

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6125 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
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 concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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KASAMBHAI KAYARBHAI BELIM SINCE DECEASED THROUGH HEIRS

Versus

COMPETENT AUTHORITY AND DY COLLECTOR

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Appearance:

1. Special Civil Application No. 6125 of 1990  
MR PRADEEP PATEL for Petitioner No. 1-1/7  
MR.PR ABICHANDANI, A.G.P. for Respondent No. 1-2

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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 31/07/2002

ORAL JUDGEMENT

1. Neither learned A.G.P. shri P.R.Abichandani, nor Ms.Sonal Vyas have any instruction in the matter to appear as the papers are not traceable in their office, therefore, the request was made by learned A.G.P. Shri P.R.Abichandani to grant some time in the matter. In ordinary circumstances request would have been granted, but the fact that today this matter is listed for 39th time and that learned Senior Advocate Shri A.J.Patel appearing with Shri Pradip Patel had serious objection about grant of time, therefore, request to adjourn this matter is refused and the matter is heard and disposed of

in accordance with law by this order.

2. By way of this petition the petitioner has challenged the impugned common order passed by the Urban Land Tribunal and Ex-Officio Secretary to the Government, Revenue Department, Ahmedabad, in Appeal Nos.2/87 and 95/87, whereby the learned Tribunal dismissed both the Appeals filed against the impugned order dated 30.8.1983 passed by the Competent Authority holding that the petitioners had excess land to the extent of 31413 sq.mtrs. under the Urban Land (Ceiling & Regulation) Act, 1976 (for short "The Act").

3. On 9.6.1992, learned Single Judge of this Court, while issuing notice granted ad.interim relief by a brief reasoned order which is as under :

"Notice returnable on 29.6.92. As could be understood and appreciated, learned Advocate Mr.Patel is asking for ad-interim relief. At the same time, it cannot be ignored that we are dealing with a petition which is filed on 19.7.90 against an order that came to be passed on 30.5.90 and therefore, as on the date what could be the position of the field, is not clear.

However, Mr.Patel on instructions, has stated that the possession of the field is still with the petitioner and it would necessarily mean that the impugned order at Annexure-B at 30.5.90 has not been implemented. If that be the position and actual possession of the land has not been taken, the respondents are hereby restrained from taking possession of the field and implementing the said order till returnable date of the notice i.e. 29.6.92. D.S. Permitted."

4. However, though duly served, no reply was filed by the respondents in the matter, therefore, on 29.6.1992 the learned Single Judge of this Court regarding that reply is not filed, issued Rule making it returnable on 31.7.1992 and continued the interim relief granted earlier in favour of the petitioner. However, due to some or the other reason the matter could not be finally heard and decided till today.

5. It seems that on behalf of the respondent the reply Affidavit dated 26.10.1999 came to be filed by one Shri S.A.Patel, Competent Authority & Deputy Collector (LR), Vadodara, wherein it has been contended that the Notification u/s.10(3) of the Act was issued on

30.11.1983 which was duly published on 22.12.1983 and accordingly the land in question vested with the Government and no right title remained with the petitioner. Thereafter, notice dated 15.3.1984 issued u/s.10(5) of the Act was served upon the petitioner on 21.3.1984, and possession of the land in question had been taken over on 27.3.1985 in presence of the Panchas. Not only that, the compensation order u/s.11 was also passed on 18.4.1987. Moreover, 413 plots were allotted to the beneficiary u/s.23 of the Act creating 3rd party interest. Accordingly, on the date of repeal Act coming into force the possession of the land in question remained with the Government and poor urban persons.

6. In view of the above Reply Affidavit, Shri Ahmedbhai Kasambhai, the petitioner No.1/2 filed Affidavit in Rejoinder contending that the actual possession of the land is with them and they are carrying out agricultural operation till date. Further, Additional Affidavit was filed by Ahmedbhai Kasambhai on behalf of the petitioner on 12.7.2000 stating that during the pendency and hearing of this petition before A.L.Dave, J. the officers of the respondent Authorities personally visited the place early in the morning at 9.00 a.m. on 7.7.2000 and it was found by them that the petitioners were not only in actual possession of the land, but they were also cultivating the said land. Along with that further Affidavit some documents are produced which includes the Certificate issued by the Sarpanch of the Gram Panchayat on 3.7.2000 that they are in possession of the land and other documents like village form No.8-A and the receipt of payment, etc. Affidavit of 3 persons of the village have also been annexed along with additional affidavit to show that the petitioners were in possession.

7. There is yet another Affidavit dated 17.4.2000 on the record of this case filed by Ahmedbhai Kasambhai on behalf of the petitioners in support of their case that they are in possession of the land and cultivating the same. Along with Affidavit some documents are also annexed.

8. In absence of the papers, learned A.G.P. Shri P.R.Abichandani appearing for the respondents borrowed the papers from learned Counsel Shri Patel and pointed out that Shri T.L.Chauhan, Addl. Collector and Competent Authority, Vadodara has filed further additional Affidavit in Reply on behalf of the respondents on 26.6.2000 along with the relevant documents showing that the possession actually taken over. In his Affidavit Shri Chauhan, Addl. Collector & Competent Authority,

Vadodra asserted that the possession was already taken over by the State Government under Panchnama. However, the copy of the same was not traceable and the police complaint vide CR No.I-166/2000 was filed on 17.7.2000 which was being investigated. He has also admitted in his reply that Talati of village Tarsali had collected the revenue for the year 1991-92 to 1998-99 and 1999-2000 on 1.3.2000, but it was by mistake through oversight. Regarding the Certificate issued by the Sarpanch he had specifically stated in his Affidavit that on the false information supplied to him that they are in possession of doing agricultural activity and cultivating the land and therefore he has issued such certificate without any sufficient material. Explanation is called for from the Talati for collecting the revenue for the period from 1991 to 2000 on 1.3.2000 though disputed land vested with the Government. It was further reiterated in the Reply Affidavit that the respondent authority had taken over possession of the disputed land on 27.3.1985 and thereafter proceeding u/s.10(1), 10(3) and 10(5) and Section 11 of the Act had taken place and that the possession of the disputed land was already with the Government. Therefore, the Authority was able to allot the said land to urban poor person by allotting 413 plots admeasuring 25 sq.mtrs. In absence of the additional Affidavit in Reply filed by Shri Chauhan on 26.7.2000 simple copy of the said Affidavit is ordered to be taken on record.

9. Learned Senior Advocate Shri A.J.Patel submitted that this petition survives only for academic purpose and it need not be decided. In that view of the matter the petition is required to be disposed of accordingly. However, there is serious controversy between the parties regarding actual possession of the land. Both the parties contending in this petition that they are in possession of the land and in support of their claim they have tried to rely upon the averments made in the petition, Reply Affidavit, Rejoinder, further Reply and the documents annexed to it. Such type of disputed question of fact regarding possession cannot be gone into and decided by this Court when such serious controversy is involved in the matter. If according to the State Government the possession was already taken over by them way back in 1985 and the said land was divided in 413 sub-plots and allotted to poor urban people then the same shall remain with them. However, if the possession of the land was never taken over by the State Government from the petitioner and if it had actually remained with the petitioners then it shall remain with them. Except observing this nothing more can be done in the matter.

Accordingly this petition is disposed of. Interim relief granted earlier stand vacated. Rule discharged. No order as to costs.

sd/-

Date : July 31, 2002 (B.J.Shethna, J.)

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