

Gujarat Housing Board Engineers Assn vs State Of Gujarat on 5 November, 1993

Equivalent citations: 1994 SCC (2) 24, JT 1993 (6) 469, AIRONLINE 1993 SC 633, AIRONLINE 1993 SC 547

Author: Kuldeep Singh

Bench: Kuldeep Singh, S.P Bharucha, Jagdish Saran Verma, N.P Singh

PETITIONER:
GUJARAT HOUSING BOARD ENGINEERS ASSN.

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT 05/11/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
BHARUCHA S.P. (J)
VERMA, JAGDISH SARAN (J)
SINGH N.P. (J)

CITATION:
1994 SCC (2) 24 JT 1993 (6) 469
1993 SCALE (4) 383

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by BHARUCHA, J.- Special leave granted.

2. Heard.

3.This appeal requires a true and correct interpretation to be placed upon Regulation 3 of the Gujarat Housing Board Services Classifications of and Recruitment Regulations, 1981

1. The appeal arises thus: The first appellant is an association of the Engineers of the Gujarat Housing Board (the second respondent). The second and third appellants are employees of the Housing Board. They filed a writ petition in the Gujarat High Court challenging the direction given to the Housing Board by the State of Gujarat (the first respondent) to appoint to the post of Assistant Housing Commissioner (Technical) an officer on deputation from the Building and Communication Department of the State Government. The writ petition was dismissed. The High Court relied upon the fact that the decision to appoint to the said post an officer of the rank of Superintending Engineer from the Building and Communication Department of the State Government had been taken by the State Government for reasons stated in its affidavit in reply and the said decision could not be said to be unjust or arbitrary or based on irrelevant or extraneous considerations.

4.The Gujarat Housing Board Services Classifications of and Recruitment Regulations, 1981 are made under the provisions of Section 74(c) of the Gujarat Housing Board Act, 1961 (now called "the said Act") with the previous sanction of the State Government. Regulation 3 in Part V thereof prescribes the qualifications, age, experience and procedure relating to recruitment to the post of Assistant Housing Commissioner (Technical), now called Superintendent Engineer. The relevant portion thereof reads thus:

"The post may be filled in either:

(1)(a) by promotion of employees working as Executive Engineer in Board's Higher Services on the basis of seniority cum merits, OR

(b) by calling Executive Engineer on deputation from State Building and Communication Department.

OR

(c) by direct selection from amongst the candidates called for interview; (2) To be eligible for promotion, Executive Engineers (i) should have rendered at least 4 years continuous service as Executive Engineer;

On promotion, the officer will be on trial for one year on expiry of which he may be finally promoted or his trial may be extended or he may be reverted to the post from which he was promoted as the case may be looking to his performance during the trial period. On the expiry of the extended trial period, his case will be again reviewed and dealt in same manner.

(3) If a suitable candidate is not available for appointment by promotion from the Executive Engineers of the Board, a panel of names of Executive Engineers having at least 4 years standing experience from the State B & C Department may be called for, with a proviso that no departmental

inquiry should be pending against them. The of the names will be selected by the Board and the selected candidate will be appointed by the Board.

(4) To be eligible for appointment by direct selection a candidate

(i) should be not more than 45 years of age;

(ii) should possess a Bachelor's Degree in Engineering of a recognised University or an equivalent qualification recognised by Board, and

(iii) should have at least 10 years. practical experience of planning and building construction work in State or Central Government or a local authority or a Corporation owned or controlled by such Government or in renowned private firms of Engineers and Contractors in a responsible post.

Officers in Board's Higher Service who are eligible for direct selection as above, can also apply along with others.

5. The contention on behalf of the appellants is that no appointment on deputation can be made to the said post of an officer serving in the State Government's Building and Communication Department until and unless it has been found that no suitable eligible candidate is available for appointment to the said post by promotion from among the eligible Executive Engineers of the Housing Board. On the other hand, it is contended on behalf of the State Government that Regulation 3 provides three alternative modes of appointment to the said post in clause (1) and clause (3) provides yet another, fourth mode of appointment. The appointment in question was directed to be made under the provisions of sub-clause (b) of clause (1) and not under clause (3), so that the State Government and the Housing Board were not in any manner constrained in making the appointment and it was not required that the appointment should be so made only if no suitable eligible candidate was available for appointment by promotion from among the Executive Engineers of the Housing Board.

