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Date of Decision: 16th October 1995

SPECIAL CIVIL APPLICATION NO. 5307 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? 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 J.R. Nanavaty, Advocate, for the Petitioner

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

CORAM: A.N. DIVECHA, J.
(Date: 16th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 26th November 1986 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on

16th July 1987 inter alia in Appeal No. Rajkot-195 of 1986 is under challenge in this petition under Art. 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 37094 square meters.

2. The facts giving rise to this petition move in narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. It appears that his holding included one parcel of land bearing Survey No. 311 (part) admeasuring 9 acres 19 gunthas. It appears that he applied for exemption under sec. 20(1) of the Act and by the order passed by and on behalf of the State Government on 25th February 1978, such exemption was granted. However, later on, by the order passed by and on behalf of the State Government on 5th June 1986 under sec. 20(2) of the Act, such exemption came to be withdrawn. Thereupon the declaration filed by the petitioner was processed by respondent No.1 and, by his order passed on 26th November 1986, the petitioners' holding was declared to be in excess of the ceiling limit by 37094 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-195 of 1986. It was heard with Appeal No. Rajkot-196 of 1986. By the common order passed on 16th July 1987 in the aforesaid two appeals, the petitioner's appeal came to be dismissed. Its copy is at Annexure B 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 order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. Learned Advocate Shri Nanavaty for the petitioner has urged that neither authority below has applied the mind with respect to exclusion of the constructed area from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and Others reported in AIR 1992 SC 1567 and exclusion of agricultural land from his holding in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and Others reported in AIR 1993 SC 2465. As against this, learned Assistant Government Pleader Shri Thakkar for the respondents has urged that no such point was canvassed before the authorities below and it cannot be permitted to be urged before this court in this petition under Art. 227 of the Constitution of India. Learned Assistant Government Pleader Shri Thakkar has further urged that, it is not the case of the petitioner that the land was situated in agricultural zone.

4. It maybe noted that the ruling of the Supreme Court in

the case of Smt. Meera Gupta (supra) came to light only in 1992 and that in the case of Smt. Atia Mohammadi Begum (supra) came to light some time in 1993. The exclusion from the holding of the land-holder on the ground of constructed area together with the land appurtenant thereto and on the ground of agricultural use of land would go to the root of the matter. In that view of the matter, it would be open to this court to examine these questions in this petition under Art. 227 of the Constitution of India though not urged before the authorities below.

5. It appears that the holding of the petitioner consisted of one plot of land admeasuring 300 square meters with a residential house constructed therein. It does not become clear from the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition whether or not such area has been included in the petitioner's holding. If construction is authorised, such area is to be excluded from the land-holder's holding in view of the aforesaid binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra).

6. So far as the land bearing Survey No. 311 (part) is concerned, it does not become clear from the impugned orders whether or not there existed any master plan answering its definition contained in sec. 2 (h) of the Act, whether or not the land was situated in the agricultural zone and whether or not the land in question was used for agricultural purposes on the date of coming into force of the Act. Neither authority below has applied his mind to the aforesaid three aspects of the matter.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. The matter deserves to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine taking into consideration whether or not the construction of house in a residential plot in Rajkot was authorised and keeping in mind the aforesaid three questions.

8. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 26th November 1986 at Annexure A to this petition as affirmed in appeal by the common order passed by the Urban Land Tribunal at Ahmedabad inter alia in Appeal No. Rajkot-195 of 1986 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made

absolute to the aforesaid extent with no order as to costs.
