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Date of Decision: 17th October 1995

SPECIAL CIVIL APPLICATION NO. 5309 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: 17th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 26th November 1987 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-196 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 36847.52 square meters.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing Survey No. 311 (part) admeasuring 9 acres 18 gunthas situated within the urban agglomeration of Rajkot (the disputed land for convenience). By the order passed by and on behalf of the State Government on 25th February 1978, exemption under sec. 20(1) of the Act was granted qua the disputed land on certain terms and conditions. Later on the exemption came to be withdrawn by the order passed by and on behalf of the State Government on 11th June 1986 under sec. 20(2) of the Act for breach of certain conditions. Prior thereto, the petitioner had submitted his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. His holding consisted of the disputed land only. That form was duly processed by respondent No.1 and, by his order passed on 26th November 1986 under sec. 8(4) of the Act, the holding of the petitioner was declared to be in excess of the ceiling limit by 36847.52 square meters. Its copy is at Annexure A to this petition. The 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-196 of 1986. It was heard along with Appeal No. Rajkot-195 of 1986. By the common order passed in the aforesaid two appeals on 16th July 1987, respondent No. 2 dismissed both the appeals. 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. Relying on 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, Shri Nanavaty for the petitioner has urged that the disputed land has to be excluded from the holding of the petitioner as it was used for agricultural purposes on the date of coming into force of the Act. It appears that this point was not urged before the lower authorities. Since this point goes to the root of the matter, I overrule the objection against raising this new plea raised by learned Assistant Government Pleader Shri Thakkar for the respondents and have permitted the petitioner to raise this plea before this court.

4. Since neither authority below has applied its mind to this aspect of the case, it would be necessary to remand the

matter to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the following three questions:

(i) Was there in existence any master plan answering its definition contained in sec. 2(h) of the Act?

(ii) What was the position of the disputed land in the master plan? Was it situated in the agricultural zone or any other zone?

(iii) Was the disputed land used for agricultural purposes on the date of coming into force of the Act?

5. In order to allow the matter to be remanded to respondent No. 1, it would be necessary to quash and set aside the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

6. 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 on 16th July 1987 inter alia in Appeal No. Rajkot-196 of 01986 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.
