

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2631 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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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

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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

NATWARLAL HIRALAL BHAIWALA

Versus

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR

Appearance:

MR MUKESH R SHAH , Advocate, for Petitioners.
MR TH SOMPURA, ASSTT. GOVT. PLEADER , for Respondent.

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 30/04/97

ORAL JUDGEMENT

While dealing with Form No.1 filled in by the petitioner under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief), the respondent declared 10,179.51 square metres of land as excess land. After completing necessary formalities and publishing

draft statement, a final statement was issued on 13.1.1987. Aggrieved by this order, the petitioner preferred an appeal before the Tribunal and at the same time the respondent also approached the Tribunal by filing a cross appeal. On merits, the appeal filed by the petitioner was allowed and the matter was remanded for fresh decision for the reasons stated therein. The cross appeal filed by the respondent was dismissed. After remand, when the matter was taken up for fresh consideration, the respondent authority declared 31,571 square metres as excess land as against 10,179.51 square metres declared initially and thereafter the respondent published final statement on 27.5.1993 without publishing draft statement under Section 8 (3) of the Act. From the record it transpires that, in the meanwhile, the State of Gujarat exercised suo motu powers under Section 34 of the Act and reviewed the matter. During the course of review, some arithmetical error came to its notice and the same was corrected under Section 45 of the Act. By giving due effect to the arithmetical error, 29571 square metres of land was declared as excess. Even at this stage also, without resorting to the procedure under Section 8 (3) of the Act, the respondent authority published final statement on 19.4.1995. Aggrieved by this order, the petitioner again filed an appeal under Section 33 of the Act. It appears that the appeal was dismissed on technical ground of bar of limitation. Aggrieved by this order, the petitioner landholder has filed this petition invoking writ jurisdiction.

2. In the background of aforesaid facts, the question of law involved in this petition has a very narrow compass relating to publishing final statement without publishing draft statement u/s. 8 (3) of the Ceiling Act. In a case where competent authority prepares draft statement under Section 8 (3) of the Act and thereafter he proposes to hold that an area larger than that specified in the draft statement is required to be surrendered by the holder, a fresh draft statement is required to be issued before issue of final statement qua the larger area to be declared as surplus land. This question is no longer res - integra as is squarely covered by the judgment in the case of CHUNILAL CHHAGANAL PANDYA v. COMPETENT AUTHORITY & DY. COLLECTOR, RAJKOT reported in 1992 (2) 33 (2) Gujarat Law Reporter 861 wherein it has been held that failure to do so would render the entire exercise as unlawful, illegal and improper. Section 8 (3) of the Act provides for a stage for filing objection by a landholder to the draft statement and consideration thereof within a stipulated period. After publishing the notice as required under

Section 8 (3) of the Act, the Competent Authority shall take decision after affording a reasonable opportunity of hearing and thereafter shall publish final statement qua the extent of land to be declared as surplus. In this case, it is true that draft statement was published in relation to the land admeasuring 10,179.51 square metres only, therefore the petitioner - landholder could file his objections in relation to the said area of land only. After considering the objections, the respondent published final statement dated 13.1.1987 for 10,179.51 square metres of land. In this case, admittedly, no draft statement was published before publishing final statement qua the additional excess land. If no draft statement u/s. 8 (3) is published in relation to additional land to be declared as surplus, then the stage for filing objection by the landholder is not made available and is not heard. In other words, the landholder would be deprived of his valuable right of hearing and substantiating objections against the proposal of the authority. This would apparently be in violation of principles of natural justice.

3. Record shows that, after remand, the authority declared 31,571 square metres of land as surplus land and ultimately 29,571 square metres as excess land and published final statement without inviting objections under Section 8 (3) of the Act. This amply suggests that the decision has been taken by the Competent Authority without affording reasonable opportunity of hearing by inviting objections as required under Section 8 (3) of the Act. It is true that initially objections were submitted under Section 8 (3) of the Act in connection with the land admeasuring 10,179.51 square metres only. Therefore, the objections which were given initially cannot be treated as objections in relation to the land admeasuring 29,571 square metres. Thus, on the face of it, the decision of the Competent Authority is in violation of principles of natural justice, unlawful, arbitrary and the same is required to be quashed and set aside.

4. Accordingly, the petition is allowed. The order dated 7.5.1993 declaring 31,571 square metres of land as modified by the order dated 27.3.1995 declaring 29,571 square metres of land as surplus land is hereby quashed and set aside. The matter is remanded to the Competent Authority for fresh consideration on merits after publishing draft statement in connection with the land to be declared as surplus. It is needless to say that, since the impugned order has been set aside, all consequential steps taken by the respondent authority

shall have no recognition in the eyes of law. Rule is
made absolute with no order as to costs.

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