

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 381 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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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?

(No. 1 to 5 NO)

HAJI ISMAIL MOHMED KHAKDAKI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR

Appearance:

MR YN OZA for Petitioner

MR Th Sompura,Ld.Govt. Counsel for Respondents

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 31/01/97

ORAL JUDGEMENT

The petitioner before me happens to be a land holder. The concerned land would be a piece of land bearing survey no. 339 situated at Village Adajan under the Choryasi taluka of the Surat district, which would fall within the Urban Agglomeration of Surat. The area of the land in question appears to be 7082 sq. meters. The land holder had presented a Scheme under Section 21

(1) of ULC Act, 1976, so that the residential units for the weaker sections of the Society could be constructed. The said Scheme came to be sanctioned under the orders dated March 18, 1982. Revised Scheme came to be sanctioned under the orders dated September 04, 1985. It appears that, at a later juncture it was brought to the notice of the concerned authority that, certain terms & conditions of the sanctioned Scheme have not been complied with and that, there has been a violation or breach thereof. The necessary show cause notice dated October 08, 1986, came to be issued upon the petitioner land holder. By the orders of the Competent Authority dated July 05, 1993, the land holder was called upon to show cause repeatedly and to produce certain document but that the same was not done. The Competent Authority therefore under the orders dated June 28, 1993 was pleased to come to the conclusion that, the Scheme under Section 21(1) of the ULC Act, 1976 was required to be cancelled, and the exemption in this respect was required to be cancelled. That has been done, and under the said orders the land admeasuring 7082 sq. meters is declared as the excess vacant land. This orders dated June 28, 1993 came to be challenged before the Urban Land Tribunal by filing the requisite appeal. The Tribunal was of the opinion that very many flaws were pointed out in the show cause notice but that enough explanation was not coming forth. The Tribunal was of the opinion that, regard being had to the flaws committed by the land holder, the Competent Authority was perfectly justified in cancelling the Scheme and declaring the land underneath as his excess land. This has happened in the orders dated September 07, 1996. These are the orders in challenge before me in the present petition.

Ld. Counsel for the petitioner Mr. Yatin Oza urges that all the documents are ready with the petitioner land holder and that, it was his misfortune arising out of a bona fide mistake that all these could not be produced before the Competent Authority. Ld. counsel urges that, the land holder should be given a reasonable opportunity of showing cause and of producing the requisite material before the Competent Authority so that the Scheme could be salvaged. On the other hand Ld. Govt. Counsel Mr. Sompura urges that the Competent Authority had given the necessary notice dated October 08, 1986, to the land holder, calling upon him to show cause as to why the revised Scheme should not be treated as a cancelled one, and as to why the land in question should not be declared as the excess vacant land. Ld. Govt. Counsel appears to be true factually. It can not be disputed that the show cause notice came to be given

to the petitioner land holder. Despite this, the necessary material could not be produced.

Mr. Yatin Oza was found to be in a position to urge before me successfully that, all what was required to be done to the Competent Authority would be ready with the land holder. I do not express any opinion of mine on this aspect, as I propose to allow the present petition in part and to remand the proceedings to the Competent Authority for a fresh decision.

In the result, therefore, the present petition succeeds in part and the same requires to be partly allowed. The orders of the Competent Authority dated July 05, 1993, as confirmed by the Tribunal on September 07, 1996 are hereby quashed and set aside, and the matter is remanded to the Competent Authority with the direction to decide the matter afresh, after affording a reasonable opportunity of being heard to the petitioner land holder. The remanded proceedings shall have to be completed by the Competent Authority within a period of three months from the date of receipt of writ of the present orders. Ld. counsel Mr. Yatin Oza for the petitioner says that, the petitioner shall cooperate for the final disposal of the matter before the Competent Authority without asking for time in the matter and that the petitioner land holder would not ask for dates so as to lengthen the proceedings.

Till the above said remanded proceedings are decided by the Competent Authority, the status quo qua the land shall be maintained by the petitioner. Rule is made absolute to the said extent, with no order as to cost.