6. Clause (1) of Regulation 3 provides that the post of Assistant Housing Commissioner (Technical) may be filled in by promotion of employees working as Executive Engineers in the Housing Board on the basis of seniority cum merit; or by calling Executive Engineers on deputation from the Building and Communication Department of the State Government; or by direct selection from among candidates called for interview. Clause (2) sets out who among the Executive Engineers of the Housing Board are eligible for such promotion. Clause (3) states that if a suitable eligible candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board, a panel of names of Executive Engineers having four years standing experience in the State Government's Building and Communication Department may be called for and one name out of the panel may be selected and appointed on deputation by the Housing Board. Clause (4) sets out the eligibility requirements of candidates for appointment by direct selection.

7. It is, therefore, clear that clause (2) of Regulation 3 has application to sub-clause (a) of clause (1); that is to say, clause (2) sets out the eligibility criteria of employees working as Executive Engineers

in the Housing Board for appointment to the said post on the basis of seniority-cum-merit under sub-clause (a) of clause (1). Clause (3) sets out how and when an Executive Engineer from the State Government's Building and Communication Department can be appointed on deputation to the said post under the provisions of sub-clause (b) of clause (1). Clause (4) sets out the eligibility requirements for candidates to be appointed by direct selection under the provisions of sub-clause (c) of clause (1).

8. We have no doubt, therefore, that clause (3) does not set out an additional, fourth mode of filling in the said post but is only a provision which sets out how and when an Executive Engineer from the State Government's Building and Communication Department can be appointed to the said post on deputation. It provides that an appointment can be made of an Executive Engineer from the State Government's Building and Communication Department to the said post on deputation only if a suitable eligible candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board.

9. Regulation 3 can be read in no other manner. To construe it otherwise would mean that it provides no guidelines as to when the said post is to be filled up from among the Executive Engineers of the Housing Board, when by deputation from among the Executive Engineers of the Building and Communication Department of the State Government and when by direct selection. The interpretation that the court must place upon Regulation 3 must be such as avoids arbitrariness and the conferment of uncanalised power. Regulation 3 must, therefore, be read as providing that the said post must be filled by promotion of eligible Executive Engineers of the Housing Board on the basis of seniority-cum-merit. It is only if no suitable candidate is available for promotion to the said post from among the eligible Executive Engineers of the Housing Board that the appointment may be made on deputation from among the Executive Engineers of the State Government's Building and Communication Department. Failing this, the appointment can be made by direct selection from among candidates called for interview.

10. It is an admitted position that the suitability of eligible Executive Engineers of the Housing Board for appointment to the said post by promotion was not considered before resort was directed to be had to the provisions of sub-clause (b) of clause (1) for filling the said post by deputation of an officer of the State Government's Building and Communication Department. In our view, therefore, the State Government was patently in error in directing the Housing Board to fill the said post by deputing an officer in the State Government's Building and Communication Department.

11. Reference was made on behalf of the State Government to the provisions of Section 82 of the said Act and it was submitted that the State Government was thereby empowered to give to the Housing Board such directions as were in its opinion necessary or expedient for carrying out the purposes of the said Act and the Housing Board was obliged to comply with such directions. The short answer to the submission is that it is not open to the State Government to give directions to the Housing Board under Section 82 which are contrary to the provisions of Regulations made under the provisions of the said Act with its previous sanction.

12. The appeal is allowed. The judgment and order under appeal are set aside. The direction given to the Gujarat Housing Board by the Government of Gujarat to fill the post of Assistant Housing Commissioner (Technical) (now called Superintendent Engineer) by appointment on deputation a person in its service in the Building and Communication Department is set aside. For the purposes of filling up the said post, the Gujarat Housing Board shall proceed in the manner indicated above.

