

State of Gujarat

Vs

Patel Bava Karsan and Others

Chief Officer, Rajkot Municipality and Others

Vs

Patel Bava Karsan and Others

Civil Appeals Nos. 1596 and 1224 of 1970

(Syed M. Fazal Ali, A. D. Koshal, R. S. Sarkaria JJ)

22.02.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by certificate is directed against a judgment of the Gujarat High Court dated January 31, 1970 issuing a writ of mandamus to the Rajkot Municipality directing it to desist from enforcing a notice dated March 9, 1966 served on respondent 1 and requiring him in pursuance of the provisions of Section 233(1) of the Gujarat Municipality Act (herein after referred to as the 'Gujarat Act') to hand over possession of a piece of land to the Municipality on the ground that he was in unauthorised occupation thereof. The only point in controversy before the High Court was as to whether or not Section 233 of the Gujarat Act, under which the proceedings for eviction of respondent 1 were taken, was constitutionally valid. The High Court in view of a previous decision of that court held that Section 233 being violative of Article 14 of the Constitution of India was ultra vires. The appellants applied for certificate for leave to appeal under Article 133(1)(c) which was granted, hence this appeal.

2. Section 233 of the Gujarat Act runs thus :

233. Power to evict certain persons from municipal premises. - (1) If the Chief Officer is satisfied -

(a) that the person authorised to occupy any premises belonging to the municipality (hereinafter referred to as "the municipal premises") as a tenant or otherwise has -

(i) not paid rent lawfully due from in respect of such premises for a period of more than two months, or

(ii) sub-let, without the permission of the municipality, the whole or any part of such premises, or

(iii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any municipal premises,

the Chief Officer may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by post or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be provided in the rules made by the State Government order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub-section (1) is made against any person the Chief Officer shall inform the person by notice in writing of the grounds on which the proposed order is to be made and give him a reasonable opportunity of tendering an explanation and producing evidence, if any, and to show cause why such order should not be made, within a period to be specified in such notice. If such person makes an application to the Chief Officer for extension of the period specified in the notice the Chief Officer may grant the same on such terms as to payment and recovery of the amount claimed in the notice as it deems fit. Any written statement put in by such person and documents produced in pursuance of such notice shall be filed with the record of the case and such person shall be entitled to appear before the authority proceeding in this connection by advocate, attorney or pleader. Such notice in writing shall be served in the manner provided for service of notice under sub-section (1).

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3. It appears that in the case of Northern India Caterers Pvt. Ltd. v. State of Punjab ((1967) 3 SCR 399 : AIR 1967 SC 1581 : (1968) 1 SCJ 475) this Court while construing a statute whose provisions were almost similar to those of Section 233 of the Gujrat Act took the same view as the High Court and struck down the statute. The decision held the field until it was ultimately overruled in the case of Maganlal Chhaganlal (Maganlal Chhaganlal v. Municipal Corpn., (1975) 1 SCR 1 : (1974) 2 SCC 402).

4. In a later decision in Ahmedabad Municipal Corpn. v. Ramanlal Govindram ((1975) 3 SCR 935 : (1975) 1 SCC 778), this Court while following the case of Maganlal Chhaganlal (Maganlal v. Municipal Corpn., (1975) 1 SCR 1 : (1974) 2 SCC 402) upheld a provision of the Bombay Provincial Municipal Corporation (Gujarat Amendment) Act, 1963 which was in pari materia with Section 233 of the Gujarat Act. Mr. M. K. Ramamurthi appearing for the respondents submitted that Ahmedabad Municipal Corpn. case ((1975) 3 SCR 935 : (1975) 1 SCC 778) was not correctly decided because through Maganlal Chhaganlal case (Maganlal Chhaganlal v. Municipal Corpn., (1975) 1 SCR 1 : (1974) 2 SCC 402) there was a right to appeal to a civil court and the right to take evidence was given by the statute concerned, in the former, the relevant statute contained no such provision. This contention does not appear to be well founded because once property belonging to the government or semi-government bodies is held to fall within a particular class and therefore a reasonable classification, whether a civil remedy is given or not would not be violative of Article 14 of the Constitution on the broad principle laid down in Maganlal Chhaganlal case (Maganlal Chhaganlal v. Municipal Corpn., (1975) 1 SCR 1 : (1974) 2 SCC 402).

5. It was also argued that the provisions of the Gujarat Act were violative of Article 19 of the Constitution of India. This contention was expressly considered and negative by this Court in

Ahmedabad Municipal Corpn. v. Ramanlal Govindram ((1975) 3 SCR 935 : (1975) 1 SCC 778) with which we find ourselves in complete agreement. We, therefore, allow these appeals, set aside the judgment of the High Court and affirm the order of the Chief Officer dated March 9, 1966.

6. We might, however, observe that under Section 236 of the Gujarat Act, the respondents have right to file an appeal to the government against the impugned order of eviction. This section also contains a specific provision under which delay can be condoned if sufficient cause is shown to the satisfaction of the appellate authority namely the government. In these circumstances, it will be open to the respondents to file an appeal to the government against the order of eviction passed by the Chief Officer which will be disposed of by the government in accordance with the law.

7. There will be no order as to costs.

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