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THAKOREBHAI KEVELBHAI PATEL

v.

THE STATE OF GUJARAT

November 7, 1974

[A. N. RAY, C.J., K. K. MATHEW AND N. L. UNTWALIA, JJ.]

B *Gujarat Vacant Lands in Urban Area (Prohibition of Alienation) Act, 1972 —Constitutionality—If violative of article 14, Constitution of India.*

The Gujarat Vacant Lands in Urban Area (Prohibition of Alienation) Act, 1972 is enacted to prohibit the alienation of certain vacant lands in urban areas in the State of Gujarat. Section 2 of the Act embodies a declaration that the Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution. Section 4 prohibits the alienation of vacant land after the appointed day. It however, C exempts one plot of vacant land owned by a person not exceeding 1000 sq. metres and not forming part of a compact block. The transfers in favour of the State Government, Central Government, local authority, Government company, statutory corporations and cooperative house building societies are also exempted. The State Government has been empowered by general or special order to exempt any area or any alienation from all or any of the provisions of the Act. This is subject to the rules made by the State Government. Every order made by the State Government and the Collector exempting any area or alienation from any D of the provisions of the Act is required to be laid before the State Legislature. The Learned Counsel for the petitioner conceded that in view of the proclamation of emergency fundamental right guaranteed under Article 19 is under suspension. It was contended that the Act offended Article 14 and that the Act was not directly relatable to the object of Article 39 (b) and (c) and, therefore, Article 31C could not protect it.

HELD: (i) It is not necessary to take recourse to Article 31C for upholding constitutional validity of the Act as it does not infringe equal protection of E law guaranteed under Article 14 of the Constitution. Urban area means any area which is comprised in the city or a municipal Borough. Surrounding area not exceeding 16 kms. has to be fixed by a notification of the State Government. By notifications limit of 16 kms. has been fixed in case of big cities like Ahmedabad, Baroda, etc. but lesser limits of distance have been notified in case of small municipal boroughs. When the limit of the distance outside the city or town area differed from place to place it was not necessary to fix the limit of permissible area of transfer with reference to the value of the land. It was neither feasible nor expedient to do so. From the permissible limit of transfer the area form- F ing part of the compact block had to be excluded as it would have led to monopolisation and monoeuvrings by persons belonging to the same family unit. [668F; 672B]

(ii) There is reasonable classification and there is a clear nexus between the object of the Act and the classification. The Act has neither put unequals as equals nor has it discriminated between equals. The object of the Act being to prevent alienation of vacant lands it rightly excludes the building lands from its operation. Since the object of the Act is to ultimately distribute ownership and G control of the material resources to subserve the common good transfer in favour of Government, Local Authorities, Government Companies and Statutory Corporations has been excluded. Formation of Cooperative House Building Societies is obviously a step for fulfilment of the object of the Act. The power of the State Government to exempt any area or any alienation from all or any of the provisions of the Act is a power which is to be exercised for the reasons to be recorded and in furtherance of the object of the Act. The guideline is to be found in the object of the Act. The order of exemption to be made by the Collector is H only where the land is to be used for any educational, scientific, industrial or commercial purposes. The exercise of the power by the Collector is further controlled by providing an appeal to the State Government. The orders are to be placed before the State Legislature which will act as a supervisory of the orders of exemption made by the State Government or the Collector. [672D-H]

ORIGINAL JURISDICTION : Writ Petition No. 467 of 1972.

Petition Under Article 32 of the Constitution of India.

B. Sen and *R. M. Mehta, S. K. Dholakia* and *R. C. Bhatia,* for the petitioner.

L. N. Sinha, Solicitor General of India, G. A. Shah and *S. P. Nayar,* for the respondent.

The Judgment of the Court was delivered by

UNTWALIA, J.—By this petition under Article 32 of the Constitution of India the petitioner has challenged the constitutional validity of the Gujarat Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972, Gujarat Act No. 12 of 1972—hereinafter referred to as the Act on the ground that it violates the fundamental rights of the petitioner granted under Arts. 14 and 19 of the Constitution. In the writ petition the petitioner claims that he owns 9559 square yards of land situate in District Bulsar, sub-district and Taluka Navsari, village Kohilpore. He intends to sell the said land but is unable to do so because of the prohibition of alienation imposed under the Act.

Mr. B. Sen, learned counsel for the petitioner conceded, and in our opinion rightly, that since the Proclamation of Emergency is in operation under Article 358 of the Constitution, fundamental right guaranteed under Article 19 is under suspension and therefore the Act could not be assailed for infraction of Article 19 even if there be any. Counsel, however, submitted that it does violate the guarantee of equal protection of the law and offends Article 14. In the Act under section 2 is embodied a declaration that the Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution and consequently Article 31C would save the Act from attack on account of the infraction of Article 14. But it was submitted that the Act is not directly relatable to the object of Article 39(b) and (c) and hence Article 31C cannot protect it. In our opinion it is not necessary in this case to take recourse to Article 31C for upholding the constitutional validity of the Act as it does not infringe the equal protection of law guaranteed under Article 14 of the Constitution.

