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Date of Decision: 19th October 1995

SPECIAL CIVIL APPLICATION NO. 4759 of 1995

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 P.B. Majmudar, Advocate, for the Petitioner

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

CORAM: A.N. DIVECHA, J.
(Date: 19th October 1995)

ORAL JUDGMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 7th December 1994 rejecting the petitioner's application for exemption under sec. 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under Art. 226 of the Constitution of India.

2. It is not necessary to set out in detail the facts giving rise to this petition. It maybe sufficient to note that the petitioner applied for exemption under sec. 20(1) of the Act with respect to one parcel of land bearing Survey No. 161/1/B admeasuring 11639 square meters situated within the urban agglomeration of Vadodara. That application came to be rejected by and on behalf of respondent No. 1 by the order passed on 7th December 1994. Its copy is at Annexure A to this petition. The aggrieved petitioner has approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. The ground given for rejection of the petitioner's application appears to be non-production of certain documents by or on behalf of the petitioner despite grant of opportunities for the purpose from time to time. The petitioner has produced at Annexure B to this petition a copy of one letter of 26th January 1994 addressed to the authority empowered to take decision with respect to the petitioner's application. It transpires therefrom that the petitioner has produced several documents including the building permission and the approved plan with respect to the construction raised on the land in question. It also transpires therefrom that the necessary zoning certificate was also sent and it is explained in what capacity the petitioner was holding the land. The grievance voiced by or on behalf of the petitioner before this court is that, despite producing all these materials, the author of the impugned order at Annexure A to this petition has not at all referred to them in his impugned order.

4. It transpires from the impugned order at Annexure A to this petition that the materials referred to by or on behalf of the petitioner in his letter at Annexure B to this petition do not find mention in the impugned order. It appears that the author of the order at Annexure A to this petition has not taken into consideration the documents referred to by the petitioner in his letter at Annexure B to this petition. In that view of the matter, there is hesitation in coming to the conclusion that the impugned order at Annexure A to this petition suffers from the vice of non-application of mind on the part of its author. Such order cannot be sustained in law.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No. 1 for restoration of the proceeding to file and for its fresh decision according to law after giving an opportunity of hearing to the petitioner and after taking into consideration all the relevant materials produced by the petitioner.

6. In the result, this petition is accepted. The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 7th December 1994 at Annexure A 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 its fresh disposal 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.
