

HIGH COURT OF GUJARAT

**RADHEKRISHNA DEVELOPERS PVT LTD
V/S
STATE OF GUJARAT**

Date of Decision: 12 July 2007

Citation: 2007 LawSuit(Guj) 3196

Hon'ble Judges: [Ravi R Tripathi](#)

Eq. Citations: 2008 (1) GLR 578, 2007 (3) GCD 1904, 2007 (59) AllIndCas 863, 2008 (17) GHJ 192

Case Type: Special Civil Application

Case No: 11752 of 2007

Subject: Property

Head Note:

Urban Land (Ceiling and Regulation) Act, 1976 – Sec 23 – Effect of repeal on order passed prior to repeal of the statute – Held, in case where land is allotted to a person on certain conditions and grant is accepted, government can forfeit land in case of breach of conditions on repeal of Act, Person cannot oppose 'Forfeiture' – Application dismissed

Acts Referred:

[Urban Land \(Ceiling and Regulation\) Act, 1976 Sec 23](#)

Final Decision: Application dismissed

Important Para: [3](#),



Judgement Text:-

Ravi R Tripathi, J

[1] The present petition is filed as a very well designed, dishonest attempt on the part of the petitioner to get out of the clutches of the law, which are applicable to the petitioner for its own deeds. The petitioner has prayed that :

"32(A) This Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order at Annexures "N" and "P" hereto; and consequently, restoring the order at Annexure "M" hereto."

[2] The petitioner is a 'private limited company' represented through its Managing Director. The facts as stated by the petitioner, are that, earlier, the name of the petitioner Company was 'P. K. Plastic Pvt. Ltd.', registered under the provisions of the Companies Act, 1956.

In the year 1987, the said company (Shri P. K. Plastic Pvt. Ltd.) applied for the land admeasuring 2399 sq.mtrs. of Final Plot No. 236 of T. P. Scheme No. 21 of Survey No. 79 of village Vastrapur, Taluka City, District Ahmedabad. The competent authority passed an order and on payment of Rs. 1,25,56,366/ (Rupees one crore twenty five lac fifty six thousand three hundred and sixty six only), the land was allotted to Shri P. K. Plastic Pvt. Ltd.

Allotment letter dated 29121997 is at Annexure 'B' to the petition. It is stated therein that the land is allotted to Shri P. K. Plastic Pvt. Ltd. under Sec. 23 of the Urban Land Ceiling Act, 1976 on certain conditions, which form part of the order.

Condition No. 13 is important as it has a direct bearing on the dispute raised

in this petition. Condition No. 13 is :

"Before the construction referred to in Condition No. 7 is completed as well as for 20 (Twenty) years after completion of construction, members of the company cannot be changed. But, if a member expires then the constructed house can be transferred in the name of the heir of the deceased member. Before completion of the construction, if any member discontinues then the land allotted to such member will be required to be returned to the Government."

Condition No. 7 is to the effect that :

"As aforesaid, except getting the layout plan sanctioned, no construction of any type be made as well as no commitment shall be made for any such construction."

[3] Mr. C. G. Sharma, learned Advocate appearing for the petitioner, vehemently submitted that these conditions, which are part of allotment order dated 29121997, are not applicable to the case of the petitioner (Shri Radhekrishna Developers Pvt. Ltd.) as Urban Land Ceiling Act is repealed in the year 1999.

The submission of the learned Advocate for the petitioner is without any substance and an example of nonapplication of mind because there is no question of applicability of the repealed Act to the present case. Present is the case wherein Shri P. K. Plastic Pvt. Ltd., had applied for allotment of the land under Sec. 23 of the U.L.C. Act, which had already vested in the Government, being excess land, and for all purposes was a Government land. As the allottee Shri P. K. Plastic Pvt. Ltd., is alleged to have committed breach of the conditions on which the land was allotted, the authorities had taken action. Being aggrieved of that the present petition is filed. That being so, what is required to be examined by this Court is as to whether any breach of the conditions on which the land was allotted is committed or not.

[4] The learned Advocate for the petitioner vehemently submitted that it is a simple case of change of name of the erstwhile 'Shri P. K. Plastic Pvt. Ltd.' to 'Shri Radhekrishna

Developers Pvt. Ltd.' The learned Advocate tried to convince this Court that the authorities are taking a supertechnical stand in the matter and are treating this change of name as a breach of the conditions, and taking action. Therefore, they should be restrained by the Court. The authorities be directed not to act like that. Even this submission is misconceived and misplaced.

