grant of land measuring 2541 sq. yds. I do not see how the G.R. of 23rd April

1965 can be deemed to be applicable to Ex.A or even the source of that exhibit viz. G.R. dated 10-6-1954. So far as the G.R. dated 23-4-1965

is concerned, it contains a specific prohibition against the enrolment by the Housing Society of any additional members or substitution of new

members in place of those approved by the Government, except with the previous written approval of Government. Had the G.R. of 23rd April

1965 been part of the G.R. issued on 10-6-1954 -- whether directly or by implication -- something could have been said in support of the view

canvassed by Mr. Saraf. Faced with the omission learned Counsel says that the G.R. dated 23rd April 1965 should be read as being part of the

grant made on 2-7-1954, and this, because the said G.R. of 23rd April 1965 was part of the G.R. of 10-6-1954 and so must be deemed to have

been applied to the grant dated 2-7-1954 also. This argument is without merit. In the cases relied upon by Mr. Talyarkhan appears the well-settled

view that the intention of the parties to a document of grant has to be gathered by the words used by the parties themselves. To quote from the first

authority:--

In doing so, the parties must be presumed to have used the words in their strict grammatical sense... While it is true that strict grammatical sense of

the words must be given effect to, words and phrases are not used by people always and invariably in the same sense.

A departure can be made from the literal construction rule if there be any ambiguity. This has been aptly phrased thus in the Delhi Development

Authority case, AIR 1953 SC 2609 (supra) by remarking that in construing a document one must have regard not to the presumed intention of the

parties, but to the meaning of words they have used. Whatever may have constituted the background to Exs. A and C, the said background

became redundant and irrelevant, once Ex. A came into existence and was formalised by Ex. C. In Exs. A and C no obligation is cast upon the

Society to obtain the previous approval of the Collector for enrolling any member whether belonging to the backward class community or

otherwise. Neither do the documents require the Collector's previous approval in writing for inducting new members not belonging to the

backward class community into any of the structures put up on the 2541 sq. yds. of land. The reasons for the grant of the land free of occupancy

price may have possibly been motivated by the fact of the applicants seeking the grant of land belonging to the backward class communities. If the

grantor wanted to restrict the membership to backward class communities, this should have been made clear in either Ex. A or Ex. C. The

omission being there, the second principle set out in Sahebzada's case (supra) is attracted. This is that where the grantor is the Sovereign, the

grantor's document has to be interpreted strictly against it and in favour of the grantee. Mr. Saraf seeks sustenance from Provash Chandra Dalui

and Another Vs. Biswanath Banerjee and Another, . The portion relied upon by learned Counsel appears at page 1838 of the report and is stated

thus:--

The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms.

This however does not mean that the word used are to be overlooked or a special meaning attributed to them which in ordinary parlance does not

confer on them. In fact this is made clear by the following passage from the same page:--

In construing a contract the Court must look at the words used in the contract unless they are such that one may suspect that they do not convey

the intention correctly. If the words are clear, there is very little the Court can do about it. In the construction of a written instrument it is legitimate

in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their

creation and the subject matter to which it was designed and intended they should apply.

Here, the restrictive clauses appearing in Exs. A and C do not admit of any ambiguity or doubt. In fact, the respondents seek to construe some

term appearing in the two documents in a distorted manner. To put it candidly, respondents seek to fetter Exs. A and C with certain terms relatable

only to the grant of plot No. 675. It cannot be assumed that what governs the grant in respect of plot No. 675 should also govern the grant relating

to 2541 sq. yds. which grant incidentally was antecedent in point of time vis-a-vis the grant pertaining to plot No. 675. A better way of looking at

the situation is that the grantor's Officers took greater care when preparing documents in relation to plot No. 675. This does not mean that the

restrictive covenants relating to plot No. 675 became attached also to documents pertaining to the grant of 2541 sq. yds. Mr. Saraf says that the

1954 grant should be read as restricted to persons who were at the time of grant members of the petitioner-Society. Reading the document in such

a manner does not appear to be possible for as pointed out by Mr. Talyarkhan representing the petitioner, it would denude the agreement at Ex. C

of all meaning which agreement has the preface describing the Chairman and the Secretary as being executants on behalf of the petitioner-Society

as also executors, administrators and assigns of the said Society. These expressions cannot be taken as meaningless surplusage. All covenants have

such expressions for transactions, certainly those pertaining to immovable properties, are intended to last beyond the life-time of those who are

parties to the transactions recorded in the instruments. I would therefore hold that the petitioner had not violated any term of the grant vis-a-vis

land forming part of plots Nos. 676, 677, 678 and 679.

9. To turn now to the cancellation in respect of plot No. 675, all that could be said by Mr. Saraf in justification of the said cancellation is that the

petitioner had enrolled non-backward class members and there was no knowing what truth there was in the claim made for the first time to Court

that the structure on plot No. 675 was wholly occupied by backward class community members. Para 10 of the petition recites in specific terms

that on plot No. 675 there is a multi-storeyed building and that tenements of that building are allotted to the members of the petitioner-Society and

that none of the terms of the grant relating to plot No. 675 have been contravened. This is sufficient to cover the submission advanced in the course

of oral hearing about none of the occupants of the structure standing on plot No. 675, being a member of the non-backward class community or a

non-member of the Society. In fact, as Counsel for the petitioner at this stage points out, the show-cause notice did not allege that any part of the

structure on plot No. 675 was in the occupation of a non-backward class community person. Petitioner's contention that whatever be the merits in

respect of the cancellation of the larger piece of land, there was no justification for the cancellation vis-a-vis plot No. 675, has to be sustained.

10. Petitioner also takes exception to the ambiguity in the show-cause notice vis-a-vis how the breach was to be repaired by them and the

authorities taking recourse to the extreme option open to them, when more lenient penalties could have been imposed. Mr. Saraf's answer to this

submission is that petitioner-Society should have evicted the non-backward class members or showed cause by appearing before the

Government and solicited the imposition of a lesser penalty. It is not possible to accept this answer as a valid reply to the contention raised by the

petitioner. The petitioner was called upon to remedy the breach, but what could have constituted the remedy for the breach was not specified. An

ambiguous expression having been used the petitioner was deprived of a proper opportunity to show against the action proposed to be taken

against it. This also would invalidate the order at Ex. H. But that aspect need not trouble us. The only other submission left to be considered is Mr.

Saraf's plea that the matter should be remitted to the authorities to enable them to decide how to regularise or deal with the breach allegedly

committed by the petitioner. It is argued that even otherwise petitioner had no right to rush to the writ Court and should have availed of statutory

remedies by preferring an appeal or a review or a revision as providing for under the MLR Code. I see no merit in this submission for on the face

of it, the Government's action is contrary to law.

11. The result of the foregoing discussion is that the petition succeeds and the order at Ex. H. is hereby quashed. Respondents injuncted from

giving effect to Ex. G. Rule thus made absolute with parties being left to bear their own costs.

12. Order accordingly.