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Date of Decision: 20th September 1995

SPECIAL CIVIL APPLICATION NO. 1080 of 1984

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri S.I. Nanavati, Advocate, for the Petitioner

Shri Y.M. Thakkar, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 20th September 1995)

ORAL JUDGMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 30th January 1984 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief) is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By the impugned order, the order passed by the Competent Authority on

12th April 1982 and the order passed by him on 30th June 1982 were sought to be revised.

2. The facts giving rise to this petition move in a narrow compass. The petitioner along with her sister received certain four parcels of land by way of gift from their father some time on 12th December 1962. On coming into force of the Act, the petitioner filed the declaration in the prescribed form under sec. 6(1) of the Act for herself and also for the other co-owner. That form was processed and by the order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 12th April 1982, the proceeding was closed on the ground that the holding of the petitioner was not in excess of the ceiling limit. Its copy is at Annexure A (part) to this petition. It appears that she thereafter applied for permission to sell her share of the holding to one Purna Kuti Vikas Mandal, Ahmedabad (NTC) under sec. 26(2) of the Act. By his order passed on 30th June 1982, respondent No.2 granted such permission. Its copy is at Annexure A (part) to this petition. It appears that the orders at Annexure A collectively to this petition came to the notice of the concerned officer of respondent No.1. He appears to have found them not according to law. Their suo motu revision was therefore contemplated. Thereupon a show-cause notice appears to have been issued to the petitioner calling upon her to show cause why the orders at Annexure A collectively to this petition should not be revised. After hearing her, by the order passed on 30th January 1984, respondent No.1 held that the holding of the petitioner was by and on behalf of an association of persons and that holding would be in excess of the ceiling limit. Its copy is at Annexure B to this petition. In that view of the matter, the orders at Annexure A collectively to this petition were set aside. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition.

3. Shri Nanavati for the petitioner is right in his submission to the effect that co-owners of gifted lands cannot be treated as an association of persons in view of the binding Division Bench decision of this court in the case of Chhaganlal Trikamdas Thakker & Others v. Competent Authority, Rajkot and Others reported in 1994(1) Gujarat Current Decisions 1. It is true that the shares of two sisters with respect to the gifted lands were not specified. It appears that the author of the impugned order at Annexure B to this petition lost sight of Sec. 45 of the Transfer of Property Act. Keeping in mind the provisions contained therein, by analogy, the shares of the donees will have to be treated as equal in absence of any specified share in the gift transaction. In that view of the matter, there should not be any hesitation in coming to the

conclusion that the share of the petitioner in the gifted lands would be one-half. That is exactly what was taken to be by respondent No.2 in his impugned order of 12th April 1982 at Annexure A (part) to this petition. After deducting the land going in road margin, respondent No. 2 came to the conclusion that the holding of the petitioner was to the tune of 988.93 square meters. It would be very much within the ceiling limit.

4. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside.

5. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 30th January 1984 under sec. 34 of the Act at Annexure B to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.