

Special Civil Application No.10759 of 1994

cr

Date of decision: 30-1-95

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.H.J.Trivedi, learned counsel for the petitioners.
Mr. A.G.Uraizee, learned A.G.P. for the respondents.

Coram: (M.R. Calla, J.)

Dt: 30-1-95

ORAL JUDGMENT:

1. This Special Civil Application is directed against the order dated 24-1-94 passed by the Joint Secretary, Revenue Department, Government of Gujarat under S.34 of the Urban Land (Ceiling and Regulations) Act, 1976 (herein-after referred to as "the Act").
2. Petitioners herein filled Form No.1 under S.6 of

the Act with regard to the holding of the land. These forms were dealt with by the competent authority and the competent authority, after taking into consideration and after satisfying itself with regard to the portions of the land, which could not be included in the exercise of computing the excess land held by each of the petitioner separately, decided the case of both the petitioners by common order holding that the petitioner Nargis held 2015 Sq.Mts. of land in excess and Saroj held 1925 Sq.Mts. of land in excess. The petitioners were satisfied with the order passed by the competent authority, but the Government in the Revenue Department took up the matter suo motu under S.34 of the Act and passed impugned order dated 24-1-94 holding that the petitioners held excess land beyond the ceiling limits to the extent of 11285 Sq.Mts. and that the land was being held jointly by two petitioners, who are real sisters.

3. Apart from other grievances, which have been raised against the impugned order passed in revision, it has been argued by learned counsel for the petitioners that no notices under S.34 of the Act, before passing the impugned order, were served upon the petitioners; whereas it has been clearly provided in S.34 that no order under S.34 shall be made except after giving the person affected a reasonable opportunity of being heard in the matter. It has been argued by the learned counsel for the petitioners that the competent authority had passed the order on 28-11-86 whereas the order in Revision has been passed on 24-1-94 and it is mentioned in the impugned order passed by the Government of Gujarat under S.34 that the notices had been issued on 25-11-91, in which details had been set out as to why the order passed by the competent authority was sought to be revised. In this span of more than 5 years, the petitioners had shifted their residence from 665, Band View, Opp. Five Garden, Lady Jahangir Road, Parsi Colony, Dadar, Bombay to Nutan Bharat Society, Alkapuri, Baroda and the petitioners had shifted their residence prior to the date of the issue of the notice under S.34 and it has been submitted that the notices under S.34 had not been served upon the petitioners.

4. Neither any return has been filed on behalf of the respondents nor any document whatsoever has been placed on record. The learned A.G.P. has orally argued that if the impugned order passed under S.34 could be received by the petitioners, although it was sent at the Bombay address, there is no reason to believe that the notices might not have been served upon the petitioners on account of the change in the address and, therefore,

it has been argued by the learned Asstt. Govt. Pleader that, when it is mentioned in the impugned order that notices had been sent on 25-11-91, there is no reason to disbelieve this statement made in the body of the impugned order dated 24-1-94. In this view of the matter, it is urged that there is no fault on the part of the concerned authorities and it must be presumed that, if the final order could be served, the notices must also have been served when they were issued in 1991. On query being made, as to whether the copy of the order, which has been placed on record by the petitioners, is a certified copy obtained by them or it is a copy served upon them as sent by the Department. Mr. Uraizee, learned A.G.P. emphasised and stressed, without placing any material whatsoever, that the zerox copy of the order, which has been placed on record has been prepared from the copy which was sent by the Department and it is not a certified copy. Had it been a certified copy, there would have been a seal over the same and that at the bottom of the order there is a tick against the name and Bombay address of the petitioners and, therefore, it must be taken that this order was duly served upon them at Bombay address. In support of this argument, the postal receipt and the A.D. slip could have been placed on record, because the order shows at the top the words "Registered Post A.D.". On that basis, it can be inferred that a copy of the order may have been sent to the petitioners by Registered Post, but merely because a photostat copy of this order has been produced by the petitioners, it cannot be said that it was duly served upon them and that the address of the petitioners had not changed in the long span of more than five years after 1986. One is only left to presume. It is settled that the matters which can be proved and the facts for which primary contemporaneous evidence is available, such documents must be placed on record. Unfortunate it is, that on behalf of the respondents neither any fact has been pleaded nor any document has been produced. No effort has been made to make it clear before the Court that this was served upon the petitioners at the Bombay address. Even if it was served by Registered Post, who received the registry and on what date the registry was received, all these could be proved by way of producing the acknowledgement, but no effort whatsoever has been made in this regard, except making a request that time may be granted for producing the record. In this Special Civil Application, rule had been issued and the matter has been duly shown on the Board. Although observations have been made time and again that returns must be filed, yet neither any returns are filed nor the records are kept ready and Mr. Uraizee has submitted that in matters under

