

State of Gujarat & Another

v.

Gyanaba Dilavarsinh Jadega

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.M. LODHA HON'BLE MR. JUSTICE H.L. GOKHALE

C. A. Nos. 3593-3594 of 2012 (Arising out of SLP(C) Nos. 16951-16952 of 2009 | 17-04-2012

1. Delay condoned.

2. Leave granted.

3. Two questions arise for our consideration, namely, (1) whether the High Court ought to have considered the Respondent's plea that the possession allegedly taken on June 27, 1989 was by an officer who was not authorised and only a paper possession was taken, and (2) whether the High Court was justified in directing the competent authority to examine the case of the Respondent in the light of Notification dated October 6, 1997 in view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. (for short, '1999 Repeal Act').

4. It is not necessary to refer to the facts in detail. Suffice it to say that on November 4, 1982 a draft statement of land held by the Respondent in excess of ceiling limit was prepared Under Section 8(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, '1976 Act') and notice Under Section 8(3) was issued. Final statement Under Section 9 was issued by the competent authority on March 5, 1986 and ultimately on September 23, 1987 notification Under Section 10(1) was issued which was published in the Government Gazette on October 8, 1987. In the meanwhile, the Respondent made an application for exemption Under Section 20 of the 1976 Act which came to be rejected on December 15, 1983. The Respondent challenged the rejection of the application made Under Section 20 by filing Special Civil Application before the High Court. On March 26, 1984, the single Judge of the High Court remanded the matter to the State Government to decide afresh the Respondent's application Under Section 20. Thereafter, the State Government heard the Respondent and rejected the application on August 23, 1984. The Respondent filed another Special Civil Application challenging the order of the State Government dated August 23, 1984 and notification issued Under Section 8(4) of the 1976 Act.

5. Learned single Judge dismissed the said Special Civil Application on April 28, 1994.

6. The Respondent filed Letters Patent Appeal which was disposed of on June 17, 2008 whereby the order of the single Judge was set aside and the matter was remanded back to the competent authority as indicated above.

7. The Appellants filed review application seeking review of the order dated June 17, 2008 which was dismissed on December 19, 2008.

8. Coming to the second question first, it may be immediately noticed that the 1976 Act came to be repealed by the 1999 Repeal Act. The 1999 Repeal Act came into effect on March 31, 1999 in the State of Gujarat. Section 3 of the 1999 Repeal Act saves certain actions taken under the 1976 Act. Section 3 reads as follows:

"Section 3. Saving.-(1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

(2) Where-

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

9. Section 4 provides that all proceedings relating to the 1976 Act pending immediately before the commencement of the 1999 Repeal Act shall abate. Proviso that follows Section 4 provides that the abatement of legal proceedings which is provided in the main Section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the 1976 Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

10. While deciding second question what we have to decide is, whether the Respondent has any legal right to have his claim under Notification dated October 6, 1997 examined by the competent authority despite the repeal of the 1976 Act by the 1999 Repeal Act ?

11. Mr. Ranjit Kumar, learned senior Counsel for the Respondent, urged that the Respondent has pre-existing right by virtue of Section 2(o) and 2(q) of the 1976 Act as he is claiming his right in respect of the land which is agriculture land and that right is saved by Notification dated October 6, 1997. We are unable to accept the submission of Mr. Ranjit Kumar, learned senior Counsel for the Respondent.

12. On repeal of the 1976 Act by the 1999 Repeal Act, the only actions which have been saved are the actions as set out in Section 3(1)(a), (b) and (c) of the 1999 Repeal Act. The claim of the Respondent under Notification dated October 6, 1997 is, at best, a claim of acquiring a right; it is not an enforcement of accrued right. Such claim of acquiring a right under Notification dated October 6, 1997 is not saved Under Section 3 at all. In this view of the matter, the High Court was clearly in error in directing the competent authority to examine the case of the Respondent in the light of Notification dated October 6, 1997. No such proceedings can take place on repeal of the 1976 Act. The direction given by the High Court cannot be sustained and has to be set aside.

13. Insofar as first question is concerned, it does transpire from the impugned order and the record that the Respondent expressly set up the case that the possession allegedly taken over on June 27, 1989 was not by a competent officer and it was only a paper possession. Unfortunately, the High Court has not adverted to this aspect at all. In our opinion, the above plea raised by the Respondent is quite vital. If the actual possession has not been taken over by the competent authority, then by virtue of the 1999 Repeal Act, the proceedings under the 1976 Act would abate automatically. On the other hand, if the actual possession has been taken over by the competent officer, the proceedings under the 1976 Act would stand concluded and the Respondent would have no right whatsoever. Having regard to this aspect, we are satisfied that on this limited issue the matter should go back to the Division Bench of the High Court.

14. Consequently, the Appeals are allowed in part. The direction given by the High Court to the competent authority to examine the case of the Respondent in the light of Notification dated October 6, 1997 is set aside. Letters Patent Appeal is restored to the extent noted above. The Division Bench shall examine the question as to whether the possession on June 27, 1989 alleged to have been taken over by the Appellants tantamount to actual possession contemplated Under Section 3(1)(a) of the 1999 Repeal Act. No costs.