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Date of Decision: 18th October 1995

SPECIAL CIVIL APPLICATION NO. 11569 of 1994

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
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?
5. Whether it is to be circulated to the Civil Judge?

Shri P.M. Bhatt, Advocate, for the Petitioner

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

CORAM: A.N. DIVECHA, J.
(Date: 18th October 1995)

ORAL JUDGMENT

The order passed by the Collector of Vadodara (respondent No. 2 herein) on 16th September 1994 is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No. 2 did not entertain the petitioner's application for non-agricultural use of one parcel of land bearing Survey No. 79 and measuring 5291 square meters situated at Gotri within the urban agglomeration of Vadodara.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to his holding within the urban agglomeration of Vadodara. His total holding was found to be to the tune of 14599 square meters. The declaration was processed by the Competent Authority at Vadodara. By his order passed on 28th January 1986 under sec. 8(4) of the Act, the Competent Authority declared the holding of the petitioner to be in excess of the ceiling limit by 11599 square meters. The aggrieved petitioner carried the matter in appeal before the Urban Land Tribunal at Ahmedabad. It came to be registered as Appeal No. 51 of 1986. By the order passed by the Urban Land Tribunal on 8th November 1993 in the aforesaid appeal, the Urban Land Tribunal accepted the appeal in part and declared the holding of the petitioner to be in excess of the ceiling limit by 5599 square meters. Its copy is at Annexure A to this petition. It may be mentioned that the petitioner was permitted thereunder to retain in all 6000 square meters of land including two parcels of land bearing Survey No. 79 and 920 measuring 5291 square meters and 709 square meters respectively situated at Gotri within the urban agglomeration of Vadodara. The present dispute centres round Survey No. 79 thereof (the disputed land for convenience). The petitioner thereafter applied on 5th February 1994 for permission to use the disputed land for non-agricultural purposes. It appears that respondent No.2 received one communication from the State Government indicating that the original order passed by the Competent Authority at Vadodara was required to be reviewed and its revision was in contemplation under sec. 34 of the Act. Thereupon, by his order passed on 16th September 1994, respondent No.2 did not entertain the petitioner's aforesaid application for what is popularly known as the N.A. permission with respect to the disputed land. A copy of the aforesaid order passed by respondent No.2 on 16th September 1994 is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. It becomes clear from the impugned order at Annexure D to this petition that the petitioner's application for N.A. permission with respect to the disputed land was not decided on merits. In fact, it was not entertained on the basis of some confidential communication. I think the ground given for not entertaining such application is not germane to me. Learned Assistant Government Pleader Shri Dave for the respondents is unable to inform me as to whether or not any show-cause notice is issued for reviewing the order passed by the Competent Authority. Shri Bhatt for the petitioner states that the petitioner has not received any such show-cause notice so far.

It therefore becomes clear that no review of the order passed by the Competent Authority at Vadodara was in contemplation or that, if it was not in contemplation, no further action thereon has been taken.

4. Even if such review was in contemplation, if at all the petitioner's application for N.A. permission with respect to the disputed land was required to be granted, it could have been granted on certain terms and conditions including the condition that the N.A. permission was liable to be cancelled in case the order passed by the Competent Authority at Vadodara was reviewed under sec. 34 of the Act.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition cannot be sustained in

