

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6542 of 1996

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?

1 to 5 : No

NATRAJ DYEING AND PRINTING WORKS PRIVATE LIMITED

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR SP DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 31/01/97

ORAL JUDGEMENT

The petitioner before me is a Private Limited Company. One Khushalbhai Naginbhai Patel, in the capacity of the Managing Director of the petitioner Private Limited Company, had submitted the necessary form under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, on September 12, 1976. Two pieces

of land situated at Udhna bearing Survey No. 223-Part and 287 admeasuring 4654 sq.mtrs. were shown as the land which would require consideration by the ULC Authorities. It was urged before the Competent Authority that, there has been the construction over the land before the coming into operation of the ULC Act, 1976. Any how, the Competent Authority was of the view that the authorised construction would be 26.752 sq.mtrs. alone. According to the Competent Authority, the petitioner-Company was entitled to one unit, i.e. 1500 sq.mtrs. Therefore, the Competent Authority, under the orders dated January 4, 1984 has said that the excess vacant land would be 3100.496 sq.mtrs. The above said orders were taken in appeal by the petitioner before the ULC Tribunal. It was urged before the Tribunal during the course of the hearing of the appeal that, the constructed portion, the land appurtenant thereto and the land which has gone because of the application of the TP Scheme were required to be deducted. Any how, it was the view of the Tribunal that, there was nothing on record to warrant a conclusion that the construction on the pretty large area was an authorised one. It was the case being taken up by the petitioner that, though initially, the authorisation was in respect of a small area admeasuring 26.752 sq.mtrs., ultimately, there has been the request for the building of the factory-cum-godown-cum-office and the area would be more than 1176 sq.mtrs. The petitioner wanted to place reliance upon the orders of regularisation pronounced in March 1972, i.e. before the coming into operation of the ULC Act, 1976.

All these contentions have not been dealt with by the Tribunal. In my view, therefore, the matter requires a remand to the Competent Authority who can decide all these questions. It shall have to be appreciated that, under the orders passed by the appropriate authority in March 1972, there has been the regularisation of certain construction which would be of 1176.252 sq.mtrs. This aspect shall have to be taken into consideration by the Competent Authority while deciding the remanded proceedings favourably for the petitioner. In the same way, the Competent Authority shall have to come to the conclusion regarding the availability of the open land as the land appurtenant. In the same way, the Competent Authority shall have to decide the question regarding the deduction qua the land which has been lost by the petitioner because of the application of the Town Planning Scheme.

Learned Counsel Mr.Yatin Oza points out that as a corollary proceedings have been travelled upto S.10 of

the ULC Act, 1976 and all these incidental and consequential orders also shall have to be quashed. Such orders are final but subject to the outcome of the appeal, if any, filed. When the matter is being remanded to the Competent Authority, all such orders shall have to be quashed and set aside. They are hereby quashed and set aside.

The Competent Authority shall complete the remanded proceedings within a period of three months from the date of receipt of the writ of the present orders. Rule is made absolute accordingly.
