

Mansukhlal Jadavji Darji and another etc.

Vs

Ahmedabad Municipal Corporation and others

Civil Appeals Nos.4886-87 of 1991

(M.N. Venkatachaliah, A.M. Ahmadi, B.P. Jeevan Reddy JJ)

04.012.1991

JUDGMENT

VENKATACHALIAH, J:-

1. Appellants seek special leave to appeal to this Court from the common judgment and order dated 4th April, 1977 of the High Court of Gujarat in F.A. No. 526 of 1975 and 509 of 1975. We have heard Shri P. H. Parekh for the Appellants and Shri T. U. Mehta for the Respondents. Special leave is granted and the appeals are heard and disposed of by this judgment.

2. The two appeals arise out of two of the four suits instituted in the City Civil Court, Ahmedabad where the appellants assailed the validity of the Ahmedabad Town Planning Scheme under the Bombay Town Planning Act, 1955. The grounds of the challenge were that the mandatory requirements of sub-rules (3) and (4) of R. 21 of the Bombay Town Planning Rules, 1955 had not been complied with. Appellants contended that they were tenants in occupation of certain properties belonging to a Public Trust in the City of Ahmedabad; that the reconstitution of the plots under the Scheme respecting the property in their occupation would adversely affect their interests and that, therefore, the Town Planning Officer was required to give special notice to all the "persons-interested" in any plot and to give to all "affected persons" affected by the scheme sufficient opportunity of stating their views. The suits were decreed by the trial Court.

3. But the appeals preferred by the Ahmedabad Municipal Corporation before the High Court were allowed by the learned single Judge who, following the Full Bench decision of that court in *Dungarlal Harichand v. State of Gujarat*, (1976) 17 Guj LR 1152 : (AIR 1977 Gujarat 23), held that sub (3) and (4) were not mandatory. This was affirmed by the Division Bench in the Letters Patent Appeals.

4. It is necessary to take note of the career of these suits in the appeals before this Court for the purposes of determining the identity of the parties entitled to the relief. There were four suits, including the two from which these appeals arise, before the trial Court which were all dealt with as companion matters.

The first was Civil Suit No. 2355 of 1971 instituted by a certain Gopal Singh Tilak Singh and five others. That suit was also dismissed by the trial Court and no appeal was carried up in that matter. That dismissal has become final.

The two present appeals arise out of Civil Suit No. 2358 of 1971 from which S.L.P. (C) No. 3165 of 1977 arises and Civil Suit No. 2356 of 1971 from which S.L.P. (C) No. 3166 of 1977 is preferred.

In Civil Suit No. 2358 of 1971 there were originally five plaintiffs. But only two of them have come-up in appeal. Similarly only two of the five original plaintiffs in Civil Suit No. 2356 of 1971 have preferred appeal.

5. The fourth suit of the companion matters was Civil Suit No. 2357 of 1971. That suit was also for similar reliefs. Against the partial decree made by the trial Court therein, the Municipal Corporation of Ahmedabad preferred an appeal to the High Court. The High Court reversed that judgment and decree holding that sub-rules (3) and (4) of R.21 were not mandatory and that the scheme was valid. The judgment of the High Court was brought up before this Court in S.L.P. (C) No. 2678 of 1977 which after grant of special leave became Civil Appeal No. 1354 of 1977. The appeal was disposed of by a three Judge Bench on 1-10-1991 : (reported in 1991 AIR SCW 2515).

6. This Court laid down that sub-rules (3) and (4) of R. 21 of the Bombay Town Planning Rules, 1955 were mandatory and the non-observance of their requirements entailed the vitiating of the scheme. However, the Court considered that it was not necessary to push the matter to its logical conclusion in view of the obvious public inconvenience and difficulties arising from such invalidation. A just solution was found by granting relief to the plaintiff in some other appropriate way. In regard to the form this relief should take, this Court said (1991 AIR SCW 2515, para 16):

"It is seen that the appellant has been in possession as tenant for well over half a century and, therefore, it is injuriously affected by the scheme which has the effect of terminating his possession and this adversely affects its business in the demised premises. Since it is a running business over the years, the respondent is directed to provide an alternative premises by allotting a suitable shop within the city to the appellant; to put in possession thereof and until then allow its occupation of demised shop. In case the appellant does not vacate or create any obstruction in any form in the matter of possession, it would be open to the respondent to have the appellant ejected summarily. In this view we decline to interfere with the scheme. The appeal is accordingly allowed to the above extent and in other respects the decree of the Courts below is upheld. But in the circumstances parties are directed to bear their own costs.

While limiting the category of persons who would be entitled to relief, it was observed:

"..... But he must be in possession of the property on the crucial date i.e. when the town plan scheme is notified in the official gazette. Every owner or tenant or a subtenant in possession on that date alone shall be entitled to a notice and opportunity.

Undoubtedly the Town Planning Scheme was published on July 1, 1951....."

7. Indeed the present appeals are covered by the said pronouncement. For the reasons stated in and following the said pronouncement, we direct that the two appellants in S.L.P. (C) No. 3165 of 1977 viz., Mansukhlal Jadavji Darji and Mathurbhai Gangabhai Thakkar and the two appellants in S.L.P. (C) No. 3166 of 1977 viz., Nurmohmed Hussainbhai and Shankarbhai Haribhai Proprietor of Ganpatram Kewaldas Company shall be entitled to similar reliefs of being provided with by the respondent-Municipal Corporation of suitable accommodations on rent in a suitable locality having regard to the nature of their businesses and of the extents reasonably required for carrying on their respective businesses.

The appeals are disposed of accordingly. No costs.

Order accordingly.

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