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Date of Decision: 31st January 1996

SPECIAL CIVIL APPLICATION NO. 4443 of 1988

Kishorchandra S. Mehta

vs.

The Competent Authority and Deputy Collector, Rajkot and Anr.

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 S.M. Shah, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, 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.1 herein) on 27th August 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 15th June 1988 in Appeal No. Rajkot-1565 of 1984 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1116.27 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filled in the necessary declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. That form was duly processed by respondent No.1. By his order passed on 27th August 1984 under sec. 8(4) of the Act, he declared the holding of the petitioner to be in excess of the ceiling limit by 1116.27 square meters. Its copy is at Annexure A to this petition. The final statement under sec. 9 thereof was also prepared. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1565 of 1984. By his order passed on 15th June 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Art. 226 of the Constitution 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 property had construction thereon. The entire area thereof has been included in the holding of the petitioner. 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, the constructed area together with the land appurtenant thereto will have to be excluded from the holding of the land-holder. This aspect of the matter requires to be considered.

4. It appears that two parcels of land were in the green strip. It does not become clear from the material on record whether it was so in the master plan in existence on the date of coming into force of the Act answering its definition contained in sec. 2(h) of the Act. This position will have to be ascertained as the attention of the authorities below has not been focussed on it.

5. If the lands in question were shown in any zone other than the agricultural zone in the master plan in existence on the date of coming into force of the Act or they were not used for agricultural purposes at the relevant time, 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 will have no application. The position in that regard will have to be ascertained by respondent No.2 herein.

6. In view of my aforesaid discussion, I am of the opinion that the matter will have 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 the following three questions:

(a) Was any master plan answering its definition contained in sec. 2(h) of the Act in existence on the date of its coming into force?

(b) Were the lands in question situated in any zone other than the agricultural zone therein?

(c) Were agricultural operations in fact carried on therein?

Respondent No.1 shall also take into consideration the constructed area together with the land appurtenant thereto for the purpose of applicability of the aforesaid binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra). The impugned order at Annexure A to this petition together with the final statement at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition will have therefore to be quashed and set aside.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 27th August 1984 at Annexure A to this petition together with the final statement at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 15th June 1988 in Appeal No. Rajkot-1565 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.

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