

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4037 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
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? No
5. Whether it is to be circulated to the Civil Judge?

No

HEIRS AND LEGAL REPRESENTATIVES OF DAHYABHAI
LALDAS

Versus

STATE OF GUJARAT & ANR.

Appearance:

Shri A.J. Patel, Advocate, for the Petitioners
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 30/04/96

ORAL JUDGEMENT

The order passed by the District Development Officer at Gandhinagar (respondent No. 2 herein) on 21st March 1988 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 1

herein) on 30th January 1989 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 cancelled what is popularly known as the N.A. permission granted by him by the order passed on 11th February 1982 with respect to one parcel of land bearing Block No. 1066 admeasuring 23 acres 30 gunthas situated at Adalaj in Gandhinagar Taluka and District (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. It appears that the disputed land was owned and occupied by the predecessor-in-title of the present petitioners, named, Dahyabhai Laldas (the deceased for convenience). It appears to be a new tenure land. He appears to have applied on 1st February 1982 for its N.A. use. By his order passed on 11th February 1982, respondent No. 2 granted the necessary permission for its N.A. use on certain terms and conditions. Its copy is at Annexure A to this petition. It inter alia fixed the premium to the tune of Rs. 88650 at the rate of 50% of the market value for its conversion from new tenure to old tenure and the amount was required to be paid within two months from the date of the order. It transpires from the material on record that the premium amount so fixed was paid on 5th April 1982. The order at Annexure A appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) was therefore contemplated. A show-cause notice thereupon came to be issued on 15th October 1983 calling upon the deceased to show cause why the order at Annexure A to this petition should not be cancelled. After hearing the parties, by the order passed on 27th February 1984 by and on behalf of respondent No. 1, only that part of the order at Annexure A to this petition fixing the premium amount for the purpose of conversion from new tenure to old tenure came to be cancelled. Its copy is at Annexure B to this petition. Thereunder the premium fixation was left to the Collector of Gandhinagar. While the matter remained pending before the Collector at Gandhinagar for fixation of the premium amount for its conversion from new tenure to old tenure, a notification came to be issued on 9th December 1985 under sec. 4 of the Land Acquisition Act, 1894 (the Act for brief) inter alia acquiring 86501 square meters of land from the disputed land. A copy of the aforesaid notification as appearing in "Gujarat Samachar" daily of 26th December 1985 is at Annexure C to this petition. While the matter relating to the premium fixation was pending before the Collector at Gandhinagar,

respondent No. 2 issued one show-cause notice on 17th November 1987 calling upon the deceased to show cause why the N.A. permission granted by the order at Annexure A to this petition should not be cancelled on the ground of breach of certain conditions mentioned therein. A copy of the aforesaid show-cause notice is at Annexure D to this petition. It appears that the deceased filed his reply thereto on 14th December 1987. Its copy is at Annexure E to this petition. Thereafter, by the order passed by respondent No. 2 on 21st March 1988, the N.A. permission granted by the order at Annexure A to this petition came to be cancelled. Its copy is at Annexure F to this petition. The aggrieved deceased carried the matter in revision before respondent No. 1 under sec. 211 of the Code. By the order passed on 30th January 1989, respondent No. 1 rejected the revisional application. Its copy is at Annexure G to this petition. It appears that the deceased breathed his last in the meantime leaving behind him the present petitioners as his heirs and legal representatives. They were aggrieved by the orders at Annexures F and G to this petition. They have therefore approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure F to this petition as affirmed in revision by the order at Annexure G to this petition.

3. It may be noted that the disputed land admeasured 23 acres 30 gunthas. Its area in the metric system would be around 96000 square meters. By the notification at Annexure C to this petition, an area of 86501 square meters therefrom has been acquired. Relying on the notification at Annexure C to this petition, learned Assistant Government Pleader Shri Sompura for the respondents has urged that the N.A. permission at Annexure A to this petition became infructuous even otherwise and this petition need not therefore be entertained. As against this, learned Advocate Shri Patel for the petitioners has urged that, by the order at Annexure B to this petition, the N.A. permission was not cancelled and the entire disputed land has not been acquired, and as such the N.A. permission at Annexure A to this petition would remain in operation for the balance area.

4. It cannot be gainsaid that the objection against the impugned order at Annexure A to this petition was only to the effect that its author had no authority to fix the premium amount for conversion of the disputed land from new tenure to old tenure. It transpires from the order at Annexure B to this petition that what was

cancelled was only that part of the order by which the premium for its conversion from new tenure to old tenure was fixed. It therefore becomes clear that the N.A. permission qua the disputed land was not cancelled. If it had come to be cancelled, there was no necessity to issue the show-cause notice at Annexure D to this petition and the consequential order at Annexure E to this petition. I am therefore of the opinion that the acquisition notification at Annexure C to this petition had not the effect of rendering infructuous the N.A. permission at Annexure A to this petition.

