

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3017 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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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?
1 to 5 - No

NEW MADHURIKAPARK CO OP HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners
MR DA BAMBHANIA for Respondent No. 1
MR NILESH A PANDYA for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3
MR MUKESH R SHAH for Respondent No. 8
MR DC DAVE for Respondent No. 11

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/10/98

CAV JUDGEMENT

This petition under Article 226 of the Constitution challenges the order dated 7.11.1996 passed by the Competent Authority & Additional Collector, Ahmedabad (Annexure "H") as confirmed by the judgement and order dated 30.3.1998 (Annexure "K") passed by the

Urban Land Tribunal in Appeal No. (Ahmedabad)-108 of 1996, cancelling the exemption dated 15.12.1979 as modified by the order dated 2.1.1982 under Section 21 of the Urban Lands (Ceiling & Regulation) Act, 1976 and cancelling the scheme sanctioned by the Competent Authority as per the aforesaid orders in respect of lands bearing Survey Nos. 42 to 46, 51, 54, 61 and 62 in village Kotarpur, Ahmedabad City admeasuring 47340.82 sq.mtrs. and declaring the entire lands as excess vacant land and for acquiring the said land alongwith the construction thereon.

2. The facts leading to filing of the present petition, as averred by the petitioners, are as under:-

The petitioners herein are three Co-operative Societies which have filed this petition through their administrators. The petitioners are the owners of certain portion of the aforesaid lands for which exemption was granted by the Competent Authority on 15.12.1979 upon sanction of the scheme for construction of dwelling units for the weaker sections of the society under Section 21(1) of the Act. The said scheme was revised by the Competent Authority's order dated 2.1.1982 (Annexure "B"). The sanctioned scheme dated 15.12.1979 at annexure "A" to the petition stipulated various conditions including condition No. 1 that the construction of the dwelling units as per the scheme was to be completed within five years.

By notice dated 12.8.1996 (Annexure "D") the Competant Authority called upon the original holders of the land to show cause why the exemption granted by the aforesaid orders should not be cancelled as the conditions requiring the land holder to commence construction within one year from the date of sanction of the scheme (condition No. 9) and condition Nos. 1 and 18 requiring the holder to complete the construction of the dwelling units within five years from the date of the scheme were not complied with. The plinth certificate and the occupancy certificate were also not submitted as required by condition No. 11. It was also alleged that the petitioners had not complied with condition No. 13 requiring the holder to obtain undertakings from the members of the scheme that they shall not transfer the dwelling units for a period of 10 years without permission of the Competent Authority nor shall they mortgage the same during that period.

It was further alleged in the above notice that as per the scheme, 286 units were required to be

constructed whereas the actual number of buildings constructed was only 130 in Survey No. 51 to 54. Similarly, in Survey Nos. 42 to 46, 3,304 dwelling units were to be constructed whereas only 2,286 units were constructed.

In response to the notice, communication dated 26.9.1996 (Annexure "G") was sent by one of the Co-operative Societies pointing out that various co-operative societies were formed for construction of the dwelling units on the lands in question and the construction was commenced as per the building regulations and the construction was completed before 1991 and that the dwelling units were also occupied by the concerned purchasers upon execution of the sale deeds in their favour. It was submitted that since the dwelling units were already constructed and were occupied, there was no reason for cancelling the scheme which was sanctioned earlier.

On the date of hearing, the land holders did not remain present. The Competent Authority, therefore, proceeded with the matter and after considering the reports of the surveyors upon site inspection, the Competent Authority came to the conclusion that the land holders had committed breach of conditions enumerated in the show cause notice. The Competent Authority relied upon the fact that the land holders did not remain present nor did they submit any reply to the show notice. Accordingly, the Competent Authority passed the impugned order dated 7.11.1996 (Annexure "H") cancelling the previous orders sanctioning the scheme and revoking the exemption orders.

3. Aggrieved by the aforesaid order of the Competent Authority, the original land holders through their executors, C/o. Noble Builders alongwith 11 Co-operative Housing Societies including the present three petitioners, filed ULC Appeal No. (Ahmedabad)-108 of 1996. By judgment and order dated 30.3.1998 (Annexure "K"), the Urban Land Tribunal dismissed the said appeal on the ground that the land holders had not filed any reply or produced any material before the Competent Authority and, therefore, the land holders were not interested in the scheme and the Competent Authority was justified in cancelling the scheme and revoking the exemption orders.

4. The present petition is filed by three Co-operative Housing Societies - New Madhurikapark Co-operative Housing Society Ltd., Nikitapa (Naroda)

Co-operative Housing Society Ltd. and New Rutulpark Co-operative Housing Society Ltd. through their administrators. The other eight Co-operative Housing Societies Ltd. who were appellants before the Tribunal have been joined as respondents to this petition.