Learned counsel for the petitioner endeavoured to make out the following points for attacking the Act as being violative of Article 14 :

(1) That the limit of Prohibition in respect of the area of the vacant land is the same irrespective of its situation and value thus putting unequals as equals.

(2) That it does not apply to building lands and building areas have been left out.

(3) That there is discrimination between the permissible limit of alienation on the basis of the irrational consideration of the area forming part of a compact block or not.

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(4) That there is no rational basis for not applying the Act in respect of the alienation of vacant lands in favour of the State Govt., the Central Govt., Local authorities, Govt. companies, Govt. Corporations or the Cooperative House Building Societies.

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(5) There is no guideline provided in section 7 of the Act for exercise of the power of exemption.

Learned Solicitor General appearing for the respondent, the State of Gujarat, submitted that none of the points urged on behalf of the petitioners has got any substance and there is no violation of the equal protection of law guaranteed under Article 14 of the Constitution.

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We shall first refer to and wherever necessary read some of the relevant provisions of the Act. The Preamble of the Act indicates that it is an Act to prohibit alienation of certain vacant lands in urban areas in the State of Gujarat. The object of the Act is to prohibit alienation of the vacant lands so that ultimately the ownership and control of the material resources of the Community may be so distributed as best to sub-serve the common good and may prevent the concentration of wealth to the common detriment. It may be pointed out here that the impugned Act is a temporary one. Originally it was to remain in force for one year but the period is being extended from time to time in order to enable the State Legislature to pass the Urban Property Ceilings Act. Prohibition of alienation by the Act is a preparatory measure for distribution of the material resources of the community. The definition section of the Act is section 3. Clause (b) defines "City" to mean a City as constituted under the Bombay Provincial Municipal Corporations Act, 1949. The definition of "Collector" includes certain other officers also as mentioned in clause (c). It is necessary to read clause (d) which defines the "compact block" to mean "any block of vacant land in an urban area exceeding one thousand square metres in extent, (whether owned by one person or jointly by more than one person or owned in contiguous parts separately by one or more members of a family unit) and whether or not divided by a private road, street, lane, footway, passage or drain, natural or artificial." Under clause (dd) "family unit" means an individual, his or her spouse and their children." Clause (e) defines "municipal borough" to mean "a municipal borough as constituted or deemed to be constituted under the Gujarat Municipalities Act, 1963." It is necessary to read clauses (i) and (j) of section 3 in full. (i) "urban area" means—

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(1) any area which is comprised for the time being in a City or a municipal borough and also any such area in the vicinity thereof, within a distance, not exceeding sixteen kilometres from the local limits of the City, or as the case may be, of the municipal borough concerned, as the State Govt. may, having regard to the extent of and the scope for the urbani-

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sation of that area or other relevant considerations, by a notification in the Official Gazette, specify in this behalf; and

(2) any other area which the State Government may, by notification in the Official Gazette declare to be an urban area, having regard to any project existing in that area on the appointed day or having regard to the possibility in the near future of any project being established in that area where any such project, in the opinion of the State Government, has led to or is likely to lead to urbanisation of that area;

(j) "vacant land" means land in an urban area, agricultural or non-agricultural, other than land on which any building has been or is being constructed in accordance with any law regulating such construction and the land appurtenant to such building to the minimum extent required under such law or under the provisions of the Bombay Town Planning Act, 1954, or any other corresponding law for the time being in force.

Explanation—for the purposes of this clause any land which is vacant on the appointed day shall be deemed to be vacant land, notwithstanding that the construction of a building thereon has been commenced on or after the said day."

Section 4 provides for prohibition of alienation etc. in these terms: (1) No person who owns any vacant land shall, on or after the appointed day, alienate such land by way of sale, gift, exchange (mortgage other than simple mortgage), lease or otherwise, or effect a partition or create a trust of such land; and any alienation made, or partition effected, or trust created in contravention of this section shall be null and void:

Provided that nothing in this sub-section shall apply to the alienation by any person of any one plot of vacant land owned by him not exceeding one thousand square metres in extent and not forming part of a compact block or to the effecting of a partition or creation of a trust of any such plot.

(2) The provisions of sub-section (1) shall apply to any sale, partition or creation of trust, of vacant land of any person in execution of a decree or order of a civil court or of any award or order of any other authority. Restrictions on registration of documents have been put in section 5. Section 6(1) says that "Nothing in this Act shall apply to any transfer of vacant land by or in favour of—

(a) A State Government or the Central Government or a local authority;

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(b) A Government Company as defined in section 617 of the Companies Act, 1956;

(c) a corporation established by or under a Central Provincial or State Act, which in controlled or managed by a State Government or the Central Government;

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(d) such co-operative house building societies established for the purpose of providing housing accommodation to weaker sections of people, as may be approved by the State Government in this behalf."

