

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1424 of 2022**

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REKHABEN SHASHIKANT GADE

Versus

STATE OF GUJARAT & 4 other(s)

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Appearance:

MR SHASHIKANT S GADE(1706) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3,4,5

MR KM ANTANI ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1

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***CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI***

Date : 04/08/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI)

1. By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for following reliefs:-

- (a) Be pleased to admit & allow present writ petition;
- (b) Be pleased to give mandatory direction to present respondents no. 1, 2 and 5 to consider legal representations complains by present petitioner (Old member seller) in the interest of justice;
- (c) Give mandatory direction to present respondents no. 1, 2 and 5 to give fair compensation @ Rs. 3,00,000/- to present petitioner (Old member - seller) holding that she is legally entitled for fair compensation on cut-off date in notification under four corners of law;
- (d) Your Lordships may pass an orders of (1) to take back Rs. 3,00,000/- (including Rs. 30,000/- kept reserved in said society) from New Owner Sachin Agrawal (present respo. No. 4-new member-purchaser) and POA Ram Singh (present respo. No. 3) because sale deed of C-011 flat is dt. 7/7/2020 and (2) to pay Rs. 3,00,000/- fair

compensation for C-011 flat to present petitioner because as on cut-off i.e. record date of initial notification her name was on record of said society to satisfy provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and provisions of Land Acquisitions Act;

(d) Pass any order that deem fit in the interest of justice.

2. Background of facts in which present petition is brought before the Court is that petitioner (old member-seller) was possessing C-011 Flat, Anand View Apartment, Near Shahibaug Railway Crossing, Ahmedabad from 1990 till 7.7.2020. She used to pay regular maintenance of flat, paid for installation of new lift to the extent of contribution of Rs.25,000/-, painting of the building at Rs.9,500/- and stayed there for 17 almost years and tenants had stayed for 12 years (paying regular Rs.100/- extra in addition to maintenance per month regularly. Said flat was sold by petitioner to one Sachin Chunilal Agrawal- respondent No.4 who became new member- purchaser with a sale deed videography through his Power of Attorney Ram Singh vide document dated 7.7.2020.

3. It is the case of petitioner that portion of land of society was acquired by Government for its Bullet Train project, Ahmedabad to Mumbai and as such, in view of the provisions of

the Land Acquisition Act, petitioner being an old member and owner at a relevant point of time, claimed is legally entitled to fair compensation for her settlement and rehabilitation. It has further been submitted that present possession of flat is with Sachin Chunilal Agrawal (through Power of Attorney Ram Singh), but his name was not found on cut-off date as occupier, hence he was not entitled to receive any amount of compensation and she is entitled to compensation under the provisions of the Act.

4. Petitioner is said to have submitted a representation on 5.7.2021 by attaching all necessary documents related to flat in question, i.e. C-011. Said representation was also submitted to the Chairman of the society and also representation is said to have been submitted to the highest authority, i.e. Collector as well as District Magistrate, complaining about fair compensation not being paid to her vide communications dated 19.8.2021, 7.9.2021 and 21.9.2021. Having not received any response, petitioner has approached this Court by way of this petition under Article 226 of the Constitution of India for the reliefs as stated herein-before.

5. The main contention raised by learned advocate Mr. Shashikant Gade appearing for petitioner is that as on cut-off date, petitioner was owner and occupier of flat in question and as such, petitioner being owner at relevant point of time, authorities are bound to pay fair compensation, as agreed in favour of the petitioner. It has further been contended that despite repeated representations having been made, neither the authorities nor shop/ office bearers have paid any attention to her representation, which has constrained the petitioner to approach this Court. While agitating this, Mr. Gade has further submitted that this is nothing but a serious dereliction of duty on the part of respondent authorities and respondent authorities were under obligation to consider and examine the fact that though petitioner had stayed and possessed said flat right from 1990 till 7.7.2020 and had paid all charges and maintenance regularly, this 17 years occupation and 12 years occupation as tenant ought to have been examined as the petitioner is legally entitled to secure the compensation.

6. Learned advocate Mr. Gade for petitioner has submitted that despite aforesaid situation, Shri Ram Singh, power of

attorney holder of Sachin Chunilal Agrawal took a cheque, which is on record. Though it was to be in the name of petitioner, according to her, an error is committed by Chairman of the Society to give said cheque to new member/ owner and paid the same, who was otherwise not entitled to. This fact is though evidently clear from record, neither of the authorities looked into nor the Chairman corrected the same, which has resulted in serious prejudice to the petitioner and as such, left with no alternate, petitioner is constrained to approach this Court.

7. Learned advocate Mr. Gade, to strengthen his submission, has made reference to a decision delivered by Hon'ble Court delivered in S.L.P. (C) No.9036-9038 of 2016 decided on 6.3.2020 and by making reference to paragraph 4, has requested the Court to extend the reliefs as prayed for in the petition. No other submissions have been made.

8. Having heard learned advocate appearing for petitioner and having gone through material on record, following circumstances deserve consideration before arriving at the ultimate conclusion:-

(1) It appears from record of the case that petitioner had taken 'No Due Certificate' on 21.3.2020 from the society in which flat No.C-11 is situated and later on, had sold the same to one Sachin Chunilal Agrawal by a registered sale deed on 7.7.2020 and possession of the flat thereof was also declined to the said purchaser. Share Certificate and all rights related to said flat have been transferred in favour of said purchaser namely, Mr. Sachin Chunilal Agrawal and petitioner had received full consideration of said flat.