13. There shall be no order as to costs.

ARUNDHATI MISHRA V. SRI RAM CHARITA PANDEY ORDER

1. Leave granted.

2. This appeal arises against the judgment of the Allahabad High Court in Second Appeal No. 89 of 1990 dated December 21, 1992. The facts in a nutshell are that the appellant-plaintiff basing on title laid the suit for possession and mesne profits against the respondent. The respondent was inducted into possession of M.I.G. flat allotted to her by the Lucknow Improvement Trust later renamed as Lucknow Development Authority. The rent was Rs 30 per month. It was covenanted that the respondent should pay every month a sum of Rs 24.50 to the L.I.T./L.D.A. and the balance to the appellant. On March 15, 1971, the appellant got issued a notice under Section 106 of the T.P. Act determining the tenancy for default committed in payment of the rent. Thereon, the respondent replied that the appellant was only his benamidar and he is the real owner of the property. The appellant paid the installments and got the sale deed executed in 1977 by L.I.T. or L.D.A. Suit notice was issued in 1978 on the ground that the denial of the appellant's title constitutes forfeiture of the tenancy which the respondent had with the appellant. The respondent reiterated in his written statement that he is the real owner and remained in possession as owner of the suit house and the appellant is only benamidar. The respondent also later filed an application under Order 6 Rule 17, CPC to add para 21-A claiming alternatively compensation for the improvements made by him. Framing appropriate issues and on addition of evidence, the trial court found that the appellant has title to the property, by denial of the title, the respondent forfeited his tenancy and decreed the suit. Pending first appeal, the respondent filed another application on March 30, 1989 for amendment of the written statement setting up the plea of "adverse possession". The appellate court rejected the application, considered the case on merits and confirmed the decree of the trial court. In the second appeal the learned Single Judge considered and allowed the application for amendment, set aside the findings of the courts below and remitted the case to the trial court for fresh trial. Thus this appeal by special leave.

3. It is settled law as laid down by this Court in *Firm Srinivas Ram Kumar v. Mahabir Prasad* that it is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea it could be granted. If the facts are admitted in the written statement, the relief could be granted to the plaintiff on the basis of the evidence though inconsistent pleas were raised. Amendment to written statement cannot be considered on the same principle as an amendment to the plaint. The pleas in the written statement may be alternative or on additional ground or to substitute the original plea. It is equally settled law that amendment of the pleadings could be made at any stage of the proceedings. Instances are not wanting that pleadings are permitted to be

amended even when second appeal is pending. Equally it was refused. It is not necessary to burden the judgment by copious references thereof. But 1 AIR 1951 SC 177: 1951 SCR 277 each case depends upon its own facts. The essential requisites are that the delay in making the application; the reason therefore should be given and considered; and there should be no prejudice caused to the other side. Bar of limitation which is available to the parties cannot be permitted to be defeated. It is also settled law that if the relief is found on the same cause of action, though different sets of facts are sought to be brought on record by appropriate pleadings, it cannot be refused. In those circumstances, permission to amend the pleadings could be granted.

4. The question in this case is whether the plea of adverse possession sought to be set up by the respondent could be permitted to be raised. The pleas based on title and adverse possession are mutually inconsistent and tile latter does not begin to operate until the former is renounced. It is his own case that he came into possession of the suit house in his own right and remained in possession as an owner. The appellant is only benamidar. Therefore, his plea is based on his own title. He never denounced his title nor admitted the title of the appellant. He never renounced his character as an owner asserting adverse possession openly to the knowledge of the appellant and the appellant's acquiescence to it. Thereafter, he remained in open and peaceful possession and enjoyment to the knowledge of the appellant without acknowledging/or acquiescing the right, title and interest of the appellant. The plea of adverse possession, though available to the respondent, was never raised by him. Only on receipt of the first notice he denied title of the appellant and made it known to him for the first time through the reply notice got issued by him. Even then the plea of adverse possession was not raised in the written statement. No explanation for the belated plea was given. Even assuming that the reply dated March 15, 1971 constitutes assertion of adverse possession, the Limitation would start running against the appellant only from March 15, 1971 and not earlier. Tile suit was filed in 1978 within 12 years. Under these circumstances, tile High Court is not justified in permitting the respondent to raise the plea of adverse possession. It is made clear that we are not expressing any opinion on merits. The judgment of the High Court is set aside and the matter is remitted to the High Court for disposal on merits according to law. Tile appeal is allowed but without costs.