

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 631 of 1997

in

SPECIAL CIVIL APPLICATION No. 1092 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements ? YES

@@	2.	To be referred to the Reporter or not ? NO	
@@	2.	To be referred to the Reporter or not ? NO	
@	2.	To be referred to the Reporter or not ? NO	
	2.	To be referred to the Reporter or not ? NO	@@
2.	To be referred to the Reporter or not ? NO		@@
.	To be referred to the Reporter or not ? NO		@@ 2.
	To be referred to the Reporter or not ? NO		@@ 2.
	To be referred to the Reporter or not ? NO		@@ 2.
To be referred to the Reporter or not ? NO			@@ 2.
o be referred to the Reporter or not ? NO			@@ 2. To
be referred to the Reporter or not ? NO			@@ 2. To b
re			

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

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 ? NO

5. Whether it is to be circulated to the Civil
Judge ? NO

JAYDEVBHAI S SONAGARA

Versus

Appearance:

MR AJ PATEL for Petitioner
MR PM BHATT for Respondent No. 1
MS BR GAJJAR AGP for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 31/07/97

ORAL JUDGEMENT

Admitted.

Mr. P.M Bhatt waives service of notice of admission on behalf of Respondent Nos. 1 & 2 and Ms. B.R Gajjar, learned AGP waives service of notice of admission on behalf of Respondent No. 3-State. In the facts and circumstances of the case, is taken up for final hearing today.

This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No. 1092 of 1997, dated May 6, 1997. By the impugned order, the learned Single Judge granted interim relief as under :-

"In the result, the prayer of respondent No. 3 to modify and vacate interim relief qua land bearing Survey No. 369/1 is hereby rejected. The order of status quo in force to continue till final disposal of this petition."

Being aggrieved by the said order, the appellant {respondent No. 3 in Special Civil Application No. 1092 of 1997}, who was joined subsequently as a party respondent has approached this Court by filing the present Appeal.

We have heard Mr. A.J Patel, learned counsel for the appellant and Mr. P.M Bhatt, learned counsel for petitioners and Ms. B.R Gajjar, learned AGP for State.

It is not in dispute by and between the parties that proceedings were initiated against the petitioners under the Urban Land {Ceiling & Regulation} Act, 1976

(hereinafter referred to as "the Act"). The Competent Authority passed an order in 1982, against which appeal was preferred, which was also dismissed and finally the order was confirmed. It further appears that Notifications under sub-section (1) of Section 10 was published on October 17, 1985, under sub-Section (3) of Section 10 on May 27, 1986 and under Sub-Section (5) of Section 10 on July 17, 1992.

So far as the orders passed by the authorities under the Act are concerned, they were not challenged by the petitioners. It appears that an application was made by the petitioner under Section 45 of the Act stating therein that due to arithmetical or clerical error, more land was acquired which has caused prejudice to the petitioners. According to the petitioners, the error was apparent on the fact of record and since the said application was not decided by the Government, the petitioners had to approach this Court. The petition is admitted and is pending for final hearing. Status quo is also granted.

Mr. Patel, learned counsel for the appellant submitted that after the proceedings were over and the land was declared as 'surplus', it is vested in the State Government, free from all encumbrances. Thereafter, pursuant to an application made by the appellant-Trust under section 23, land was granted to the appellant-Trust for running a School on February 5, 1997. The trust has paid an amount of Rs. 11,38,800/-. Thus, the appellant has become absolute owner of the property. He further submitted that there is a gross and unexplained delay on the part of the petitioners in approaching this Court inasmuch as orders impugned in the petition were passed by the authorities in 1982 to 1988 whereas the petition was filed in January, 1997.

As regards delay in filing petition, we express no opinion particularly when 'Rule' is issued, and the matter is pending for final hearing. But, in our opinion, interim relief of status quo granted by the learned Single Judge has caused prejudice to the appellant to whom the land is allotted by the State under Section 23 of the Act.

Mr. Bhatt, no doubt, contended that if the petition will be allowed, irreparable injury and loss would be caused to the petitioners inasmuch as the appellant may make construction and there may be multiplicity of proceedings. In our opinion, however, Mr. Patel is right in drawing our attention to a

decision of Hon'ble Supreme Court in RAMNIKLAL N. BHUTTA AND ANOTHER v. STATE OF MAHARASHTRA & OTHERS, 1997 (1) SCC 134. In the said decision, the Supreme Court observed that even where a Court comes to the conclusion that a particular action is illegal or de-hors act, it does not necessarily result into status quo ante being restored. "... The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. "

According to Mr. Patel, therefore, even at the final hearing stage, if the learned Single Judge is of the opinion that there was some error on the part of the State authorities in dispossessing the petitioners and that the land might have been acquired in excess, the petitioners may be entitled to damages/compensation. So far as appellants are concerned, they have been granted land under the Act and they have made payment for the said purpose.

Mr. Bhatt submitted that an Affidavit-in-Reply is filed by one M.M Chaudhari, Competent Authority & Deputy Collector, U.L.C., Ahmedabad, wherein it was admitted that, "there was a mistake on the part of the authorities and that the same will rectified, and that necessary modifications will be made, as provided under Section 45 of the Act." Ms. Gajjar, learned AGP submitted that this sentence does not mean that possession of land will be given to the petitioners. On this aspect also, we express no opinion. In the facts and circumstances, in our opinion, this was not a case in which interim order could have been made and hence, interim order passed by the learned Single Judge requires to be vacated and is hereby vacated.

Mr. Bhatt submitted that if the petition will not be disposed of immediately, prejudice would be caused to the petitioners. The petitioners are at liberty to request the learned Single Judge for expeditious disposal of Special Civil Application. As

and when such a request is made, the learned Single Judge will decide the same in accordance with law. We may also clarify that the above observations which have been made by us have been made only for the purpose of disposal of the present Letters Patent Appeal, and as and when the main matter will be taken up for final hearing, the learned Single Judge will decide the same without being influenced in any manner whatsoever by the above observations.

For the foregoing reasons, appeal is allowed.
Order passed by the learned Single Judge in Special Civil Application No.1092 of 1997 on May 6, 1997 is set-aside. In the facts and circumstances of the case, there will be no order as to costs.

Prakash*