

Suvarnaben and anr. Vs. the Competent Authority and Additional Collector (U.L.C.) and anr.

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Court : Gujarat

Decided On : Apr-21-1995

Reported in : AIR1996Guj13; (1996)1GLR419

Judge : A.N. Divecha, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 21(1), 21(2) and 33; Urban Land (Ceiling and Regulation) Rules, 1976 - Rule 11A; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Spe. Civ. App. No. 6185 of 1988

Appellant : Suvarnaben and anr.

Respondent : The Competent Authority and Additional Collector (U.L.C.) and anr.

Advocate for Def. : Y.M. Thakkar, A.G.P.

Advocate for Pet/Ap. : M.R. Shah, Adv. for; R.N. Shah, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.N. Divecha, J.

1. The order passed by the Competent Authority at Ahmedabad (respondent No. 1 herein) on 15th March, 1988 under Section 21(2) of the Urban Land (Ceiling & Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Additional Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 29th July, 1988 in Appeal No. Ahmedabad-326 of 1988 is under challenge in this petition under Articles 226 and 227 of the [Constitution of India](#). By his impugned order, respondent No. 1 withdrew the permission under Section 21(1) of the Act granted to the petitioners with respect to certain parcels of land bearing survey Nos. 302/2, 305, 306/1, 307, 300, 314/1/2, 368 and 369 in all admeasuring 58, 680 square metres (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioners as the owners of the disputed lands made an application under Section 21(1) of the Act for permission to retain excess vacant lands for construction of dwelling units for weaker sections of the Society. By his order passed on 30th August, 1983, respondent No. 1 granted such permission on certain terms and conditions. Its copy is at Annexure-A to this petition. One condition (bearing Condition No. 18) stipulated completion of the construction work within five years from the date of the order failing which the disputed lands would be treated as vacant lands for the purposes of the Act. It appears that the petitioners could not complete the construction work within five years. They raised the construction work up to the plinth level only. It is their case that a substantially long time of about 3 1/2 years was consumed in obtaining approval of the plans for construction and the building permission from the local authority in terms of the Scheme approved under Section 21(1) of the Act in the light of Condition No. 8 of the order at Annexure-A to this petition. Copies of the relevant orders in that regard are at Annexure-B (collectively) to this petition. It appears that respondent No. 1 came to know that the construction work was not completed within the stipulated time-limit of five years. Thereupon, without following the procedure prescribed under Section 21(2) of the Act, by his order passed on 18th March 1986, respondent No. 1 cancelled the permission at Annexure-A to this petition. A copy of the aforesaid order passed by respondent No. 1 on 18th March, 1986 is at Annexure-C to this petition. The

aggrieved petitioners carried the matter in appeal before Respondent No. 2 under Section 33 of the Act. It came to be registered as Appeal No. Ahmedabad-70 of 1986. By his order passed on 17th June, 1986 in the aforesaid appeal, respondent No. 2 set aside the order at Annexure-C to this petition and remanded the matter to respondent No. 1 to decide the matter afresh according to law after following the procedure prescribed in Section 21(2) of the Act. Apropos, respondent No. 1 issued one show cause notice on 21st October, 1986 under Section 21(2) of the Act calling upon the petitioners to show cause why the permission at Annexure-A to this petition should not be cancelled. The petitioners filed their reply thereto on 1st December, 1986. Its copy is at Annexure-E to this petition. It appears that the learned Advocate for the petitioners did not remain present at the time of hearing despite grant of several adjournments. Thereupon, by his order passed on 15th March, 1988, respondent No. 1 cancelled the permission at Annexure-A to this petition. A copy of the aforesaid order passed by respondent No. 1 on 15th March, 1988 is at Annexure-F to this petition. The aggrieved petitioners carried the matter in appeal before respondent No. 2 under Section 33 of the Act. A copy of the memo of appeal is at Annexure-G to this petition. It came to be registered as Appeal No. Ahmedabad-326 of 1988. By his order passed on 29th July, 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure-G (Part) to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Articles 226 and 227 of the [Constitution of India](#) for questioning the correctness of the impugned order at Annexure-F to this petition as affirmed in appeal by the appellate order at Annexure-G (Part) to this petition.

3. It may be mentioned that the only ground on which the permission at Annexure-A to this petition was cancelled is non-completion of the construction activity within the stipulated time-limit of five years. Neither respondent No. 1 nor respondent No. 2 has taken into consideration the fact and circumstances of the case as put forward by and on behalf of the petitioners showing that they could not complete the construction work within the stipulated time-limit.

