

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11152 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF DECD SOMAJI BAHIJJI

Versus

COMPETENT AUTHORITY  
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Appearance:

MR SANJAY M AMIN for Petitioners  
Mr K.C. Shah, AGP, for Respondents.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 28/06/96

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order of respondent No.2 in appeal No.ULC/3493/2781/4606 dated 28.4.94 declaring surplus

land and revoking the order of the Competent Authority, respondent No.1.

2. The petitioners are the legal heirs of deceased Somaji Bhaijiji, who had filed statement under section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (ULC Act). The said statement was inquired into and decided by the respondent No.1 who held that there was no vacant land and the statement in form No.1 under section 6 of ULC Act came to be dropped. Thereafter, the State Government took up the order of the Competent Authority in suo motu revision under section 34 of the ULC Act. The respondent No.2, after hearing the parties set aside the order of the Competent Authority and declared 12152 sq. mtrs. land as excess vacant land and directed the Competent Authority to resume further proceedings after giving option to the petitioners to select particular land for retention as per their desire. The impugned order of the respondent No.2 came to be passed on 28.4.94 which is under challenge in this petition.

3. The first contention is raised to the effect that the respondent No.2 could not have decided the matter in suo motu revision under section 34 of the ULC Act as the application of the petitioners for exemption under section 20 of the ULC Act was not decided and is still pending. In support of this submission, reliance is placed on a decision of Division Bench of this Court rendered in the case of Samrathben M. Chokshi v. State of Gujarat, 1994 (1) GLR 203. In the opinion of this Court, present case is covered by the ratio of the said decision of the Division Bench. There is no dispute about the fact that the application for exemption under section 20 of the ULC Act is still pending. Under section 20 of the Act, the State Government is empowered to exempt vacant land in excess of ceiling limit and the application under section 20 is admittedly pending and the respondent State Government is yet to exercise its power under section 20 of the ULC Act.

4. In the aforesaid decision of the Division Bench, it is held that the State is under duty to stay proceedings beyond the stage of section 10(2) of the ULC Act if an application under section 20 or section 21 is preferred. It is also stated that during the course of submissions by the learned Assistant Government Pleader that the Government has not proceeded further after the passing of the impugned order. Having regard to the facts and circumstances of the case and the factum of pendency of application under section 20 of the ULC Act and the ratio of the aforesaid decision of the Division

Bench of this Court, the State is required to be directed not to proceed beyond the stage of proceedings under section 10(2) of the ULC Act. The impugned decision of the respondent No.2 declaring excess land of 12152 sq. mtrs. will be, obviously, subject to the final decision of the Government on the application for exemption under section 20(1) of the ULC Act which is pending. It is also observed that the State Government will take early action to decide the pending application for exemption.

5. Having regard to the facts and circumstances and the decision of the Division Bench of this Court, this petition is required to be allowed to the aforesaid extent. Accordingly this petition is partly allowed. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

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