[5] The question, which is required to be considered by this Court, is as to whether the conditions on which the land was allotted to Shri P. K. Plastic Pvt. Ltd. are breached or not. Condition No. 13 referred to hereinabove is very clear. Before completion of the construction and for 20 years after the completion of the construction, it is not open for the company to change its members and it is only in the event of death of a member of the company, the constructed house can be transferred in the name of the heir of the member. If any member ceases to be a member prior to the construction is over, the land belonging to that member is to be forfeited.

The learned Advocate for the petitioner avoids to answer a query of the Court as to 'who can be said to be a member of the company'. The learned Advocate for the petitioner submits that the question is not relevant to the controversy involved in the matter. The submission on behalf of the petitioner is that the only relevant aspect is 'change of name of the erstwhile company Shri P. K. Plastic Pvt. Ltd. to Shri Radhekrishna Developers Pvt. Ltd.' Besides this nothing else is required to be looked into, by this Court.

The submission of the learned Advocate is not acceptable as it is made with a definite design to serve the interest of the petitioner. Condition No. 13 is as clear as it could be and is not required to be interpreted by this Court. If this condition was not acceptable to the company, the company ought to have refused the allotment made by order dated 29121997. Having accepted the allotment of land at the rate of Rs. 5234/ per sq.mtr., which is nothing but a tip of an iceberg of the market price, prevailing at the relevant time in the area 'Vastrapuf of City of Ahmedabad. Having accepted the allotment, it is not open to the petitioner (Shri Radhekrishna Developers Pvt. Ltd.) to contend that the authorities are not justified in taking action under challenge.

Subsequently, the learned Advocate for the petitioner submitted that 'member' of a company means the 'shareholder' of the company. The

learned Advocate was then asked to make a definite statement as to whether there was change of member after the order of allotment on 29121997, to which the learned Advocate replied that he is not in a position to make such statement. That being so, an adverse inference is to be drawn against the petitioner because the petitioner is trying to keep back the material information from this Court and still seek an order under discretionary jurisdiction.

The jurisdiction under Art. 226 of the Constitution of India is discretionary and it is exercisable only in cases wherein the Court is convinced that the petitioner has approached the Court with clean hands bona fide.

[6] The learned Advocate for the petitioner produced a copy of Government Resolution, bearing No. JMN/3988/1785/A dated 2831989 and referred to Clause 11 ('kh'). The reference and the reliance placed on the resolution is misplaced. More particularly, the submission made with regard to subclause ('kh') of Clause 11. The submission is not only well planned, but also ill designed. The learned Advocate for the petitioner submitted that in subclause ('kh') it is provided that when a Government waste land is given to a partnership firm for industrial purpose, in such case, when there is any change in the partners, meaning thereby, if any partner retires or a new partner is admitted, same can be done only with prior permission of the Government by paying 20% of the notional market value as 'premium'. The learned Advocate submitted that present is not the case of a partnership firm. It is a private limited company, and therefore, there is no question of application of the aforesaid subclause ('kh') of Clause 11. The submission is devoid of any merit.

As discussed hereinabove, condition No. 13 is without any reference to the aforesaid resolution, and therefore, the question of breach of condition No. 13 can always be examined by the authority and action can be taken for the same in accordance with law.

[7] Mr. Shah, learned Advocate appearing for respondent Nos. 3/1 to 3/4 made available a copy of the order passed in Special Civil Application No. 3193 of 1986, wherein P. K. Plastic Pvt. Ltd. was the petitioner. For ready reference, the order passed by the Division Bench is reproduced :

"Mr. S. B. Vakil, learned Counsel for the petitioner states that the petitioner accepts the impugned order and vesting of land in the State Government. He further states that the petitioner has already moved the Government for allotment of land to the petitioner under Sec. 23 of the Urban Land (Ceiling and Regulation) Act, 1976, and hence, he wants to withdraw the petition. The petition, is therefore, dismissed as withdrawn."

[8] The learned Advocate for the petitioner is not able to explain as to why this fact is not mentioned in the petition. Having found that there is suppression of material fact and the petitioner has not approached this Court with clean hands bona fidely, the petition is dismissed with cost of Rs. 15,000/ (Rupees fifteen thousand only). Notice is discharged.

[9] Payment of cost shall be a condition precedent for filing any further proceedings in the matter.

Application dismissed.