Article 227, filing of the return is not at all necessary and the matters can be argued on the basis of the materials placed by the petitioner alone and only verbal objections shall be raised on behalf of the respondents. It is a dismal fact that despite the stress being laid time and again on number of occasions, no care has been taken to file reply in any case in the ceiling matters. Neither officers remain present in the court nor the record is available, nor any return is filed even on factual aspects and as a matter of fact, when any query is made, the time is sought for finding the record and thus hearing of matters is being impeded in direct or indirect manner. Be that as it may, in the facts of this case, the order might have been received by somebody and it may have been delivered to the present petitioners and even if it is taken that this order reached the hands of the petitioners through someone at Bombay address or this order had been received by the petitioners, there is no material whatsoever to show that the notices under S.34 had been served upon the petitioners. Once the competent authority had passed the order in favour of the petitioners and that matter was re-opened in the Revision under S.34, the Revising Authority was under a statutory obligation, as per the requirements of the principles of natural justice provided through the Statute, that the reasonable opportunity of being heard in the matter has to be given to the effected person. On such a vital aspect, it remains an uncontroverted fact before this Court, that the notices under S.34 had not been served upon the petitioners. The factum of change of address has also not been denied. No photostat copy of the outward Register of the Department has been produced and in case the same were sent by Registered A.D., the postal receipt and acknowledgement slip might be with the Department, but the same were not produced. All that has been argued is that in the matters under Article 227 reply is not required to be filed. The reply may not be necessary with regard to the questions of law, but every factual averment needs a reply; in case the reply is not there, then the document, which is available, must be produced before the Court. In such circumstances, when documentary evidence, which may be available with the party is not produced before the Court, the Court is left with no option but to proceed with the uncontroverted statement. In absence of any material placed on record on behalf of the respondents, I am inclined to believe the petitioners' version that the notices under S.34 were not properly served. The impugned order also does not recite that the notices had been served and the author of the impugned order had rest contented by saying that the notices dated 24-1-94 had been sent. Not a word has been

written in the whole order as to whether this notices had been served upon the petitioners or not. In the facts of this case,I, therefore, deem it appropriate to remand the matter back to the concerned authority i.e. Revenue Department of the Government of Gujarat for the purposes of the proceedings under S.34. Since the petitioners had approached this court and this order of remand is passed at their instance and now that the grounds on the basis of which the order of the competent authority is sought to be revised, have already become known to the petitioners through the contents of this order dated 24-1-94,the issue of any notice de novo may not be necessary and the petitioners may treat the contents of this order dated 24-1-95 as the grounds for the purposes of S.34 seeking to revise the order passed by the competent authority. It will be open for the petitioners to file their objections against the grounds on which order of the competent authority is sought to be revised under S.34 and after considering the said grounds and hearing the petitioners, the concerned authority dealing with the matters under S.34 of the Act shall pass appropriate orders in accordance with law.The petitioners may file their objections against the grounds within a period of one month from today and the concerned authority in the Revenue Department shall pass the orders within two months thereafter and till then no further action shall be taken against the petitioners in respect of the lands in question.

5. This Special Civil Application is, therefore, partly allowed to the above extent and the matter is remanded back to the Revenue Department of the Government of Gujarat for decision afresh in accordance with law. Rule is made absolute in the above terms. No order as to costs.