

State of Gujarat

Vs

Dharamdas Viranand and Another

State of Gujarat

Vs

Laxmandas Hotchand and Another

State of Gujarat

Vs

Shaikh Abdul Rahim Hajimohammed and Another

Civil Appeals Nos. 1447, 14533 and 1449 of 1970

(V.B. Eradi, R.B. Misra JJ)

18.11.1981

JUDGMENT

MISRA J. –

1. These three appeals by certificate are directed against a common judgment of the Gujarat High Court dated November 15, 1969. By the said judgment the High Court allowed three petitions under Article 226 of the Constitution, two of them challenging Section 233 of the Gujarat Municipalities Act, 1963. and the third one challenging Section 193-A of the Gujarat Village Panchayats Act, 1961.

2. The provisions of Section 233 of the Gujarat Municipalities Act are identical with provisions of Section 193-A of the Gujarat Village Panchayats Act. To appreciate the point involved in the case it is necessary to read Section 233 :

233. (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 him 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, of 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 appeal 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. The pattern of facts in all these appeals is similar. We, therefore, propose to give the facts of Appeal No. 147 of 1970. Dharamdas Viranand, respondent 1 had erected a cabin on municipal footpath near sub-station on public road. A resolution was passed on February 5, 1966 by the Upleta Municipality to get the said premises vacated. Pursuant to the resolution respondent 1 was served with a notice dated December 4, 1967 showing cause why he should not be evicted from the premises. In reply thereto respondent 1 sent a letter dated January 6, 1968 stating therein that he was not in unauthorised occupation and he should be allowed to retain the cabin on the said premises. As respondent 1 failed to vacate the said premises and hand over the same to the Municipality, the Chief Officer of the Upleta Municipality by his order dated May 28, 1968 directed respondent 1 to vacate the same and hand over possession to the Municipality by June 30, 1968. Feeling aggrieved, respondent 1 filed a petition under Article 226 of the Constitution challenging the notice.

4. The main ground of challenge is that Section 233 of the 1963 Act is violative of the equal protection clause contained in Article 14 of the Constitution in that it discriminates amongst those in occupation of municipal premises inter se by leaving it open to the Municipality at its own sweet will to adopt either the ordinary remedy by civil suit or the drastic summary remedy under the section without there being any guiding policy or principle to control the exercise of the discretion, and that Section 233 imposed unreasonable restrictions on the occupant's fundamental right to hold property under Article 19(1) (f) inasmuch as the machinery provided in the section for determining the liability to eviction under both the clauses of sub-section (1) was unreasonable. The High Court relying on its earlier decision in Ramanlal Govindram v. Ahmedabad Municipal Corporation and

related matters declared Section 233 ultra vires Article 19(1) (f) and Section 233, sub-section (1), clause (b) vires Article 14 of the Constitution and issued a writ of certiorari quashing the notice issued under Section 233, sub-section (1). In Ramanlal Govindram case relied upon by the High Court the vires of Section 437-A of the Bombay Provincial Municipal Corporations (Gujarat Amendment) Act, 1963 was challenged. Section 437-A was in identical terms as Section 233 of the Gujarat Municipalities Act, 1963 or Section 193-A of the Gujarat village Panchayats Act, 1961.

5. It appears that in Northern India Caterers Pvt. Ltd. v. State of Punjab this Court while considering Section 5 of the Punjab Public Premises and Land (Eviction and rent Recovery) Act, 1959, which was almost similar to Section 233 of the Gujarat Municipalities Act, had taken the same view as the Gujarat High Court and struck down the statute. This decision held the filed until it was overruled in the case of Maganlal Chhagganlal (P.) Ltd. v. Municipal Corporation of Greater Bombay. The case of Ramanlal Govindram on the basis of which the High Court declared Section 233 of the Gujarat Municipalities Act and section 193-A of the Gujarat Village Panchayats Act ultra vires, itself came for consideration before this Court in Ahmedabad Municipal Corporation v. Ramanlal Govindram and it reversed the judgment holding Section 437-A of the Bombay Provincial Municipal Corporations (Gujarat Amendment) Act, 1963, which was in pari materia with Section 233 of the Gujarat Municipalities Act, as intra vires. The result is that the case on the basis of which the High Court of Gujarat held Section 233 of the Gujarat Municipalities Act and Section 193-A of the Gujarat Village Panchayats Act as ultra vires itself has been overruled by this Court. Again the same view has been taken in Civil appeal No. 1596 of 1970, decided on February 22, 1980.

6. In view of the law laid down in the aforesaid cases by this Court, we allow these appeals and set aside the judgment of the High Court. In the circumstances of the case we direct the parties to bear their own costs.

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