5. It transpires from the reply at Annexure E to this petition that the deceased was injuncted against making any construction on the disputed land till the final order was passed at the time of issue of the show-cause notice of 15th October 1983. As transpiring from the order at Annexure B to this petition, the premium amount for conversion of the disputed land from new tenure to old tenure was to be fixed by the Collector at Gandhinagar. It was certainly not fixed. In that view of the matter, the deceased was justified in not proceeding with the construction work in view of the order of injunction passed against him in the show-cause notice of 15th October 1983.

6. It may be noted that the deceased had got the building plans approved by the local authority for raising construction on the disputed land pursuant to the N.A. permission at Annexure A to this petition. It is the case of the petitioners in this petition that construction work had begun on the disputed land at the time of issue of the show-cause notice of 15th October 1983. It is therefore clear that the deceased was keen to develop the disputed land after obtaining the N.A. permission by the order at Annexure A to this petition. Respondent No. 2 in his order at Annexure F to this petition has found fault with the deceased not to have moved the Collector at Gandhinagar for fixing the premium amount or not to have applied for extension of the time-limit prescribed for completion of the construction work by the order at Annexure A to this petition. By the order at Annexure B to this petition, the matter was referred to the Collector at Gandhinagar for fixation of the premium amount for conversion of the disputed land from new tenure to old tenure. It was the duty of that officer to fix the premium amount as expeditiously as possible. There was no reason for him to sit tight over it. It was not necessary for the deceased to have reminded the Collector at Gandhinagar to discharge his duty or to perform his function in that regard. For

negligence on the part of the Collector at Gandhinagar the petitioner could not have been penalised. To do so would tantamount to putting premium on lethargy and negligence on the part of the Collector at Gandhinagar. It cannot simply be permitted to be done. The deceased was certainly not at fault for lethargy and negligence on the part of the Collector at Gandhinagar. The reasoning on that account given by respondent No.2 in his impugned order at Annexure F to this petition passes comprehension. It shows total lack of application of mind on his part.

7. So far as omission on the part of the deceased in not applying for extension of the time-limit for completion of the construction work pursuant to the N.A. permission order at Annexure A to this petition is concerned, the deceased could not have been faulted with. The reason therefor is quite simple. He was awaiting the decision of the Collector at Gandhinagar for fixation of the premium amount for conversion of the disputed land from new tenure to old tenure. Besides, the acquisition notification at Annexure C to this petition had come to be issued. In view of the acquisition proceeding, he would naturally not raise any construction and would wait for fixation of the premium amount by the concerned authority. The deceased was justified in waiting for initiation of actions for breach of that condition in the N.A. permission order at Annexure A to this petition and to have set out the necessary fact-situation in that proceeding. In his reply at Annexure E to the show-cause notice at Annexure D to this petition, the deceased has in no uncertain terms stated that he could not carry on the construction work on that account. It was therefore not necessary for him to have applied for extension of the time-limit.

8. Besides, fixation of the time-limit for the purpose of completion of the construction work pursuant to the order at Annexure A to this petition was a directory condition and not a mandatory condition. The N.A. permission could not have been cancelled if the deceased could not have completed the construction work within the stipulated time-limit on account of certain circumstances beyond his control like non-availability of construction material in whatever form for a reasonably long period. In that case, the authority might have been required to extend the time-limit on being satisfied about the genuineness of the ground for its extension. In that view of the matter, omission on the part of the deceased in making an application for extension of the time-limit for completion of the construction work can be

said to be a mere technical breach not warranting any serious or severe action of cancellation of the N.A. permission. Respondent No. 2 appears to have remained oblivious to this aspect of the matter. The impugned order at Annexure F to this petition as affirmed in revision by the order at Annexure G to this petition cannot therefore be sustained in law on the ground of non-application of mind on the part of its author.

9. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure F to this petition as affirmed in revision by the order at Annexure G to this petition cannot be sustained in law and it has to be quashed and set aside. The Collector at Gandhinagar deserves to be directed to fix the premium amount for the balance area of the disputed land in the light of the acquisition notification at Annexure C to this petition. It has to be fixed in relation to the date of the N.A. permission at Annexure A to this petition obviously because the N.A. permission has not been disturbed and the fixation of the premium amount was disturbed only on the ground that its author had no authority to do so.

10. In the result, this petition is accepted. The order passed by the District Development Officer at Gandhinagar on 21st March 1988 as affirmed in revision by the order passed by and on behalf of the State Government on 30th January 1989 is quashed and set aside. The Collector of Gandhinagar is directed to fix the premium amount pursuant to the order at Annexure B to this petition with two months from the date of receipt of the writ in the light of this judgment of mine. Rule is accordingly made absolute with no order as to costs.