5. At the hearing of the petition, Mr AJ Patel, learned counsel for the petitioners, Mr MR Shah for the respondent Nos. 8, 9 and 10, Mr DC Dave for respondent No. 11 and Mr NA Pandya for respondent No. 2 have made a common cause and have raised the following contentions:-

- (i) The condition requiring commencement of construction within one year and completion of construction within five years is illegal and unreasonable.
- (ii) In any case the aforesaid condition is directory in nature and not mandatory. Hence, breach of this condition cannot result into cancellation of the entire scheme and the exemption order.
- (iii) The Competent Authority had given notice only to the original landholders and not to the Co-operative Housing Societies which were already formed and the Competent Authority was already informed by communication dated 26.9.1996 (Annexure "G") about the fact that the lands in question had already vested in the Co-operative Societies since July, 1991. Hence, the impugned decision is vitiated by violation of the principle of natural justice and it is required to be quashed and set aside.
- (iv) As per the revised sanctioned scheme, only 1509 dwelling units were required to be constructed but the actual number of dwelling units constructed on the lands in question are 2008 and, therefore, the Competent Authority and the Tribunal erred in holding that the number of dwelling units constructed was less than the number of units required to be constructed as per the scheme.

The learned counsel for the Co-operative Societies submitted that as per the decision dated 19.12.1996 in Special Civil Application No. 3463 of 1996, the Competent Authority could not make the order under Section 21(2) of the Act cancelling the scheme without affording an opportunity of hearing to the buyers

of the dwelling units.

5. On the other hand, Mr Sompura, learned AGP appearing for respondent No. 1 -State of Gujarat has submitted that since the conditions stipulated in the exemption orders were not complied with, the Competent Authority was justified in cancelling the scheme and revoking the exemption and the Tribunal was justified in dismissing the appeal.

6. Having heard the learned counsel for the parties, it appears to the Court that once it was brought to the notice of the Competent Authority by communication dated 26.9.1996 (Annexure "G") that pursuant to the scheme sanctioned by the Competent Authority, the Co-operative Societies were formed for constructing and allotting dwelling units, the Competent Authority ought to have issued show cause notices to the said Co-operative Housing Societies. As is well known, the landholders in whose favour the schemes are sanctioned and the exemption orders are passed under Section 21(1) of the Act, ordinarily enter into arrangements with developers and builders for construction of the premises and thereafter the landholders wash their hands of leaving the occupants of the dwelling units into lurch for facing wrath of the authorities on account of breach of various conditions committed by the landholders and their developers, builders and contractors. Hence, without expressing any opinion on the question whether occupant of each individual dwelling unit should be served with such a notice, this Court is definitely of the view that atleast the Co-operative Society consisting of the occupants of the dwelling units constructed on the land vested in the Society should be given a show cause notice before passing any orders for cancelling the scheme or for revoking the exemption order. That having not been done, the impugned orders would have been liable to be quashed and set aside and the matter would have been required to be remanded to the authorities for taking fresh decision in accordance with law.

7. However, in view of the decisions of this Court in the case of Govindlal Chunilal Dalvadi vs. State of Gujarat (Special Civil Application No. 7891/88 decided on 11.6.993) reported in 1994 (1) GCD 526 and in the case of Shyamjibhai B Patel vs. Competent Authority, 1995(1) GLR 742 and in view of the assertion made on behalf of the petitioners that the number of dwelling units constructed is more than the number of dwelling units required to be constructed under the exemption orders under Section 21 of the Act, this Court has thought it

fit to deal with the controversy on merits.

8. In the first place, the authorities must follow the principles laid down by this Court in the case of *Govindlal Chunilal Dalvadi vs. State of Gujarat* (Special Civil Application No. 7891/88 decided on 11.6.993) reported in 1994 (1) GCD 526 and in the case of *Shyamjibhai B Patel vs. Competent Authority*, 1995(1) GLR 742 that when it is found that the condition requiring completion of the construction work within a period of 5 years from the date of the scheme is not complied with, but ultimately it is found that substantial part of the construction was over within the stipulated period of five years or by the time the show cause notice under Section 21(2) of the Act comes to be issued, the authorities cannot mechanically cancel the permission and revoke the order of exemption and that the use of the word "shall" in Section 21(2) has to be read as giving discretion to the Competent Authority and to see that the scheme is implemented as early as possible. Hence, the Competent Authority was required to see that contravention of a particular condition of the scheme did not result into frustration of the scheme and the competent authority ought to have considered whether levy of penalty could have served the purpose or not.

