

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 30-10-1996.

SPECIAL CIVIL APPLICATION No 2186 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATEL ATMARAM LALLUBHAI & OTHERS

Versus

STATE OF GUJARAT

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Appearance:

Mr. G.R. Shaikh Advocate for the petitioners.

Mr. D.N. Patel, A.G.P. for the Respondent.

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 30/10/96

ORAL JUDGEMENT

The order dated January 19, 1987 passed by the Secretary, (Revenue), referring the case back to the District Development Officer for consideration about cancellation of the N.A. permission granted directing to ascertain whether petitioners had succeeded in obtaining the licence to run the plant, and if at all the licence was obtained, to ascertain further, within what time the industrial unit would start functioning, is under

challenge in this petition.

2. Tersely put and shorn of unnecessary details, the case of the petitioners is that they are the owners and occupants of Survey Nos. 1775 and 1776 situated within the Sim of village Dholka in Ahmedabad District. The land is admeasuring 32072 sq.meters. As the petitioners wanted to start their industrial unit, they applied for necessary permission for non-agricultural use ordinarily known as 'N.A. Permission'. The District Development Officer (D.D.O.) at Ahmedabad on 24th September 1981 granted the N.A. permission on certain terms and conditions, one of which was to start the construction of the industrial unit within 6 months of the permission and complete the same latest by three years of the permission. As both the conditions were breached, a show cause notice was issued calling upon the petitioners to show cause why necessary action under the provisions of the Bombay Land Revenue Code should not be taken. Without affording the opportunity of being heard, the District Development Officer on 3rd July 1986 passed the order and held that when conditions Nos. 1 & 10 were set at naught the petitioners were liable to pay fine. He, therefore, imposed the fine of Rs.12,829/-. He also directed the petitioners to complete the construction on the land latest by 24th September 1987 extending the period of N.A. permission. Being aggrieved by such order, the petitioners carried the matter before the Secretary, Revenue, who in the month of January 1987 passed the impugned order directing the D.D.O. to consider about cancellation of the N.A. permission and if at all the licence was procured by the petitioners to run their factory installing the plant, take the assurance within what time the manufacturing process would start. Considering that aspect it would be open to the D.D.O. to extend the period and if the period of N.A. permission was extended he would keep a constant watch. After the said order came to be passed, the petitioners found that it was inconsistent with the provisions of law and unjust as well as irksome. It is against that order the present petition is filed before this Court.

3. The learned advocates representing the parties submitted for and against the order. The crucial point that arises for consideration is whether it could be just to impose the fine if the permission granted for a particular period is on the expiry of that period extended for a further period.

4. The principle on which the fine is imposed has to

be borne in mind. The fine is imposed if a wrong in the eye of law is committed; but if the wrong is excused, condoned or rectified, the wrong would not survive, and consequently the cause to impose the fine would also not survive. In this case, the D.D.O. preferred to impose the fine because he found that the petitioners after obtaining the N.A. permission could not complete the construction of the industrial unit within the specified time and had not paid the amount of premium. Because of such breach having been committed, it was no doubt within his discretion to exercise his power and impose the fine commensurating with the wrong; and if that is done, being quite in consonance with law, this Court would not interfere with such order. But here a step further has been taken which cannot be lost the sight of. After issuing the notice when the breach came to the notice of the D.D.O., he extended the period of N.A. permission, directing the petitioners to complete the construction latest by 24th September 1987. When he accordingly renewed the permission, whatever wrong he noted came to be condoned and the petitioner were virtually exonerated. When that is so, the cause to impose the fine did not survive. In view of the matter, the order imposing the fine cannot be said to be consistent with the law and therefore it cannot be allowed to be maintained.

5. The Secretary, Revenue, has referred the matter back to the D.D.O. for reconsideration qua the cancellation of the permission because he found that extension granted was not just and proper. At this juncture, there is no just cause to interfere with the said order when the matter is referred back for a fresh consideration, but it should be stated that when a question of reconsideration arises, it cannot be one sided namely cancellation of the permission. While considering the matter afresh, it would be open to the authority considering the materials before him either to accept the request and grant the permission or to turn down the request and refuse the same. The D.D.O. therefore, cannot be restricted or inhibited for applying his mind only on the particular aspect of the case rather than overall consideration on all the aspects.

6. (a) In view of the aforesaid circumstances,  
the petition is allowed. The order of the D.D.O. dated 3-7-86 imposing the fine; and the order dated 19-1-1987 passed by the Secretary, confirming the imposition of fine and giving the direction restricting the sphere of the D.D.O. are hereby set aside.

(b) The D.D.O. shall consider the application of petitioners for N.A. permission and will be free to take appropriate decision either accepting the request or refusing the request made for N.A. permission. It would be open to him to pass consequential order if necessary and found just in the facts and circumstances of the case exercising his discretion in accordance with law.

No costs in the circumstances of the case. Rule is made absolute.

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