

Memon Bachubhai Dawoodbhai and Co.

Vs

State of Gujarat and another

Civil Appeals Nos. 3468 to 3478 of 1979

(K. Ramaswamy, S. Mohan JJ)

28.01.1992

JUDGMENT

1. These appeals by special leave arise against an interlocutory order vacating the injunction granted by the trial court. The controversy at that time centred round the question whether the appellants were entitled to notice before finalising the Town Planning Scheme published on July 1, 1951. Reliance was placed on the decision of the High Court reported in AIR 1977 Gujarat 23 (FB) titled *Dungarlal Harichand v. State of Gujarat*. This Court in *Jaswant Singh Mathura Singh v. Ahmedabad Municipal Corporation* reported in AIR 1991 SC 2130 has partly overruled the judgment of the Full Bench and held that all those tenants, sub-tenants continuing in possession as on July 1, 1951, are entitled to a notice before finalising the scheme. It is now admitted by the appellants that the tenants were continuing in possession from 1960. Under these circumstances, so far as the tenants are concerned, they are not entitled to any notice. It is not clear from the pleadings whether the first appellant is an owner or in possession as on July 1, 1951. Therefore, it is open to the first appellant to adduce evidence in this regard before the trial court to establish this fact. If he is continuing in possession as on July 1, 1951, he is also entitled to the same benefit as was given in the earlier decision of this Court referred to above. Mr. Parekh, learned counsel for the appellants seeks to raise some more contentions in support of the appellants' right to continue in possession. Since the questions have not been gone into by the trial court, the matter is left open for consideration. It is open to the appellants to adduce evidence in respect of the points sought to rely on and the trial court would dispose of the matter according to law.

2. In the circumstances, the appeals are partly allowed in regard to first appellant. There shall be a direction not to dispossess the first appellant till the matter is decided by the trial court. With regard to other tenants, maintaining parity with the judgment of this Court referred to above, we cannot accede to the request of learned counsel for the appellants, Mr. Parekh to continue the injunction granted earlier and the direction given by this Court. Accordingly, to that extent it is vacated. The trial court is directed to dispose of the suit as expeditiously as possible within a period of six months from the date of the receipt of a copy of this order. The parties are directed to bear their own costs.

3. It is made clear that if the tenants are entitled to continue under the protection of the landlord, this order may not preclude to have the rights asserted through the landlord. Order accordingly.

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