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Date of Decision: 27th September 1995

SPECIAL CIVIL APPLICATION NO. 5849 OF 198

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.H. Sanjanwala, Advocate, for the Petitioners

Shri S.P. Dave, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.

(Date: 27th September 1995)

ORAL JUDGMENT

The order passed by the Assistant Collector of Choryasi Prant at Surat (Respondent No.4 herein) on 21st October 1985 as affirmed in revision by the common order passed by the Collector of Surat (Respondent No.3 herein) on 2nd November 1987 inter alia in Revision Application No. 264 of 1986 as further affirmed in further revision by the order passed by the Additional Chief Secretary (Appeals), Revenue Department at Ahmedabad (Respondent No.2 herein) on 23rd May 1988 is under

challenge in his petition under Articles 226 and 227 of the Constitution of India. By this impugned order, Respondent No.4 cancelled Mutation Entry No. 532 of 1st January 1984 with respect to Survey No. 50/2 (Part) situated at Village Rundh Taluka Choryasi District Surat ('the disputed land' for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land was of the ownership of petitioner No.1. He sold it to petitioner No.2 by a registered sale deed executed on 15th October 1982. Its copy is at Annexure A to this petition. Pursuant thereto, an application was made for mutation of entry pertaining to the disputed land in the Record of Rights. Apropos, Entry No. 532 of 1st January 1984 was made in the Record of Rights with respect to the disputed land. A copy of the said entry is at Annexure B to this petition. It appears to have come to the notice of respondent No.4 herein. He appears to have found it not according to law. A show-cause notice thereupon came to be issued on 4th October 1985 calling upon petitioners Nos. 1 and 2 to show cause why the said entry should not be cancelled. A copy of the aforesaid show-cause notice is at Annexure C to this petition. Petitioners Nos. 1 and 2 filed their reply thereto on 21st October 1985. Its copy is at Annexure D to this petition. After hearing the parties, by his order passed on 21st October 1985, respondent No.4 cancelled the aforesaid mutation entry. Its copy is at Annexure E to this petition. That aggrieved petitioners Nos. 1 and 2 herein. They carried the matter in revision before respondent No.3. It came to be registered as Revision Application No. 264 of 1986. It was heard along with certain other allied matters. By his common order passed on 2nd November 1987, respondent No.3 rejected the aforesaid revisional application by petitioners Nos. 1 and 2 herein. A copy of the aforesaid order passed by respondent No.3 is at Annexure F to this petition. That aggrieved petitioners Nos. 1 and 2 herein. They therefore carried the matter further in revision before respondent No. 2. By his order passed on 23rd May 1988 in the aforesaid revisional application, respondent No.2 rejected it. Its copy is at Annexure G to this petition. That aggrieved petitioners Nos. 1 and 2 herein. They have therefore moved 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 E to this petition as affirmed in revision by the order at Annexure F to this petition as further affirmed in revision by the order at Annexure G to this petition.

3. It appears that petitioners Nos. 1 and 2 sold the disputed land and certain other parcels of land to petitioners 3, 4 and 5. By the order passed by this court in Civil Application No. 2346 of 1995 today, petitioners Nos. 3, 4 and 5 have been impleaded as parties petitioners to this petition.

4. Apart from the fact that the proceeding for cancellation of the mutation entry made on 1st January 1984 was initiated more than 18 months after that date, which action is not permissible in law in view of the binding ruling of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha and Others reported in AIR 1969 SC 1297, this petition can be disposed of on some other ground also.

5. The basis of the order at Annexure E to this petition is the apprehension that the holding of petitioner No.1 might be in excess of the ceiling limit under the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief). As transpiring from the order at Annexure G to this petition, the Competent Authority had processed the form filed by petitioner No.1 in the prescribed form under sec. 6(1) of the Act, and petitioner No.1 was required to prefer an appeal against the order passed by the Competent Authority in that proceeding. It transpires from the appellate order of the Urban Land Tribunal at Annexure J to this petition that the appeal preferred by petitioner No.1 against the order of the Competent Authority was accepted and it was declared that the holding of petitioner No.1 was not in excess of the ceiling limit. The appellate order at Annexure J to this petition has not been carried further by way of any proceeding either before this court or before any other forum. In that view of the matter, it has become final in view of Sec.33(3) of the Act. It thus becomes clear that the basis of the order at Annexure E to this petition has been removed. No reason would therefore exist for cancellation of the mutation entry at Annexure B to this petition.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to this petition as affirmed in revision by the order at Annexure F to this petition as further affirmed in revision by the order at Annexure G to this petition cannot be sustained in law. It has to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Assistant Collector of Choryasi Prant at Surat on 21st October 1985 at Annexure E to this petition as affirmed in revision by the common order passed by the Collector of Surat on 2nd November 1987 inter alia in Revision Application No. 264 of 1986 at Annexure F to this petition as further affirmed in further revision by the order passed by the Additional Chief Secretary (Appeals), Revenue Department at Ahmedabad (Respondent No.2 herein) on 23rd May 1988 at Annexure G to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