9. In the case of *Shyamjibhai B Patel vs. Competent Authority* (supra), this Court was concerned with a situation where the landholder had constructed more dwelling units than the number of dwelling units as required by the scheme. The Court held that the scheme under Section 21 can be cancelled only if there is breach of a condition which breach would frustrate the object of the Act. Hence, if the holder constructs more dwelling units than required by the scheme, it would not frustrate but advance the object of the Act.

10. In the instant case, the learned counsel for the petitioner and respondent Nos. 2 to 11 have stated that as per the original order dated 15.12.1979, the landholder was required to construct 1499 dwelling units and that upon revision of the scheme as per the order dated 2.1.1982, the number of dwelling units required to be constructed was 1509 whereas the number of units already constructed on the land in question is 2008. Hence, construction of more dwelling units has advanced the purpose of the Act and not frustrated the same. It is submitted that the findings given by the Competent Authority that the number of units constructed is less is contrary to the orders dated 2.1.1982.

11. In view of the fact that the Competent Authority had taken the view in the impugned order that the number of dwelling units constructed was less than the number of dwelling units required to be constructed under the exemption orders, and in view of the aforesaid undisputed specific assertion on behalf of the petitioner that the number of dwelling units required to be constructed was 1509 and not 3304 + 286 as recorded in the impugned order of the competent authority, the learned AGP was called upon to clarify this issue. This was required to be done as the revised exemption order dated 2.1.1982 (Annexure "B" to the petition) was clearly supporting the petitioners' case and not the stand adopted by the competent authority in the impugned orders. Mr Mankad, learned AGP has ultimately conceded on the basis of written instructions that the competent authority had committed an error in mentioning in the impugned order that 3304 + 286 dwelling units were required to be constructed. In view of the specific figures given in the exemption order dated 2.1.1982 at Annexure "B" to the petition that in all 1509 units were required to be constructed, the petitioners are justified in making a grievance that the Competent Authority proceeded on an absolutely erroneous basis in holding that the petitioners have committed breach of the exemption order by constructing less dwelling units. In view of the admitted fact that the number of dwelling units constructed is more than the number stipulated in the revised exemption order, the impugned order is required to be quashed and set aside.

12. As regards the construction of shops, it is pointed out that as per the guidelines of the State Government contained in the Government Resolution dated 3.12.1980 (Annexure "C" to the petition) for every 20 dwelling units, construction of one shop is permissible so as to enable the occupants of the dwelling units to have easy access to the shops selling commodities of daily necessity. It is, therefore, submitted that the construction of 56 shops on the lands in question was not illegal.

13. In view of the aforesaid Government resolution dated 3.12.1980 at Annexure "C" to the petition it is clear that it was permissible to the landholder/societies to construct shops in order to facilitate occupancy of the dwelling units. It, however, appears that annexure "C" stipulates the ratio of shops looking to the number of dwelling units constructed under the scheme as sanctioned under Section 21 of the Act. The number of

shops constructed on the land in question is stated to be 56. It would, therefore, be just proper to direct the petitioners as well as the respondent-societies to pay penalty at the rate of Rs.5,000/- (Rupees five thousand only) per shop in excess of the ratio prescribed under the aforesaid Government resolution.

14. Having regard to the facts and circumstances of the case, it would be just and proper to direct that for the delay in completing construction of the dwelling units beyond the time limit stipulated in the exemption order, the petitioners as well as the respondent-societies shall pay penalty at the rate of Rs.2,500/- (Rupees Two thousand five hundred only) per dwelling unit and at the rate of Rs.5,000/- (Rupees five thousand only) for each shop.

15. In the result, the impugned orders dated 7.11.1996 passed by the Competent Authority & Additional Collector, Ahmedabad (Annexure "H") as confirmed by the judgement and order dated 30.3.1998 (Annexure "K") passed by the Urban Land Tribunal in Appeal No. (Ahmedabad)-108 of 1996, cancelling the exemption dated 15.12.1979 as modified by the order dated 2.1.1982 under Section 21 of the Urban Lands (Ceiling & Regulation) Act, 1976 are set aside on condition that the petitioner-societies as well as the respondent-societies pay the State of Gujarat-respondent No. 1 herein penalty at the rate of Rs.2,500/- (Rupees Two thousand five hundred only) per dwelling unit and at the rate of Rs.5,000/- (Rupees five thousand only) for each shop and also pay further sum of Rs.5,000/- for each shop in excess of the ratio stipulated under the Government resolution dated 3.12.1980. The amounts shall be paid to respondent No. 1 - State of Gujarat within two months from today, without prejudice to the rights of the societies to recover the same from the original landholders, developers and builders.

In case the above conditions are not complied with, this petition shall stand dismissed and the impugned orders dated 7.11.1996 (Annexure "H") and the judgement and order dated 30.3.1998 (Annexure "K") shall continue to operate.

Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

October 16, 1998 (M.S. Shah, J.)

