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Date of Decision: 31st January 1996

SPECIAL CIVIL APPLICATION NO. 306 of 1989

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?

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Shri A.K. Clerk, Advocate, for the Petitioners

Shri D.N. Patel, Advocate, for the Respondents  
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CORAM: A.N. DIVECHA, J.

(Date: 31st January 1996)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.3 herein) on 16th May 1983 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 2nd November 1988 in Appeal No. Rajkot-86 of 1985 together with the order passed by respondent No.3 herein on 22nd February 1989 under sec. 8(4) of the Act is under challenge in this petition

under art. 227 of the Constitution of India. By his impugned order, respondent No.3 declared the holding of the petitioners to be in excess of the ceiling limit by 584.07 square meters and also 1125 square meters as excess as found in the declaration filled in by the co-owners wherein petitioner No.1 was one of them.

2. The facts giving rise to this petition move in a narrow compass. The petitioners filed their individual declaration (presumably in their joint names) in the prescribed form under sec. 6(1) of the Act. The proceeding arising therefrom was registered as Case No. 55 of 1976. It appears that petitioner No.1 herein was a co-owner of one parcel of land bearing Survey No. 464 admeasuring 8243 square meters situated within the urban agglomeration of Rajkot (the co-ownership property for convenience). There were in all four co-owners of the co-ownership property. They jointly filed their declaration in the prescribed form under sec. 6 of the Act. The proceeding arising therefrom came to be registered as Case No. 60 of 1976. Both the declarations were processed by respondent No.3 herein. By his order passed on 16th May 1983 in Case No. 55 of 1976, the holding of the petitioners herein was declared surplus by 584.07 square meters. Its copy is at Annexure A-3 to this petition. That aggrieved petitioner No.1. It carried the matter in appeal before respondent No.2 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure F to this petition. It came to be registered as Appeal No. Rajkot-86 of 1985. By the order passed on 2nd November 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure A to this petition. Respondent No.3 also processed the declaration registered as case No. 60 of 1976. By his order passed on 22nd February 1989, the share of petitioner No.1 in the co-ownership property to the tune of 1125 square meters was declared surplus and modification of the order at Annexure A-3 to this petition was also mentioned to that extent. A copy of the order passed by respondent No.3 on 22nd February 1989 is at Annexure H to this petition. It appears that the order at Annexure H to this petition has not been carried in appeal. It thus becomes clear that the total excess land found in the hands of the petitioners was to the tune of 1709.07 square meters. The aggrieved petitioners have thereupon invoked the extra-ordinary jurisdiction of this Court under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A-3 to this petition as affirmed in appeal by the appellate order at Annexure A to this petition together with the order at Annexure H to this petition.

3. As transpiring from the order at Annexure A-3 to this petition, the properties mentioned at Sl. Nos. 1, 2 and 3 in internal page 3 thereof are shown to be constructed properties. Such constructed properties fall outside the purview of the

vacant land as defined in sec. 2(q) of the Act in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. This aspect of the matter has not been taken into consideration by the authorities below.

4. It appears that the properties at Sl. Nos. 7 and 8 shown in internal page 3 of the order at Annexure A-3 to this petition did not come to the ownership of the petitioners as transpiring from a copy of the consent terms at Annexure E to this petition read in the light of the judgment and order passed by the Court of the Civil Judge (S.D) at Rajkot on 11th September 1975 in Special Civil Suit No. 101 of 1974. Its copy is at Annexure G to this petition. A submission in that regard appears to have been made in the memo of appeal at Annexure F to this petition while questioning the correctness of the order at Annexure A-3 to this petition. It appears that this aspect of the matter was not considered by the appellate authority.

5. It would however be desirable to remand the matter to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law qua the constructed properties and qua the properties covered by the consent terms at Annexure E to this petition read in the light of the judgment at Annexure G to this petition keeping in mind the aforesaid binding ruling of the Supreme Court. So far as the impugned order at Annexure H to this petition is concerned, there is no serious challenge to it. However, whatever land is declared surplus, a choice for surrendering the surplus land will have to be given to the petitioners before preparing the final statement under sec. 9 of the Act. The impugned orders at Annexures A-3 and A to this petition will have therefore to be quashed and set aside and the matter will have to be remanded to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

6. In the result, this petition is accepted to the aforesaid extent. The order passed by the Competent Authority at Annexure A-3 to this petition as affirmed in appeal by the appellate order at Annexure A to this petition is quashed and set aside. The matter is remanded to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It may be mentioned that the order at Annexure H to this petition may now be merged with the final order that may be passed after restoration of the proceeding to file pursuant to this judgment of mine as it has been indicated in the order at Annexure H to this petition that the order at Annexure A-3 to this petition may be revised accordingly. Since the matter is very old, it would be desirable on the part of respondent No.3 to accord priority for its disposal and he should endeavour to dispose it

of as expeditiously as possible preferably within 3 months from the date of receipt of the writ from this Court. It would be open to the petitioners to produce a certified copy of this judgment before respondent No.3 and in that case the date of receipt of writ will be commencing from the date of the production of such certified copy. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

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