

Municipal Corporation

Vs

Chelaram & Sons and Another

Civil Appeal No. 7736 of 1996

(N. P. Singh, S. B. Majmudar JJ)

27.09.1996

JUDGMENT

S. B. MAJMUDAR, J.

1. The Municipal Corporation of the City of Ahmedabad having obtained special leave to appeal under Article 136 of the Constitution of India from this Court has brought in challenge the judgment and order rendered by a Division Bench of the Gujarat High Court in Letters Patent Appeal No. 258 of 1993 decided on 2-9-1993 whereby the decree of the City Civil Court in favour of the respondent-plaintiffs came to be restored by setting aside the judgment and order of the learned Single Judge who had dismissed the said suit.

2. The background facts leading to this appeal may be noted at the outset. Respondent-plaintiffs filed Civil Suit No. 1809 of 1972 in the City Civil Court at Ahmedabad against the appellant-Corporation. They had brought in challenge notice dated 14-6-1972 issued by the appellant-Corporation against the respondent-plaintiffs under Section 54 of the Bombay Town Planning Act, 1955 (hereinafter referred to as "the Act") read with Rule 27 of the Bombay Town Planning Rules, 1955 (hereinafter referred to as "the Rules"). By the said notice the respondent-plaintiffs were called upon to vacate the suit land within seven days failing which they were threatened to be removed from the land and the superstructure thereon by use of force. The respondent-plaintiffs contended that the said notice was illegal and contrary to principles of natural justice. The said challenge was mounted by the respondent-plaintiffs mainly on two grounds, one that Plaintiff 2, Respondent 2 herein, was in possession of the land and the superstructure on the date on which the Town Planning Scheme concerned was gazetted by the appellant-Corporation under the Act on 2-8-1951 and no individual notice was served on Plaintiff 2 who was in possession of the suit property, hence subsequent proceedings culminating into the Town Planning Scheme and the impugned notice were bad in law. The second ground of challenge was that in any case the notice under Section 54 of the Act read with Rule 27 of the Rules was contrary to the basic principles of natural justice as no opportunity to show cause was given to the respondents before ordering their eviction. The learned trial Judge having heard the parties came to the conclusion that the impugned notice was liable to be quashed on both the aforesaid grounds. Consequently the following order and decree were passed by the learned trial Judge :

"The notice dated 14-6-1972, impugned in this suit being violative of principles of natural justice are illegal and the defendant is restrained from implementing or otherwise executing the said notices.

Looking to the circumstances of the case, there will be no order as to costs."

3. The appellant-Corporation carried the matter in appeal to the High Court of Gujarat at Ahmedabad. A learned Single Judge by his order dated 9-4-1991 allowed the said appeal. The learned Single Judge of the High Court held that in view of the latter Full Bench judgment of the High Court in the case of *Dungarlal Harichand v. State of Gujarat* [(1976) 17 Guj LR 1152 : AIR 1977 Guj 23 (FB)] no individual notices were required to be served on the sitting tenants as per Rule 21 sub-rules (3) and (4) of the Rules. That negated the first ground of attack levelled against the impugned notice by the plaintiff. On the second ground which appealed to the trial court for voiding the notice, namely, non-compliance with the principles of natural justice while issued notice under Section 54 of the Act read with Rule 27, it was held by the learned Single Judge that the earlier view of the Division Bench of the High Court in the case of *Mangalji bhai v. State of Gujarat* [(1972) 13 Guj LR 649] no longer held in view of latter Full Bench judgment of the High Court in the case of *Saiyed Mohd. Abdullamiya Uraizee v. Ahmedabad Municipal Corpn.* [(1977) 18 Guj LR 549]. Consequently the appeal of the appellant-Corporation was allowed and respondents' suit was dismissed. The respondents thereafter carried the matter in letters patent appeal before the Division Bench of the High Court. The Division Bench of the High Court consisting of S. Nainar Sundaram, C.J. and S.D. Dave, J. by their impugned judgment and order held that this Court in the case of *Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corpn.* [1992 Supp (1) SCC 5 : AIR 1991 SC 2130] had taken a contrary view and had held that individual notice under Rule 21 sub-rules (3) and (4) of the Bombay Town Planning Rules was required to be issued to those in possession of the properties and as no such notice was issued to the respondents only on that ground the suit was required to be decreed and the judgment of the learned Single Judge was required to be set aside. Accordingly the Division Bench vacated the order of the learned Single Judge in First Appeal and restored the decree of the City Civil Court in Civil Suit No. 1809 of 1972. Thereafter the Division Bench further directed that it is for the defendant (appellant-Corporation) to follow the due procedure before enforcing to reconstitute the plot as final Plot No. 115 under the Scheme.