(2) What is emerging from the document is that all rights, interest, etc. have been transferred in favour of purchaser, including common facilities related to said flats proportionately and in turn, the Chairman has transferred legally the said flat on account of registered sale deed to Sachin Chunilal Agrawal by passing a specific resolution in the meeting of the Society dated 25.8.2020 and pursuant to the said resolution, Sachin Chunilal Agrawal has entered as member of the society.

(3) It further appears that on account of acquisition proceedings for Bullet train Project, society has been covered

under land acquisition and in response thereto, an amount of Rs.3,65,56,738/- for 135 members of the society was entrusted for its distribution to each member of the society and accordingly, cheque qua this flat No.C-11 has been issued in favour of Sachin Chunilal Agrawal since he happened to be on the rolls of the society as owner of the flat and being member of the Society. Accordingly, an amount of Rs.2,70,000/- through cheque No.600204 dated 27.10.2020 has issued in his favour.

(4) It is no-doubt a settled position of law that once property has been transferred through lawful document and registered transaction, rights of seller gets extinguished by virtue of said event. However, here, a contention is raised that amount ought to have been paid to the petitioner which had been received by the Society by way of compensation.

(5) *Prima facie*, grievance about entitlement of compensation raised by the petitioner is a disputed question. Whether petitioner is entitled to or not, can well be examined by an appropriate forum meant for this very purpose under The Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013. In our considered opinion, writ jurisdiction is not the proper forum. It would be open for petitioner to ventilate her grievance before an appropriate forum available.

(6) Act of 2013 has provided a specific redressal mechanism, whereby if any dispute related to apportionment or entitlement raised, authority under the Act is entitled to adjudicate and redress the said grievance.

(7) Chapter-VIII of the Act has prescribed the establishment of Land Acquisition Rehabilitation and Resettlement Authority and said authority is couched with appropriate powers to examine the issues which may arise in process of land acquisition and related to compensation distribution.

(8) Section 6 of the Act has prescribed the powers of authority and procedure before it, whereas Section 64 has provided a reference to the authority. Chapter-IX of the Act provides apportionment of compensation and Section 76 contained under said Chapter deals with procedure when dispute as to apportionment arise. Said statutory provisions are sufficiently

providing a mechanism for ventilating the grievance and as such, petitioner is not remediless.

(9) When a Statute prescribes a mechanism for redressal of grievance, same is to be availed of and it is settled position of law that High Court cannot usurp the powers of the authority, which is specifically created under the Statute to do a particular thing and as such, we are of the considered opinion that instead of opining on this grievance voiced out in the petition, we leave it open to the petitioner to approach appropriate forum as may be advised and permissible in law. Extraordinary jurisdiction of the High Court cannot be converted into a fact finding and adjudicating authority and as such, we are of the considered opinion that present petition is not entertainable.

(10) At this stage, we may make a reference to the observations made in one of the decisions delivered by Hon'ble Apex Court. Following are the observations contained in paragraphs 41 and 43 of the said decision in the case of **D.N. Jeevaraj Vs. Chief Secretary, Government of Karnataka and others** reported in **(2016)2 SCC 653:-**

- “41. This Court has repeatedly held that where discretion is required to be exercised by a statutory authority, it must be permitted to do so. It is not for the courts to take over the discretion available to a statutory authority and render a decision. In the present case, the High Court has virtually taken over the function of the BDA by requiring it to take action against Sadananda Gowda and Jeevaraj. Clause 10 of the lease-cum-sale agreement gives discretion to the BDA to take action against the lessee in the event of a default in payment of rent or committing breach of the conditions of the lease-cum-sale agreement or the provisions of law.[8] This will, of course, require a notice being given to the alleged defaulter followed by a hearing and then a decision in the matter. By taking over the functions of the BDA in this regard, the High Court has given a complete go-bye to the procedural requirements and has mandated a particular course of action to be taken by the BDA. It is quite possible that if the BDA is allowed to exercise its discretion it may not necessarily direct forfeiture of the lease but that was sought to be pre-empted by the direction given by the High Court which, in our opinion, acted beyond its jurisdiction in this regard.
43. To this we may add that if a court is of the opinion that a statutory authority cannot take an independent or impartial decision due to some external or internal pressure, it must give its reasons for coming to that conclusion. The reasons given by the court for disabling the statutory authority from taking a decision can always be tested and if the reasons are found to be inadequate, the decision of the court to by-pass the statutory authority can always be set aside. If the reasons are cogent, then in an exceptional case, the court may take a decision without leaving it to the statutory authority to do so. However, we must caution that if the court were to take over the decision taking power of the statutory authority it must only be in exceptional circumstances and not as a routine. Insofar as the present case is concerned, the High Court has not given any reason why it virtually took over the decision taking function of the authorities and for this reason alone the mandamus issued by the High Court deserves to be set aside, apart from the merits of the case which we have already adverted to.”

11. At this stage, learned advocate Mr. Gade has made an attempt to strengthen his submission on the basis of the judgment delivered by Hon’ble Apex Court in S.L.P. (C) No.9036-9038 of 2016. On going through minutely the said factual details

of said decision we are of the opinion that same would not be of any assistance to the petitioner and as such, without expressing any opinion on merit of the grievance of petitioner, we leave it open for the petitioner to adjudicate the same before appropriate authority. Accordingly, petition is DISMISSED with no order as to costs.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

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