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Date of Decision: 28th September 1995

SPECIAL CIVIL APPLICATION NO. 1695 of 1987

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
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?
5. Whether it is to be circulated to the Civil Judge?

Shri G.R. Shaikh, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondent

CORAM: A.N. DIVECHA, J.

(Date: 28th September 1995)

ORAL JUDGMENT

The order passed by the Deputy Collector (N.A.) of Ahmedabad ('the first authority' for convenience) on 4th June 1983 as affirmed in appeal by the order passed by the Collector of Ahmedabad ('the appellate authority' for convenience) on 16th August 1984 in L.B. Appeal No. 198 of 1983 as further affirmed in revision by the order passed by the Secretary, Revenue Department (Appeals) at Ahmedabad ('the revisional authority' for convenience) on 28th October 1985 is under challenge in this

petition under Art. 227 of the Constitution of India. By his impugned order, the first authority levied assessment with penalty in the sum of Rs. 15,894/- with respect to one parcel of land bearing Survey No. 89/90 (part) of Final Plot No. 125 (part) situated within the revenue limits of the city of Ahmedabad ('the disputed land' for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land was granted to the petitioner by the order passed by and on behalf of the State Government some time on 20th June 1970. A copy of the sanad in that regard is at Annexure A to this petition. It transpires therefrom that it was granted on certain terms and conditions. One such condition was that the construction thereon was to be in accordance with the plans approved by the Municipal Corporation of Ahmedabad and that the two-thirds portion of the disputed land was to be kept as open presumably as margin land. It appears that some construction was found to have been made on the margin land. Thereupon an inquiry was undertaken under sec. 67 of the Bombay Land Revenue Code, 1879 ('the Code' for brief). After hearing the parties, by his order passed on 4th June 1983, the first authority levied the duty of assessment with penalty to the tune of Rs. 15,894. Its copy is at Annexure C to this petition. The aggrieved petitioner carried the matter in appeal before the appellate authority under sec. 203 of the Code. It came to be registered as L.B. Appeal No. 198 of 1983. By his order passed on 16th August 1984 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure D to this petition. The aggrieved petitioner carried the matter in revision before the revisional authority. By his order passed on 28th October 1985 in the aforesaid revisional application, the revisional authority rejected it. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 227 of the Constitution of India for questioning the correctness of the impugned order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure D to this petition as further affirmed in revision by the revisional order at Annexure E to this petition.

3. It is clear that under the terms and conditions of the sanad at Annexure A to this petition, the petitioner was required to construct in accordance with the plans approved by the Municipal Corporation of Ahmedabad and to keep the two-thirds of the area open as margin land. It appears that the construction was carried out in accordance with the plans approved by the Municipal Corporation of Ahmedabad. However, it is found by the authorities in their impugned order that some construction was raised in the margin land. That was contrary to the conditions of the sanad at Annexure A to this petition.

4. It is not possible to countenance the submission urged before me by Shri Shaikh for the petitioner to the effect that, since the construction was raised after approval of the plans by the Municipal Corporation of Ahmedabad, the only authority empowered to take action for raising construction on the margin land would be Municipal Corporation of Ahmedabad and not any revenue officer. It may be noted that under the terms and conditions of the sanad, the petitioner was required to keep open as margin land the two-thirds of the disputed land. If that condition is violated, the officer issuing such sanad can be said to be within his authority to take appropriate action for breach of such conditions