Sub-section (2) of section 6 makes a distinction in the application of sub-section (2) of section 4 in relation to the execution of a decree or an order of a civil court in favour of the Government or the local C authority. Under sub-section (1) of section 7 "the State Government, may, by a general or special order in writing and for reasons to be recorded therein, exempt any area or any alienation or other transfer of any vacant land from all or any of the provisions of this Act." Under sub-section (2), to avoid any hardship also, the State Government may, if it considers it necessary so to do, exempt, by an order D in writing, any alienation or other transfer of any vacant land from all or any of the provisions of this Act. Subject to any rules that may be made in this behalf or to any general or special orders of the State Government, the Collector has been authorised under sub-section (3) of section 7 by order in writing, to exempt any alienation or other transfer of any vacant land from the provisions of this Act in case the land is to be used for any educational, scientific, industrial or E commercial purpose or for such other purpose as may be prescribed. "Prescribed" means under clause (g) of the third section "prescribed by rules made under this Act." The State Government has power under section 12 to make the rules. Sub-section (4) enjoins that every order issued by the State Government, under sub-sections (1) and (2) and by the Collector under section 3 shall be laid before the State Legislature as soon as possible after its issue. Alienation etc. made on F or after the 1st July, 1972 but before the appointed day under the Act has also been affected under section 8. Section 9 gives a right to appeal against the order of the Collector under sub-section (3) of section 7 to the State Government within the prescribed period and in the prescribed manner. The jurisdiction of the Civil Court has been barred under section 10. A penalty has been provided under section 11. The act overrides other laws in view of section 13.

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It would be noticed that the urban area means any area which is comprised in the City or a Municipal Borough. Surrounding distance of the City or municipal borough has to be fixed by a notification of the State Government in the Official Gazette having regard to the relevant considerations. The maximum distance of such an area cannot exceed sixteen kilometres. We were informed at the Bar by the H learned Solicitor General that notifications have been issued fixing the maximum limit of 16 kilometres in case of big cities like Ahmedabad, Baroda etc. but lesser limits of distances have been notified in case of small municipal boroughs. Under the proviso to sub-section (1) of

section 4 a person is not prohibited from alienating one plot of vacant land owned by him not exceeding 1000 sq. metres provided it does not form part of a compact block. When the limit of the distance outside the City or town area differed from place to place it was not necessary to fix the limit of permissible area of transfer with reference to the value of the land. It was neither feasible nor expedient to do so. From the permissible limit of transfer the area forming part of the compact block had to be excluded as it would have led to manipulations and manoeuvrings by persons belonging to the same family unit. The land belonging jointly to more than one person or owned in contiguous part separately by one or more members of a family unit, which unit is a narrow one as defined in clause (dd) of section 3, comes under the definition of compact block. Then only the permissible limit of transfer does not apply.

Excluding the land on which any building has been or is being constructed in accordance with any law regulating such construction and only the permissible limit of the vacant land appertaining to it is a reasonable classification distinguishing the vacant land from the building land. The object of the act is to prevent alienation of certain vacant lands and that being so it is rightly excluded the building lands from its operation.

It is plain that the main object of the act being ultimately to distribute the ownership and control of the material resources of the community as best to subserve the common good and to prevent concentration of wealth, a transfer in favour of the Government, local authorities, Government companies or Corporations had to be excluded as such transfer could not possibly defeat the object of the Act, rather, it would give a fillip to it. Permitting transfers of vacant lands in favour of Cooperative Housing Building Societies is obviously a step for the fulfilment of the object of the Act. The Act cannot be held to be discriminatory on such grounds.

The power of the State Government under sub-section (1) of section 7 to exempt any area or any alienation or other transfer of vacant land from all or any of the provisions of the Act is a power which is to be exercised for the reasons to be recorded in the general or the special order and in furtherance of the object of the Act. The guideline is to be found in the object of the act itself. The power under sub-section (2) has to be exercised by the State Government for avoiding any hardship. There is sufficient guideline for exemption in case of hardship which will depend upon the facts and circumstances of each case. The order of exemption to be made by the Collector can only be in a case where the land is to be used for any educational, scientific, industrial or commercial purposes. It has not been left open to the Collector to decide for what other purpose he can grant the exemption. Such other purpose can be only that as may be prescribed by the State Government by rules made under section 12 of the Act. Sub-section (4) of section 7 is a good safety valve. The State Legislature will act as a Supervisor of the orders of exemption

A made by the State Government or the Collector. The exercise of the power of exemption by the Collector is further controlled by providing an appeal to the State Government under section 9 of the Act.

In our opinion, therefore, there is no violation of the equal protection of law guaranteed under Art. 14 of the Constitution. Classifications are all reasonable and there is a clear nexus between the B object of the act and the classifications. They have neither put unequals as equals nor has discriminated between equals.

In the result the writ petition fails and is dismissed with costs.

P.H.P. *Petition dismissed.*