4. The learned counsel for the appellant-Corporation vehemently submitted that the Division Bench of the High Court had totally misunderstood the ratio of the decision of this Court in *Jaswantsingh* case [1992 Supp (1) SCC 5 : AIR 1991 SC 2130]. He submitted that on the facts of the present case there was no dispute that Plaintiff 2, Respondent 2 herein, who was on possession of the suit superstructure on 2-8-1951 when declaration of the Scheme was published in the Government Gazette had already transferred his right, title and interest in the suit premises in favour of Plaintiff 1-Respondent 1 when he sold the same to Respondent 1 on 1-9-1971 and thereafter Respondent 1 became the direct tenant of the original owner Ranchhodbhai M. Panchal. He submitted that Ranchhodbhai M. Panchal had never challenged the impugned notice nor was such a notice issued to him. That Respondent 2-Plaintiff 2 had nothing to do with the suit property after 1-9-1971 and he was a total stranger to the said property. Thus even if he had formally joined as Plaintiff 2 no relief could be given to him on any ground. So far as Plaintiff 1-Respondent 1 is concerned he came on the scene only on 1-9-1971. He was admittedly not in possession of the suit property on 19-7-1951 when the declaration of intention for framing Town Planning Scheme No. 14 was made by the appellant-Corporation. Nor was he in possession when the Scheme was published in Government Gazette after the State Government sanctioned the approved Scheme on 26-12-1954. Thus Plaintiff 1-Respondent 1 had nothing to do with the suit property on the aforesaid dates. Therefore, to such a person like Plaintiff 1 no special notice was required to be served under Rule 21 sub-rules (3) and (4) of the Rules as laid down by this Court in the very same judgment which was relied upon by the High Court against the appellant. In this connection he invited our attention to the said decision rendered by a Bench of three learned Judges of this Court in the case of *Jaswantsingh* [1992 Supp

(1) SCC 5 : AIR 1991 SC 2130]. K. Ramaswamy, J. speaking for the three-member Bench in that case has clearly laid down as under : (SCC pp. 12-14, paras 8-11)

"... a tenant or a sub-tenant in possession of a tenement in the Town Planning Scheme is a person interested within the meaning of Rules 21(3) and (4) of the Rules. But he must be in possession of the property on the crucial date i.e. when the Town Planning Scheme is notified in the Official Gazette. Every owner or tenant or a sub-tenant, in possession on that date alone shall be entitled to a notice and opportunity.

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It is settled law that before depriving a person of his property or imposing any further liability, the principles of natural justice require prior notice and reasonable opportunity to him to put forth his claim or objections. Rule 21(3) speaks of special notice of at least three days' duration. It is in consonance with and in compliance of the principles of natural justice. The legislature thus made a distinction between the general notice envisaged in sub-rule (1) of Rule 21 and special notice under sub-rule (3) of Rule 21, which was in addition to the former."

A mere look at the aforesaid decision shows that a special notice under Rule 21(3) of the Rules framed under the Act will be required to be served only on those persons either owners or tenants or sub-tenants who were in possession of the property concerned on the date on which Town Planning Scheme was notified in Official Gazette and not to others who might have come on the scene later on. As noted earlier the declaration for framing the Town Planning Scheme was published in the Government Gazette on 2-8-1951 and the Scheme itself was published on 29-12-1954. On neither of these two dates Plaintiff 1-Respondent 1 was in possession. He came on the scene later on, i.e. on 1-9-1971. Therefore, to such a person no special notice under Rule 21, sub-rule (3) was required to be issued as ruled by this Court. Unfortunately this factual position does not seem to have been noted by the Division Bench of the High Court which voided the impugned notice on that ground. The Division Bench also with respect ignored the salient fact that though Plaintiff 2 was in possession on the aforesaid dates when the declaration of intention for framing the Town Planning Scheme was published as well as when the sanctioned Scheme was published, by the time the suit was filed after the impugned notice was issued, Plaintiff 2 had nothing to do with the property as his right, title and interest in the said property had ceased to exist from 1-9-1971 when he parted with the same in favour of Plaintiff 1-Respondent 1. To that extent learned counsel for the appellant is justified in his submission. He is also justified in contending that if the impugned notice is not held bad on account of non-compliance of Rule 21 sub-rule (3) so far as Plaintiff 2-Respondent 2 is concerned, it could not be voided also against Plaintiff 1-Respondent 1. The final direction issued by the High Court to the effect that it is for the defendant to follow the due procedure before enforcing to reconstitute the plot as final Plot No. 115 under the Scheme, also therefore would not survive.

