

Narayanbhai Ramabhai Vs. State of Gujarat

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Court : Gujarat

Decided On : Nov-29-1984

Reported in : (1985)1GLR531

Judge : S.B. Majmudar, J.

Appellant : Narayanbhai Ramabhai

Respondent : State of Gujarat

Advocate for Pet/Ap. : Mr. A.J. Patel

Judgement :

S.B. Majmudar, J.

1. In this petition under Article 226 of the Constitution of India, the petitioners have challenged the order passed by the Deputy Secretary, Revenue Department, refusing to grant exemption to the petitioners under Section 20 Sub-section (i) of the Urban Land (Ceiling and Regulation) Act, 1976. The application was moved on two grounds, (i) that the petitioners who are the land holders wanted to utilise the land for a public purpose by enabling the co-operative society members of weaker sections of the public to put up residential houses; (2) that they have also prayed that undue hardship would be caused to them if such exemption is not granted. The application was moved on 25th September, 1980 under the then existing guidelines which were holding the field. That application came to be rejected on

18-6-1983. The petitioners, therefore, came to this Court by way of special civil application No. 125 of 1984 and submitted amongst others that without hearing the petitioners the application was rejected. This Court by its order dated 22-3-1984 (Coram: N.H. Bhatt, J) remanded the proceedings back to the Government to rehear the matter after giving opportunity to the petitioners and for passing an appropriate speaking order in accordance with law. According to the petitioners they were heard and by a speaking order the petitioners' application has come to be rejected. Mr. A.J. Patel, learned Counsel for the petitioners, stated before me that he does not press the case for exemption under Section 21(b) on the ground that undue hardship would be caused to the petitioners if exemption is not granted, but his submission is confined to Section 20 Sub-section (i)(a) of the Act. Mr. Patel submitted that on the date on which he applied for the grant of exemption the old guidelines were holding the field. That circular is to be found at annexure-A to the petition. That is dated 25th May, 1979. According to these guidelines the plans were prepared for utilising the land for the purpose of residential houses for the weaker and backward sections of the public. Mr. Patel submitted that in this case the respondent authorities took a lot of time in disposing of the application and in the meantime the guidelines came to be rescinded and hence it would not be open to the respondents not to give effect to the then existing guidelines which did hold the field on the date when the petitioners applied for exemption. It is not possible to agree with the aforesaid contention of the petitioners. It is true that the guidelines of 25th May, 1979 did hold the field when the petitioners submitted their application for exemption under Section 20 on 25th September, 1980. However, on the basis of those guidelines the petitioners' application was never granted. This is not a case in which the competent authority granted exemption in the light of the existing guidelines and thereafter sought to rescind the same in the light of the existing guidelines subsequently. It is easy to visualise that once the exemption is granted a crystallised right would arise in favour of the grantee. Such a right cannot be divested subsequently on account of subsequent guidelines. But in the present case the petitioners' application was never granted. Even earlier it was rejected before remand from this Court for consideration on merits. After hearing the petitioners the application again came to be rejected.

2. Thus when the impugned order was passed on 20th October, 1984, the petitioners application came to be finally rejected in the light of the circumstances that prevailed at that time. If, during the pendency of the application, the earlier guidelines got rescinded it cannot be said that any vested right of the petitioner got affected. Merely because the application was filed earlier, the petitioners cannot insist that this application should be considered only in the light of the earlier guidelines and not in the light of the subsequent guidelines which comes to operate by the time of application comes up for consideration on merits. The authority while deciding the question of granting exemption under Section 20(i)(a) has to keep in view all the relevant guidelines applicable at the time the question comes up for consideration. Mere filing of application gives no vested right to the applicant to get exemption in the light of the then existing guidelines which do not exist by the time the; application comes up for decision. If the earlier guidelines have been uniformly withdrawn all pending applications which have to be decided in the light of the fresh guidelines which may be holding the field on the date of the decision. If that is not done the competent authority would get exposed to the charge of considering old and State guidelines ignoring the current and applicable guidelines and its decision would be rendered arbitrary and illegal. The first contention of Mr. Patel, therefore, fails.

3. Mr. Patel next submitted that even if the exemption is refused, the excess brands will be utilised for a public purpose while the petitioners themselves want to utilised same' for a public purpose. That is neither hers nor there. If the petitioners have not made out any case for exemption under Section 21(i), the excess vacant land would get subjected to the disposal as laid down by the Act. It would be obviously for a public purpose. They will form part of the common pool. That would benefit the society at large, for whom the Act is meant. Under these circumstances it cannot be said that any case is made out by the petitioners for interference of this Court in the present proceedings. The order passed by the Deputy Secretary is well reasoned and reflects no apparent error of law. On the contrary in the facts of the cases it is well sustained. Hence rejected.