

Special Civil Application No 4413 of 1988

Date of decision: 31/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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?

MITHABHAI M. PARSANA, vs COMPETENT AUTH.& DY.COLLECTOR (ULC)

Appearance: MR J.R. Nanavati, Advocate, for the Petitioners
Mr. D.N. Patel, Asst. Govt. Pleader, for the Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 12th November 1984 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 24th June 1987 in Appeal No. Rajkot-1693 of 1984 is under challenge in this petition under Art. 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioners herein to be in excess of the ceiling limit by 29337.70 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners are two brothers and they constitute one joint family. Petitioner No.1 filed declaration in the prescribed form under sec. 6(1) of the Act on behalf of the

family with respect to the properties held by the family within the urban agglomeration of Rajkot. It was duly processed by respondent No.1. After observing the necessary formalities according to law, by his order passed on 12th November 1984 under sec. 8(4) of the Act, respondent No.1 declared the holding of the family to be in excess of the ceiling limit by 29337.70 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioners carried the matter in appeal before respondent No.2 under sec.33 of the Act. The copy of the memo of appeal is at Annexure B to this petition. It came to be registered as Appeal No. Rajkot-1693 of 1984. By his order passed on 24th June 1987 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. It appears that one parcel of land bearing Survey No.. 401 (part) admeasuring 5 acres 14 gunthas was used for agricultural purposes. Learned Advocate Shri Nanavaty for the Petitioners submits that that parcel of land will have to be excluded from the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465.

4. It does not become clear from the material on record whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence on the date of coming into force of the Act with respect to the aforesaid land. If it was so, it will have to be ascertained whether or not the aforesaid land was placed in any zone other than the agricultural zone. Besides, it will have to be ascertained whether or not agricultural operations were in fact carried on in the said land at the time of coming into force of the Act. The applicability of the aforesaid binding ruling of the Supreme Court will have to be decided in the light of the aforesaid queries.

5. It transpires from the impugned order at Annexure A to this petition that some constructed houses have been included in the holding of the petitioners. As rightly submitted by learned Advocate Shri Nanavaty for the petitioners, such constructed properties together with the land appurtenant thereto (if any) will have to be excluded from the holding of the land-holders 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.

6. In view of my aforesaid discussion, the impugned orders at Annexures A and C to this petition cannot be sustained in law in the light of the aforesaid two binding rulings of the Supreme Court. They have to be quashed and set aside. The matter has to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted to the aforesaid extent. The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 12th October 1992 under sec. 8(4) of the Act at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 24th June 1987 in Appeal No. Rajkot-1693 of 1984 at Annexure C to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
