

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.4861-4863 of 2009

BAVABHAI TAPUBHAI PATEL (D) THR. LRS. Appellant(s)

VERSUS

STATE OF GUJARAT & ANR. Respondent(s)

WITH

Civil Appeal No.4950 of 2019

O R D E R

Civil Appeal Nos.4861-4863 of 2009

Learned counsel for the appellant(s) points out from the record by referring to the prayer made in the Letters Patent Appeal No.1778/2007 that the said appeal(s) were directed both against the order of the review application dated 8.12.2006 as well as the order of the learned Single Judge passed in the special civil application No.10914 of 2002 dated 25.10.2002. The prayer reads as under :

“The order passed by the Ld. Single Judge in MCA No.454 of 2006 in Special Application No.10914 of 2002 dated 8.12.2006, may please be set aside in the interest of justice.

The order passed in Special Application No.10914 of 2002 dated 25.10.2002, may please be set aside and the reliefs prayed there in may please be allowed in the interest of justice”

The impugned order has rejected the LPA on the sole ground that only the order passed on review has been assailed without assailing the main order dated 25.10.2002 in Special Application No.10914 of 2002. Thus the very basis of the impugned order is factually not correct.

The aforesaid position cannot be disputed by learned counsel for the respondent.

Thus, we have no option but to set aside the impugned order(s) and remit the matter(s) back for consideration by the Division Bench of the Letters Patent Appeal in view what he has observed aforesaid.

The appeals are allowed leaving the parties to bear their own costs.

Civil Appeal No.4950/2019

We have heard learned counsel for the parties.

The endeavour of the appellant to file an appeal after 13 years in respect of proceedings under Urban

Land (Ceiling and Regulation) Act, 1976 have proved to be futile, but more so as the Act was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. However, in the course of the proceedings, it appears that the appellant sought to argue a case of continuous physical occupation of the land, an ill-advised course in retrospect. Such a submission has invited certain observations in the impugned order also noticing that the concerned authorities are not arrayed as respondents before the Court.

In the conspectus of the fact of the case, we are of the view that since the Act itself has been repealed, the appellant has to establish that there has been a continued possession by instituting proper proceedings in this behalf. The aforesaid course of action is acceptable to both the learned counsel for the parties.

We thus do not interfere with the findings in the present case insofar as the maintainability of the appeal(s) is concerned. The appellant would be at liberty to take proper proceedings in accordance with law to establish a case for retention of the property on account of continued occupation.

The observations made in the impugned order would not come in the way of the appellant. The interim order of status quo would continue for a period of six weeks to facilitate the appellant to move appropriate proceedings and obtain interim order.

We make it clear that the continuation of the interim order is not a reflection on the merits of the controversy and the concerned court would form its own view on the merits of the case.

The appeal is dismissed with the aforesaid liberty.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[K.M. JOSEPH]

NEW DELHI,
AUGUST 7, 2019.

ITEM NO.112

COURT NO.11

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos. 4861-4863/2009

BAVABHAI TAPUBHAI PATEL (D) THR. LRS.

Appellant(s)

VERSUS

STATE OF GUJARAT & ANR.

Respondent(s)

WITH

C.A. No. 4950/2009 (III)

Date : 07-08-2019 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Parties (s) Ms. Aishwarya Bhati, Sr. Adv.
Mr. Haresh Raichura, AOR
Ms. Saroj Haresh Raichura, Adv.
Mr. Kalp Raichura, Adv.

Mr. A.P. Mayee, Adv.
Mr. A. Rajarajan, Adv.

Ms. Minakshi Vij, AOR

Ms. Hemantika Wahi, AOR

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal Nos. 4861-4863/2009

The appeals are allowed in terms of the signed order.

Civil Appeal No.4950/2009

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(POOJA ARORA)
COURT MASTER

(BEENA JOLLY)
COURT MASTER

(Signed order is placed on the file)