

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10714 of 1995

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? No
2. To be referred to the Reporter or not? No
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

KANTILAL MANILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

Shri Harin P. Ravel, Advocate, for the
Petitioners

Shri M.R. Anand, Senior Counsel (Government
Pleader), with Shri T.H. Sompura, Asst. Govt.
Pleader, for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/06/96

ORAL JUDGEMENT

Rule. Service of rule is waived by learned
Assistant Government Pleader Shri T.H. Sompura for the
respondents.

2. The order passed by the Collector of Gandhinagar

(respondent No. 3 herein) on 16th June 1994 as affirmed in revision by the order passed by the Deputy Secretary (Appeals) at Ahmedabad (respondent No.2 herein) on behalf of the State Government (respondent No. 1 herein) on 28th June 1995 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 cancelled the auction held on 16th October 1992 with respect to one plot of land bearing Plot No. 208 situated in Sector 29 admeasuring 532 square meters at the rate of Rs. 1625 per square meter (the disputed land for convenience). A copy of the order passed by respondent No. 3 on 16th June 1994 is at Annexure J to this petition and the order passed by respondent No. 2 in revision is at Annexure M to this petition.

3. It is not in dispute that the auction was held on 16th October 1992 with respect to the disputed land. The upset price was fixed at Rs. 1000 per square meter. It transpires from the record that there were 7 bidders and in all 67 bids were made. The auction was not put off on account of a small number of bidders. In that view of the matter, when the price bid by the petitioners was the highest and above the upset price, there was no reason to cancel that bid only on the ground that on subsequent dates higher price was realised in respect of certain adjoining plots.

4. It is not in dispute that the auction of one plot bearing No. 166 in Sector No. 29 itself with a road frontage was held on 29th September 1992 and it fetched the price of Rs. 1551 per square meter by means of the highest bid. The disputed plot is somewhat interior and does not have the advantage of the road frontage which was enjoyed by Plot No. 166. If the price of Rs. 1551 per square meter for a better situated plot was accepted as sufficiently reasonable price some 15-16 days ago, the price realised for the disputed plot in the auction should not have been considered to be low simply because 4 days later some adjoining plots could fetch substantially more price.

5. It may be noted that in the earlier revisional proceeding culminating into the order of remand passed on 22nd September 1993 at Annexure I to this petition it was observed that the price difference was not very high. It appears that respondent No. 3 has not taken into consideration that observation in his impugned order at Annexure J to this petition. It further appears from the order in revision at Annexure M to this petition that the aforesaid observation made in the earlier revisional

order at Annexure I to this petition has not been taken into consideration by the author of the order at Annexure M to this petition.

6. Learned Advocate Shri Raval for the petitioners states at the bar that the petitioners are prepared to raise their bid to Rs. 2000 per square meter in order see that the State Government does not suffer and there is not much of a price difference.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure M to this petition cannot be sustained in law as it suffers from the vice of non-application of mind on the part of its author qua the earlier revisional order at Annexure I to this petition. It therefore deserves to be quashed and set aside. The matter deserves to be remanded to respondent No. 1 for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine taking into consideration the higher price offered by the petitioners.

8. In the result, this petition is accepted. The order passed by respondent No. 2 on behalf of respondent No. 1 on 28th June 1995 at Annexure M 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 its fresh decision according to law in the light of this judgment of mine. It would be desirable that the proceeding may be decided as expeditiously as possible preferably by 31st August 1996. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.