4. In this connection, a reference deserves to be made to the ruling of this Court in the case of G. C. Dalvadi v. State reported in 1994 (1) Gujarat Current Decisions

at page 526. It has been held therein:

'It is true that such construction is completed beyond the time limit. Despite such contravention the question which is required to be answered by this Court is as to whether for such non-compliance entire scheme can be rendered meaningless by permitting the Government to take over the land as vacant land especially when all houses are constructed and are being occupied by persons belonging to the weaker sections of the society. This Court also fails to understand as to how in the fact situation of this type the Competent Authority can be permitted to utilise the power under Section 21(2) so as to declare the land as excess vacant land when persons belonging to the weaker sections of the society have invested their hard earned income for getting the dwelling units and when they have got such dwelling units. Therefore, I am of the opinion that the order of the Competent Authority as confirmed by the Appellate Tribunal cannot be permitted to stand, but at the same time, some reasonable condition shall have to be imposed for breach of terms and conditions subject to which permission under Section 21(1) was granted.

*** *** *** It was the case of the holder of the land that he could not complete the construction within the stipulated time as building permission was granted very late by Nagar Panchayat of Odhav and also because of the disturbed condition in the city of Ahmedabad due to communal riots which erupted for 3 to 4 times in the period of 3 years. The construction work was therefore required to be abandoned and labourers were also afraid for coming to the work immediately after normalcy was restored. The factum of riots in the city of Ahmedabad cannot be disputed and it shall have to be accepted that some reasonable explanation was given by the landholder which partially explained the delay in completing the construction. It would have been therefore just and reasonable in the facts and circumstances of the case to condone such breach of condition by imposing some reasonable penalty.'

The aforesaid ruling of this Court is on all fours applicable in the present case. Sitting as a single Judge, I am bound by it. Even otherwise, I am in respectful agreement therewith.

5. It is true that the permission at Annexure-A to this petition was granted in the light of Rule 11-A read with Schedule 1-A of the Urban Land (Ceiling & Regulation) Rules, 1976 (the Rules for brief). Rule 11-A of the Rules requires imposition of the terms and conditions embodied in Schedule 1-A while granting permission under Section 21(1) of the Act. Condition No. 3 thereof reads as under:

'3. The construction of the dwelling units shall be completed within five years from the date on which the declaration is made by the competent authority under Sub-section (1) of Section 21, permitting the person concerned to continue to hold the vacant land for the purposes specified in that sub-section.'

It is true that it is couched in mandatory terms by use of the word 'shall' therein. It is however difficult to agree that it is mandatory in nature. The reason therefor is quite simple. If it was to be treated as mandatory, its breach would have entailed an automatic consequence of cancellation of the permission granted under Section 21(1) of the Act. In that case, there was no necessity for incorporating in the Act Section 21(2) thereof. If Condition No. 3 in Schedule 1-A of the Rules was to be treated as mandatory, no discretion was left with the Competent Authority under Section 21(2) of the Act. In fact, the opportunity of hearing embodied therein would be rendered meaningless. In its aforesaid ruling in the case of G.C. Dalvadi, 1994(1) Guj Cur Dec 526 (supra), this Court has clearly held that the power under Section 21(2) of the Act has to be exercised meaningfully in order to see that any contravention of such condition does not result in frustration of the Scheme. There would be no meaningful exercise of power under the aforesaid statutory provision if Condition No. 3 of Schedule 1-A is treated as mandatory. The Legislature in its wisdom has given an opportunity of hearing to the concerned landholder before cancellation of the permission under Section 21(2) of the Act. The avowed object there behind could be that the concerned landholder is able to explain the circumstances beyond his control resulting in breach of such condition as to imposition of the time-limit for completion of the construction work. I am therefore of the opinion that Condition No. 3 of Schedule 1-A to the Rules is directory and not mandatory. Its breach would not result in automatic cancellation of the permission under Section 21(1) of the Act.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-F to this petition as affirmed in appeal by the appellate order at Annexure-G (Part) to this petition cannot be sustained in law inasmuch as the permission at Annexure-A to this petition has been cancelled only on the ground of non-completion of the construction work within the stipulated time-limit of five years without examining the circumstances of the case. It therefore deserves to be quashed and set aside. The matter deserves to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law after taking into consideration the circumstances put forward by and on behalf of the petitioners resulting in non-completion of the construction activity within the stipulated time-limit keeping in mind the aforesaid ruling of this Court in the case of G.C. Dalvadi, 1994 (1) Guj Curr Dec 526 (supra) and this judgment of mine. Respondent No. 1 may also consider issuing direction to the petitioners to set a fresh time-limit for completion of the construction work if he comes to the conclusion that the construction work could not be completed within the stipulated time-limit of five years because of the circumstances beyond the control of the petitioners.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No. 1 herein) on 15th March, 1988 at Annexure-F to this petition as affirmed in appeal by the order passed by the Additional Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 29th July, 1988 in Appeal No. Ahmedabad-326 of 1988 at Annexure-G (Part) to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law after giving an opportunity of hearing to the petitioners in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.