5. However, that is not the end of the matter. The Division Bench has restored the decree passed by the learned trial Judge. As we have noted the order and decree passed by the trial court quashed the impugned notice dated 14-6-1972 on the ground of violation of principles of natural justice. So far as this part of the order of the Division Bench is concerned no fault can be found in the said decision of the High Court. The reason is obvious. Under Section 54 of the Act read with Rule 27 of the Rules when any occupant is sought to be evicted in the light of the sanctioned Scheme principles of natural justice have to be observed and after hearing the occupant concerned a speaking order has to be passed. As laid down by this Court in the case of Babubhai & Co. v. State of Gujarat [(1985) 2

SCC 732 : AIR 1985 SC 613] while upholding the vires of Section 54 and Rule 27 of this very Act Tulzapurkar, J., speaking for the two-member Bench made the following pertinent observations in para 8 of the Report : (SCC p. 738)

"... the power conferred upon the Local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record eschewing extraneous and irrelevant. Moreover any order of summary eviction based on any extraneous, non-germane, irrelevant or mala fide considerations would be subject to the writ jurisdiction of Court."

On the facts of the present case there is no dispute that the impugned notice dated 14-6-1972 did not follow the aforesaid procedure laid down by this Court for issuing such notices under Section 54 read with Rule 27. The learned trial Judge in this connection has noted in para 18 of his judgment as under :

"Now, in the case before me, the notice issued under Rule 27 and impugned in the suit does not comply with the principles of natural justice, in any manner, whatsoever. In the impugned notice, the occupant is being called upon to vacate the land within seven days, failing which, it has been stated that the occupant would be removed from the land superstructure by use of force and if he protested or obstructed or re-entered the land after removal he would be liable to prosecution under the provisions of Section 180 of the Indian Penal Code. In the notice impugned in the suit, the occupant is not asked to state if he has any defence as to his liability to be evicted under Section 54 read with Rule 27 or explain his position otherwise about any such non-liability and prove such defence or support such explanation. Absolutely no opportunity is being given to the occupant in the impugned notice to enable him to lay any material before the local authority to represent his case and to convince the local authority that the occupant is not liable to be removed in pursuance of the notice. In absence of such an opportunity, the notice does not call for any scope for the local authority to make any enquiry about the case of the occupant and the determination of the local authority thereupon."

The learned Single Judge of the High Court did not disagree with the said finding of the trial Judge. However in his view the legal position as laid down by Saiyed Mohd. [(1977) 18 Guj LR 549] did not require any such procedure to be followed before issuing the direction for an eviction under Section 54 read with Rule 27. It must be held that the said decision of the High Court in Saiyed Mohd. [(1977) 18 Guj LR 549] cannot survive in view of the decision of this Court in Babubhai & Co. [(1985) 2 SCC 732 : AIR 1985 SC 613]. Consequently the decision rendered by the Division Bench restoring the decree passed by the trial court will have to be confirmed on this ground alone. The appeal is accordingly liable to be dismissed subject to the rider that the observations made by the Division Bench in the impugned judgment to the effect that it is for the defendant to follow the due procedure before enforcing to reconstitute the plot as final Plot No. 115 under the Scheme, will stand expunged from the impugned judgment as no special notice under Rule 21 sub-rule (3) was required to be issued to the plaintiff-respondents by the Corporation as laid down by this Court in the case of Jaswantsingh [1992 Supp (1) SCC 5 : AIR 1991 SC 2130]. Subject to the aforesaid

deletion of the observations in para 3 of the impugned judgment, the said decision of the Division Bench will stand confirmed and accordingly final order and decree passed by the learned trial Judge in favour of the respondents will also stand confirmed. The appeal is disposed of accordingly with no order as to costs.